

adoptions in the calendar year preceding the year in which the TAD falls may apply for a two-year period of temporary accreditation. Both the one- and the two-year periods commence on the date that the Convention enters into force for the United States.

To become temporarily accredited, an agency must demonstrate that: (1) It is a non-profit agency licensed by State law to provide adoption services in at least one State; (2) it is, and, for the last three years prior to the TAD has been providing intercountry adoption services; (3) it has the capacity to comply with the Department's and the accrediting entity's reporting requirements; and (4) it has not been involved in any improper conduct related to providing intercountry adoption services. To prove that it has not been involved in any prior improper conduct, the agency must provide evidence that it has continually maintained its State license without suspension or cancellation for misconduct and it has not been subject to any fault or liability decisions or criminal findings of fraud or financial misconduct for the three years preceding the TAD. The agency also must demonstrate that it has a comprehensive and realistic plan for achieving full accreditation and is actively taking steps to execute that plan.

To maintain temporary accreditation, the agency must: (1) Follow all applicable licensing and regulatory requirements; (2) refrain from any improper conduct, including but not limited to, maintaining its State license; (3) avoid any findings of fault or liability in any administrative or judicial action; (4) ensure that it is not subject to any criminal findings of fraud or financial misconduct; (5) adhere to the prohibition against child-buying in § 96.36; (6) respond to complaints in accordance with § 96.41; (7) comply with the maintenance of records requirements in § 96.42; (8) provide data in accordance with § 96.43; (9) comply with the home study, child background study, and consents requirements in §§ 96.47 and 96.53; and (10) plan for the transfer of its cases when necessary. Furthermore, when acting as the primary provider using supervised providers, the agency must comply with the requirements on primary providers in §§ 96.44, 96.45, and 96.46. When performing Convention functions in either incoming or outgoing cases, it must adhere to the standards in §§ 96.52 (incoming cases) and 96.55 (outgoing cases). These standards and others are listed in § 96.104.

These standards for obtaining or maintaining temporary accreditation (subpart N) are much less comprehensive than the standards for full accreditation (Subpart F). The reason for this difference is that the IAA mandates that small agencies, which initially might be unable to meet the more detailed standards applicable to full accreditation, be allowed to provide services during an initial phase-in period for Convention implementation while developing the resources to comply with the accreditation standards. The temporary accreditation provisions are designed to avoid prematurely disqualifying small, community-based agencies from providing Convention adoption services. These regulations take into account the concern that, if too many small, non-profit agencies were unable to meet the standards and consequently stopped providing adoption services, then parents and children in some geographical areas of the United States would find it difficult to obtain services. On the other hand, the Department also considered the goal of ensuring that temporarily accredited agencies could provide satisfactory adoption services to families served. Thus, the Department struck a balance between these competing concerns and developed a list of performance-based standards applicable to temporarily accredited agencies, but also incorporated by reference certain key standards from the accreditation provisions in subpart F.

Moreover, some of the accrediting entity's procedures for evaluating an agency for temporary accreditation differ from the procedures for evaluating an agency for full accreditation. For example, an accrediting entity must conduct a site visit before granting full accreditation; however, for temporary accreditation, an accrediting entity may, in its discretion, conduct a site visit if necessary. The costs for site visits for full accreditation will be wrapped into the initial accreditation fee disclosed to the agency. Only if the accrediting entity decides to conduct a site visit for temporary accreditation, however, will it then assess the agency additional fees for the site visit costs. Also, the accrediting entity must monitor the agency's progress in implementing the plan for full accreditation and require the agency to make continual progress toward completing the process of obtaining full accreditation. These are just a few examples of the special procedures applicable to temporary accreditation. The reader is encouraged to consult subpart N for a detailed listing.

Finally, an accrediting entity may deny temporary accreditation, or withdraw temporary accreditation after it is granted, when the agency is not in substantial compliance with the applicable standards. Under the regulations, there is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation. This is consistent with the fact that the IAA does not treat denial as an adverse action. The Department believes, however, that withdrawal of temporary accreditation is an adverse action subject to judicial review under the IAA. Withdrawal of temporary accreditation is similar to cancellation and other adverse actions that are subject to judicial review in that an agency or person that was already permitted to provide adoption services under the Convention will lose the ability to provide such services. An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. The circumstances of the withdrawal of its temporary accreditation may be taken into account when evaluating the agency for full accreditation.

VI. Regulatory Review

A. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies, pursuant to 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is required to “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). “Small entities” include “small organizations,” which the RFA defines as any non-profit enterprise that is independently owned and operated and not dominant in its field. (5 U.S.C. 601(4), 601(6)).

This proposed rule directly affects all adoption service providers, whether agencies or persons, who are providing intercountry adoption services in cases involving other Convention countries. The estimate of the number of such entities, which are mainly non-profits, is between 410 and 600. The Department estimates that the vast majority of these adoption service providers are small entities under the RFA; therefore, the Department has determined that this proposed rule will