

Review and approval of home studies prepared by exempted providers and non-accredited/approved supervised providers: the impact of 22 CFR 96.47(c)(1).

Background:

Many states do not have a Hague accredited agency to conduct home studies. Common practice nationwide is to engage an exempted provider or to enter into a supervised provider relationship with an agency that is not accredited to conduct the home study. 22 CFR §96.47(c) address review and approval of home studies not performed by an accredited agency:

(c) Where the home study is not performed in the first instance by an accredited agency or temporarily accredited agency, the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the home study:

(1) Includes all of the information required by paragraph (a) of this section and **is performed in accordance with 8 CFR 204.3(e)*, and applicable State law;** and. . . .

* Note on change in citation for 8 CFR 204.3(e): 8 CFR 204.3(e) pertains to the USCIS orphan rule and was used as a placeholder in the Department of State regulation, which preceded USCIS's new rule on Hague Convention case processing. Now that the USCIS regulation has been published, the correct Convention home study citation is 8 CFR 204.311, which we will use in the rest of this document.

Most APSs currently use one of 2 different approaches to comply with 96.47(c)(1):

1. In the first approach, whenever an ASP has a home study prepared in another state and uses an agency that is not Hague-accredited (exempted provider or non-accredited supervised provider), in order to satisfy that the study was performed in accordance with State regulations the primary provider/accredited supervising agency instructs the agency or person to provide a copy of her/his license and a letter of good standing. By so doing, the primary provider assures that the home study preparer knows her/his own State regulations and will make sure that the study is in compliance with them.
2. In a second approach, the primary provider/accredited supervising agency studies the State regulations of the State where the home study was performed and reviews the home study in light of those laws to assure that it meets all State standards. This approach requires the primary provider to develop expertise in the State adoption laws and regulations for every State in which it works with a family using an exempted provider or non-accredited supervised provider.

QUESTION:

What should agencies do to demonstrate substantial compliance with the provisions of 22 CFR 96.47(c)(1)? How can the reviewing accredited agency best assure that an exempted provider or supervised provider performed a home study in accordance with applicable State law?

RESPONSE:

Under 22 CFR 96.47(c)(1) the accredited agency reviewing and approving a home study prepared by an exempted or unaccredited supervised provider reviews and, if appropriate, provides a written approval including a statement that the home study was performed in accordance with USCIS's home study rule (8 CFR 204.311) and applicable State law. The provision in 22 CFR 96.47(c)(1) does not speak to how the agency should assess that the home study was completed in accordance with State law. It is left to the accredited agency to decide how best to be in substantial compliance with this accreditation standard.

The commonly used approaches, noted above, may be reasonable ones allowing the reviewing accredited agency to conclude that the home study was completed in accordance with State law. Other

approaches may similarly provide assurances to the reviewing accredited agency that the home study was completed in accordance with State law.

The relevant accrediting entity will take into account any failure of an accredited adoption service provider to determine that a home study was prepared in accordance with USCIS rules and applicable State law in assessing such provider's substantial compliance with applicable Hague standards and the provider's accreditation or approval.