

uniform and consistent method of assigning points and weighting different standards. The Department and the accrediting entities will consult on a point system and methods to weight the standards to ensure that certain standards are given greater weight than others as appropriate. The weighting of standards is typical of and consistent with current accreditation practice. The Department, however, did not think it was advisable to begin the process of having any accrediting entities ascribe points and weight the standards in subpart F when both the number and content of the standards may change subject to comments provided during the public comment period. Also, because the point system and the weighting criteria will be developed by the accrediting entities as internal procedures, the criteria will not be subject to the notice and comment rulemaking. Applicants will be advised of the system, however, when provided with application materials.

(b) *Consideration of Capacity or Actual Performance.* The Department anticipates that when evaluating an agency or person for initial accreditation or approval, the accrediting entity may not be able to evaluate actual compliance because the agency or person will not yet have had an opportunity to comply with the stated requirements. Therefore, the regulations permit the accrediting entity, when evaluating an initial application for accreditation or approval, to evaluate the capacity of the agency or person to achieve substantial compliance with the standards rather than the agency's or person's actual performance when evidence of actual performance is not yet available. Once the agency or person has been accredited or approved, however, the accrediting entity generally will, for the purposes of reapplication after adverse action, renewal, monitoring and enforcement, consider the agency's or person's actual performance when deciding whether it is in substantial compliance with the standards. In special, limited circumstances it may be necessary for the accrediting entity to continue to evaluate capacity, but in the absence of such special circumstances the accrediting entity will evaluate actual performance.

(c) *Use of IAA Standards.* Accrediting entities may use only the standards in subpart F. Accrediting entities may not impose standards that are not included in these regulations. Although the accrediting entity is limited to the standards in subpart F when determining whether to grant or maintain accreditation or approval,

there are three instances when other considerations may be taken into account. First, if an agency or person has been previously denied accreditation or approval under these regulations, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after certain adverse actions, the accrediting entity may take the circumstances of such actions into account when making its determination. The Department considers such past behavior relevant in accreditation or approval decisions. Second, if any agency or person that has an ownership or control interest in the applicant has been previously debarred, the accrediting entity may take the circumstances of the debarment into consideration when making its determination. The purpose of this provision is to prevent an agency or person that has been debarred from bypassing the debarment by merely reconstituting itself as another entity. Finally, a failure to provide information to the accrediting entity may be grounds for denial or other adverse action.

6. Subpart F—Standards for Convention Accreditation and Approval

(a) *Overview of Standards.* Subpart F contains the standards for accrediting and approving agencies and persons. The standards include the basic requirements necessary to comply with the IAA and the Convention, detailed standards addressing issues of particular concern to the adoption community, and generally recognized standards for sound and ethical practice in the intercountry adoption field.

The standards contained in subpart F are applicable at all stages of accreditation or approval. Specifically, the accrediting entity will use these standards: (1) When an agency or person applies for accreditation or approval; (2) during monitoring by the accrediting entity; (3) at the time renewal of accreditation or approval is sought; (4) during the investigation of complaints lodged against the agency or person; and (5) when the accrediting entity or the Department contemplates taking adverse action against the agency or person. If at any time an agency or person is believed to be out of substantial compliance with these standards, the client or other interested party may file a complaint. The accrediting entity will investigate the complaint in accordance with subpart J and, if non-compliance is established, take adverse action as appropriate in accordance with subpart K.

The standards in subpart F do not apply to agencies seeking temporary accreditation, except as otherwise provided in subpart N (Procedures and Standards Relating to Temporary Accreditation). Subpart N contains separate performance standards for small entities that wish to become temporarily accredited agencies under the IAA.

(b) *Review of Certain Specific Standards.* The Department does not believe it is necessary in this Preamble to review the contents of every standard in subpart F. However, there are a number of requirements that are specifically highlighted because the preliminary public input on such standards has been conflicting. For those standards, the Department believes that further explanation is warranted.

Section 96.33: Budget, Audit, Insurance, and Risk Assessment Requirements: The appropriate treatment of liability and insurance is one of the issues that elicited a range of intense comments during the development of the proposed regulation. Concerns centered in particular on the ability of an aggrieved party to seek redress from a single agency or person in the United States that would be responsible for the adoption. Input from congressional staff called for the regulations to assign civil liability to the accredited/approved provider for the acts of its U.S. supervised providers and its foreign supervised providers. To address these concerns, the regulations mandate in §§ 96.45(c), and § 96.46(c) that any accredited agency, temporarily accredited agency, or approved person acting as the primary provider assume legal responsibility vis-à-vis the adoptive parents for the acts of other agencies and persons in the United States or abroad acting under its supervision and responsibility, in addition to its own acts in connection with an adoption. The intent of this provision is to give the adoptive parents legal recourse against a single entity so far as is reasonable. The primary provider may, however, seek indemnification from its supervised providers for any liability it incurs vis-à-vis the adoptive parent. (No effort is made, however, to make the primary provider responsible for the acts of other accredited agencies or approved persons with which it handles an adoption.)

The Department recognizes that this provision may raise the costs of liability insurance for accredited agencies and approved persons and have an effect on civil litigation. The Department is satisfied, however, that it is consistent with the intent and overall purpose of