

adoption services in Convention cases until it becomes accredited or approved, unless it acts under the supervision and responsibility of the primary provider in the case, or is a public body or exempted provider. If an agency or person does not comply with this requirement, it risks being subject to the civil and criminal penalties provided for in the IAA. If an agency or person is not seeking to be on this first list, it may submit an application for accreditation and approval at any time. Regardless of when an agency or person submits its application, a designated accrediting entity must evaluate the applicant in a timely fashion.

The regulations also cover how an agency or person selects a designated accrediting entity. The agency or person must apply to a designated accrediting entity with jurisdiction over its application. The Department, after evaluating potential accrediting entities, will designate selected accrediting entities and define their jurisdiction. An accrediting entity's jurisdiction may be limited by geography, type of applicant (agency or person), or other conditions determined by the Department.

The Department is aware that some agencies and persons have previously undergone voluntary accreditation. If the entity that granted such voluntary accreditation is eventually designated as an accrediting entity by the Department, any agency or person that has previously obtained voluntary accreditation from that entity may apply to that same entity for Convention accreditation under these regulations, but is not required to do so.<sup>2</sup> When an

applicant applies for accreditation or approval for the first time under these regulations, an applicant may apply to any accrediting entity with jurisdiction over its application. Subsequent applications for accreditation or approval are subject to different rules that are also described in subpart D.

#### 5. Subpart E—Evaluation of Applicants for Accreditation and Approval

Subpart E governs how accrediting entities must evaluate applicants for full accreditation or approval. The Department recognizes that accrediting entities currently use a variety of methods for voluntary accreditation of all types of social service providers, including adoption service providers. However, the Department chose in these regulations to mandate specific requirements so as to ensure that the processes used to scrutinize agencies and persons for compliance are fair and can be uniformly applied to all agencies and persons.

For example, the regulations require accrediting entities to do the following: (1) Use at least two qualified evaluators to assess an agency or person; (2) review all documentation submitted; (3) verify the information submitted; and (4) conduct appropriate site visits. The regulations also describe how site visits must be conducted, and include a requirement that at least one evaluator participate in the site visit. Before making its final decision, the accrediting entity may, in its discretion, advise an agency or person of any deficiencies that could prevent accreditation or approval. The accrediting entity may defer a final decision to allow the agency or person to correct the deficiencies.

The regulations also discuss how the accrediting entity must protect the information and documents disclosed to it at any stage of the accreditation and approval process. Specifically, the regulations address the protection of information from unauthorized disclosure, proper use of the information received, maintenance of accurate records, and safeguards for protecting identifying information from unauthorized use and disclosure. The regulations also require that the accrediting entity's officers, employees, contractors, and evaluators who have access to an agency's or person's documents or information sign a non-disclosure agreement.

requests that commenters in favor of deeming identify any current, non-regulatory standards that are sufficiently similar to particular standards in subpart F of this proposed regulation to warrant an automatic finding of compliance on the "matching" standard.

(a) Substantial Compliance. Section 96.27(a) mandates substantial compliance, not absolute compliance, with the standards in subpart F. There was considerable disagreement in the adoption community about which of the standards in subpart F—if any—should be made absolute. Some advocated that all the standards should be subject to strict compliance; others advocated that particular standards, but not others, should be subject to strict compliance. The Department believes that the use of an accreditation system based on substantial compliance and the opportunity to improve, rather than a strict licensing scheme, to regulate the agencies and persons is more consistent with the regulatory approach contemplated by the IAA. Thus, after careful deliberation, the Department has decided to mandate substantial compliance with all of the standards.

There are three additional reasons for the decision to use substantial compliance as the standard. First, in the absence of consensus among the experts, it was impossible to delineate which individual requirements should always be mandatory. Second, a number of these standards address a wide range of ethical and sound social work practices, rather than just Convention or IAA requirements. One-time failures to comply with such social work practice standards, which inherently are evolving, though unfortunate, should not form the sole basis for the imposition of the severe types of adverse action such as cancellation of accreditation or approval. Third, the Department considers it essential to give sufficient discretion to accrediting entities, which will be selected based on their expertise, to decide when non-compliance warrants denial of accreditation or approval or adverse action.

The Department recognizes that adherence to certain key individual standards is critical to protecting children and families and comporting with the requirements of the Convention and the IAA. Therefore, the regulations require that the standards or elements of certain standards will be assigned points by the accrediting entity. The accrediting entities will develop a scoring or weighting system that determines how a calculation is completed to determine if an agency or person is in substantial compliance with the standards. The Department has considered but rejected the idea of defining the scoring methods and listing the weighting criteria in this proposed rule. Instead, the Department intends to oversee the designated accrediting entities so that they may arrive at a

<sup>2</sup> Throughout this Preamble and regulations, accreditation and approval refer to accreditation and approval under these regulations, not to any other system of accreditation. Acton Burnell received substantial comments in favor of a "deeming" mechanism, which would permit agencies that have already been voluntarily accredited under a different accreditation system to meet via "deeming" these new Federal regulatory standards when the standards are the same. The Department has decided not to permit deeming. The standards developed in subpart F differ substantially from the standards currently used by potential accreditors. The standards in this proposed regulation focus mainly on intercountry adoption practices and compliance with the Convention and IAA requirements rather than general corporate governance practices and quality assurance systems. These requirements are derived from newly enacted mandates, and currently used accreditation standards do not yet have this same focus. Therefore, the Department has concluded that its regulatory standards differ substantially from other standards and that the use of a "deeming" mechanism would have little practical utility and not ensure adequate compliance with the Convention and the IAA. In addition, deeming could give an advantage in the start-up phase to some providers over others. The Department welcomes public comment on this issue, especially from potential accreditors as well as agencies that have been voluntarily accredited. The Department