

those contained in subpart F of this part; and

(2) Enforcement action against the agency will be taken in accordance with § 96.105 and § 96.107 rather than in accordance with subpart K of this part.

(b) The accrediting entity may determine, at its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency. In such a case, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity.

(c) The accrediting entity may consider any information that becomes available to it about the compliance of the agency. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.104 Performance standards for temporary accreditation.

The accrediting entity may not maintain an agency's temporary accreditation unless the agency demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the following standards:

(a) The agency follows applicable licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(b) It does not engage in any improper conduct related to the provision of intercountry adoption services, as evidenced in part by the following:

(1) It maintains its State license without suspension or cancellation for misconduct;

(2) It is not subject to a finding of fault or liability in any administrative or judicial action; and

(3) It is not the subject of any criminal findings of fraud or financial misconduct;

(c) It adheres to the standards in § 96.36 prohibiting child buying;

(d) It adheres to the standards for responding to complaints in accordance with § 96.41;

(e) It adheres to the standards on adoption records and information relating to Convention cases in accordance with § 96.42;

(f) It adheres to the standards on providing data to the accrediting entity in accordance with § 96.43;

(g) When acting as the primary provider in a Convention adoption and using supervised providers in the United States or in another Convention country, it complies with the standards in §§ 96.44, 96.45 and 96.46;

(h) When performing or approving a home study in an incoming Convention

case, it complies with the standards in § 96.47;

(i) When performing or approving a child background study or obtaining consents in an outgoing Convention case, it complies with the standards in § 96.53;

(j) When performing Hague Convention functions in incoming or outgoing cases, it complies with the standards in § 96.52 or § 96.55;

(k) It has a plan to transfer its cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases;

(l) The agency is making continual progress towards completing the process of obtaining full accreditation by the time its temporary accreditation expires; and

(m) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.

(a) If at any time the accrediting entity determines that an agency it has temporarily accredited is substantially out of compliance with the standards in § 96.104, it may, in its discretion, withdraw the agency's temporary accreditation. The accrediting entity must notify the agency in writing of any decision to withdraw the agency's temporary accreditation. The written notice must identify the deficiencies necessitating the withdrawal. Before withdrawing the agency's temporary accreditation, the accrediting entity may, in its discretion, provide the agency with an opportunity to correct the deficiencies warranting withdrawal.

(b) The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must immediately notify the Secretary in writing when it withdraws an agency's temporary accreditation.

§ 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.

(a) There is no administrative review of a decision by an accrediting entity to withdraw an agency's temporary accreditation.

(b) Withdrawal of temporary accreditation is analogous to cancellation of accreditation and is therefore an adverse action pursuant to § 96.75. In accordance with section

202(c)(3) of the IAA (Pub. L. 106-279, section 202(c)(3), 42 U.S.C. 14922(c)(3)), a temporarily accredited agency that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court may review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.107 Adverse action against a temporarily accredited agency by the Secretary.

(a) The Secretary may, in his or her discretion, withdraw an agency's temporary accreditation if the Secretary finds that the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The Secretary may also withdraw an agency's temporary accreditation if the Secretary finds that such action:

(1) Will further U.S. foreign policy or national security interests;

(2) Will protect the ability of U.S. citizens to adopt children under the Convention; or

(3) Will protect the interests of children.

(c) If the Secretary withdraws an agency's temporary accreditation, the Secretary will notify the accrediting entity.

§ 96.108 Review of the withdrawal of temporary accreditation by the Secretary.

(a) There is no administrative review of a decision by the Secretary to withdraw an agency's temporary accreditation.

(b) Section 204(d) of the IAA (Pub. L. 106-279, section 204(d), 42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. Withdrawal of temporary accreditation, which is analogous to cancellation of accreditation, is a final action subject to judicial review.

(c) An agency whose temporary accreditation has been withdrawn by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the agency is located, to set aside the action pursuant to section 204(d) of the