SUBCHAPTER J—LEGAL AND RELATED SERVICES

PART 91—IMPORT CONTROLS

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SOURCE: 22 FR 10858, Dec. 27, 1957, unless otherwise noted.

§ 91.1 Answering inquiries regarding tariff acts and customs regulations.
In replying to inquiries received from exporters, travelers, or other interested parties, concerning tariff acts or customs regulations, consular officers shall refrain from giving, or appearing to give, decisions pertaining to matters upon which they are not competent to pass.

§ 91.2 Furnishing samples to collectors of customs or appraising officers.
Upon the receipt of a request therefor from a collector of customs or appraising officer of the Government of the United States, a consular officer shall procure and forward samples of merchandise being imported or offered for importation into the United States from his particular district.

§ 91.3 Assistance to Customs and Tariff Commission representatives.
Consular officers shall render all proper assistance to Customs and Tariff Commission representatives abroad to aid them in the performance of their official duties.

§ 91.4 Alcoholic liquors on vessels of not over 500 tons.
(a) Upon request of interested shippers or masters of vessels at ports in the consular district other than the place where the consular office is situated, consular officers shall designate one or more reputable individuals residing in such port, as authorized persons to witness the signatures of the masters of vessels of not over 500 net tons when affixed to declarations covering shipments of alcoholic liquors destined to the United States, and to issue certificates therefor as contemplated by section 7 of the Anti-Smuggling Act of 1935 (49 Stat. 520; 19 U.S.C. 1707). Any person so designated by a consular officer to issue such certificates shall state in each of his certificates that he has no interest in the shipment described therein. Having delivered the original document to the master, he shall forward the duplicate to the consular office for retention.
(b) Consular officers shall, with respect to declarations of masters of vessels of not over 500 net tons in instances in which the port of shipment is the same place as, or conveniently near to, the location of the consular office, supply their certifications directly as contemplated by the said section of the Anti-Smuggling Act. They shall retain, over the interval prescribed in the applicable records retirement schedule, a copy of each document so certified by them. They shall similarly retain the copies of the certifications supplied by authorized persons in outlying ports of the consular district, as set forth in the preceding subsection.
(c) This section, read together with § 4.13, title 19, of the Code of Federal Regulations, comprises the joint regulations contemplated for issuance by the Secretary of State and the Secretary of the Treasury under section 7 of the Anti-Smuggling Act of 1935.
[32 FR 12588, Aug. 30, 1967]

PART 92—NOTARIAL AND RELATED SERVICES

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**INTRODUCTION**

§ 92.1 Definitions.

(a) In the United States the term notary or notary public means a public officer qualified and bonded under the laws of a particular jurisdiction for the performance of notarial acts, usually in connection with the execution of some document.

(b) The term notarial act means an act recognized by law or usage as pertaining to the office of a notary public.

(c) The term notarial certificate may be defined as the signed and sealed statement to which a “notarial act” is almost invariably reduced. The “notarial certificate” attests to the performance of the act by the notary, and may be an independent document or as in general American notarial practice, may be placed on or attached to the notarized document.

(d) For purposes of this part, except §§ 92.36 through 92.42 relating to the authentication of documents, the term notarizing officer includes consular officers, officers of the Foreign Service who are secretaries of embassy or legation under Section 24 of the Act of August 18, 1856, 11 Stat. 61, as amended (22 U.S.C. 4221), and such U.S. citizen Department of State employees as the Deputy Assistant Secretary of State for Overseas Citizens Services may designate for the purpose of performing notarial acts overseas pursuant to section 127(b) of the Foreign Relations Authorization Act, Fiscal Years 1994–1995, Pub. L. 103–236, April 30, 1994 (“designated employees”). The authority of designated employees to perform notarial services shall not include the authority to perform authentications, to notarize patent applications, or take testimony in a criminal action or proceeding pursuant to a commission issued by a court in the United States, but shall otherwise encompass all notarial acts, including but not limited to administering or taking oaths, affirmations, affidavits or depositions.

The notarial authority of a designated employee shall expire upon termination of the employee’s assignment to such duty and may also be terminated at any time by the Deputy Assistant Secretary for Overseas Citizens Services.

[60 FR 51721, Oct. 3, 1995]

§ 92.2 Description of overseas notarial functions of the Department of State, record of acts.

The overseas notarial function of notarizing officers of the Department of State is similar to the function of a notary public in the United States. See § 22.5(b) of this chapter concerning the giving of receipts for fees collected and the maintenance of a register serving the same purposes as the record which notaries are usually expected or required to keep of their official acts.

[60 FR 51721, Oct. 3, 1995]

§ 92.3 Consular districts.

Where consular districts have been established, the geographic limits of the district determine the area in which notarial acts can be performed by the notarizing officer. See § 92.41(b) regarding authentication of the seals and signatures of foreign officials outside the consular district.


§ 92.4 Authority of notarizing officers of the Department of State under Federal law.

(a) All notarizing officers are required, when application is made to them within the geographic limits of their consular district, to administer to and take from any person any oath, affirmation, affidavit, or deposition, and to perform any notarial act which
any notary public is required or authorized by law to perform within the United States. The term “notarial act” as used herein shall not include the performance of extraordinary acts, such as marriages, that have not been traditionally regarded as notarial, notwithstanding that notary publics may be authorized to perform such acts in some of the states of the United States. If a request is made to perform an act that the notarizing officer believes is not properly regarded as notarial within the meaning of this regulation, the officer shall not perform the act unless expressly authorized by the Department upon its determination that the act is a notarial act within the meaning of 22 U.S.C. 4215 and 4221. The language “within the limits of the consulate” is construed to mean within the geographic limits of a consular district. With respect to notarial acts performed by notarizing officers away from their office, see §92.7. Notarial acts shall be performed only if their performance is authorized by treaty provisions or is permitted by the laws or authorities of the country wherein the notarizing officer is stationed.

(b) These acts may be performed for any person regardless of nationality so long as the document in connection with which the notarial service is required is for use within the jurisdiction of the Federal Government of the United States or within the jurisdiction of one of the States or Territories of the United States. (However, see also §92.6.) Within the Federal jurisdiction of the United States, these acts, when certified under the hand and seal of office of the notarizing officer are valid and of like force and effect as if performed by any duly authorized and competent person within the United States. Documents bearing the seal and signature of a secretary of embassy or legation, consular officer (including consul general, vice consul or consular agent) are admissible in evidence within the Federal jurisdiction without proof of any such seal or signature being genuine or of the official character of the notarizing officer.

(c) Every notarizing officer may perform notarial acts for use in countries occupied by the United States or under its administrative jurisdiction, provided the officer has reason to believe that the notarial act will be recognized in the country where it is intended to be used. These acts may be performed for United States citizens and for nationals of the occupied or administered countries, who reside outside such countries, except in areas where another government is protecting the interests of the occupied or administered country.

(d) Chiefs of mission, that is, ambassadors and ministers, have no authority under Federal law to perform notarial acts except in connection with the authentication of extradition papers (see §92.40).

(e) Consular agents have authority to perform notarial services but acting consular agents do not.

§92.5 Acceptability of notarial acts under State or territorial law.

The acceptability with the jurisdiction of a State or Territory of the United States of a certificate of a notarial act performed by a notarizing officer depends upon the laws of the State or Territory.

[60 FR 51721, Oct. 3, 1995]

§92.6 Authority of notarizing officers under international practice.

Although such services are not mandatory, notarizing officers may, as a courtesy, perform notarial acts for use in countries with which the United States has formal diplomatic and consular relations. Generally the applicant for such service will be a United States citizen or a national of the country in which the notarized document will be used. The notarizing officer’s compliance with a request for a notarial service of this type should be based on the reasonableness of the request and the absence of any apparent irregularity. When a notarizing officer finds it advisable to do so, the officer may question the applicant to such extent as may be necessary to be assured of the reasonableness of the request and the absence of irregularity.

(a) That his notarial certificate may reasonably be expected to satisfy the legal requirements of the country in
which the notarized document will be used;

(b) That the notarial service is legally necessary and cannot be obtained otherwise than through a United States notarizing officer without loss or serious inconvenience to the applicant; and

(c) That the notarial certificate will be used solely for a well-defined purpose, as represented by the applicant for the service. (See also §92.4(c) regarding notarial services for use in countries occupied by the United States or under its administrative jurisdiction.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51721, Oct. 3, 1995]

§ 92.7 Responsibility of notarizing officers of the Department of State.

(a) As a rule notarial acts should be performed at the consular office. Where required by the circumstances of a particular case and subject to the reasonableness of the request notarial acts may be performed elsewhere within the limits of the consulate subject to the assessment of the applicable fees under subheading “Services Rendered Outside of Office” of the Tariff of Fees (§22.1(a) of this chapter), as well as to payment by the interested party of the officer’s expenses in going to the place where the service is performed and returning to his office (§22.1(b) of this chapter).

(b) As indicated in §§92.4, 92.5, and 92.6, the authority of secretaries of embassy or legation as well as consular officers to perform notarial acts is generally recognized. However, the function is essentially consular, and notarial powers are in practice exercised by diplomatic officers only in the absence of a consular officer or U.S. citizen State Department employee designated to perform notarial functions as provided in §92.1(d). Performance of notarial acts by an officer assigned in dual diplomatic and consular capacity shall be performed in his/her consular capacity, except in special circumstances.


GENERAL NOTARIAL PROCEDURES

§ 92.8 Compliance with request for notarial services.

A notarizing officer should comply with all proper requests for the performance of notarial services within the limitations prescribed in this part. (See particularly §§92.3 to 92.7.) Moreover, as a representative of the United States Government, the notarizing officer, when acting in a notarial capacity, should take great care to prevent the use of his official seal in furthering any unlawful or clearly improper purpose. (See §92.9 regarding refusal to perform notarial services in certain cases.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51721, Oct. 3, 1995]

§ 92.9 Refusals of requests for notarial services.

(a) A notarizing officer should refuse requests for notarial services, the performance of which is not authorized by treaty provisions or permitted by the laws or authorities of the country in which he is stationed. (See §92.4(a).) Also, a notarizing officer should refuse to perform notarial acts for use in transactions which may from time to time be prohibited by law or by regulations of the United States Government such, for example, as regulations based on the “Trading With the Enemy Act of 1917,” as amended.

(b) A notarizing officer is also authorized to refuse to perform a notarial act if he had reasonable grounds for believing that the document in connection with which his notarial act is requested will be used for a purpose patently unlawful, improper or inimical to the best interests of the United States. Requests for notarial services should be refused only after the most careful deliberation.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.10 Specific waiver in notarial certificate.

If the notarizing officer has reason to believe that material statements in a document presented for notarization are false, and if no basis exists for refusing the notarial service in accordance with §92.9, he may consider the advisability of informing the applicant
that he will perform the service only with a specific waiver of responsibility included in the notarial certificate. Furthermore, a notarizing officer may, in his discretion, add to the specific waiver in the notarial certificate a statement of verifiable facts known to him, which will reveal the falsity of material in the document. However, normally a notarizing officer shall exercise great caution not to limit the general privilege of a United States citizen while abroad to execute under oath any statement he sees fit to make, including mistaken, unnecessary, and even frivolous statements: Provided, That substantial and compelling reasons do not exist which impel restraining action on the part of the notarizing officer. On the other hand, experience has shown the desirability of including, as standard practice, a specific waiver of responsibility in all authentications (§ 92.38) executed in connection with divorce proceedings.

§ 92.11 Preparation of legal documents.

(a) By attorneys. When a document has been prepared by an attorney for signature, a notarizing officer should not question the form of document unless it is obviously incorrect.

(b) By notarizing officers. A notarizing officer should not usually prepare for private persons legal documents for signature and notarization. (However, see the provisions in §92.24 regarding the preparation of affidavits.) When asked to perform such a service, the notarizing officer should explain that the preparation of legal forms is normally the task of an attorney, that the forms used and the purposes for which they are used vary widely from jurisdiction to jurisdiction and that he could not guarantee the legal effectiveness of any document which he might prepare. The person desiring the preparation of a legal document should be referred to such publications as Jones Legal Forms and The Lawyers Directory with the suggestion that he select or adapt the form which appears best suited to his needs. The notarizing officer may, in his discretion, arrange to have a member of his office staff type the document. If the document is typed in the Foreign Service office, the fee for copying shall be collected as prescribed under the caption “Copying and Recording” of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter).

§ 92.12 Necessity for certification of notarial acts.

A notarizing officer must execute a written certificate attesting to the performance of a notarial act. This certificate may be inserted on or appended to the notarized document (see §92.17 regarding the fastening of sheets). The certificate evidences the performance of the notarial act. Failure to execute this certificate renders the notarial act legally ineffective. Each notarial act should be evidenced by a separate certificate; two or more distinct notarial acts should not be attested to by one certificate.

§ 92.13 Form of notarial certificate.

The form of a notarial certificate depends on the nature of the notarial act it attests. (See §§92.18 to 92.48 for discussions of the various forms of notarial certificates.) Rules pertaining to venue, and signing and sealing, are common to all notarial certificates.

§ 92.14 Venue on notarial certificates.

(a) The term venue means the place where the certificate is executed. The venue must be shown on all notarial certificates to establish the qualifications and sphere of authority of the notarizing officer to perform the notarial act. The items characteristic of a typical venue, in the order of their appearance in the certificate, are as follows:

(1) Name of the country (or dominion, Territory, colony, island, as appropriate);

(2) Name of province or major administrative region (if none, this may be omitted);

(3) Name of local community (city, town, or village);

(4) Name of the Foreign Service post.
(b) When a notarial act is performed, and the notarial certificate executed, at a locality in a consular district other than the locality in which the Foreign Service office is situated, the venue should mention only the name of the country (or dominion, territory, colony, island, as appropriate), and the name of the consular district.

(c) The venue used at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should bear the notation “American Consular Service” in place of the post name.

§ 92.15 Signing notarial certificate.

The notarizing officer should sign a notarial certificate on the lower right-hand side. The name and full official title of the notarizing officer should be typed, stamped with a rubber stamp, or printed in ink on two separate lines immediately below his signature. When the notarizing officer is assigned to a Foreign Service post in both a diplomatic and consular capacity, he should use his consular title in the notarial certificate. (See § 92.7.)

§ 92.16 Sealing the notarial certificate.

The notarizing officer should seal a notarial certificate with the impression seal of the post on the lower left-hand side of the certificate. A notarial certificate executed at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should be sealed with an impression seal bearing the legend “American Consular Service” and the name of the locality.

§ 92.17 Fastening of pages.

When the instrument or document to which a notarial act relates consists of more than one sheet, or when the notarial certificate will be attached and not written on the document itself, the notarizing officer should bring all the sheets comprising the document together under his official seal.

§ 92.18 Oaths and affirmations defined.

(a) Oath. An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. In a broad sense the word “oath” includes all forms of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly, and in this sense it includes “affirmation”.

(b) Affirmation. An affirmation is a solemn and formal declaration or asseveration in the nature of an oath that a statement, or series of statements, is true. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by any person having conscientious scruples against taking an oath. As a general rule, an affirmation has the same legal force and effect as an oath.

§ 92.19 Administering an oath.

The usual formula for administering an oath is as follows: The officer administering the oath requests the person taking the oath to raise his right hand while the officer repeats the following words: “You do solemnly swear that the statements set forth in this paper which you have here signed before me are true. So help you God.” Whereupon the person taking the oath answers, “I do.”

§ 92.20 Administering an affirmation.

In administering an affirmation the procedure followed is generally the same as in the case of an oath, but the formula is varied by the use of the following words: “You do solemnly, sincerely, and truly affirm and declare that . . . , and this you do under the pains and penalties of perjury.”

§ 92.21 Notarial certificate to oath or affirmation.

The written statement attesting to the administration of an oath or affirmation is known as a jurat. The jurat must be signed and sealed by the notarizing officer (see §§ 92.15 and 92.16 on signing and sealing notarial certificates).
§ 92.22 "Affidavit" defined.

An affidavit is a written declaration under oath made before some person who has authority to administer oaths, without notice to any adverse party that may exist. One test of the sufficiency of an affidavit is whether it is so clear and certain that it will sustain an indictment for perjury, if found to be false. An affidavit differs from a deposition in that it is taken ex parte and without notice, while a deposition is taken after notice has been furnished to the opposite party, who is given an opportunity to cross-examine the witness.

§ 92.23 Taking an affidavit.

The notarizing officer taking an affidavit should:

(a) Satisfy himself, as far as possible, that his notarial act will be acceptable under the laws of the jurisdiction where the affidavit is to be used (see § 92.5);

(b) Require the personal appearance of the affiant at the time the affidavit is taken;

(c) Require satisfactory identification of the affiant; and

(d) Administer the oath to the affiant before the affiant signs the affidavit.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.24 Usual form of affidavit.

Affidavits are usually drawn by competent attorneys or are set out in established forms. The form and substantive requirements of an affidavit depend principally upon the purpose for which it is made and the statutes of the jurisdiction where it is intended to be used. When a notarizing officer finds it necessary in the discharge of his official duties to prepare an affidavit, or when he assists a private person in preparing an affidavit (see §92.11(b)), he should, where possible, consult the pertinent statutory provisions.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.25 Title of affidavit.

Generally an affidavit taken for use in a pending cause must be entitled in that cause so that it will show to what proceedings it is intended to apply, and may support an indictment for perjury in case it proves to be false. If there is no suit pending at the time the affidavit is taken or if the affidavit is not to be used in any cause in court, no title need be given.

§ 92.26 Venue on affidavit.

The venue must always be given and should precede the body of the affidavit. (See §92.14 regarding venue on notarial certificates generally.)

§ 92.27 Affiant's allegations in affidavit.

(a) Substance of allegations. Although a notarizing officer is generally not responsible for the correctness of the form of an affidavit or the manner in which the allegations therein are set forth (see §92.11(a) regarding the preparation of legal documents by attorneys; §92.11(b) regarding the preparation of legal documents by notarizing officers; and §92.24 regarding the form of an affidavit), he may, in appropriate instances, draw the affiant’s attention to the following generally accepted criteria as regards the substance of the allegations:

(1) Material facts within the personal knowledge of the affiant should be alleged directly and positively. Facts are not to be inferred where the affiant has it in his power to state them positively and fully.

(2) If the matters stated in the affiant’s affidavit rest upon information derived from others rather than on facts within his personal knowledge, he should aver that such matters are true to the best of his knowledge and belief.

(3) If the allegations made on information and belief are material, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be made.

(4) If the conclusions of the affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the authority to whom the affidavit is presented may determine whether the affiant’s deductions are well founded.

(b) Veracity of allegations. Notarizing officers are not required to examine into the truth of the affiant’s allegations or to pass upon any contentious
questions involved. In many instances the matters referred to in an affidavit will be of a technical or special nature beyond the officer’s general knowledge or experience. However, he may, in certain circumstances, refuse to take an affidavit. (See § 92.9 regarding the types of situations in which an officer might properly refuse to perform a notarial service; also see §92.10 regarding the waiver and other statements which may be included in a notarial certificate where evidence exists of falsity in the affiant’s declaration.)

§ 92.28 Signature of affiant on affidavit.

The signature of the affiant is indispensable. The affiant should always sign the affidavit in the presence of the notarizing officer.

§ 92.29 Oath or affirmation to affidavit.

Affidavits made before notarizing officers must be sworn to or affirmed (see § 92.23(d)).

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.30 Acknowledgment defined.

An acknowledgment is a proceeding by which a person who has executed an instrument goes before a competent officer or court and declares it to be his act and deed to entitle it to be recorded or to be received in evidence without further proof of execution. An acknowledgment is almost never made under oath and should not be confused with an oath (see §92.18(a) for definition of oath). Moreover, an acknowledgment is not the same as an attestation, the latter being the act of witnessing the execution of an instrument and then signing it as a witness. Instruments requiring acknowledgment generally are those relating to land, such as deeds, mortgages, leases, contracts for the sale of land, and so on.

§ 92.31 Taking an acknowledgment.

(a) Officers’ assurance of acceptability of notarial act. A notarizing officer taking an acknowledgment should, if possible, ascertain the requirements of the jurisdiction in which the acknowledged document is to be used and execute the certificate in accordance with those requirements. Not all States or Territories will accept certificates of acknowledgment executed by notarizing officers other than consuls. Therefore, notarizing officers and consular agents who are called upon to perform this notarial act should consult the applicable State or territorial law to ascertain whether certificates of acknowledgment will be acceptable. (See §92.5 regarding acceptability of consular notarial acts under state or territorial law.) Furthermore, public policy generally forbids that the act of taking and certifying an acknowledgment be performed by a person financially or beneficially interested in the transaction to which the acknowledged document relates. Notarizing officers should keep this point in mind, especially in connection with acknowledgments by members of their families.

(b) Personal appearance of grantor(s). A notarizing officer taking an acknowledgment should always require the personal appearance of the grantor(s), i.e., the person or persons who have signed the instrument to be acknowledged. Since the officer states in his certificate that the parties did personally appear before him, failure to observe this requirement invalidates the notarial act and makes the officer liable to the charge of negligence and of having executed a false certificate. A notarizing officer should never take an acknowledgment by telephone.

(c) Satisfactory identification of grantor(s). The notarizing officer must be certain of the identity of the parties making an acknowledgment. If he is not personally acquainted with the parties, he should require from each some evidence of identity, such as a passport, police identity card, or the like. The laws of some States and Territories require that the identity of an ackowledger be proved by the oath of one or more “credible witnesses”, and that a statement regarding the proving of identity in this manner be included in the certificate of acknowledgment. (See §92.32(b) regarding forms of certificates of acknowledgment generally.) Mere introduction of a person not known to the notarizing officer, without further proof of identity, is
not considered adequate identification for acknowledgment purposes.

(d) **Explanation of contents of instrument.** The notarizing officer must assure himself that the person acknowledging an instrument understands the nature of the instrument. If the person does not understand it, the officer is legally and morally bound to explain the instrument in such a way as to make the person who has signed it realize the character and effect of his act. This duty is particularly important where the signer of a document has little or no knowledge of the language in which the document is written.

(e) **Acknowledgments of married women.** Some of the States still require that a married woman who has executed an instrument of conveyance jointly with her husband be examined separately by the notarizing officer at the time the acknowledgments of the couple are taken. Notarizing officers should consult the applicable statutory provisions before taking the acknowledgments of a husband and wife to a document which they have both executed.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51722 and 51723, Oct. 3, 1995]

§ 92.32 Notarial certificate to acknowledgment.

(a) **Title.** The notarial certificate evidencing the taking of an acknowledgment is commonly known as a “certificate of acknowledgment” or sometimes simply as an “acknowledgment.”

(b) **Form.** The form of a certificate of acknowledgment varies widely depending on the laws of the jurisdiction where the acknowledged document is intended to be used, the purpose for which the document is intended, and the legal position of the persons who have executed it. Instruments to be acknowledged are frequently prepared on printed forms, the entire contract or deed being on one sheet together with the certificate of acknowledgment. Often the document, including the certificate of acknowledgment, is drawn up in advance by an attorney. In these cases, the notarizing officer may use the certificate which is already on the document, making whatever modifications are manifestly required to show that the certificate was executed by a notarizing officer. However, if he finds it necessary to prepare the certificate of acknowledgment, the officer should consult the appropriate reference work for guidance as to the proper form. When no prescribed form can be found, the officer should use the language in Form FS-88. Certificate of Acknowledgment of Execution of an Instrument, inserting the certificate immediately at the close of the deed on the last page if space permits, or, if a separate sheet is necessary, using the printed Form FS-88 itself.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.33 Execution of certificate of acknowledgment.

(a) **When certificate should be executed.** A notarizing officer should execute a certificate of acknowledgment immediately after the parties to the instrument have made their acknowledgment. Allowing several days or weeks to elapse between the time the acknowledgment is made and the certificate executed is undesirable, even though the officer may remember the acknowledgment act.

(b) **Venue.** The venue must be shown as prescribed in §92.14.

(c) **Date.** The date in the certificate must be the date the acknowledgment was made. This is not necessarily the same as the date the instrument was executed. In fact, there is no reason why an instrument may not be acknowledged a year or more after the date of its execution, or at different times and places by various grantors.

(d) **Names of parties.** The name or names of the person or persons making the acknowledgment should appear in the certificate in the same form as they are set out in the acknowledged document, and in the same form as their signature on the instrument.

(e) **Additional statements.** When executing a certificate of acknowledgment on Form FS-88, the notarizing officer may include any necessary additional statements in the blank space below the body of the certificate.

(f) **Signing and sealing certificate.** The certificate of acknowledgment shall be signed and sealed as prescribed in §§92.15 and 92.16.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]
§ 92.34 Fastening certificate to instrument.

The proper place for the certificate of acknowledgment is after the signature of the parties to the instrument. If the instrument is a printed form, the certificate will almost invariably be a part of the form. When Form FS-88 is used or when the certificate must be prepared on a sheet separate from the instrument, it should be fastened to the instrument as the last sheet. The method of fastening notarial certificates is prescribed in § 92.17.

§ 92.35 Errors in certificate of acknowledgment.

A notarizing officer having taken an acknowledgment of an instrument and made a certificate of that fact cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can be done only by the parties reacknowledging the instrument. However, typographical errors may be corrected by striking out the erroneous characters and inserting the correct ones above. Such changes should be initiated by the parties who executed the instrument and by the notarizing officer.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.36 Authentication defined.

An authentication is a certification of the genuineness of the official character, i.e., signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers.

§ 92.37 Authentication procedure.

(a) The consular officer must compare the foreign official’s seal and signature on the document he is asked to authenticate with a specimen of the same official’s seal and signature on file either in the Foreign Service office or in a foreign public office to which he has access. If no specimen is available to the consular officer, he should require that each signature and seal be authenticated by some higher official or officials of the foreign government until there appears on the document a seal and signature which he can compare with a specimen available to him. However, this procedure of having a document authenticated by a series of foreign officials should be followed only where unusual circumstances, or the laws or regulations of the foreign country require it.

(b) Where the State law requires the consular officer’s certificate of authentication to show that the foreign official is empowered to perform a particular act, such as administering an oath or taking an acknowledgment, the consular officer must verify the fact that the foreign official is so empowered.

(c) When the consular officer has satisfactorily identified the foreign seal and signature (and, where required, has verified the authority of the foreign official to perform a particular act), he may then execute a certificate of authentication, either placing this certificate on the document itself if space is available, or appending it to the document on a separate sheet (see § 92.17 on the fastening of notarial certificates).

§ 92.38 Forms of certificate of authentication.

The form of a certificate of authentication depends on the statutory requirements of the jurisdiction where the authenticated document will be used (see § 92.39 regarding the provisions of Federal law). Before authenticating a document for use in a State or Territory of the United States, a consular officer should consult the pertinent law digest to ascertain what specific requirements must be met, or, if he should be guided by any special information he may receive from the attorney or other person requesting the document with regard to the applicable statutory requirements. (See § 92.41(e) regarding material which should not be in the certificate of authentication.) If no provisions relating to authentications can be found in a particular State
or Territorial law digest, and in the absence of any special information from the attorney or other person requesting the document, the officer should prepare the certificate of authentication in the form which seems best suited to the needs of the case. When in his opinion the circumstances seem to warrant, and always in connection with certificates of marriage or divorce decrees, a consular officer should include in the body of his certificate of authentication a qualifying statement reading as follows: “For the contents of the annexed document I assume no responsibility.”

§ 92.39 Authenticating foreign public documents (Federal procedures).

(a) A copy of a foreign public document intended to be used as evidence within the jurisdiction of the Federal Government of the United States must be authenticated in accordance with the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 948, sec. 92(b), 63 Stat. 103; 28 U.S.C. 1741). This provision of Federal law provides that a copy of any foreign document of record, or on file in a public office of a foreign country or political subdivision thereof, if certified, by the lawful custodian thereof, may be admitted in evidence when authenticated by a certificate of a United States consular officer resident in the foreign country, under the seal of his office.

(b) The consular officer’s certificate should indicate that the copy has been certified by the lawful custodian.

(c) In the absence of a consular officer of the United States as an officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document may be authenticated by a consular officer of the United States resident in Rome, Italy (22 U.S.C. 1294).

§ 92.40 Authentication of foreign extradition papers.

Foreign extradition papers are authenticated by chiefs of mission.

§ 92.41 Limitations to be observed in authenticating documents.

(a) Unknown seals and signatures. A consular officer should not authenticate a seal and signature not known to him. See §92.37(a) regarding the necessity for making a comparison with a specimen seal and signature.

(b) Foreign officials outside consular district. A consular officer should not authenticate the seals and signatures of foreign officials outside his consular district.

(c) Officials in the United States. Consular officers are not competent to authenticate the seals and signatures of notaries public or other officials in the United States. However, diplomatic and consular officers stationed at a United States diplomatic mission may certify to the seal of the Department of State (not the signature of the Secretary of State) if this is requested or required in particular cases by the national authorities of the foreign country.

(d) Photostat copies. Consular officers should not authenticate facsimiles of signatures and seals on photographic reproductions of documents. They may, however, authenticate original signatures and seals on such photographic reproductions.

(e) Matters outside consular officer’s knowledge. A consular officer should not include in his certificate of authentication statements which are not within his power or knowledge to make. Since consular officers are not expected to be familiar with the provisions of foreign law, except in a general sense, they are especially cautioned not to certify that a document has been executed or certified in accordance with foreign law, nor to certify that a document is a valid document in a foreign country.

(f) United States officials in foreign countries. An authentication by a United States consular officer is performed primarily to cause the official characters and positions of foreign officials to be known and recognized in the United States. Consular officers should not, therefore, undertake to authenticate the seals and signatures of other United States officials who may be residing in their consular districts.
(g) Officers of the Foreign Service in other countries. An officer of the Foreign Service stationed in one country is not expected to authenticate the signature or seal of an officer of the Foreign Service stationed in another country. When it is necessary for the seal and signature of an officer of the Foreign Service to be authenticated, such authentication will be done in the Department of State. An official of a foreign government requesting the authentication of the seal and signature of an officer of the United States Foreign Service who is, or was, stationed in another country should be informed that the document to be authenticated will have to be sent to the Department for this purpose. Any document bearing the seal and signature of an officer of the Foreign Service which is received at a Foreign Service post from a person in the United States with the request that it be further authenticated should be referred to the Department of State.

§ 92.42 Certification of copies of foreign records relating to land titles.

In certifying documents of the kind described in title 28, section 1742, of the United States Code, diplomatic and consular officers of the United States will conform to the Federal procedures for authenticating foreign public documents (§ 92.39), unless otherwise instructed in a specific case.

§ 92.43 Fees for notarial services and authentications.

The fees for administering an oath or affirmation and making a certificate thereof, for the taking of an acknowledgment of the execution of a document and executing a certificate thereof, for certifying to the correctness of a copy of or an extract from a document, official or private, for authenticating a foreign document, or for the noting of a bill of exchange, certifying to protest, etc., are as prescribed under the caption Documentary services in the Schedule of Fees (§ 22.1 of this chapter), unless the service is performed under a “no fee” item of the same caption of the Schedule. If an oath or affirmation is administered concurrently to several persons and only one consular certificate (jurat) is executed, only one fee is collectible. If more than one person joins in making an acknowledgment but only one certificate is executed, only one fee shall be charged.

[22 FR 10858, Dec. 27, 1957, as amended at 63 FR 6480, Feb. 9, 1998]

DEPOSITIONS AND LETTERS ROGATORY

§ 92.49 “Deposition” defined.

A deposition is the testimony of a witness taken in writing under oath or affirmation, before some designated or appointed person or officer, in answer to interrogatories, oral or written. (For the distinction between a deposition and an affidavit see § 92.22.)

§ 92.50 Use of depositions in court actions.

Generally depositions may be taken and used in all civil actions or suits. In criminal cases in the United States, a deposition cannot be used, unless a statute has been enacted which permits a defendant in a criminal case to have a deposition taken in his own behalf, or unless the defendant consents to the taking of a deposition by the State for use by the prosecution. (For exception in connection with the proving of foreign documents for use in criminal actions, see § 92.65.)

§ 92.51 Methods of taking depositions in foreign countries.

Rule 28(b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the following four methods:

(a) Pursuant to any applicable treaty or convention, or

(b) Pursuant to a letter of request (whether or not captioned a letter rogatory), or

(c) On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States. Notarizing officials as defined by 22 CFR 92.1 are so authorized by the law of the United States, or

(d) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony.

[60 FR 51722, Oct. 3, 1995]
§ 92.52  ‘‘Deposition on notice’’ defined.

A deposition on notice is a deposition taken before a competent official after reasonable notice has been given in writing by the party or attorney proposing to take such deposition to the opposing party or attorney of record. Notarizing officers, as defined by 22 CFR 92.1, are competent officials for taking depositions on notice in foreign countries (see §92.51). This method of taking a deposition does not necessarily involve the issuance of a commission or other court order.

[60 FR 51722, Oct. 3, 1995]

§ 92.53  ‘‘Commission to take depositions’’ defined.

A commission to take depositions is a written authority issued by a court of justice, or by a quasi-judicial body, or a body acting in such capacity, giving power to take the testimony of witnesses who cannot appear personally to be examined in the court or before the body issuing the commission. In Federal practice, a commission to take depositions is issued only when necessary or convenient, on application and notice. The commission indicates the action or hearing in which the depositions are intended to be used, and the person or persons required to take the depositions, usually by name or descriptive title (see §92.55 for manner of designating notarizing officers). Normally a commission is accompanied by detailed instructions for its execution.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.54  ‘‘Letters rogatory’’ defined.

In its broader sense in international practice, the term letters rogatory denotes a formal request from a court in which an action is pending, to a foreign court to perform some judicial act. Examples are requests for the taking of evidence, the serving of a summons, subpoena, or other legal notice, or the execution of a civil judgment. In United States usage, letters rogatory have been commonly utilized only for the purpose of obtaining evidence. Requests rest entirely upon the comity of courts toward each other, and customarily embody a promise of reciprocity. The legal sufficiency of documents executed in foreign countries for use in judicial proceedings in the United States, and the validity of the execution, are matters for determination by the competent judicial authorities of the American jurisdiction where the proceedings are held, subject to the applicable laws of that jurisdiction. See §92.66 for procedures in the use of letters rogatory requesting the taking of depositions in foreign jurisdictions.

§ 92.55  Consular authority and responsibility for taking depositions.

(a) Requests to take depositions or designations to execute commissions to take depositions. Any United States notarizing officer may be requested to take a deposition on notice, or designated to execute a commission to take depositions. A commission or notice should, if possible, identify the officer who is to take depositions by his official title only in the following manner: ‘‘Any notarizing officer of the United States of America at (name of locality)’’. The notarizing officer responsible for the performance of notarial acts at a post should act on a request to take a deposition on notice, or should execute the commission, when the documents are drawn in this manner, provided local law does not preclude such action. However, when the officer (or officers) is designated by name as well as by title, only the officer (or officers) so designated may take the depositions. In either instance, the officer must be a disinterested party. Rule 28(c) of the Rules of Civil Procedure for the district courts of the United States prohibits the taking of a deposition before a person who is a relative, employee, attorney or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action.

(b) Authority in Federal law. The authority for the taking of depositions, charging the appropriate fees, and imposing the penalty for giving false evidence is generally set forth in 22 U.S.C. 4215 and 4221. The taking of depositions for federal courts of the United States is further governed by the Federal Rules of Civil Procedure. For the provisions of law which govern particularly the taking of depositions to prove the
generousness of foreign documents which it is desired to introduce in evidence in any criminal action or proceeding is a United States federal court, see 18 U.S.C. 3491 through 3496.

(c) Procedure where laws of the foreign country do not permit the taking of depositions. In countries where the right to take depositions is not secured by treaty, notarizing officers may take depositions only if the laws or authorities of the national government will permit them to do so. Notarizing officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents to the parties from whom they are received explaining why they are returning them, and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

§ 92.57 Oral examination of witnesses.

When a witness is examined on the basis of oral interrogatories, the counsel for the party requesting the deposition has the right to conduct a direct examination of the witness without interruption except in the form of objection by opposing counsel. Cross-examination may be followed by redirect and recross-examinations until the interrogation is complete. The notarizing officer taking the deposition should endeavor to restrain counsel from indulging in lengthy colloquies, digressions, or asides, and from attempts to intimidate or mislead the witness. The notarizing officer has no authority to sustain or overrule objections but should have them recorded as provided in §92.59. Instead of taking part in the oral examination of a witness, the parties notified of the taking of a deposition may transmit written interrogatories to the notarizing officer. The notarizing officer should then question the witness on the basis of the written interrogatories and should record the answers verbatim. (Rules 30(c) and 31(b), Rules of Civil Procedure for the District Courts of the United States;
§ 92.58 Examination on basis of written interrogatories.

Written interrogatories are usually divided into three parts:
(a) The direct interrogatories or interrogatories in chief;
(b) The cross-interrogatories; and
(c) The redirect interrogatories.

Recross-interrogatories sometimes follow redirect interrogatories. The notarizing officer should not furnish the witness with a copy of the interrogatories in advance of the questioning, nor should he allow the witness to examine the interrogatories in advance of the questioning. Although it may be necessary for the officer, when communicating with the witness for the purpose of asking him to appear to testify, to indicate in general terms the nature of the evidence which is being sought, this information should not be given in such detail as to permit the witness to formulate his answers to the interrogatories prior to his appearance before the notarizing officer. The officer taking the deposition should put the interrogatories to the witness separately and in order. The written interrogatories should not be repeated in the record (unless special instructions to that effect are given), but an appropriate reference should be made thereto. These references should, of course, be followed by the witness’ answers. All of the written interrogatories must be put to the witness, even though at some point during the examination the witness disclaims further knowledge of the subject. When counsel for all of the parties attend an examination conducted on written interrogatories, the notarizing officer may, all counsel having consented thereto, permit oral examination of the witness following the close of the examination upon written interrogatories. The oral examination should be conducted in the same manner and order as if not preceded by an examination upon written interrogatories.

§ 92.59 Recording of objections.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings must be noted in the deposition. Evidence objected to will be taken subject to the objections. (Rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.60 Examination procedures.

(a) Explaining interrogatory to witness. If the witness does not understand what an interrogatory means, the notarizing officer should explain it to him, if possible, but only so as to get an answer strictly responsive to the interrogatory.

(b) Refreshing memory by reference to written records. A witness may be permitted to refresh his memory by referring to notes, papers or other documents. The notarizing officer should have such occurrence noted in the record of the testimony together with a statement of his opinion as to whether the witness was using the notes, papers or other documents to refresh his memory or for the sake of testifying to matters not then of his personal knowledge.

(c) Conferring with counsel. When the witness confers with counsel before answering any interrogatory, the notarizing officer should have that fact noted in the record of the testimony.

(d) Examining witness as to personal knowledge. The notarizing officer may at any time during the examination of a witness propound such inquiries as may be necessary to satisfy himself whether the witness is testifying from his personal knowledge of the subject matter of the examination.

(e) Witness not to leave officer’s presence. The notarizing officer should request the witness not to leave his presence during the examination, except during the recesses for meals, rest, etc., authorized in §92.56 (g). Failure of the witness to comply with this request must be noted in the record.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]
§ 92.61 Transcription and signing of record of examination.

After the examination of a witness is completed, the stenographic record of the examination must be fully transcribed and the transcription attached securely to any document or documents to which the testimony in the record pertains. (See §92.63 regarding the arrangement of papers.) The transcribed deposition must then be submitted to the witness for examination and read to or by him, unless such examination and reading are waived by the witness and by the parties to the action. Any changes in form or substance desired by the witness should be entered upon the deposition by the notarizing officer with a statement of the reasons given by the witness for making the changes. The witness should then sign the transcript of his deposition and should initial in the margin each correction made at his request. However, the signature and initials of the witness may be omitted if the parties to the action by stipulation waive the signing or if the witness is ill, refuses to sign, or cannot be found. If the deposition is not signed by the witness, the notarizing officer should sign it and should state on the record the reason for his action, i.e., the waiver of the parties, the illness or absence of the witness, or the refusal of the witness to sign, giving the reasons for such refusal. The deposition may then be used as though signed by the witness except when, on the motion to suppress, the court holds that the reasons given for the refusal to sign require the rejection of the deposition in whole or in part. (Rules 30 (e) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.62 Captioning and certifying depositions.

The notarizing officer should prepare a caption for every deposition; should certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness; and should sign and seal the certification in the manner prescribed in §§92.15 and 92.16. (Rules 30 (f) (1) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.63 Arrangement of papers.

Unless special instructions to the contrary are received, the various papers comprising the completed record of the depositions should usually be arranged in the following order from bottom to top:
(a) Commission to take depositions (or notice of taking depositions), with interrogatories, exhibits, and other supporting documents fastened thereto.
(b) Statement of fees charged, if one is prepared on a separate sheet.
(c) Record of the responses of the various witnesses, including any exhibits the witnesses may submit.
(d) Closing certificate.

All of these papers should be fastened together with ribbon, the ends of which should be secured beneath the notarizing officer’s seal affixed to the closing certificate.

§ 92.64 Filing depositions.

(a) Preparation and transmission of envelope. The notice or commission, the interrogatories, the record of the witnesses’ answers, the exhibits, and all other documents and papers pertaining to the depositions should be fastened together (see §92.63 regarding the arrangement of papers) and should be enclosed in an envelope sealed with the wax engraving seal of the post. The envelope should be endorsed with the title of the action and should be marked and addressed. The sealed envelope should then be transmitted to the court in which the action is pending.

(b) Furnishing copies. The original completed depositions should not be sent to any of the parties to the action or to their counsel. However, the notarizing officer may furnish a copy of a deposition to the deponent or to any party to the action upon the payment of the copying fee and if certification is desired under official seal that the copy is a true copy, the certification
§ 92.65 Depositions to prove genuineness of foreign documents.

(a) Authority to execute commission. Under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492), a diplomatic or consular officer may be commissioned by an United States court to take the testimony of a witness in a foreign country either on oral or written interrogatories, or partly on oral and partly on written interrogatories, for the purpose of determining the genuineness of any foreign document (any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States) which it is desired to introduce in evidence in any criminal action or proceeding in any United States court under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 945; 28 U.S.C. 1732). Such testimony may also be taken to determine whether the foreign document was made in the regular course of business and whether it was the regular course of business to make such document. The term “business” includes business, profession, occupation, and calling of every kind. (Sec. 1, 62 Stat. 945, 28 U.S.C. 1732.)

(b) Disqualification to execute commission. Any diplomatic or consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are intended to be used or who has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If, after notice and hearing, the court grants the motion, it will instruct the diplomatic or consular officer thus disqualified to send the commission to any other diplomatic or consular officer of the United States named by the court, and such other officer should execute the commission according to its terms and will for all purposes be deemed the officer to whom the commission is addressed. (Section 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492.)

(c) Execution and return of commission. (1) Commissions issued in criminal cases under the authority of the act of June 25, 1948, as amended, to take testimony in connection with foreign documents should be executed and returned by officers of the Foreign Service in accordance with section 1 of that act, as amended (sec. 1, 62 Stat. 835; 18 U.S.C. 3493, 3494), and in accordance with any special instructions which may accompany the commission. For details not covered by such section or by special instructions, officers of the Foreign Service should be guided by such instructions as may be issued by the Department of State in connection with the taking of depositions generally. (See §§ 92.55 to 92.64.)

(2) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U.S.C. 3493) provides that every person whose testimony is taken should be cautioned and sworn to testify the whole truth and should be carefully examined. The testimony should be reduced to writing or typewriting by the consular officer, or by some person under his personal supervision, or by the witness himself in the presence of the consular officer, and by no other person. After it has been reduced to writing or typewriting by the consular officer, or by some person under his personal supervision, or by the witness himself in the presence of the consular officer, and by no other person. After it has been reduced to writing or typewriting, the testimony must be signed by the witness. Every foreign document with respect to which testimony is taken must be annexed to such testimony and must be signed by each witness who appears for the purpose of establishing the genuineness of such document.

(3) When counsel for all of the parties attend the examination of any witness whose testimony will be taken on written interrogatories, they may consent that oral interrogatories, in addition to those accompanying the commission, be put to the witness. The consular officer taking the testimony...
§ 92.66 Depositions taken before foreign officials or other persons in a foreign country.

(a) Customary practice. Under Federal law (Rule 28(b), Rules of Civil Procedure for the District Courts of the United States) and under the laws of some of the States, a commission to take depositions can be issued to a foreign official or to a private person in a foreign country. However, this method is rarely used; commissions are generally issued to U.S. notarizing officers. In those countries where U.S. notarizing officers are not permitted to take testimony (see §92.55(c)) and where depositions must be taken before a foreign authority, letters rogatory are usually issued to a foreign court.

(b) Transmission of letters rogatory to foreign officials. Letters rogatory may often be sent direct from court to court. However, some foreign governments require that these requests for judicial aid be submitted through the diplomatic channel (i.e., that they be submitted to the Ministry for Foreign Affairs by the American diplomatic representative). A usual requirement is that the letters rogatory as well as the interrogatories and other papers included with them be accompanied by a complete translation into the language (or into one of the languages) of the country of execution. Another requirement is that provision be made for the payment of fees and expenses. Inquiries from interested parties or their attorneys, or from American courts, as to customary procedural requirements in given countries, may be addressed direct to the respective American embassies and legations in foreign capitals, or to the Department of State, Washington, DC 20520.

(c) Return of letters rogatory executed by foreign officials. (1) Letters rogatory executed by foreign officials are returned through the same channel by which they were initially transmitted. When such documents are returned to a United States diplomatic mission, the responsible officer should endorse thereon a certificate stating the date and place of their receipt. This certificate should be appended to the documents as a separate sheet. The officer should then enclose the documents in an envelope sealed with the wax engraving seal of the post and bearing an endorsement indicating the title of the action to which the letters rogatory pertain. The name and address of the American judicial body from which the letters rogatory issued should also be placed on the envelope.

(2) If the executed letters rogatory are returned to the diplomatic mission from the Foreign Office in an envelope bearing the seals of the foreign judicial authority who took the testimony, that sealed envelope should not be opened at the mission. The responsible officer should place a certificate on the envelope showing the date it was received at his office and indicating that
§ 92.67 Taking of depositions in United States pursuant to foreign letters rogatory.

(a) Authority and procedure. The taking of depositions by authority of State courts for use in the courts of foreign countries is governed by the laws of the individual States. As respects Federal practice, the district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure. A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege. This does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person or in any manner acceptable to him (28 U.S.C. 1782).

(b) Formulation of letters rogatory. A letter rogatory customarily states the nature of the judicial assistance sought by the originating court, prays that this assistance be extended, incorporates an undertaking of future reciprocity in like circumstances, and makes some provision for payment of fees and costs entailed in its execution. As respects Federal practice, it is not
required that a letter rogatory emanating from a foreign court be authenticated by a diplomatic or consular officer of the United States or that it be submitted through the diplomatic channel; the seal of the originating court suffices. When testimony is desired, the letter rogatory should state whether it is intended to be taken upon oral or written interrogatories. If the party on whose behalf the testimony is intended to be taken will not be represented by counsel, written interrogatories should be attached. Except where manifestly unneeded (e.g. a Spanish-language letter rogatory intended for execution in Puerto Rico) or dispensed with by arrangement with the court, letters rogatory and interrogatories in a foreign language should be accompanied by English translations.

(c) Addressing letters rogatory. To avert uncertainties and minimize possibilities for refusal of courts to comply with requests contained in letters rogatory in the form in which they are presented, it is advisable that counsel for the parties in whose behalf testimony is sought ascertain in advance if possible, with the assistance of correspondent counsel in the United States or that of a consular representative or agent of his nation in the United States, the exact title of the court, Federal or State as the case may be, which will be prepared to entertain the letter rogatory. In Federal practice the following form of address is acceptable:

The U.S. District Court for the (e.g. Northern, Southern) District of (State)
(City),

In instances where it is not feasible to ascertain the correct form of address at the time of preparation of the letter rogatory, and it will be left for counsel in the United States, or a consul or agent in the United States of the nation of origin of the letter rogatory to effect its transmission to an appropriate court, the following form may be used: “To the Appropriate Judicial Authority at (name of locality).”

(d) Submitting letters rogatory to courts in the United States. A letter rogatory may be submitted to the clerk of the court of which assistance is sought, either in person or by mail. This may be direct by international mail from the originating foreign court. Alternatively, submission to the clerk of court may be effected in person or by mail by any party to the action at law or his attorney or agent, or by a consular officer or agent in the United States of the foreign national concerned. Finally, the Department of State has been authorized (62 Stat. 949; 28 U.S.C. 1781) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution. This authorization does not preclude—

1. The transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

2. The transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

[32 FR 11775, Aug. 16, 1967]

§ 92.68 Foreign Service fees and incidental costs in the taking of evidence.

The fees for the taking of evidence by officers of the Foreign Service are as prescribed by the Tariff or Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), under the caption “Services Relating to the Taking of Evidence,” unless the service is performed for official use, which comes under the caption “Exemption for Federal Agencies and Corporations” of the same Tariff. See § 22.6 of this chapter concerning the requirement for advance deposit of estimated fees. When the party on whose behalf the evidence is sought or his local representative is not present to effect direct payment of such incidental costs as postage or travel of witnesses, the advance deposit required by the officer shall be in an amount estimated as sufficient to cover these in addition to the fees proper. The same rule shall apply
to charges for interpreting or for the taking and transcribing of a stenographic record when performed commercially rather than by staff members at Tariff of Fee rates.

§ 92.69 Charges payable to foreign officials, witnesses, foreign counsel, and interpreters.

(a) Execution of letters rogatory by foreign officials. Procedures for payment of foreign costs will be by arrangement with the foreign authorities.

(b) Execution of commissions by foreign officials or other persons abroad. Procedure for the payment of foreign costs will be as arranged, by the tribunal requiring the evidence, with its commissioner.

(c) Witness fees and allowances when depositions are taken pursuant to commissiion from a Federal court. A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive $4 for each day’s attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residence as to prohibit return thereto from day to day shall be entitled to an additional allowance of $8 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance (28 U.S.C. 1821, Supp. IV). Witnesses giving depositions before consular officers pursuant to a commission issued by the Federal Court are entitled to these fees and allowances, and the officer shall make payment thereof in the same manner as payment is made of other expenses involved in the execution of the commission, charging the advance deposit provided by the party at whose request the depositions are taken (see §92.68). In any case to which the Government of the United States, or an officer or agency thereof, is a party, the United States marshal for the district will pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner (28 U.S.C. 1825).

§ 92.70 Special fees for depositions in connection with foreign documents.

(a) Fees payable to witnesses. Each witness whose testimony is obtained under a commission to take testimony in connection with foreign documents for use in criminal cases shall be entitled to receive compensation at the rate of $15 a day for each day of attendance, plus 8 cents a mile for going from his place of residence or business to the place of examination, and returning, by the shortest feasible route (18 U.S.C. 3495 and 3496, and E.O. 10307, 3 CFR, 1949–1953 Comp.). When, however, it is necessary to procure the attendance of a witness on behalf of the United States or an indigent party, an officer or agent of the United States may negotiate with the witness to pay compensation at such higher rate as may be approved by the Attorney General, plus the mileage allowance stated above (5 U.S.C. 341). The expense of the compensation and mileage of each witness will be borne by the party, or parties, applying for the commission unless the commission is accompanied by an order of court (18 U.S.C. 3495(b) that all fees, compensations, and other expenses authorized by these regulations are chargeable to the United States (18 U.S.C. 3495).

(b) Fee payable to counsel. Each counsel who represents a party to the action or proceeding in the examination before the commission will receive compensation for each day of attendance at a rate of not less than $15 a day and not more than $50 a day, as agreed between him and the party whom he represents, plus such actual and necessary expenses as may be allowed by the commissioner upon verified statements filed with him. If the commission is issued on application of the United States, the compensation and expenses of counsel representing each party are chargeable to the United States under section 3495(b) of title 18 of the United States Code (18 U.S.C. 3495).
3495 and 3496, and E.O. 10307, 3 CFR, 1949–1953 Comp.).

(c) Fees payable to interpreters and translators. Each interpreter and translator employed by the commissioner under these regulations shall receive an allowance of $10 a day, plus 8 cents a mile for going from his place of residence or business to the place of examination and returning, by the shortest feasible route. The compensation and mileage of interpreters and translators shall be chargeable to the United States.

(d) Time for paying fees. Witnesses, counsel, interpreters, and translators will be paid, in accordance with the foregoing regulations, by the commissioner at the conclusion of their services. Other expenses authorized by these regulations will be paid by the commissioner as they are incurred.

(e) Payment of fees by the United States. When it appears that the commissioner was issued on application of the United States or when the commissioner is accompanied by an order of court that all fees, compensation, and other expenses authorized by these regulations are chargeable to the United States under section 3495(b) of title 18 of the United States Code, the commissioner shall execute the commission without charge for his service as commissioner in connection therewith. The Commissioner shall pay witnesses, counsel, interpreter, or translator, and other expenses authorized by this section, from the proceeds of a check which the disbursing officer for his area will be authorized to draw on the Treasurer of the United States.

§ 92.72 Services in connection with patents and patent applications.

(a) Affidavit of applicant. The form of the affidavit of an applicant for a United States patent depends on who is making the application, the type of invention, and the circumstances of the case. Officers of the Foreign Service are not responsible for the correctness of form of such affidavits, and should not endeavor to advise in their preparation. Persons who inquire at a Foreign Service post regarding the filing of patent applications may be referred to the pamphlet entitled “General Information Concerning Patents,” if copies thereof are available at the post.

(b) Oath or affirmation of applicant—

(1) Authority to administer oath or affirmation. When an applicant for a patent resides in a foreign country, his oath or affirmation may be made before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of
a diplomatic or consular officer of the United States (35 U.S.C. 115). See paragraph (c) of this section regarding authentication of the authority of a foreign official. A notary or other official in a foreign country who is not authorized to administer oaths is not qualified to notarize an application for a United States patent.

(2) Form of oath or affirmation. See §§92.19 and 92.20 for usual forms of oaths and affirmations.

(3) Execution of jurat. In executing the jurat, the officer should carefully observe the following direction with regard to ribboning and sealing: When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed. (Rule 66, Rules of Practice of the United States Patent Office.)

(c) Authentication of authority of foreign official—(1) Necessity for authentication. When the affidavit required in connection with a patent application had been sworn to or affirmed before an official in a foreign country other than a diplomatic or consular officer of the United States, an officer of the Foreign Service authenticate the authority of the official administering the oath or affirmation (35 U.S.C. 115). If the officer of the Foreign Service cannot authenticate the oath or affirmation, the document should be authenticated by a superior foreign official, or by a series of superior foreign officials if necessary. The seal and signature of the foreign official who affixes the last foreign authentication to the document should then be authenticated by the officer of the Foreign Service.

(2) Use of permanent ink. All papers which will become a part of a patent application filed in the United States Patent Office must be legibly written or printed in permanent ink. (Rule 52, Rules of Practice of the United States Patent Office.) Consular certificates of authentication executed in connection with patent applications should preferably be prepared on a typewriter; they should not be prepared on a hectograph machine.

(d) Authority of a foreign executor or administrator acting for deceased inventor. Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor (35 U.S.C. 117). The rules of the Patent Office require proof of the power or authority of the legal representative. See paragraph (c) of this section for procedure for authenticating the authority of a foreign official.

(e) Assignments of patents and applications for patents. An application for a patent, or a patent, or any interest therein, may be assigned in law by an instrument in writing. The applicant, or the patentee, or his assigns or legal representatives, may grant and convey an exclusive right under the application for patent, or under the patent, to the whole or any specified part of the United States. Any such assignment, grant, or conveyance of any application for patent, or of any patent, may be acknowledged, in a foreign country, before "a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States" (35 U.S.C. 261). See §92.37 regarding authentication of the authority of a foreign official.

(f) Fees. The fee for administering an oath, taking an acknowledgment, or supplying an authentication, in connection with patent applications is as prescribed in item 49 of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter).

§92.73 Services in connection with trademark registrations.

(a) Authority and responsibility. Acknowledgments and oaths required in
§ 92.77 Services in connection with applications for registration of trademarks may be made, in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country whose authority must be proved by a certificate of a diplomatic or consular officer of the United States (15 U.S.C. 1061). The responsibility of officers of the Foreign Service in this connection is the same as that where notarial services in connection with patent applications are involved (see § 92.72(a)). (See § 92.72(c) regarding the authentication of the authority of a foreign official who performs a notarial service in connection with a patent application.)

(b) Fees. The fee for administering an oath, taking an acknowledgment, or supplying an authentication, in connection with an application for registration of a trademark, or with the assignment or transfer of rights thereunder, is as prescribed in item 49 of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.74 Services in connection with United States securities or interests therein.

(a) Authority and responsibility. Assignments or requests for payment of United States securities, or securities for which the Treasury Department acts as transfer agent, or powers of attorney in connection therewith where authorized by the Treasury Department, should, in a foreign country, be executed before a United States consular or diplomatic officer. However, if they are executed before a foreign official having power to administer oaths, the Treasury Department requires that the official character and jurisdiction on the foreign official be certified by a United States diplomatic or consular officer. (See §§ 92.36 to 92.41 on authentication.)

(b) Fees. Officers of the Foreign Service should charge no fees for notarial services they perform in connection with the execution of documents, including the certification or authentication of documents where necessary, which affect United States securities or securities for which the Treasury Department acts as transfer agent, or which may be required in the collection of interest thereon. Item 58(b) of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter) applies in cases of this nature.

§ 92.75 Services in connection with income tax returns.

(a) Responsibility. Officers of the Foreign Service are authorized to perform any and all notarial services which may be required in connection with the execution of Federal, state, territorial, municipal, or insular income tax returns. Officers should not give advice on the preparation of tax returns.

(b) Fees. No charge under the caption "Notarial Services and Authentications" should be made for services performed in connection with the execution of tax returns for filing with the Federal or State Governments or political subdivisions thereof. When requested, see item 58(d) of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.76 Copying documents.

(a) Consular authority. The consular officer is authorized to have documents, or abstracts therefrom, copied at a Foreign Service post, if he deems it advisable and it is practicable to do so. This service frequently is necessary in connection with the performance of certain notarial acts, such as the certification of copies of documents.

(b) Fees. The charges for making copies of documents are as prescribed by the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), under the caption "Copying and Recording," unless the service is performed for official use, which comes under the caption Exemption for Federal Agencies and Corporations of the same Tariff.

§ 92.77 Recording documents.

(a) Consular authority. Consular officers may, at their discretion, accept for recording in the Miscellaneous Record Book of the office concerned...
unofficial documents such as deeds, leases, agreements, wills, and so on. The object of this service is primarily to afford United States citizens and interests the means of preserving, in official custody, records of their business and other transactions where other suitable facilities are not available locally for making such records. The recording of unofficial documents is not a notarial service, strictly speaking; however, the certifying of copies of documents thus recorded is a notarial service.

(b) Recording procedure. Generally, before accepting a document for recording the consular officer should require satisfactory proof of its genuineness. The document should be copied, word for word, in the Miscellaneous Record Book. At the close of the record a statement that it is a true copy of the original should be entered and signed by the consular officer who copies or compares the record. In the margin of the first page where the document is recorded, the consular officer should note the following data:

(1) By whom the document is presented for recording;
(2) On whose behalf the service is requested;
(3) Date and hour of presentation for recording;
(4) How the authenticity of the document was proved (where appropriate); and
(5) The name of the person by whom recorded (in his proper signature) and the name of the consular officer with whom compared (in his proper signature).

(c) Certificate of recording. Ordinarily, a certificate of recording need not be issued. The original document may simply be endorsed: “Recorded at (name and location of consular office) this ____ day of ____ , 19____, in (here insert appropriate reference to volume of Miscellaneous Record Book)”. Below the endorsement should appear the notation regarding the service number, the Tariff item number, and the amount of the fee collected. When a certificate of recording is requested, the consular officer may issue it, if he sees fit to do so. The certificate may be either entered on the document, if space permits, or appended to the document as a separate sheet in the manner prescribed in §92.17.

(d) Fees. The fee for recording unofficial documents at a Foreign Service post is as prescribed under the caption “Copying and Recording” of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter). For purposes of assessment of fees, the issuance of certificates of recording, when requested, shall be regarded as part of the consular service of recording unofficial documents, and no separate fee shall be charged for the certificate.

§ 92.78 Translating documents.

Officers of the Foreign Service are not authorized to translate documents or to certify to the correctness of translations. (However, see §92.56 with regard to interpreting and translating services which may be performed in connection with depositions.) They are authorized to administer to a translator an oath as to the correctness of a translation; to take an acknowledgment of the preparation of a translation; and to authenticate the seal and signature of a local official affixed to a translation. Separate fees should be charged for each of these services, as indicated under the caption “Notarial Services and Authentications” of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter).

§ 92.79 Procuring copies of foreign public documents.

(a) Nature of services. When requested to do so by United States citizens or by persons acting in behalf of United States citizens, a consular officer should endeavor to obtain from foreign officials copies of birth, death, and marriage certificates, or copies of other public records such as divorce decrees, probated wills, and so on. The interest of the party requesting the document should be clearly indicated, and there should be good reason for asking for the consular officer’s assistance. Persons requesting documents for use in the preparation of family trees or in the compilation of genealogical studies should be referred to a local attorney.
or to a genealogical research bureau if one is available.

(b) Payment of expenses involved—(1) Official funds not to be used. The use of official funds to pay for copies of or extracts from foreign public records obtained at the request of private persons is prohibited.

(2) Payment of costs by Federal Government. In instances of requests emanating from departments or agencies of the Federal Government for copies of or extracts from foreign public records, the Department will issue to Foreign Service posts concerned appropriate instructions with respect to the payment of whatever local costs may be entailed if the documents cannot be obtained gratis from the local authorities.

(3) Payment of costs by State or municipal governments. Should State, county, municipal or other authorities in the United States besides the Federal Government request the consular officer to obtain foreign documents, and express willingness to supply documents gratis in analogous circumstances, the consular officer may endeavor on that basis to obtain the desired foreign documents gratis. Otherwise, such authorities should be informed that they must pay the charges of the foreign officials, as well as any fees which it may be necessary for the consular officer to collect under the provisions of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter).

(4) Payment of costs by private persons. Before a consular officer endeavors to obtain a copy of a foreign public document in behalf of a private person, the person requesting the document should be required to make a deposit of funds in an amount sufficient to defray any charges which may be made by the foreign authorities, as well as the Foreign Service fee for authenticating the document, should authentication be desired.

§ 92.80 Obtaining American vital statistics records.

Individuals who inquire as to means of obtaining copies of or extracts from American birth, death, marriage, or divorce records may be advised generally to direct their inquiries to the Vital Statistics Office at the place where the record is kept, which is usually in the capital city of the State or Territory. Legal directories and other published works of references at the post may be of assistance in providing exact addresses, information about fees, etc. An inquirer who is not an American citizen may write directly to the diplomatic or appropriate consular representative of his own country for any needed assistance in obtaining a desired document.

QUASI-LEGAL SERVICES

§ 92.81 Performance of legal services.

(a) Legal services defined. The term "legal services" means services of the kind usually performed by attorneys for private persons and includes such acts as the drawing up of wills, powers of attorney, or other legal instruments.

(b) Performance usually prohibited—(1) General prohibition; exceptions. Officers of the Foreign Service should not perform legal services except when instructed to do so by the Secretary of State, or in cases of sudden emergency when the interests of the United States Government, might be involved, or in cases in which no lawyer is available and refusal to perform the service would result in the imposition of extreme hardship upon a United States citizen. There is no objection, however, to permitting persons to use the legal references in the Foreign Service office giving specimen forms of wills, powers of attorney, etc.

(2) Specific prohibitions and restrictions. See §72.41 of this chapter for prohibition of performance of legal services by consular officers in connection with decedents' estates. See §92.11 restricting the preparation for private parties of legal documents for signature and notarization.

(3) Acceptance of will for deposit prohibited. Wills shall not be accepted for safekeeping in the office safe. If a person desires to have his last will and testament made a matter of record in a Foreign Service establishment, the officer to whom application is made shall have the will copied in the Miscellaneous Record Book (§92.77) and charge the prescribed fee therefor.

(c) Refusal of requests. In refusing requests for the performance of legal
services, an officer of the Foreign Service should cite these regulations and should state clearly his reasons for refusing to act. In appropriate cases, the officer may furnish the inquirer with a copy of the annual list of attorneys (see §92.82) practicing in the consular district or he may refer the inquirer to the Department for a list of attorneys.

(d) **Waiver of responsibility.** When an officer of the Foreign Service accedes to a request for the performance of a legal service, he should inform the applicant that the service is performed at the latter’s risk and without any responsibility on the part of the United States Government or the officer performing the service.

(e) **Fees.** No fee should be charged for any legal services which may be performed under these regulations, beyond the fees or charges for specific services enumerated in the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter).

§ 92.82 Recommending attorneys or notaries.

(a) **Assistance in selecting American lawyers.** When any person in the district of a Foreign Service post desires to have the name of an attorney in the United States, the officer at the post may refer him to American law directories or other published references at his disposal, but he shall refrain from recommending any particular attorney.

(b) **Assistance in selecting foreign attorneys or notaries.** Persons applying to a Foreign Service post for services of a legal or fiduciary character or for assistance in selecting an attorney or notary capable of rendering the services in view, may be furnished the names of several attorneys or notaries in the district, or referred to the lists to be found in American or foreign law directories or other published references. Alternatively, they may be referred to bar associations or, where applicable, to the organization charged by local law with the responsibility for providing legal assistance.

(c) **Agreements for referral of legal business prohibited.** Officers of the Foreign Service shall not recommend particular attorneys or notaries to persons who apply to a Foreign Service post for legal assistance, nor shall they make agreements with attorneys or notaries for the referral to them of inquiries for legal assistance.

§ 92.84 Legal process defined.

Legal process means a writ, warrant, mandate, or other process issuing from a court of justice. The term includes subpoenas, citations, and complaints.

§ 92.85 Service of legal process usually prohibited.

The service of process and legal papers is not normally a Foreign Service function. Except when directed by the Department of State, officers of the Foreign Service are prohibited from serving process or legal papers or appointing other persons to do.

[32 FR 11776, Aug. 16, 1967]

§ 92.86 Consular responsibility for serving subpoenas.

When directed by the Department of State, officers of the Foreign Service will serve a subpoena issued by a court of the United States on a national or resident of the United States who is in a foreign country unless such action is prohibited by the law of the foreign country.

[32 FR 11776, Aug. 16, 1967]

§ 92.87 Consular responsibility for serving orders to show cause.

Officers of the Foreign Service are required to serve orders to show cause issued in contempt proceedings on a person who has failed or neglected to appear in answer to a subpoena served in accordance with the provisions of §92.86. (Section 1, 62 Stat. 949; 28 U.S.C. 1784.)

§ 92.88 Consular procedure.

With regard to the serving of subpoenas and orders to show cause referred to in §§92.86 and 92.87, section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 819, 28 U.S.C. 1783), provides that the subpoena shall designate the time and place for appearance before the court of the United States, and shall issue to any consular officer of the United States in the foreign country. The consular officer is required to make personal service of the subpoena.
§ 92.89 Fees for service of legal process.

No charge should be made for serving a subpoena or order to show cause issuing out of Federal court under the procedures set forth in §§ 92.86 and 92.87. The taking of the affidavit of the officer effecting the service, or the performance of any other notarial act which may be involved in making the return, should be without charge, under the caption “Exemption for Federal Agencies and Corporations” of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.90 Delivering documents pertaining to the revocation of naturalization.

Officers of the Foreign Service shall deliver, or assist in delivering, to designated persons, documents relating to proceedings in the cancellation of certificates of naturalization when such documents are forwarded by duly authorized officials of the Federal courts. The responsibility for furnishing detailed instructions on the procedure to be followed in delivering such documents rests with the court or with the United States attorney concerned, and officers should follow such instructions carefully.

§ 92.91 Service of documents at request of Congressional committees.

Officers of the Foreign Service have no authority to serve upon persons in their consular districts legal process such as subpoenas or citations in connection with Congressional investigations. All requests for such service should be referred to the Department of State.

§ 92.92 Service of legal process under provisions of State law.

It may be found that a State statute purporting to regulate the service of process in foreign countries is so drawn as to mention service by an American consular officer or a person appointed by him, without mention of or provision for alternate methods of service. State laws of this description do not operate in derogation of the laws of the foreign jurisdiction wherein it may be sought to effect service of legal process, and such State laws do not serve to impose upon American consular officers duties or obligations which they are unauthorized to accept under Federal law, or require them to perform acts contrary to Federal regulations (see § 92.85).

§ 92.93 Notarial services or authentications connected with service of process by other persons.

An officer of the Foreign Service may administer an oath to a person making an affidavit to the effect that legal process has been served. When an affidavit stating that legal process has been served is executed before a foreign notary or other official, an officer of the Foreign Service may authenticate the official character of the person administering the oath. The fee for administering an oath to a person making an affidavit or for an authentication, as the case may be, is as prescribed under the caption “Notarial Services and Authentications” in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), unless the case is of such nature as to fall under the caption, “Exemption for Federal Agencies and Corporations” of the same Tariff.

§ 92.94 Replying to inquiries regarding service of process or other documents.

Officers should make prompt and courteous replies to all inquiries regarding the service of legal process or documents of like nature, and should render such assistance as they properly
can to the court and to interested parties. Such assistance could include furnishing information as to the standard procedure of the locality for service of legal papers, with the name and address of the local office having a bailiff authorized to effect and make return of service; it could include furnishing a list of local attorneys capable of making necessary arrangements; or it could, where appropriate, include a suggestion that the request of the American court might be presented to the foreign judicial authorities in the form of letters rogatory (see definition, §92.54, and procedures, §92.66 (b)). If the person upon whom the process is intended to be served is known to be willing to accept service, or if it is clear that it would be in his interest at least to be informed of the matter, the consular officer may suggest to the interested parties in the United States the drawing up of papers for voluntary execution by such person, such as a waiver of service or a document which would be acceptable to the American court to signify the person’s entering an appearance in the action pending therein.

§92.95 Transportation of witnesses to the United States.

Officers of the Foreign Service may at times be called upon to assist in arranging for the transportation to the United States of persons in foreign countries whose testimony is desired by the Attorney General in a case pending in a Federal court. Requests that the travel of such persons be facilitated originate in the Department of Justice, and special instructions in each case are transmitted to the appropriate Foreign Service post by the Department of State.

PART 93—SERVICE ON FOREIGN STATE

Sec.
93.1 Service through the diplomatic channel.
93.2 Notice of suit (or of default judgment).

§ 93.2 Notice of suit (or of default judgment).

(a) A Notice of Suit prescribed in section 1608(a) of title 28, United States Code, shall be prepared in the form that appears in the Annex to this section.

(b) In preparing a Notice of Suit, a party shall in every instance supply the information specified in items 1 through 5 of the form appearing in the Annex to this section. A party shall also supply information specified in item 6, if notice of a default judgment is being served.

(c) In supplying the information specified in item 5, a party shall in simplified language summarize the nature and purpose of the proceeding (including principal allegations and claimed bases of liability), the reasons why the foreign state or political subdivision has been named as a party in the proceeding, and the nature and amount of relief sought. The purpose of item 5 is to enable foreign officials unfamiliar with American legal documents to ascertain the above information.

(d) A party may attach additional pages to the Notice of Suit to complete information under any item.

(e) A party shall attach, as part of the Notice of Suit, a copy of the Foreign State Immunities Act of 1976 (Pub. L. 94–583; 90 Stat. 2891).

ANNEX

NOTICE OF SUIT (OR OF DEFAULT JUDGMENT)

1. Title of legal proceeding; full name of court; case or docket number.

2. Name of foreign state (or political subdivision) concerned:

3. Identity of the other Parties:

JUDICIAL DOCUMENTS

4. Nature of documents served (e.g., Summons and Complaint; Default Judgment):

5. Nature and purpose of the proceedings; why the foreign state (or political subdivision) has been named; relief requested:

6. Date of default judgment (if any):

7. A response to a “Summons” and “Complaint” is required to be submitted to the court, not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state immunity).

8. The failure to submit a timely response with the court can result in a Default Judgment and a request for execution to satisfy the judgment. If a default judgment has been entered, a procedure may be available to vacate or open that judgment.

9. Questions relating to state immunities and to the jurisdiction of United States courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611, of Title 28, United States Code (Pub. L. 94–583; 90 Stat. 2891).


[42 FR 6367, Feb. 2, 1977]
§ 94.1 Definitions.

For purposes of this part—


(b) Contracting State means any country which is a party to the Convention.

(c) Child and children mean persons under the age of sixteen.

§ 94.2 Designation of Central Authority.

The Office of Children’s Issues in the Bureau of Consular Affairs is designated as the U.S. Central Authority to discharge the duties which are imposed by the Convention and the International Child Abduction Remedies Act upon such authorities.

[60 FR 25843, May 15, 1995]

§ 94.3 Functions of the Central Authority.

The U.S. Central Authority shall cooperate with the Central Authorities of other countries party to the Convention and promote cooperation by appropriate U.S. state authorities to secure the prompt location and return of children wrongfully removed to or retained in any Contracting State, to ensure that rights of custody and access under the laws of one Contracting State are effectively respected in the other Contracting States, and to achieve the other objects of the Convention. In performing its functions, the U.S. Central Authority may receive from, or transmit to, any department, agency, or instrumentality of the federal government, or of any state or foreign government, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child.

§ 94.4 Prohibitions.

(a) The U.S. Central Authority is prohibited from acting as an agent or attorney or in any fiduciary capacity in legal proceedings arising under the Convention. The U.S. Central Authority is not responsible for the costs of any legal representation or legal proceedings nor for any transportation expenses of the child or applicant. However, the U.S. Central Authority may not impose any fee in relation to the administrative processing of applications submitted under the Convention.

(b) The U.S. Central Authority shall not be a repository of foreign or U.S. laws.

§ 94.5 Application.

Any person, institution, or other body may apply to the U.S. Central Authority for assistance in locating a child, securing access to a child, or obtaining the return of a child that has been removed or retained in breach of custody rights. The application shall be made in the form prescribed by the U.S. Central Authority and shall contain such information as the U.S. Central Authority deems necessary for the purposes of locating the child and otherwise implementing the Convention. The application and any accompanying documents should be submitted in duplicate in English or with English translations. If intended for use in a foreign country, two additional copies should be provided in the language of the foreign country.

§ 94.6 Procedures for children abducted to the United States.

The U.S. Central Authority, or an entity acting at its direction, shall perform the following operational functions with respect to all Hague Convention applications seeking the return of children wrongfully retained in the United States or seeking access to children in the United States:

(a) Receive all applications seeking return of children wrongfully retained in the United States or seeking access to children in the United States;

(b) Confirm the child’s location or, where necessary, seek to ascertain its location;

(c) Seek to ascertain the child’s welfare through inquiry to the appropriate
§ 94.7 Procedures for children abducted from the United States.

Upon receipt of an application requesting access to a child or return of a child abducted from the United States and taken to another country party to the Convention, the U.S. Central Authority shall—

(a) Review and forward the application to the Central Authority of the country where the child is believed located or provide the applicant with the necessary form, instructions, and the name and address of the appropriate Central Authority for transmittal of the application directly by the applicant;

(b) Upon request, transmit to the foreign Central Authority requests for a report on the status of any court action when no decision has been reached by the end of six weeks;

(c) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority information regarding the laws of the child’s state of habitual residence;

(d) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority a statement as to the wrongfulness of the taking of the child under the laws of the child’s state of habitual residence;

(e) Upon request, facilitate efforts to obtain from appropriate U.S. state authorities and transmit to the foreign Central Authority information relating to the social background of the child;

(f) Upon request, be available to facilitate possible arrangements for temporary foster care and/or travel for the child from the foreign country to the United States;

(g) Monitor all cases in which assistance has been sought and maintain records on the procedures followed in each case and its disposition;

(h) Perform such additional functions as determined by the U.S. Central Authority, deemed advisable to maintain U.S. treaty compliance with the Hague Convention on the Civil Aspects of International Child Abduction.

[53 FR 23608, June 23, 1988, as amended at 60 FR 66074, Dec. 21, 1995; 73 FR 47831, Aug. 15, 2008]
§ 94.8 Interagency coordinating group.

The U.S. Central Authority shall nominate federal employees and may, from time to time, nominate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation. This group shall meet from time to time at the request of the U.S. Central Authority.

PART 95—IMPLEMENTATION OF TORTURE CONVENTION IN EXTRADITION CASES

Sec.
95.1 Definitions.
95.2 Application.
95.3 Procedures.
95.4 Review and construction.

AUTHORITY: 18 U.S.C. 3181 et seq.; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SOURCE: 64 FR 9437, Feb. 26, 1999, unless otherwise noted.

§ 95.1 Definitions.

(a) Convention means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984, entered into force for the United States on November 10, 1994. Definitions provided below in paragraphs (b) and (c) of this section reflect the language of the Convention and understandings set forth in the United States instrument of ratification to the Convention.

(b) Torture means:

1. Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;

(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(iii) The threat of imminent death; or

(iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

3. Noncompliance with applicable legal procedural standards does not per se constitute torture.

4. This definition of torture applies only to acts directed against persons in the offender’s custody or physical control.

5. The term “acquiescence” as used in this definition requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

6. The term “lawful sanctions” as used in this definition includes judicially imposed sanctions and other enforcement actions authorized by law, provided that such sanctions or actions were not adopted in order to defeat the object and purpose of the Convention to prohibit torture.

7. Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment.

(c) Where there are substantial grounds for believing that [a fugitive] would be in danger of being subjected to torture means if it is more likely than not that the fugitive would be tortured.

(d) Secretary means Secretary of State and includes, for purposes of this
§ 95.2 Application.
(a) Article 3 of the Convention imposes on the parties certain obligations with respect to extradition. That Article provides as follows:
(1) No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.
(b) Pursuant to sections 3184 and 3186 of Title 18 of the United States Criminal Code, the Secretary is the U.S. official responsible for determining whether to surrender a fugitive to a foreign country by means of extradition. In order to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, the Department considers the question of whether a person facing extradition from the U.S. "is more likely than not" to be tortured in the State requesting extradition when appropriate in making this determination.

§ 95.3 Procedures.
(a) Decisions on extradition are presented to the Secretary only after a fugitive has been found extraditable by a United States judicial officer. In each case where allegations relating to torture are made or the issue is otherwise brought to the Department’s attention, appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant.
(b) Based on the resulting analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive, or to surrender the fugitive subject to conditions.

§ 95.4 Review and construction.
Decisions of the Secretary concerning surrender of fugitives for extradition are matters of executive discretion not subject to judicial review. Furthermore, pursuant to section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105–277, notwithstanding any other provision of law, no court shall have jurisdiction to review these regulations, and nothing in section 2242 shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or section 2242, or any other determination made with respect to the application of the policy set forth in section 2242(a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), which is not applicable to extradition proceedings.
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§ 96.1 Purpose.

This part provides for the accreditation and approval of agencies and persons pursuant to the Intercountry Adoption Act of 2000 (Pub. L. 106–279, 42 U.S.C. 14901–14954). Subpart B of this part establishes the procedures for the selection and designation of accrediting entities to perform the accreditation and approval functions. Subparts C through H establish the general procedures and standards for accreditation and approval of agencies and persons (including renewal of accreditation or approval). Subparts I through M address the oversight of accredited or approved agencies and persons. Subpart N establishes special rules relating to small agencies that wish to seek temporary accreditation.

§ 96.2 Definitions.

As used in this part, the term:

Accredited agency means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include a temporarily accredited agency.

Accrediting entity means an entity that has been designated by the Secretary to accredit agencies (including temporarily accredit) and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention. It does not include a temporarily accredited agency.

Adoption service means any one of the following six services:

1. Identifying a child for adoption and arranging an adoption;
2. Securing the necessary consent to termination of parental rights and to adoption;
3. Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
4. Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;
5. Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or
6. When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

Agency means a private, nonprofit organization licensed to provide adoption services in at least one State. (For-profit entities and individuals that provide adoption services are considered “persons” as defined in this section.)

Approved home study means a review of the home environment of the child’s prospective adoptive parent(s) that has been:

1. Completed by an accredited agency or temporarily accredited agency; or
2. Approved by an accredited agency or temporarily accredited agency.

Approved person means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in cases subject to the Convention.

Adoption record means any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person, or public domestic authority, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child. An adoption record does not include a record generated by an agency, person, or a public domestic authority to comply with the requirement to file information with the Case Registry on adoptions not subject to the Convention pursuant to section 303(d) of the IAA (42 U.S.C. 14932(d)).

Best interests of the child shall have the meaning given to it by the law of the State with jurisdiction to decide
whether a particular adoption or adoption-related action is in a child’s best interests.

Case Registry means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (42 U.S.C. 14912).

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State.

Central Authority function means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority.

Child welfare services means services, other than those defined as “adoption services” in this section, that are designed to promote and protect the well-being of a family or child. Such services include, but are not limited to, recruiting and identifying adoptive parent(s) in cases of disruption (but not assuming custody of the child), arranging or providing temporary foster care for a child in connection with a Convention adoption or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in a Convention adoption case.

Competent authority means a court or governmental authority of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Complaint Registry means the system created by the Secretary pursuant to §96.70 to receive, distribute, and monitor complaints relevant to the accreditation or approval status of agencies and persons.


Convention adoption means the adoption of a child resident in a Convention country by a United States citizen, or an adoption of a child resident in the United States by an individual or individuals residing in a Convention country when, in connection with the adoption, the child has moved or will move between the United States and the Convention country.

Convention country means a country that is a party to the Convention and with which the Convention is in force for the United States.

Country of origin means the country in which a child is a resident and from which a child is emigrating in connection with his or her adoption.

Debarment means the loss of accreditation or approval by an agency or person as a result of an order of the Secretary under which the agency or person is temporarily or permanently barred from accreditation or approval.

DHS means the Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS’s responsibilities.

Disruption means the interruption of a placement for adoption during the post-placement period.

Dissolution means the termination of the adoptive parent(s)’ parental rights after an adoption.

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study (or both) in the United States in connection with a Convention adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case.


Legal custody means having legal responsibility for a child under the order of a court of law, a public domestic authority, competent authority, public foreign authority, or by operation of law.

Legal services means services, other than those defined in this section as “adoption services,” that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing
DHS or Central Authority forms; and providing advice and counsel to accredited agencies, temporarily accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, and the regulations implementing the IAA.

Person means an individual or a private, for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services. It does not include public domestic authorities or public foreign authorities.

Post-adoption means after an adoption; in cases in which an adoption occurs in a Convention country and is followed by a re-adoption in the United States, it means after the adoption in the Convention country.

Post-placement means after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s), or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption.

Primary provider means the accredited agency, temporarily accredited agency, or approved person that is identified pursuant to §96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

Public domestic authority means an authority operated by a State, local, or tribal government within the United States.

Public foreign authority means an authority operated by a national or subnational government of a Convention country.

Secretary means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State’s authority under the Convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority.

State means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

Supervised provider means any agency, person, or other non-governmental entity, including any foreign entity, regardless of whether it is called a facilitator, agent, attorney, or by any other name, that is providing one or more adoption services in a Convention case under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

Temporarily accredited agency means an agency that has been accredited on a temporary basis by an accrediting entity, in accordance with the standards in subpart N of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include an accredited agency.

§96.3 [Reserved]

Subpart B—Selection, Designation, and Duties of Accrediting Entities

§96.4 Designation of accrediting entities by the Secretary.

(a) The Secretary, in the Secretary’s discretion, will designate one or more entities that meet the criteria set forth in §96.5 to perform the accreditation (including temporary accreditation) and/or approval functions. Each accrediting entity’s designation will be set forth in an agreement between the Secretary and the accrediting entity. The agreement will govern the accrediting entity’s operations. The agreements will be published in the FEDERAL REGISTER.

(b) The Secretary’s designation may authorize an accrediting entity to accredit (including temporarily accredit) agencies, to approve persons, or to both accredit agencies and approve persons. The designation may also limit the accrediting entity’s geographic jurisdiction or impose other limits on the entity’s jurisdiction.

(c) A public entity may only be designated to accredit agencies and approve persons that are located in the public entity’s State.

§96.5 Requirement that accrediting entity be a nonprofit or public entity.

An accrediting entity must qualify as either:

(a) An organization described in section 501(c)(3) of the Internal Revenue
§ 96.6 Performance criteria for designation as an accrediting entity.

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle authorized under §96.60;

(c) That it can monitor the performance of agencies it has accredited or temporarily accredited and persons it has approved (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited or temporarily accredited and persons it has approved;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any agency or person that provides adoption services, and of any membership organization that includes agencies or persons that provide adoption services;

(g) That it has the capacity to conduct its accreditation, temporary accreditation, and approval functions fairly and impartially;

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in its agreement;

(i) That it prohibits conflicts of interest with agencies or persons or with any membership organization that includes agencies or persons that provide adoption services; and

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an agency or person for at least one year after they have evaluated such agency or person for accreditation, temporary accreditation, or approval.

§ 96.7 Authorities and responsibilities of an accrediting entity.

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies, temporarily accredited agencies, and/or approved persons by monitoring their compliance with applicable requirements;

(4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers);

(5) Taking adverse action against an accredited agency, temporarily accredited agency, or approved person, and/or referring an accredited agency, temporarily accredited agency, or approved person for possible action by the Secretary;

(6) Determining whether accredited agencies and approved persons are eligible for renewal of their accreditation or approval on a cycle consistent with §96.60;

(7) Collecting data from accredited agencies, temporarily accredited agencies, and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and

(8) Assisting the Secretary in taking appropriate action to help an agency or person in transferring its Convention cases and adoption records.

(b) The Secretary may require the accrediting entity:
§ 96.8 Fees charged by accrediting entities.

(a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:

(1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location and volume of Convention cases of the agencies or persons it expects to serve;

(2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of accreditation or approval under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities).

(b) The schedule of fees must:

(1) Establish separate non-refundable fees for Convention accreditation and Convention approval;

(2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators; and

(3) If the accrediting entity provides temporary accreditation services, include fees as required by §96.111 for agencies seeking temporary accreditation under subpart N of this part.

(c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become accredited or approved.

(d) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

§ 96.9 Agreement between the Secretary and the accrediting entity.

An accrediting entity must perform its functions pursuant to a written agreement with the Secretary that will be published in the Federal Register. The agreement will address:

(a) The responsibilities and duties of the accrediting entity;

(b) The method by which the costs of delivering the accreditation, temporary accreditation, or approval services may be recovered through the collection of fees from those seeking accreditation, temporary accreditation, or approval, and how the entity’s schedule of fees will be approved;

(c) How the accrediting entity will address complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers) and complaints about the accrediting entity itself;

(d) Data collection requirements;

(e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and

(f) Other matters upon which the parties have agreed.
§ 96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.

(a) The Secretary will suspend or cancel the designation of an accrediting entity if the Secretary concludes that it is substantially out of compliance with the Convention, the IAA, other applicable laws, or the agreement with the Secretary. Complaints regarding the performance of the accrediting entity may be submitted to the Department of State, Bureau of Consular Affairs. The Secretary will consider complaints in determining whether an accrediting entity’s designation should be suspended or canceled.

(b) The Secretary will notify an accrediting entity in writing of any deficiencies in the accrediting entity’s performance that could lead to the suspension or cancellation of its designation, and will provide the accrediting entity with an opportunity to demonstrate that suspension or cancellation is unwarranted, in accordance with procedures established in the agreement entered into pursuant to §96.9.

(c) An accrediting entity may be considered substantially out of compliance under circumstances that include, but are not limited to:

(1) Failing to act in a timely manner when presented with evidence that an accredited agency or approved person is substantially out of compliance with the standards in subpart F of this part or a temporarily accredited agency is substantially out of compliance with the standards in §96.104;

(2) Accrediting or approving significant numbers of agencies or persons whose performance results in intervention of the Secretary for the purpose of suspension, cancellation, or debarment;

(3) Failing to perform its responsibilities fairly and objectively;

(4) Violating prohibitions on conflicts of interest;

(5) Failing to meet its reporting requirements;

(6) Failing to protect information or documents that it receives in the course of performing its responsibilities; and

(7) Failing to monitor frequently and carefully the compliance of accredited agencies, temporarily accredited agencies, and approved persons with the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (42 U.S.C. 14923(b)(1)(A)(ii)), and §96.47.

(d) An accrediting entity that is subject to a final action of suspension or cancellation 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 accrediting entity is located to set aside the action as provided in section 204(d) of the IAA (42 U.S.C. 14924(d)).

§ 96.11 [Reserved]

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

§ 96.12 Authorized adoption service providers.

(a) Once the Convention has entered into force for the United States, except as provided in section 505(b) of the IAA (relating to transitional cases), an agency or person may not offer, provide, or facilitate the provision of any such adoption service unless it is:

(1) An accredited agency, a temporarily accredited agency, or an approved person;

(2) A supervised provider; or

(3) An exempted provider, if the exempted provider’s home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to §96.47(c) or 96.53(b).

(b) A public domestic authority may also offer, provide, or facilitate the provision of any such adoption service.

(c) Neither conferral nor maintenance of accreditation, temporary accreditation, or approval, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with the Convention, the IAA, or the regulations implementing the IAA. Conferral and maintenance of accreditation, temporary
accreditation, or approval under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accrediting agency, temporarily accredited agency, or approved person is providing adoption services consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, temporarily accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with a Convention adoption.

§ 96.13 Circumstances in which accreditation, approval, or supervision is not required.

(a) Home studies and child background studies. Home studies and child background studies, when performed by exempted providers, may be performed without accreditation, temporary accreditation, approval, or supervision; provided, however, that an exempted provider's home study must be approved by an accredited agency or temporarily accredited agency in accordance with §96.47(c), and an exempted provider's child background study must be approved by an accredited agency or temporarily accredited agency in accordance with §96.53(b).

(b) Child welfare services. An agency or person does not need to be accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only child welfare services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a legal service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider unless the only adoption service provided is preparation of a home study and/or a child background study.

c) Legal services. An agency or person does not need to be accredited, temporarily accredited, approved, or to operate as a supervised provider if it is providing only legal services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a legal service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider.

(d) Prospective adoptive parent(s) acting on own behalf. Prospective adoptive parent(s) may act on their own behalf without being accredited, temporarily accredited, or approved unless so acting is prohibited by State law. In the case of a child immigrating to the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. In the case of a child emigrating from the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the parent(s) reside.
§ 96.14 Providing adoption services using other providers.

(a) Accreditation, temporary accreditation, and approval under this part require that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an approved person will be identified and act as the primary provider. If one accredited agency, temporarily accredited agency, or approved person is providing all adoption services by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing adoption services, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;
(2) Accepting custody from a birth parent or other legal custodian in a Convention country for the purpose of placement for adoption;
(3) Assuming responsibility for liaison with a Convention country’s Central Authority or its designees with regard to arranging an adoption; or
(4) Receiving from or sending to a Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to §96.44, in the case of accredited agencies or approved persons, and §96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) A supervised provider, including an accredited agency, temporarily accredited agency, or approved person;
(2) An exempted provider, if the exempted provider’s home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to §96.47(c) or §96.53(b); or
(3) A public domestic authority.

(c) Pursuant to §96.44 of subpart F, in the case of accredited agencies or approved persons, and §96.104(g) of subpart N, in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in a Convention country:

(1) A Central Authority, competent authority, or a public foreign authority;
(2) A foreign supervised provider, including a provider accredited by the Convention country; or
(3) A foreign provider (agency, person, or other non-governmental entity) who
   (i) Has secured or is securing the necessary consent to termination of parental rights and to adoption, if the primary provider verifies consent pursuant to §96.46(c); or
   (ii) Has prepared or is preparing a background study on a child in a case involving immigration to the United States (incoming case) or a home study on prospective adoptive parent(s) in a case involving emigration from the United States (outgoing case), and a report on the results of such a study, if the primary provider verifies the study and report pursuant to §96.46(c).

(d) The primary provider is not required to provide supervision or to assume responsibility for:

(1) Public domestic authorities; or
(2) Central Authorities, competent authorities, and public foreign authorities.

(e) The primary provider must adhere to the standards contained in §96.45 (Using supervised providers in the United States) when using supervised providers in the United States and the applicable standards contained in §96.46 (Using providers in Convention countries) when using providers outside the United States.

§ 96.15 Examples.

The following examples illustrate the rules of §§96.12 to 96.14:

Example 1. Identifying a child for adoption and arranging an adoption. Agency X identifies children eligible for adoption in the
United States on a TV program in an effort to recruit prospective adoptive parent(s). A couple in a Convention country calls Agency X about one of the children. Agency X refers the couple to an agency or person in the United States who arranges intercountry adoptions. Agency X does not require accreditation, temporarily accredited, approved, or supervised before providing this assessment for adoption in a Convention country on a website and then arranges for interested U.S. parents to adopt those children. Agency Y must be accredited, temporarily accredited, approved, or supervised because, in addition to identifying children eligible for adoption, it is also helping to arrange the adoption.

Example 2. Child welfare services exemption. Doctor X evaluates the medical records and a video of Child Y. The evaluation will be used in a Convention adoption as part of the placement of Child Y and is the only service that Doctor X provides in the United States with regard to Child Y’s adoption. Doctor X (not employed with an accredited agency or approved person) does not need to be approved or supervised because she is not providing an adoption service as defined in §96.2.

Example 3. Home study exemption. Social Worker X, in the United States, (not employed with an accredited agency or approved person) interviews Prospective Adoptive Parent Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent Y, then composes a report and submits it to an accredited agency for use in a Convention adoption. Social Worker X does not provide any other services to Prospective Adoptive Parent Y. Social Worker X qualifies as an exempted provider. In contrast, an employee of Agency Z interviews Child Z in the United States and compiles a report concerning Child Z’s social and developmental history for use in a Convention adoption. Agency Z provides no other adoption services on behalf of Child Z. Agency Z does not need to be accredited, temporarily accredited, approved, or supervised. Agency Z is only conducting and creating a child background study, and therefore is an exempted provider. In contrast, an employee of Agency Z interviews Child W in the United States and creates a child background study for use in a Convention adoption. Agency Z subsequently identifies prospective adoptive parent(s) and arranges a new adoption when Child W’s previous adoption becomes disrupted. Agency Z needs to be accredited, temporarily accredited, approved, or supervised before providing this service. If an agency or person provides an adoption service in addition to a child background study or home study, the agency or person needs to be accredited, temporarily accredited, approved, or supervised before providing the additional service.

Example 5. Home study and child welfare services exemptions. Agency X interviews Prospective Adoptive Parent Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent Y, then composes a home study and submits it to an accredited agency for use in a Convention adoption in the United States. Parent Y later joins a post-adoption support group for adoptive parents sponsored by Agency X. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study or child background study as well as other services in the United States that do not require accreditation, temporary accreditation, approval, or supervision, and no other adoption services, the agency or person is an exempted provider.

Example 6. Exempted provider. Agency X interviews Prospective Adoptive Parent(s) Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent(s) Y, and then composes a home study and submits the report to an accredited agency. In addition, Agency X interviews Child Z and compiles a report concerning Child Z’s social and developmental history. All of Agency X’s work is done in the United States. Both reports will be used in a Convention adoption. If Agency X performs no other adoption services, Agency X does not need to be accredited, temporarily accredited, approved, or supervised. If an agency or person provides a home study and child background study as well as other services that do not require accreditation, temporary accreditation, approval or supervision, and no other adoption services, the agency or person is an exempted provider.
Example 7. Legal services exemption. Attorney X (not employed with an accredited agency or approved person) provides advice and counsel to Prospective Adoptive Parent(s) Y on filling out DHS paperwork required for a Convention adoption. Among other papers, Attorney X prepares an affidavit of consent to termination of parental rights and to adoption of Child W to be signed by the birth mother in the United States. Attorney X must be approved or supervised because securing consent to termination of parental rights is an adoption service. In contrast, Attorney Z (not employed with an accredited agency or approved person) assists Adoptive Parent(s) T to complete an adoption in the State in which they reside, after they have been granted an adoption in Child V’s Convention country of origin. Attorney Z is exempt from approval or supervision because she is providing legal services, but no adoption services.

Example 8. Post-placement monitoring. A court in a Convention country has granted custody of Child W to Prospective Adoptive Parent(s) Y pending the completion of W’s adoption. Agency X interviews both Prospective Adoptive Parent(s) Y and Child W in their home in the United States. Agency X gathers information on the adjustment of Child W as a member of the family and inquire into the social and educational progress of Child W. Agency X must be accredited, temporarily accredited, approved, or supervised. Agency X’s activities constitute post-placement monitoring, which is an adoption service. In contrast, if Person Z provided counseling for Prospective Adoptive Parent(s) Y and/or Child W, but provided no adoption services in the United States to the family, Person Z would not need to be approved or supervised. Post-placement counseling is different than post-placement monitoring because it does not relate to evaluating the adoption placement. Post-placement counseling is not an adoption service and does not trigger the accreditation/approval requirements of the IAA and this part.

Example 9. Post-adoption services. Convention Country H requires that post-adoption reports be completed and sent to its Central Authority every year until adopted children reach the age of 18. Agency X provides support groups and a newsletter for U.S. parents that have adopted children from Country H and encourages parents to complete their post-adoption reports annually. Agency X does not need to be accredited, temporarily accredited, approved, or supervised because it is providing only post-adoption services. Post-adoption services are not included in the definition of adoption services, and therefore, do not trigger accreditation/approval requirements of the IAA and this part.

Example 10. Assuming custody and providing services after a disruption. Agency X provides counseling for Prospective Adoptive Parent(s) Y and for Child W pending the completion of Child W’s Convention adoption. The adoption is eventually disrupted. Agency X helps recruit and identify new prospective adoptive parent(s) for Child W, but it is Agency P that assumes custody of Child W and places him in foster care until an alternative adoptive placement can be found. Agency X is not required to be accredited, temporarily accredited, approved, or supervised because it is not providing an adoption service in the United States as defined in §96.2. Agency P, on the other hand, is providing an adoption service and would have to be accredited, temporarily accredited, approved, or supervised.

Example 11. Making non-judicial determinations of best interest of child and appropriateness of adoptive placement of child. Agency X receives information about and a videotape of Child W from the institution where Child W lives in a Convention country. Based on the age, sex, and health problems of Child W, Agency X matches Prospective Adoptive Parent(s) Y with Child W. Prospective Adoptive Parent(s) Y receive a referral from Agency X and agree to accept the referral and proceed with the adoption of Child W. Agency X determines that Prospective Adoptive Parent(s) Y are a good placement for Child W and notifies the competent authority in W’s country of origin that it has found a match for Child W and will start preparing adoption paperwork. All of Agency X’s services are provided in the United States. Agency X is performing an adoption service and must be accredited, temporarily accredited, approved, or supervised.

Example 12. Securing necessary consent to termination of parental rights and to adoption. Facilitator Y is accredited by Convention Country Z. He has contacts at several orphanages in Convention Country Z and helps Agency X match children eligible for adoption with prospective adoptive parent(s) in the United States. Facilitator Y works with the institution that is the legal guardian of Child W in order to get the documents showing the institution’s legal consent to the adoption of Child W. Agency X is the only U.S. agency providing adoption services in the case. Agency X must be accredited, temporarily accredited, or approved and must either treat Facilitator Y as a foreign supervised provider in accordance with §96.46(a) and (b) or verify the consents Facilitator Y secured, in accordance with §96.46(c).

§ 96.16 Public domestic authorities.

Public domestic authorities are not required to become accredited to be able to provide adoption services in
§ 96.17 Convention adoption cases, but must comply with the Convention, the IAA, and other applicable law when providing services in a Convention adoption case.

§ 96.17 Effective date of accreditation and approval requirements.

The Secretary will publish a document in the FEDERAL REGISTER announcing the date on which the Convention will enter into force for the United States. As of that date, the regulations in subpart C of this part will govern Convention adoptions between the United States and Convention countries, and agencies or persons providing adoption services must comply with §96.12 and applicable Federal regulations. The Secretary will maintain for the public a current listing of Convention countries.

Subpart D—Application Procedures for Accreditation and Approval

§ 96.18 Scope.

(a) Agencies are eligible to apply for "accreditation" or "temporary accreditation." Persons are eligible to apply for "approval." Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation. Applications for full accreditation rather than temporary accreditation will be processed in accordance with §96.20 and §96.21.

(b) An agency or person seeking to be accredited or approved as of the time the Convention enters into force for the United States, and to be included on the initial list of approved agencies and persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law, must follow the special provision contained in §96.19.

(c) If an agency or person is reapplying for accreditation or approval following cancellation of its accreditation or approval by an accrediting entity to renew its accreditation or approval, it must comply with the procedures in §96.78.

(d) If an agency or person that has been accredited or approved is seeking renewal, it must comply with the procedures in §96.63.

§ 96.19 Special provision for agencies and persons seeking to be accredited or approved as of the time the Convention enters into force for the United States.

(a) The Secretary will establish and announce, by public notice in the FEDERAL REGISTER, a transitional application deadline. An agency or person seeking to be accredited or approved as of the time the Convention enters into force for the United States must submit an application to an accrediting entity with jurisdiction to evaluate its application, with the required fee(s), by the transitional application deadline. The Secretary will subsequently establish and announce a date by which such agencies and persons must complete the accreditation or approval process in time to be accredited or approved at the time the Convention enters into force for the United States (deadline for initial accreditation or approval).

(b) The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applies by the transitional application deadline to complete the accreditation or approval process by the deadline for initial accreditation or approval. Only those agencies and persons that are accredited or approved by the deadline for initial accreditation or approval will be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

(c) The accrediting entity may, in its discretion, permit an agency or person that fails to submit an application by the transitional application deadline to attempt to complete the accreditation or approval process in time to be included on the initial list; however, such an agency or person is not assured an opportunity to complete the accreditation or approval process in time to be included on the initial list. The accrediting entity must give priority to applicants that filed by the transitional
§ 96.20 First-time application procedures for accreditation and approval.

(a) Agencies or persons seeking accreditation or approval for the first time may submit an application at any time, with the required fee(s), to an accrediting entity with jurisdiction to evaluate the application. If an agency or person seeks to be accredited or approved by the deadline for initial accreditation or approval, an agency or person must comply with the procedures in §96.19.

(b) The accrediting entity must establish and follow uniform application procedures and must make information about those procedures available to agencies and persons that are considering whether to apply for accreditation or approval. An accrediting entity must evaluate the applicant for accreditation or approval in a timely fashion.

§ 96.21 Choosing an accrediting entity.

(a) An agency that seeks to become accredited must apply to an accrediting entity that is designated to provide accreditation services and that has jurisdiction over its application. A person that seeks to become approved must apply to an accrediting entity that is designated to provide approval services and that has jurisdiction over its application. The agency or person may apply to only one accrediting entity at a time.

(b)(1) If the agency or person is applying for accreditation or approval pursuant to this part for the first time, it may apply to any accrediting entity with jurisdiction over its application. However, the agency or person must apply to the same accrediting entity that handled its prior application when it next applies for accreditation or approval, if the agency or person:

(i) Has been denied accreditation or approval;

(ii) Has withdrawn its application in anticipation of denial;

(iii) Has had its accreditation or approval cancelled by an accrediting entity or the Secretary;

(iv) Has been temporarily debarred by the Secretary; or

(v) Has been refused renewal of its accreditation or approval by an accrediting entity.

(2) If the prior accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

§ 96.22 [Reserved]

Subpart E—Evaluation of Applicants for Accreditation and Approval

§ 96.23 Scope.

The provisions in this subpart govern the evaluation of agencies and persons for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation.

§ 96.24 Procedures for evaluating applicants for accreditation or approval.

(a) The accrediting entity must designate at least two evaluators to evaluate an agency or person for accreditation or approval. The accrediting entity’s evaluators must have expertise in intercountry adoption, standards evaluation, or experience with the management or oversight of child welfare organizations and must also meet any additional qualifications required by the Secretary in the agreement with the accrediting entity.

(b) To evaluate the agency’s or person’s eligibility for accreditation or approval, the accrediting entity must:

(1) Review the agency’s or person’s written application and supporting documentation;

(2) Verify the information provided by the agency or person by examining underlying documentation;
§ 96.25 Access to information and documents requested by the accrediting entity.

(a) The agency or person must give the accrediting entity access to information and documents, including adoption case files and proprietary information, that it requires or requests to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions. The agency or person must also cooperate with the accrediting entity by making employees available for interviews upon request.

(b) Accrediting entity review of adoption case files pursuant to paragraph (a) shall be limited to Convention adoption case files, except that, in the case of first-time applicants for accreditation or approval, the accrediting entity may review adoption case files related to non-Convention cases for purposes of assessing the agency’s or person’s capacity to comply with record-keeping and data-management standards in subpart F of this part. The accrediting entity shall permit the agency or person to redact names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) from such non-Convention adoption case files prior to their inspection by the accrediting entity.

(c) If an agency or person fails to provide requested documents or information, or to make employees available as requested, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency, temporarily accredited agency, or approved person, take appropriate adverse action against the agency or person solely on that basis.

§ 96.26 Protection of information and documents by the accrediting entity.

(a) The accrediting entity must protect from unauthorized use and disclosure all documents and information about the agency or person it receives including, but not limited to, documents and proprietary information about the agency’s or person’s finances, management, and professional practices received in connection with the performance of its accreditation or approval, oversight, enforcement, renewal, data collection, or other functions under its agreement with the Secretary and this part.

(b) The documents and information received may not be disclosed to the public and may be used only for the purpose of performing the accrediting entity’s accreditation or approval functions and related tasks under its agreement with Secretary and this part, or to provide information to the Secretary, the Complaint Registry, or an appropriate Federal, State, or local authority, including, but not limited to, a
§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval.

(a) The accrediting entity may not grant an agency accreditation or a person approval, or permit an agency’s or person’s accreditation or approval to be maintained, unless the agency or person demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the standards in subpart F of this part.

(b) When the agency or person makes its initial application for accreditation or approval under the standards contained in subpart F of this part, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with these standards where relevant evidence of its actual performance is not yet available. Once the agency or person has been accredited or approved pursuant to this part, the accrediting entity must, for the purposes of monitoring, renewal, enforcement, and re-application after adverse action, consider the agency’s or person’s actual performance in deciding whether the agency or person is in substantial compliance with the standards contained in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because adequate evidence of actual performance is not available.

(c) The standards contained in subpart F of this part apply during all the stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is determining whether to renew an agency’s or person’s accreditation or approval, when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. Except as provided in §96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only use the standards contained in subpart F of this part when determining whether an agency or person may be granted or permitted to maintain Convention accreditation or approval.

(d) The Secretary will ensure that each accrediting entity performs its accreditation and approval functions using only a method approved by the Secretary that is substantially the same as the method approved for use by each other accrediting entity. Each such method will include: an assigned value for each standard (or element of a standard); a method of rating an agency’s or person’s compliance with each applicable standard; and a method of evaluating whether an agency’s or person’s overall compliance with all applicable standards establishes that the agency or person is in substantial compliance with the standards and can be accredited, temporarily accredited, or approved. The Secretary will ensure that the value assigned to each standard reflects the relative importance of that standard to compliance with the Convention and the IAA and is consistent with the value assigned to the
standard by other accrediting entities. The accrediting entity must advise applicants of the value assigned to each standard (or elements of each standard) at the time it provides applicants with the application materials.

(c) If an agency or person has previously been denied accreditation or approval, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity may take the reasons underlying such actions into account when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval on the basis of the previous action.

(d) If an agency or person that has an ownership or control interest in the applicant, as that term is defined in section 1124 of the Social Security Act (42 U.S.C. 1320a–3), has been debarred pursuant to §96.85, the accrediting entity may take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(e) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

Subpart F—Standards for Convention Accreditation and Approval

§96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

LICENSING AND CORPORATE GOVERNANCE

§96.30 State licensing.

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only:

(1) Through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or

(2) Through public domestic authorities.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in Convention countries that prohibit individuals or for-profit entities from providing adoption services.

§96.31 Corporate structure.

(a) The agency qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for nonprofit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, or joint stock
§ 96.33 Budget, audit, insurance, and risk assessment requirements.

(a) The agency or person operates under a budget approved by its governing body, if applicable, for management of its funds. The budget discloses all remuneration (including perquisites) paid to the agency’s or person’s board of directors, managers, employees, and supervised providers.

(b) The agency’s or person’s finances are subject to annual internal review and oversight and are subject to independent audits every four years. The agency or person submits copies of internal financial review reports for inspection by the accrediting entity each year.

(c) The agency or person submits copies of each audit, as well as any accompanying management letter or qualified opinion letter, for inspection by the accrediting entity.

(d) The agency or person meets the financial reporting requirements of Federal and State laws and regulations.

(e) The agency’s or person’s balance sheets show that it operates on a sound financial basis and maintains on average sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months, taking into account its projected volume of cases and its size, scope, and financial commitments. The agency or person has a plan to transfer its Convention cases if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered.

(f) If it accepts charitable donations, the agency or person has safeguards in place to ensure that such donations do not influence child placement decisions in any way.
§ 96.34 Compensation.

(a) The agency or person does not compensate any individual who provides intercountry adoption services with an incentive fee or contingent fee for each child located or placed for adoption.

(b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.

(c) The agency or person does not make any payments, promise payment, or give other consideration to any individual directly or indirectly involved in provision of adoption services in a particular case, except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

(d) The fees, wages, or salaries paid to the directors, officers, employees, and supervised providers of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the country in which the adoption services are provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.

(e) Any other compensation paid to the agency’s or person’s directors or members of its governing body is not unreasonably high in relation to the services rendered, taking into account the same factors listed in paragraph (d) of this section and its for-profit or non-profit status.

(f) The agency or person identifies all vendors to whom clients are referred for non-adoption services and discloses to the accrediting entity any corporate or financial arrangements and any family relationships with such vendors.

§ 96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention.

(a) The agency or person provides adoption services ethically and in accordance with the Convention’s principles of:

1. Ensuring that intercountry adoptions take place in the best interests of children; and
2. Preventing the abduction, exploitation, sale, or trafficking of children.

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person discloses to the accrediting entity the following information related to the agency or person, under its current or any former name:

1. Any instances in which the agency or person has lost the right to provide adoption services in any State or country, including the basis for such action(s);
2. Any instances in which the agency or person was debarred or otherwise denied the authority to provide adoption services in any State or country, including the basis and disposition of such action(s);
3. Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, and
4. Any other compensation paid to the agency’s or person’s directors or members of its governing body is not unreasonably high in relation to the services rendered, taking into account the country in which the adoption services are provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.
person, including the basis and disposition of such action(s);

(4) For the prior ten-year period, any disciplinary action(s) against the agency or person by a licensing or accrediting body, including the basis and disposition of such action(s);

(5) For the prior ten-year period, any written complaint(s) related to the provision of adoption-related services, including the basis and disposition of such complaints, against the agency or person filed with any State or Federal or foreign regulatory body and of which the agency or person was notified;

(6) For the prior ten-year period, any known past or pending investigation(s) (by Federal authorities or by public domestic authorities), criminal charge(s), child abuse charge(s), or lawsuit(s) against the agency or person, related to the provision of child welfare or adoption-related services, and the basis and disposition of such action(s).

(7) Any instances where the agency or person has been found guilty of any crime under Federal, State, or foreign law or has been found to have committed any civil or administrative violation involving financial irregularities under Federal, State, or foreign law;

(8) For the prior five-year period, any instances where the agency or person has filed for bankruptcy; and

(9) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that have been or are currently carried out by current individual directors, officers, or employees of the agency or person.

(c) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person (for its current or any former names) discloses to the accrediting entity the following information about its individual directors, officers, and employees:

(1) For the prior ten-year period, any conduct by any such individual related to the provision of adoption-related services that was subject to external disciplinary proceeding(s);

(2) Any convictions or current investigations of any such individual who is in a senior management position for acts involving financial irregularities;

(3) The results of a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management position or who works directly with parent(s) and/or children (unless such checks have been included in the State licensing process); and

(4) A completed FBI Form FD–258 for each such individual in the United States in a senior management position or who works directly with parent(s) and/or children, which the agency or person must keep on file in case future allegations warrant submission of the form for a Federal criminal background check of any such individual.

(5) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are known to have been or are currently carried out by current individual directors, officers, or employees of the agency or person.

(d) In order to permit the accrediting entity to evaluate the suitability of a person who is an individual practitioner for approval, the individual:

(1) Provides the results of a State criminal background check and a child abuse clearance to the accrediting entity;

(2) Completes and retains a FBI Form FD–258 on file in case future allegations warrant submission of the form for a Federal criminal background check;

(3) If a lawyer, for every jurisdiction in which he or she has ever been admitted to the Bar, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation and immediately reports to the accrediting entity any disciplinary action considered by a State bar association, regardless of whether the action relates to intercountry adoption; and

(4) If a social worker, for every jurisdiction in which he or she has been licensed, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation.

(e) In order to permit the accrediting entity to monitor the suitability of an
agency or person, the agency or person must disclose any changes in the information required by §96.35 within thirty business days of learning of the change.

§ 96.36 Prohibition on child buying.

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child’s parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. If permitted or required by the child’s country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs.

PROFESSIONAL QUALIFICATIONS AND TRAINING FOR EMPLOYEES

§ 96.37 Education and experience requirements for social service personnel.

(a) The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services). The agency or person must meet any State licensing or regulatory requirements for the services they are providing.

(b) The agency’s or person’s employees meet any State licensing or regulatory requirements for the services they are providing.

(c) The agency’s or person’s executive director, the supervisor overseeing a case, or the social service employee providing adoption-related social services that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services) has experience in the professional delivery of intercountry adoption services.

(d) Supervisors. The agency’s or person’s social work supervisors have prior experience in family and children’s services, adoption, or intercountry adoption and either:

(1) A master’s degree from an accredited program of social work;

(2) A master’s degree (or doctorate) in a related human service field, including but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling;

(3) In the case of a social work supervisor who is or was an incumbent at the time the Convention enters into force for the United States, the supervisor has significant skills and experience in intercountry adoption and has regular access for consultation purposes to an individual with the qualifications listed in paragraph (d)(1) or paragraph (d)(2) of this section.

(e) Non-supervisory employees. The agency’s or person’s non-supervisory employees providing adoption-related social services that require the application of clinical skills and judgment other than home studies or child background studies have either:

(1) A master’s degree from an accredited program of social work or in another human service field; or

(2) A bachelor’s degree from an accredited program of social work; or a combination of a bachelor’s degree in any field and prior experience in family and children’s services, adoption, or intercountry adoption; and

(3) Are supervised by an employee of the agency or person who meets the requirements for supervisors in paragraph (d) of this section.

(f) Home studies. The agency’s or person’s employees who conduct home studies:

(1) Are authorized or licensed to complete a home study under the laws of the States in which they practice;

(2) Meet the INA requirements for home study preparers in § CFR 204.3(b); and
(3) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

(g) Child background studies. The agency’s or person’s employees who prepare child background studies:
(1) Are authorized or licensed to complete a child background study under the laws of the States in which they practice; and
(2) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

§ 96.38 Training requirements for social service personnel.

(a) The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) with a comprehensive orientation to intercountry adoption that includes training on:
(1) The requirements of the Convention, the IAA, the regulations implementing the IAA, and other applicable Federal regulations;
(2) The INA regulations applicable to the immigration of children adopted from a Convention country;
(3) The adoption laws of any Convention country where the agency or person provides adoption services;
(4) Relevant State laws;
(5) Ethical considerations in intercountry adoption and prohibitions on child-buying;
(6) The agency’s or person’s goals, ethical and professional guidelines, organizational lines of accountability, policies, and procedures; and
(7) The cultural diversity of the population(s) served by the agency or person.

(b) In addition to the orientation training required under paragraph (a) of this section, the agency or person provides initial training to newly hired or current employees whose responsibilities include providing adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) that addresses:
(1) The factors in the countries of origin that lead to children needing adoptive families;
(2) Feelings of separation, grief, and loss experienced by the child with respect to the family of origin;
(3) Attachment and post-traumatic stress disorders;
(4) Psychological issues facing children who have experienced abuse or neglect and/or whose parents’ rights have been terminated because of abuse or neglect;
(5) The impact of institutionalization on child development;
(6) Outcomes for children placed for adoption internationally and the benefits of permanent family placements over other forms of government care;
(7) The most frequent medical and psychological problems experienced by children from the countries of origin served by the agency or person;
(8) The process of developing emotional ties to an adoptive family;
(9) Acculturation and assimilation issues, including those arising from factors such as race, ethnicity, religion, and culture and the impact of having been adopted internationally; and
(10) Child, adolescent, and adult development as affected by adoption.

(c) The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) also receive, in addition to the orientation and initial training described in paragraphs (a) and (b) of this section, no less than thirty hours of training every two years, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, documented distance learning courses, and other similar programs. Continuing education hours required under State law may count toward the thirty hours of training every two years, or more if required by State law, on current and emerging adoption practice issues.
§ 96.39 Information disclosure and quality control practices.

(a) The agency or person fully discloses in writing to the general public upon request and to prospective client(s) upon initial contact:

(1) Its adoption service policies and practices, including general eligibility criteria and fees;

(2) The supervised providers with whom the prospective client(s) can expect to work in the United States and in the child’s country of origin and the usual costs associated with their services; and

(3) A sample written adoption services contract substantially like the one that the prospective client(s) will be expected to sign should they proceed.

(b) The agency or person discloses to client(s) and prospective client(s) that the following information is available upon request and makes such information available when requested:

(1) The number of its adoption placements per year for the prior three calendar years, and the number and percentage of those placements that remain intact, are disrupted, or have been dissolved as of the time the information is provided;

(2) The number of parents who apply to adopt on a yearly basis, based on data for the prior three calendar years; and

(3) The number of children eligible for adoption and awaiting an adoptive placement referral via the agency or person.

§ 96.40 Fee policies and procedures.

(a) The agency or person provides to all applicants, prior to application, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of when and how the fees and expenses must be paid.

(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category of fees and estimated expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption:

(1) Such use is not prohibited by applicable State or Federal law or by the laws of the child’s country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).
(1) **Home study.** The expected total fees and estimated expenses for home study preparation and approval, whether the home study is to be prepared directly by the agency or person itself, or prepared by a supervised provider, exempted provider, or approved person and approved as required under §96.47.

(2) **Adoption expenses in the United States.** The expected total fees and estimated expenses for all adoption services other than the home study that will be provided in the United States. This category includes, but is not limited to, personnel costs, administrative overhead, operational costs, training and education, communications and publications costs, and any other costs related to providing adoption services in the United States.

(3) **Foreign country program expenses.** The expected total fees and estimated expenses for all adoption services that will be provided in the child’s Convention country. This category includes, but is not limited to, costs for personnel, administrative overhead, training, education, legal services, and communications, and any other costs related to providing adoption services in the child’s Convention country.

(4) **Care of the child.** The expected total fees and estimated expenses charged to prospective adoptive parent(s) for the care of the child in the country of origin prior to adoption, including, but not limited to, costs for food, clothing, shelter and medical care; foster care services; orphanage care; and any other services provided directly to the child.

(5) **Translation and document expenses.** The expected total fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly or to third parties, either in the United States or in the child’s Convention country, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or documents required to complete the adoption, costs for the child’s Convention court documents, passport, adoption certificate and other documents related to the adoption, and costs for notarizations and certifications.

(6) **Contributions.** Any fixed contribution amount or percentage that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the child’s Convention country or in the United States, along with an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for; and

(7) **Post-placement and post-adoption reports.** The expected total fees and estimated expenses for any post-placement or post-adoption reports that the agency or person or parent(s) must prepare in light of any requirements of the expected country of origin.

(c) If the following fees and estimated expenses were not disclosed as part of the categories identified in paragraph (b) of this section, the agency or person itemizes and discloses in writing any:

(1) **Third party fees.** The expected total fees and estimated expenses for services that the prospective adoptive parent(s) will be responsible to pay directly to a third party. Such third party fees include, but are not limited to, fees to competent authorities for services rendered or Central Authority processing fees; and

(2) **Travel and accommodation expenses.** The expected total fees and estimated expenses for any travel, transportation, and accommodation services arranged by the agency or person for the prospective adoptive parent(s).

(d) The agency or person also specifies in its adoption services contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(e) When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships or other services, it discloses this policy to the prospective adoptive parent(s) in advance of providing any adoption services and gives the prospective adoptive parent(s) a general description of the programs supported by such funds.

(f) The agency or person has mechanisms in place for transferring funds to
§ 96.41 Procedures for responding to complaints and improving service delivery.

(a) The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to client(s) at the time the adoption services contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent or adoptive parent, or adoptee to lodge directly with the agency or person signed and dated complaints about any of the services or activities of the agency or person (including its use of supervised providers) that he or she believes raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, and advises such individuals of the additional procedures available to them if they are dissatisfied with the agency’s or person’s response to their complaint.

(c) The agency or person responds in writing to complaints received pursuant to paragraph (b) of this section within thirty days of receipt, and provides expedited review of such complaints that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint received pursuant to paragraph (b) of this section and the steps taken to investigate and respond to it and makes this record available to the accrediting entity or the Secretary upon request.

(e) The agency or person does not take any action to discourage a client or prospective client from, or retaliate against a client or prospective client for: making a complaint; expressing a grievance; providing information in writing or interviews to an accrediting entity on the agency’s or person’s performance; or questioning the conduct of or expressing an opinion about the performance of an agency or person.

(f) The agency or person provides to the accrediting entity and the Secretary, on a semi-annual basis, a summary of all complaints received pursuant to paragraph (b) of this section during the preceding six months (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person pursuant to paragraph (b) of this section, along with information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.
(g) The agency or person provides any information about complaints received pursuant to paragraph (b) of this section as may be requested by the accrediting entity or the Secretary.

(h) The agency or person has a quality improvement program appropriate to its size and circumstances through which it makes systematic efforts to improve its adoption services as needed. The agency or person uses quality improvement methods such as reviewing complaint data, using client satisfaction surveys, or comparing the agency’s or person’s practices and performance against the data contained in the Secretary’s annual reports to Congress on intercountry adoptions.

§ 96.42 Retention, preservation, and disclosure of adoption records.

(a) The agency or person retains or archives adoption records in a safe, secure, and retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee and the adoptive parent(s) upon request all non-identifying information in its custody about the adoptee’s health history or background.

(c) The agency or person ensures that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered and safeguards sensitive individual information.

(d) The agency or person has a plan that is consistent with the provisions of this section, the plan required under § 96.33, and applicable State law for transferring custody of adoption records that are subject to retention or archival requirements to an appropriate custodian, and ensuring the accessibility of those adoption records, in the event that the agency or person ceases to provide or is no longer permitted to provide adoption services under the Convention.

(e) The agency or person notifies the accrediting entity and the Secretary in writing within thirty days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

§ 96.43 Case tracking, data management, and reporting.

(a) When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual basis.

(b) When acting as the primary provider, the agency or person routinely generates and maintains reports as follows:

(1) For cases involving children immigrating to the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The Convention country or other country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child’s placement for adoption.

(2) For cases involving children emigrating from the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The State from which the child emigrated;

(ii) The Convention country or other country to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child’s placement for adoption.

(3) For each disrupted placement involving a Convention adoption, information and reports about the disruption, including information on:

(i) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child’s placement for adoption;
§ 96.44  Acting as primary provider.

(a) When required by § 96.14(a), the agency or person acts as primary provider and adheres to the provisions in § 96.14(b) through (e). When acting as the primary provider, the agency or person develops and implements a service plan for providing all adoption services and provides all such services, either directly or through arrangements with supervised providers, exempted providers, public domestic authorities, competent authorities, Central Authorities, public foreign authorities, or, to the extent permitted by § 96.14(c), other foreign providers (agencies, persons, or other non-governmental entities).

(b) The agency or person has an organizational structure, financial and personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of acting as a primary provider in any Convention adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers and verifies the work of other foreign providers in accordance with §§ 96.45 and 96.46.

§ 96.45  Using supervised providers in the United States.

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) Does not engage in practices inconsistent with the Convention’s principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children; and

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to

(v) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child’s re-placement for adoption and final legal adoption;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(4) Wherever possible, for each dissolution of a Convention adoption, information and reports on the dissolution, including information on:

(i) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child’s placement for adoption;

(v) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(5) Information on the shortest, longest, and average length of time it takes to complete a Convention adoption, set forth by the child’s country of origin, calculated from the time the child is matched with the prospective adoptive parent(s) until the time the adoption is finalized by a court, excluding any period for appeal;

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child’s country of origin, charged by the agency or person for Convention adoptions involving children immigrating to the United States in connection with their adoption.

(c) If the agency or person provides adoption services in cases not subject to the Convention that involve a child emigrating from the United States for the purpose of adoption or after an adoption has been finalized, it provides such information as required by the Secretary directly to the Secretary and demonstrates to the accrediting entity that it has provided this information.

(d) The agency or person provides any of the information described in paragraphs (a) through (c) of this section to the accrediting entity or the Secretary within thirty days of request.

SERVICE PLANNING AND DELIVERY

§ 96.44  Acting as primary provider.

(a) When required by § 96.14(a), the agency or person acts as primary provider and adheres to the provisions in § 96.14(b) through (e). When acting as the primary provider, the agency or person develops and implements a service plan for providing all adoption services and provides all such services, either directly or through arrangements with supervised providers, exempted providers, public domestic authorities, competent authorities, Central Authorities, public foreign authorities, or, to the extent permitted by § 96.14(c), other foreign providers (agencies, persons, or other non-governmental entities).

(b) The agency or person has an organizational structure, financial and personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of acting as a primary provider in any Convention adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers and verifies the work of other foreign providers in accordance with §§ 96.45 and 96.46.

§ 96.45  Using supervised providers in the United States.

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) Does not engage in practices inconsistent with the Convention’s principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children; and

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to
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the primary provider the suitability information listed in §96.35.

(b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for example: home study (§96.47); parent training (§96.48); child background studies and consent (§96.53));

(2) Requires the supervised provider to comply with the following standards regardless of the type of adoption services it is providing: §96.36 (prohibition on child-buying), §96.34 (compensation), §96.38 (employee training), §96.39(d) (waivers of liability), and §96.41(b) through (e) (complaints);

(3) Identifies specifically the lines of authority between the primary provider and the supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(4) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the supervised provider;

(5) Specifies whether the supervised provider’s fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its service, the supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(7) Requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in §96.37, except that, for purposes of §§96.37(e)(3), (f)(3), and (g)(2), the work of the employee must be supervised by an employee of an accredited agency or approved person;

(8) Requires the supervised provider to limit the use of and safeguard personal data gathered or transmitted in connection with an adoption, as provided for in §96.42;

(9) Requires the supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider’s accreditation or approval;

(10) Requires the supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider’s reporting requirements;

(11) Requires the supervised provider to disclose promptly to the primary provider any changes in the suitability information required by §96.35;

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement or the requirements of this section.

§ 96.46 Using providers in Convention countries.

(a) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider:

(1) Is in compliance with the laws of the Convention country in which it operates;

(2) Does not engage in practices inconsistent with the Convention’s principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in §96.35, taking into account the authorities in the Convention country that are analogous to the authorities identified in that section;
(4) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for reasons germane to the Convention; and

(5) Is accredited in the Convention country in which it operates, if such accreditation is required by the laws of that Convention country to perform the adoption services it is providing.

(b) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the foreign supervised provider;

(2) Requires the foreign supervised provider, if responsible for obtaining medical or social information on the child, to comply with the standards in §96.49(d) through (j);

(3) Requires the foreign supervised provider to adhere to the standard in §96.36(a) prohibiting child buying; and has written policies and procedures in place reflecting the prohibitions in §96.36(a) and reinforces them in training programs for its employees and agents;

(4) Requires the foreign supervised provider to compensate its directors, officers, and employees who provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption, located for an adoptive placement, or on a similar contingent fee basis;

(5) Identifies specifically the lines of authority between the primary provider and the foreign supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(6) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies whether the foreign supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(8) Provides that, if billing the client(s) directly for its service, the foreign supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(9) Requires the foreign supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(10) Requires the foreign supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the foreign supervised provider to disclose promptly to the primary provider any changes in the suitability information required by §96.35; and

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign supervised provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and, in accordance with §96.14, using foreign providers that are not under its supervision, verifies, through review of the relevant documentation and other appropriate steps, that:

(1) Any necessary consent to termination of parental rights or to adoption obtained by the foreign provider was obtained in accordance with applicable foreign law and Article 4 of the Convention;

(2) Any background study and report on a child in a case involving immigration to the United States (an incoming case) performed by the foreign provider
was performed in accordance with applicable foreign law and Article 16 of the Convention.

(3) Any home study and report on prospective adoptive parent(s) in a case involving emigration from the United States (an outgoing case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 15 of the Convention.

STANDARDS FOR CASES IN WHICH A CHILD IS IMMIGRATING TO THE UNITED STATES (INCOMING CASES)

§ 96.47 Preparation of home studies in incoming cases.

(a) The agency or person ensures that a home study on the prospective adoptive parent(s) (which for purposes of this section includes the initial report and any supplemental statement submitted to DHS) is completed that includes the following:

(1) Information about the prospective adoptive parent(s)' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and able to care for a child with special needs);

(2) A determination whether the prospective adoptive parent(s) are eligible and suited to adopt;

(3) A statement describing the counseling and training provided to the prospective adoptive parent(s);

(4) The results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.3(e);

(5) A full and complete statement of all facts relevant to the eligibility and suitability of the prospective adoptive parent(s) to adopt a child under any specific requirements identified to the Secretary by the Central Authority of the child’s country of origin; and

(6) A statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or DHS.

(b) The agency or person ensures that the home study is performed in accordance with 8 CFR 204.3(e), and any applicable State law.

(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

(2) Was performed by an individual who meets the requirements in §96.37(f), or, if the individual is an exempted provider, ensures that the individual meets the requirements for home study providers established by 8 CFR 204.3(b).

(d) The agency or person takes all appropriate measures to ensure the timely transmission of the same home study that was provided to the prospective adoptive parent(s) or to DHS to the Central Authority of the child’s country of origin (or to an alternative authority designated by that Central Authority).

§ 96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

(a) The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the child is placed with the prospective adoptive parent(s) for adoption.

(b) The training provided by the agency or person addresses the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children awaiting adoption,
and the in-country conditions that affect children in the Convention country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(3) Information about the impact on a child of leaving familiar ties and surroundings, as appropriate to the expected age of the child;

(4) Data on institutionalized children and the impact of institutionalization on children, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(5) Information on attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(6) Information on the laws and adoption processes of the expected country of origin, including foreseeable delays and impediments to finalization of an adoption;

(7) Information on the long-term implications for a family that has become multicultural through intercountry adoption; and

(8) An explanation of any reporting requirements associated with Convention adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

c. The agency or person also provides the prospective adoptive parent(s) with training that allows them to be as fully prepared as possible for the adoption of a particular child. This includes counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child.

d. The agency or person provides such training through appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of prospective adoptive parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions;

(4) Video, computer-assisted, or distance learning methods using standardized curricula; or

(5) In cases where training cannot otherwise be provided, an extended home study process, with a system for evaluating the thoroughness with which the topics have been covered.

e. The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

f. The agency or person provides the prospective adoptive parent(s) with information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; and seeking appropriate help when needed.

g. The agency or person exempts prospective adoptive parent(s) from all or part of the training and preparation that would normally be required for a specific adoption only when the agency or person determines that the prospective adoptive parent(s) have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

h. The agency or person records the nature and extent of the training and preparation provided to the prospective adoptive parent(s) in the adoption record.
§ 96.49 Provision of medical and social information in incoming cases.

(a) The agency or person provides a copy of the child’s medical records (including, to the fullest extent practicable, a correct and complete English-language translation of such records) to the prospective adoptive parent(s) as early as possible, but no later than two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the Convention country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier.

(b) Where any medical record provided pursuant to paragraph (a) of this section is a summary or compilation of other medical records, the agency or person includes those underlying medical records in the medical records provided pursuant to paragraph (a) if they are available.

(c) The agency or person provides the prospective adoptive parent(s) with any untranslated medical reports or videotapes or other reports and provides an opportunity for the client(s) to arrange for their own translation of the records, including a translation into a language other than English, if needed.

(d) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child’s country of origin who is responsible for obtaining medical information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) The date that the Convention country or other child welfare authority assumed custody of the child and the child’s condition at that time;
(2) History of any significant illnesses, hospitalizations, special needs, and changes in the child’s condition since the Convention country or other child welfare authority assumed custody of the child;
(3) Growth data, including prenatal and birth history, and developmental status over time and current developmental data at the time of the child’s referral for adoption; and
(4) Specific information on the known health risks in the specific region or country where the child resides.

(e) If the agency or person provides medical information, other than the information provided by public foreign authorities, to the prospective adoptive parent(s) from an examination by a physician or from an observation of the child by someone who is not a physician, the agency or person uses reasonable efforts to include the following:

(1) The name and credentials of the physician who performed the examination or the individual who observed the child;
(2) The date of the examination or observation; how the report’s information was retained and verified; and if anyone directly responsible for the child’s care has reviewed the report;
(3) If the medical information includes references, descriptions, or observations made by any individual other than the physician who performed the examination or the individual who performed the observation, the identity of that individual, the individual’s training, and information on what data and perceptions the individual used to draw his or her conclusions;
(4) A review of hospitalizations, significant illnesses, and other significant medical events, and the reasons for them;
(5) Information about the full range of any tests performed on the child, including tests addressing known risk factors in the child’s country of origin; and
(6) Current health information.

(f) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child’s country of origin who is responsible for obtaining social information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) Information about the child’s birth family and prenatal history and cultural, racial, religious, ethnic, and linguistic background;
(2) Information about all of the child’s past and current placements prior to adoption, including, but not limited to any social work or court reports on the child and any information
on who assumed custody and provided care for the child; and

(3) Information about any birth siblings whose existence is known to the agency or person, or its supervised provider, including information about such siblings’ whereabouts.

(g) Where any of the information listed in paragraphs (d) and (f) of this section cannot be obtained, the agency or person documents in the adoption record the efforts made to obtain the information and why it was not obtainable. The agency or person continues to use reasonable efforts to secure those medical or social records that could not be obtained up until the adoption is finalized.

(h) Where available, the agency or person provides information for contacting the examining physician or the individual who made the observations to any physician engaged by the prospective adoptive parent(s), upon request.

(i) The agency or person ensures that videotapes and photographs of the child are identified by the date on which the videotape or photograph was recorded or taken and that they were made in compliance with the laws in the country where recorded or taken.

(j) The agency or person does not withhold from or misrepresent to the prospective adoptive parent(s) any available medical, social, or other pertinent information concerning the child.

(k) The agency or person does not withdraw a referral until the prospective adoptive parent(s) have had two weeks (unless extenuating circumstances involving the child’s best interests require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information, including videotapes of the child if available.

§ 96.50 Placement and post-placement monitoring until final adoption in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the prospective adoptive parent(s).

(b) In the post-placement phase, the agency or person monitors and supervises the child’s placement to ensure that the placement remains in the best interests of the child, and ensures that at least the number of home visits required by State law or by the child’s country of origin are performed, whichever is greater.

(c) When a placement for adoption is in crisis in the post-placement phase, the agency or person makes an effort to provide or arrange for counseling by an individual with appropriate skills to assist the family in dealing with the problems that have arisen.

(d) If counseling does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child.

(e) The agency or person acts promptly and in accord with any applicable legal requirements to remove the child when the placement may no longer be in the child’s best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Secretary, to inform the Central Authority of the child’s country of origin about any new prospective adoptive parent(s).

(1) In all cases where removal of a child from a placement is considered, the agency or person considers the child’s views when appropriate in light of the child’s age and maturity and, when required by State law, obtains the consent of the child prior to removal.

(2) The agency or person does not return from the United States a child placed for adoption in the United States unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(f) The agency or person includes in the adoption services contract with the prospective adoptive parent(s) a plan describing the agency’s or person’s responsibilities if a placement for adoption is disrupted. This plan addresses:

(1) Who will have legal and financial responsibility for transfer of custody in

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§ 96.51 Post-adoption services in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s).

(b) The agency or person informs the prospective adoptive parent(s) in the adoption services contract whether the agency or person will or will not provide any post-adoption services. The agency or person also informs the prospective adoptive parent(s) in the adoption services contract whether it will provide services if an adoption is dissolved, and, if it indicates it will, it provides a plan describing the agency’s or person’s responsibilities.

(c) When post-adoption reports are required by the child’s country of origin, the agency or person includes a requirement for such reports in the adoption services contract and makes good faith efforts to encourage adoptive parent(s) to provide such reports.

(d) The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the child’s country of origin and the Secretary have approved the return in writing.

§ 96.52 Performance of Convention communication and coordination functions in incoming cases.

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and of the Convention country, to:

(1) Transmit on a timely basis the home study to the Central Authority or other competent authority of the child’s country of origin;

(2) Obtain the child background study, proof that the necessary consents to the child’s adoption have been obtained, and the necessary determination that the prospective placement is in the child’s best interests, from the Central Authority or other competent authority in the child’s country of origin;

(3) Provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child’s country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority.
or other competent authority in the child’s country of origin.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the Convention country, to obtain permission for the child to leave his or her country of origin and to enter and reside permanently in the United States.

(d) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(e) 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.

STANDARDS FOR CASES IN WHICH A CHILD IS EMIGRATING FROM THE UNITED STATES (OUTGOING CASES)

§ 96.53 Background studies on the child and consents in outgoing cases.

(a) The agency or person takes all appropriate measures to ensure that a child background study is performed that includes information about the child’s identity, adoptability, background, social environment, family history, medical history (including that of the child’s family), and any special needs of the child. The child background study must include the following:

(1) Information that demonstrates that consents were obtained in accordance with paragraph (c) of this section;

(2) Information that demonstrates consideration of the child’s wishes and opinions in accordance with paragraph (d) of this section and;

(3) Information that confirms that the child background study was prepared either by an exempted provider or by an individual who meets the requirements set forth in §96.27(g).

(b) Where the child background study is not prepared in the first instance by an accredited agency or temporarily accredited agency. The written approval must include a determination that the background study includes all the information required by paragraph (a) of this section.

(c) The agency or person takes all appropriate measures to ensure that consents have been obtained as follows:

(1) The persons, institutions, and authorities whose consent is necessary for adoption have been counseled as necessary and duly informed of the effects of their consent, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;

(2) All such persons, institutions, and authorities have given their consents;

(3) The consents have been expressed or evidenced in writing in the required legal form, have been given freely, were not induced by payments or compensation of any kind, and have not been withdrawn;

(4) The consent of the mother, where required, was executed after the birth of the child;

(5) The child, as appropriate in light of his or her age and maturity, has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption; and

(6) The child’s consent, where required, has been given freely, in the required legal form, and expressed or evidenced in writing and not induced by payment or compensation of any kind.

(d) If the child is twelve years of age or older, or as otherwise provided by State law, the agency or person gives due consideration to the child’s wishes or opinions before determining that an intercountry placement is in the child’s best interests.

(e) The agency or person prior to the child’s adoption takes all appropriate measures to transmit to the Central Authority or other competent authority or accredited bodies of the Convention country the child background study, proof that the necessary consents have been obtained, and the reasons for its determination that the placement is in the child’s best interests. In doing so, the agency or person, as required by Article 16(2) of the Convention, does not reveal the identity of
the mother or the father if these identities may not be disclosed under State law.

§ 96.54 Placement standards in outgoing cases.

(a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:

(1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in the United States;

(2) Listing information about the child on a national or State adoption exchange or registry for at least sixty calendar days after the birth of the child;

(3) Responding to inquiries about adoption of the child;

(4) Providing a copy of the child background study to potential U.S. prospective adoptive parent(s).

(b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

(c) In placing the child for adoption, the agency or person:

(1) To the extent consistent with State law, gives significant weight to the placement preferences expressed by the birth parent(s) in all voluntary placements;

(2) To the extent consistent with State law, makes diligent efforts to place siblings together for adoption and, where placement together is not possible, to arrange for contact between separated siblings, unless it is in the best interests of one of the siblings that such efforts or contact not take place; and

(3) Complies with all applicable requirements of the Indian Child Welfare Act.

(d) The agency or person complies with any State law requirements pertaining to the provision and payment of independent legal counsel for birth parents. If State law requires full disclosure to the birth parent(s) that the child is to be adopted by parent(s) who reside outside the United States, the agency or person provides such disclosure.

(e) The agency or person takes all appropriate measures to give due consideration to the child’s upbringing and to his or her ethnic, religious, and cultural background.

(f) When particular prospective adoptive parent(s) in a Convention country have been identified, the agency or person takes all appropriate measures to determine whether the envisaged placement is in the best interests of the child, on the basis of the child background study and the home study on the prospective adoptive parent(s).

(g) The agency or person thoroughly prepares the child for the transition to the Convention country, using age-appropriate services that address the child’s likely feelings of separation, grief, and loss and difficulties in making any cultural, religious, racial, ethnic, or linguistic adjustment.

(h) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s).

(i) Before the placement for adoption proceeds, the agency or person identifies the entity in the receiving country that will provide post-placement supervision and reports, if required by State law, and ensures that the child’s adoption record contains the information necessary for contacting that entity.

(j) The agency or person ensures that the child’s adoption record includes the order granting the adoption or legal custody for the purpose of adoption in the Convention country.

(k) The agency or person consults with the Secretary before arranging for the return to the United States of any
§ 96.55 Performance of Convention communication and coordination functions in outgoing cases.

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person ensures that:

(1) Copies of all documents from the State court proceedings, including the order granting the adoption or legal custody, are provided to the Secretary;

(2) Any additional information on the adoption is transmitted to the Secretary promptly upon request; and

(3) It otherwise facilitates, as requested, the Secretary’s ability to provide the certification that the child has been adopted or that custody has been granted for the purpose of adoption, in accordance with the Convention and the IAA.

(c) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(d) The agency or person provides to the State court with jurisdiction over the adoption:

(1) Proof that consents have been given as required in §96.53(c);

(2) An English copy or certified English translation of the home study on the prospective adoptive parent(s) in the Convention country, and the determination by the agency or person that the placement with the prospective adoptive parent(s) is in the child’s best interests;

(3) Evidence that the prospective adoptive parent(s) in the Convention country agree to the adoption;

(4) Evidence that the child will be authorized to enter and reside permanently in the Convention country or on the same basis as that of the prospective adoptive parent(s); and

(5) Evidence that the Central Authority of the Convention country has agreed to the adoption, if such consent is necessary under its laws for the adoption to become final.

(e) The agency or person makes the showing required by §96.54(b) to the State court with jurisdiction over the adoption.

(f) 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.

§ 96.56 [Reserved]

Subpart G—Decisions on Applications for Accreditation or Approval

§ 96.57 Scope.

The provisions in this subpart establish the procedures for when the accrediting entity issues decisions on applications for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

§ 96.58 Notification of accreditation and approval decisions.

(a) The accrediting entity must notify agencies and persons that applied by the transitional application deadline of its accreditation and approval decisions on a uniform notification date to be established by the Secretary. On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency’s or person’s application has been granted or denied or remains pending. The accrediting entity may not provide any information about its accreditation or approval decisions to any agency or person or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an applicant prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.
(b) Notwithstanding the provisions in paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies and persons that applied by the transitional application date about the status of their pending applications for the sole purpose of affording them an opportunity to correct deficiencies that may hinder or prevent accreditation or approval.

(c) The accrediting entity must routinely inform applicants that applied after the transitional application date in writing of its accreditation and approval decisions, as those decisions are finalized, but may not do so earlier than the uniform notification date referenced in paragraph (a) of this section. The accrediting entity must routinely provide this information to the Secretary in writing.

§ 96.59 Review of decisions to deny accreditation or approval.

(a) There is no administrative or judicial review of an accrediting entity’s decision to deny an application for accreditation or approval. As provided in §96.79, a decision to deny for these purposes includes:

(1) A denial of the agency’s or person’s initial application for accreditation or approval;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(b) The agency or person may petition the accrediting entity for reconsideration of a denial. The accrediting entity must establish internal review procedures that provide an opportunity for an agency or person to petition for reconsideration of the denial.

§ 96.60 Length of accreditation or approval period.

(a) Except as provided in paragraph (b) of this section, the accrediting entity will accredit or approve an agency or person for a period of four years. The accreditation or approval period will commence either on the date the Convention enters into force for the United States if the agency or person is accredited or approved before that date or on the date that the agency or person is granted accreditation or approval.

(b) In order to stagger the renewal requests from agencies and persons that applied for accreditation or approval by the transitional application deadline, to prevent renewal requests from coming due at the same time, the accrediting entity may accredit or approve some agencies and persons that applied by the transitional application date for a period of between three and five years for their first accreditation or approval cycle. The accrediting entity must establish criteria, to be approved by the Secretary, for choosing which agencies and persons it will accredit or approve for a period of other than four years.

§ 96.61 [Reserved]

Subpart H—Renewal of Accreditation or Approval

§ 96.62 Scope.

The provisions in this subpart establish the procedures for renewal of an agency’s accreditation or a person’s approval. Temporary accreditation may not be renewed, and the provisions in this subpart do not apply to temporarily accredited agencies.

§ 96.63 Renewal of accreditation or approval.

(a) The accrediting entity must advise accredited agencies and approved persons that it monitors of the date by which they should seek renewal of their accreditation or approval so that the renewal process can reasonably be completed prior to the expiration of the agency’s or person’s current accreditation or approval. If the accredited agency or approved person does not wish to renew its accreditation or approval, it must immediately notify the accrediting entity and take all necessary steps to complete its Convention cases and to transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate, under the oversight of the accrediting entity, before its accreditation or approval expires.
(b) The accredited agency or approved person may seek renewal from a different accrediting entity than the one that handled its prior application. If it changes accrediting entities, the accredited agency or approved person must so notify the accrediting entity that handled its prior application by the date on which the agency or person must (pursuant to paragraph (a) of this section) seek renewal of its status. The accredited agency or approved person must follow the new accrediting entity’s instructions when submitting a request for renewal and preparing documents and other information for the new accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for renewal in a timely fashion. Before deciding whether to renew the accreditation or approval of an agency or person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must notify the accredited agency, approved person, and the Secretary in writing when it renues or refuses to renew an agency’s or person’s accreditation or approval.

(d) Sections 96.24, 96.25, and 96.26, which relate to evaluation procedures and to requests for and use of information, and §96.27, which relates to the substantive criteria for evaluating applicants for accreditation or approval, other than §96.27(e), will govern determinations about whether to renew accreditation or approval. In lieu of §96.27(e), if the agency or person has been suspended by an accrediting entity or the Secretary during its most recent accreditation or approval cycle, the accrediting entity may take the reasons underlying the suspension into account when determining whether to renew accreditation or approval and may refuse to renew accreditation or approval based on the prior suspension.
Subpart J—Oversight Through Review of Complaints

§ 96.68 Scope.

The provisions in this subpart establish the procedures that the accrediting entity will use for processing complaints against accredited agencies and approved persons (including complaints concerning their use of supervised providers) that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, as determined by the accrediting entity or the Secretary, and that are therefore relevant to the oversight functions of the accrediting entity or the Secretary. Temporary accreditation is governed by the provisions of subpart N of this part; as provided in §96.103, procedures for processing complaints on temporarily accredited agencies must comply with this subpart.

§ 96.69 Filing of complaints against accredited agencies and approved persons.

(a) Complaints described in §96.68 will be subject to review by the accrediting entity pursuant to §§96.71 and 96.72, when submitted as provided in this section and §96.70.

(b) Complaints against accredited agencies and approved persons by parties to specific Convention adoption cases and relating to that case must first be submitted by the complainant in writing to the primary provider and to the agency or person providing adoption services, if a U.S. provider different from the primary provider. If the complaint cannot be resolved through the complaint processes of the primary provider or the agency or person providing the service (if different), or if the complaint was resolved by an agreement to take action but the primary provider or the agency or person providing the service (if different) failed to take such action within thirty days of agreeing to do so, the complaint may then be filed with the Complaint Registry in accordance with §96.70.

(c) An individual who is not party to a specific Convention adoption case but who has information about an accredited agency or approved person may provide that information by filing it in the form of a complaint with the Complaint Registry in accordance with §96.70.

(d) A Federal, State, or local government official or a foreign Central Authority may file a complaint with the Complaint Registry in accordance with §96.70, or may raise the matter in writing directly with the accrediting entity, who will record the complaint in the Complaint Registry, or with the Secretary, who will record the complaint in the Complaint Registry, if appropriate, and refer it to the accrediting entity for review pursuant to §96.71 or take such other action as the Secretary deems appropriate.

§ 96.70 Operation of the Complaint Registry.

(a) The Secretary will establish a Complaint Registry to support the accrediting entities in fulfilling their oversight responsibilities, including the responsibilities of recording, screening, referring, and otherwise taking action on complaints received, and to support the Secretary in the Secretary’s oversight responsibilities as the Secretary deems appropriate. The Secretary may provide for the Complaint Registry to be funded in whole or in part from fees collected by the Secretary pursuant to section 403(b) of the IAA (42 U.S.C. 14943(b)) or by the accrediting entities.

(b) The Complaint Registry will:

(1) Receive and maintain records of complaints about accredited agencies, temporarily accredited agencies, and approved persons (including complaints concerning their use of supervised providers) and make such complaints available to the appropriate accrediting entity and the Secretary;

(2) Receive and maintain information regarding action taken to resolve each complaint by the accrediting entity or the Secretary;

(3) Track compliance with any deadlines applicable to the resolution of complaints;

(4) Generate reports designed to show possible patterns of complaints; and

(5) Perform such other functions as the Secretary may determine.
§ 96.71  Review by the accrediting entity of complaints against accredited agencies and approved persons.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, investigating, and acting upon complaints it receives pursuant to §§96.69 and 96.70(b)(1). The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint implicates the Convention, the IAA, or the regulations implementing the IAA:

(1) The accrediting entity must verify that the complainant has already attempted to resolve the complaint as described in §96.69(b) and, if not, may refer the complaint to the agency or person, or to the primary provider, for attempted resolution through its internal complaint procedures;

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether any relevant accredited agency or approved person may maintain accreditation or approval as provided in §96.27. The provisions of §§96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted pursuant to §96.69(d);

(3) If the accrediting entity determines that the agency or person may not maintain accreditation or approval, it must take adverse action pursuant to subpart K of this part.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, or to any other entity that referred the information.

(d) The accrediting entity will enter information about the outcomes of its investigations and its actions on complaints into the Complaint Registry as provided in its agreement with the Secretary.

(e) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an accredited agency, an approved person, or the accrediting entity.

§ 96.72  Referral of complaints to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the standards in subpart F of this part; or

(2) Indicates that continued accreditation or approval would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer, as appropriate, to a State licensing authority, the Attorney General, or other law enforcement authorities any substantiated complaints that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (42 U.S.C. 14944); or

(2) In violation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(3) Otherwise in violation of Federal, State, or local law.
(c) When an accrediting entity makes a report pursuant to paragraphs (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

§ 96.73 [Reserved]

Subpart K—Adverse Action by the Accrediting Entity

§ 96.74 Scope.

The provisions in this subpart establish the procedures governing adverse action by an accrediting entity against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions of this subpart do not apply to temporarily accredited agencies.

§ 96.75 Adverse action against accredited agencies or approved persons not in substantial compliance.

The accrediting entity must take adverse action when it determines that an accredited agency or approved person may not maintain accreditation or approval as provided in §96.27. The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered an adverse action for purposes of the IAA and the regulations in this part:

(a) Suspending accreditation or approval;
(b) Canceling accreditation or approval;
(c) Refusing to renew accreditation or approval;
(d) Requiring an accredited agency or approved person to take a specific corrective action to bring itself into compliance; and
(e) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific Convention country.

§ 96.76 Procedures governing adverse action by the accrediting entity.

(a) The accrediting entity must decide which adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been previously informed. The accrediting entity must notify an accredited agency or approved person in writing of its decision to take an adverse action against the agency or person. The accrediting entity’s written notice must identify the deficiencies prompting imposition of the adverse action.

(b) Before taking adverse action, the accrediting entity may, in its discretion, advise an accredited agency or approved person in writing of any deficiencies in its performance that may warrant an adverse action and provide it with an opportunity to demonstrate that an adverse action would be unwarranted before the adverse action is imposed. If the accrediting entity takes the adverse action without such prior notice, it must provide a similar opportunity to demonstrate that the adverse action was unwarranted after the adverse action is imposed, and may withdraw the adverse action based on the information provided.

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

§ 96.77 Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity.

(a) If the accrediting entity takes an adverse action against an agency or person, the action will take effect immediately unless the accrediting entity agrees to a later effective date.

(b) If the accrediting entity suspends or cancels the accreditation or approval of an agency or person, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation, it
must execute the plans required by §§96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(c) If the accrediting entity refuses to renew the accreditation or approval of an agency or person, the agency or person must cease to provide adoption services in all Convention cases upon expiration of its existing accreditation or approval. It must take all necessary steps to complete its Convention cases before its accreditation or approval expires. It must also execute the plans required by §§96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it takes an adverse action that changes the accreditation or approval status of an agency or person. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

§ 96.78 Accrediting entity procedures to terminate adverse action.

(a) The accrediting entity must maintain internal petition procedures, approved by the Secretary, to give accredited agencies and approved persons an opportunity to terminate adverse actions on the grounds that the deficiencies necessitating the adverse action have been corrected. The accrediting entity must inform the agency or person of these procedures when it informs them of the adverse action pursuant to §96.76(a). An accrediting entity is not required to maintain procedures to terminate adverse actions on any other grounds, or to maintain procedures to review its adverse actions, and must obtain the consent of the Secretary if it wishes to make such procedures available.

(b) An accrediting entity may terminate an adverse action it has taken only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the adverse action have been corrected. The accrediting entity must notify an agency or person in writing of its decision on the petition to terminate the adverse action.

(c) If the accrediting entity described in paragraph (b) of this section is no longer providing accreditation or approval services, the agency or person may petition any accrediting entity with jurisdiction over its application.

(d) If the accrediting entity cancels or refuses to renew an agency’s or person’s accreditation or approval, and does not terminate the adverse action pursuant to paragraph (b) of this section, the agency or person may petition any accrediting entity with jurisdiction over its application.

(e) If the accrediting entity cancels or refuses to renew an agency’s or person’s accreditation or approval, and does not terminate the adverse action pursuant to paragraph (b) of this section, the agency or person may petition any accrediting entity with jurisdiction over its application.
person demonstrates to the satisfaction of the accrediting entity that the specific deficiencies that led to the cancellation or refusal to renew have been corrected.

(e) If the accrediting entity grants the agency or person permission to reapply, the agency or person may file an application with that accrediting entity in accordance with subpart D of this part.

(f) Nothing in this section shall be construed to prevent an accrediting entity from withdrawing an adverse action if it concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the accrediting entity will take appropriate steps to notify the Secretary and the Secretary will take appropriate steps to notify the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.79 Administrative or judicial review of adverse action by the accrediting entity.

(a) Except to the extent provided by the procedures in §96.78, an adverse action by an accrediting entity shall not be subject to administrative review.

(b) Section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)) provides for judicial review in Federal court of adverse actions by an accrediting entity, regardless of whether the entity is described in §96.5(a) or (b). When any petition brought under section 202(c)(3) raises as an issue whether the deficiencies necessitating the adverse action have been corrected, the procedures maintained by the accrediting entity pursuant to §96.78 must first be exhausted. Adverse actions are only those actions listed in §96.73. There is no judicial review of an accrediting entity’s decision to deny accreditation or approval, including:

(1) A denial of an initial application;
(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and
(3) A denial of an application made after cancellation or debarment by the Secretary.

(c) In accordance with section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)), an accredited agency or approved person 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 shall review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency or approved person 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.

§ 96.80 [Reserved]

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

§ 96.81 Scope.

The provisions in this subpart establish the procedures governing adverse action by the Secretary against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to temporarily accredited agencies.

§ 96.82 The Secretary’s response to actions by the accrediting entity.

(a) There is no administrative review by the Secretary of an accrediting entity’s decision to deny accreditation or approval, nor of any decision by an accrediting entity to take an adverse action.

(b) When informed by an accrediting entity that an agency has been accredited or a person has been approved, the Secretary will take appropriate steps to ensure that relevant information about the accredited agency or approved person is provided to the Permanent Bureau of the Hague Conference on Private International Law. When informed by an accrediting entity that it has taken an adverse action that impacts an agency’s or person’s accreditation or approval status, the Secretary will take appropriate steps to inform the Permanent Bureau of the
§ 96.83 Suspension or cancellation of accreditation or approval by the Secretary.

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary’s discretion, that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

(1) Will protect the interests of children;

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

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

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

(a) An agency or person may petition the Secretary for relief from the Secretary’s suspension or cancellation of its accreditation or approval on the grounds that the deficiencies necessitating the suspension or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for accreditation or approval, the Secretary will so notify the appropriate accrediting entity. If the Secretary terminates a suspension, the Secretary will also take appropriate steps to notify the Permanent Bureau of the Hague Conference on Private International Law of the reinstatement.

(b) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.85 Temporary and permanent debarment by the Secretary.

(a) The Secretary may temporarily or permanently debar an agency from accreditation or a person from approval on the Secretary’s own initiative, at the request of DHS, or at the request of an accrediting entity. A debarment of an accredited agency or approved person will automatically result in the cancellation of accreditation or approval by the Secretary, and the accrediting entity shall deny any pending request for renewal of accreditation or approval.

(b) The Secretary may issue a debarment order only if the Secretary, in the Secretary’s discretion, determines that:

(1) There is substantial evidence that the agency or person is out of compliance with the standards in subpart F of this part; and

(2) There has been a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned. For purposes of this paragraph:

(i) “The children and families concerned” include any children and any families whose interests have been or may be affected by the agency’s or person’s actions;
(ii) A failure to comply with §96.47 (home study requirements) shall constitute a “serious failure to comply” unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child’s country of origin; and

(iii) Repeated serious, willful, or grossly negligent failures to comply with §96.47 (home study requirements) by an agency or person after consultation between the Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply.

§ 96.86 Length of debarment period and reapplication after temporary debarment.

(a) In the case of a temporary debarment order, the order will take effect on the date specified in the order and will specify a date, not earlier than three years later, on or after which the agency or person may petition the Secretary for withdrawal of the temporary debarment. If the Secretary withdraws the temporary debarment, the agency or person may then reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

(b) In the case of a permanent debarment order, the order will take effect on the date specified in the order. The agency or person will not be permitted to apply again to an accrediting entity for accreditation or approval, or to the Secretary for termination of the debarment.

(c) Nothing in this section shall be construed to prevent the Secretary from withdrawing a debarment if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

If the Secretary suspends or cancels the accreditation or approval of an agency or person, or debars an agency or person, the agency or person must cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation or debarment, it must execute the plans required by §§96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

§ 96.88 Review of suspension, cancellation, or debarment by the Secretary.

(a) Except to the extent provided by the procedures in §96.84, an adverse action by the Secretary shall not be subject to administrative review.

(b) Section 204(d) of the IAA (42 U.S.C. 14224(d)) provides for judicial review of final actions by the Secretary. When any petition brought under section 204(d) raises as an issue whether the deficiencies necessitating a suspension or cancellation of accreditation or approval have been corrected, procedures maintained by the Secretary pursuant to §96.84(a) must first be exhausted. A suspension or cancellation
of accreditation or approval, and a debarment (whether temporary or permanent) by the Secretary are final actions subject to judicial review. Other actions by the Secretary are not final actions and are not subject to judicial review.

(c) In accordance with section 204(d) of the IAA (42 U.S.C. 14924(d)), an agency or person that has been suspended, cancelled, or temporarily or permanently debarred 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 person resides or the agency is located, pursuant to 5 U.S.C. 706, to set aside the action.

§ 96.89 [Reserved]

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

§ 96.90 Scope.

The provisions in this subpart govern the dissemination and reporting of information on accredited agencies and approved persons by accrediting entities. Temporary accreditation is governed by the provisions of subpart N of this part and, as provided for in §96.110, reports on temporarily accredited agencies must comply with this subpart.

§ 96.91 Dissemination of information to the public about accreditation and approval status.

(a) Once the Convention has entered into force for the United States, the accrediting entity must maintain and make available to the public on a quarterly basis the following information:

(1) The name, address, and contact information for each agency and person it has accredited or approved;

(2) The names of agencies and persons to which it has denied accreditation or approval that have not subsequently been accredited or approved;

(3) The names of agencies and persons that have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment by the accrediting entity or the Secretary; and

(4) Other information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public.

(b) Once the Convention has entered into force for the United States, each accrediting entity must make the following information available to individual members of the public upon specific request:

(1) Confirmation of whether or not a specific agency or person has a pending application for accreditation or approval, and, if so, the date of the application and whether it is under active consideration or whether a decision on the application has been deferred; and

(2) If an agency or person has been subject to a withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment, a brief statement of the reasons for the action.

§ 96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons.

Once the Convention has entered into force for the United States, each accrediting entity must maintain a written record documenting each complaint received and the steps taken in response to it. This information may be disclosed to the public as follows:

(a) The accrediting entity must verify, upon inquiry from a member of the public, whether there have been any substantiated complaints against an accredited agency or approved person, and if so, provide information about the status and nature of any such complaints.

(b) The accrediting entity must have procedures for disclosing information about complaints that are substantiated.

§ 96.93 Reports to the Secretary about accredited agencies and approved persons and their activities.

(a) The accrediting entity must make annual reports to the Secretary on the information it collects from accredited agencies and approved persons pursuant to §96.43. The accrediting entity must make semi-annual reports to the Secretary that summarize for the preceding six-month period the following information:
(1) The accreditation and approval status of applicants, accredited agencies, and approved persons;
(2) Any instances where it has denied accreditation or approval;
(3) Any adverse actions taken against an accredited agency or approved person and any withdrawals of temporary accreditation;
(4) All substantiated complaints against accredited agencies and approved persons and the impact of such complaints on their accreditation or approval status;
(5) The number, nature, and outcome of complaint investigations carried out by the accrediting entity as well as the shortest, longest, average, and median length of time expended to complete complaint investigations; and
(6) Any discernible patterns in complaints received about specific agencies or persons, as well as any discernible patterns of complaints in the aggregate.

(b) The accrediting entity must report to the Secretary within thirty days of the time it learns that an accredited agency or approved person:
(1) Has ceased to provide adoption services; or
(2) Has transferred its Convention cases and adoption records.

(c) In addition to the reporting requirements contained in §96.72, an accrediting entity must immediately notify the Secretary in writing:
(1) When it accredits an agency or approves a person;
(2) When it renews the accreditation or approval of an agency or person; or
(3) When it takes an adverse action against an accredited agency or approved person that impacts its accreditation or approval status or withdraws an agency’s temporary accreditation.

§96.96 Eligibility requirements for temporary accreditation.

(a) An accrediting entity may not temporarily accredit an agency unless the agency demonstrates to the satisfaction of the accrediting entity that:
(1) It has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the transitional application deadline falls. For purposes of this subpart, the number of cases includes all intercountry adoption cases that were handled by, or under the responsibility of, the agency, regardless of whether they involved countries party to the Convention;
(2) It qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for nonprofit status under the law of any State;
(3) It is properly licensed under State law to provide adoption services in at least one State. It is, and for the last three years prior to the transitional application deadline has been, providing intercountry adoption services;
(4) It has the capacity to maintain and provide to the accrediting entity and the Secretary, within thirty days of request, all of the information relevant to the Secretary’s reporting requirements under section 104 of the IAA (42 U.S.C. 14914); and
(5) It has not been involved in any improper conduct related to the provision of intercountry adoption or other services, as evidenced in part by the following:
(1) The agency has maintained its State license without suspension or cancellation for misconduct during the
entire period in which it has provided intercountry adoption services;
(ii) The agency has not been subject to a finding of fault or liability in any administrative or judicial action in the three years preceding the transitional application deadline; and
(iii) The agency has not been the subject of any criminal findings of fraud or financial misconduct in the three years preceding the transitional application deadline.

(b) An accrediting entity may not temporarily accredit an agency unless the agency also demonstrates to the satisfaction of the accrediting entity that it has a comprehensive plan for applying for and achieving full accreditation before the agency’s temporary accreditation expires, and is taking steps to execute that plan.

§ 96.97 Application procedures for temporary accreditation.

(a) An agency seeking temporary accreditation must submit an application to an accrediting entity with jurisdiction over its application, with the required fee(s), by the transitional application deadline established pursuant to §96.19 of this part. Applications for temporary accreditation that are filed after the temporary application deadline will not be considered.

(b) An agency may not seek temporary accreditation and full accreditation at the same time. The agency’s application must clearly state whether it is seeking temporary accreditation or full accreditation. An eligible agency’s option of applying for temporary accreditation will be deemed to have been waived if the agency also submits a separate application for full accreditation prior to the transitional application deadline. The agency may apply to only one accrediting entity at a time.

(c) The accrediting entity must establish and follow uniform application procedures and must make information about these procedures available to agencies that are considering whether to apply for temporary accreditation. The accrediting entity must evaluate the applicant for temporary accreditation in a timely fashion. The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency that applies for temporary accreditation by the transitional application deadline to complete the temporary accreditation process by the deadline for initial accreditation or approval. If an agency seeks temporary accreditation under this subpart, it will be included on the initial list deposited by the Secretary with the Permanent Bureau of the Hague Conference on Private International Law only if it is granted temporary accreditation by the deadline for initial accreditation or approval established pursuant to §96.19(a).

§ 96.98 Length of temporary accreditation period.

(a) One-year temporary accreditation. An agency that has provided adoption services in 50–99 intercountry adoptions in the calendar year preceding the year in which the transitional application date falls may apply for a one-year period of temporary accreditation. The one-year period will commence on the date that the Convention enters into force for the United States.

(b) Two-year temporary accreditation. An agency that has provided adoption services in fewer than 50 intercountry adoptions in the calendar year preceding the year in which the transitional application date falls may apply for a two-year period of temporary accreditation. The two-year period will commence on the date that the Convention enters into force for the United States.

§ 96.99 Converting an application for temporary accreditation to an application for full accreditation.

(a) The accrediting entity may, in its discretion, permit an agency that has applied for temporary accreditation to convert its application to an application for full accreditation, subject to submission of any additional required documentation, information, and fee(s). The accrediting entity may grant a request for conversion if the accrediting entity has determined that the applicant is not in fact eligible for temporary accreditation based on the number of adoption cases it has handled; if the agency has concluded that it can complete the full accreditation process sooner than expected; or for
any other reason that the accrediting entity deems appropriate.

(b) If an application is converted after the transitional application deadline, it will be treated as an application filed after the transitional application deadline, and the agency may not necessarily be provided an opportunity to complete the accreditation process in time to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.100 Procedures for evaluating applicants for temporary accreditation.

(a) To evaluate an agency for temporary accreditation, the accrediting entity must:

(1) Review the agency’s written application and supporting documentation; and

(2) Verify the information provided by the agency, as appropriate. The accrediting entity may also request additional documentation and information from the agency in support of the application as it deems necessary.

(b) The accrediting entity may also decide, in its discretion, that it must conduct a site visit to determine whether to approve the application for temporary accreditation. The site visit may include interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency, interviews with the agency’s employees, and interviews with other individual(s) knowledgeable about its provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent possible, advise the agency in advance of documents it wishes to review during the site visit. The provisions of §§96.25 and 96.26 will govern requests for and use of information.

(c) Before deciding whether to grant temporary accreditation to the agency, the accrediting entity may, in its discretion, advise the agency of any deficiencies that may hinder or prevent its temporary accreditation and defer a decision to allow the agency to correct the deficiencies.

(d) The accrediting entity may only use the criteria contained in §96.96 when determining whether an agency is eligible for temporary accreditation.

(e) The eligibility criteria contained in §96.96 and the standards contained in §96.104 do not eliminate the need for an agency to comply fully with the laws of the jurisdictions in which it operates. An agency must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA.

§ 96.101 Notification of temporary accreditation decisions.

(a) The accrediting entity must notify agencies of its temporary accreditation decisions on the uniform notification date to be established by the Secretary pursuant to §96.58(a). On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency has been granted temporary accreditation. The accrediting entity may not provide any information about its temporary accreditation decisions to any agency or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an agency prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies about the status of their pending applications for temporary accreditation for the sole purpose of affording them an opportunity to correct deficiencies that may hinder their temporary accreditation. When informed by an accrediting entity that an agency has been granted temporary accreditation, the Secretary will take appropriate steps to ensure that relevant information about a temporarily accredited agency is provided to the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.102 Review of temporary accreditation decisions.

There is no administrative or judicial review of an accrediting entity’s decision to deny temporary accreditation.
§ 96.103 Oversight by accrediting entities.

(a) The accrediting entity must oversee an agency that it has temporarily accredited by monitoring whether the agency is in substantial compliance with the standards contained in §96.104 and through the process of assessing the agency’s application for full accreditation when it is filed. The accrediting entity must also investigate any complaints or other information that becomes available to it about an agency it has temporarily accredited. Complaints against a temporarily accredited agency must be handled in accordance with subpart J of this part. For purposes of subpart J of this part, the temporarily accredited agency will be treated as if it were a fully accredited agency, except that:

(1) The relevant standards will be those contained in §96.104 rather than 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, in its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency.

(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 it complies with the standards in §§96.44 and 96.45 when using supervised providers in the United States and it complies with the standards in §§96.44 and 96.46 when using supervised providers or, to the extent permitted by §96.14(c), other foreign providers in a Convention country;

(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 Convention functions in incoming or outgoing cases, it complies with the standards in §96.32 or §96.55;

(k) It has a plan to transfer its Convention cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered;

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

(m) It 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 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.

(b) 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, advise a temporarily accredited agency in writing of any deficiencies in its performance that may warrant withdrawal and provide it with an opportunity to demonstrate that withdrawal would be unwarranted before withdrawal occurs. If the accrediting entity withdraws the agency’s temporary accreditation without prior notice, it must provide a similar opportunity to demonstrate that the withdrawal was unwarranted after the withdrawal occurs, and may reinstate the agency’s temporary accreditation based on the information provided.

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

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it withdraws or reinstates an agency’s temporary accreditation. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

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

(a) A decision by an accrediting entity to withdraw an agency’s temporary accreditation shall not be subject to administrative review.

(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 (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 to set aside the adverse action imposed by the accrediting entity. The United States district court shall review the adverse action in accordance with 5 U.S.C. 706. When a temporarily 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 the Secretary’s 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 protect the interests of children;
2. Will further U.S. foreign policy or national security interests; or
3. Will protect the ability of U.S. citizens to adopt children under the Convention.

(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 (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 IAA (42 U.S.C. 14924(d)).

§ 96.109 Effect of the withdrawal of temporary accreditation by the accrediting entity or the Secretary.

(a) If an agency's temporary accreditation is withdrawn, it must cease to provide adoption services in all Convention cases and must execute the plan required by §96.104(k) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to an accredited agency, approved person, or a State archive, as appropriate.

(b) Where the agency is unable to transfer such Convention cases or adoption records in accordance with the plan or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(c) When an agency's temporary accreditation is withdrawn or reinstated, the Secretary will, where appropriate, take steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

(d) 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. Its application for full accreditation must be made to the same accrediting entity that granted its application for temporary accreditation. If that entity is no longer providing accreditation services, it may apply to any accrediting entity with jurisdiction over its application.

(e) If an agency continues to pursue its application for full accreditation or subsequently applies for full accreditation, the accrediting entity may take the circumstances of the withdrawal of its temporary accreditation into account when evaluating the agency for full accreditation.

§ 96.110 Dissemination and reporting of information about temporarily accredited agencies.

The accrediting entity must disseminate and report information about agencies it has temporarily accredited as if they were fully accredited agencies, in accordance with subpart M of this part.

§ 96.111 Fees charged for temporary accreditation.

(a) Any fees charged by an accrediting entity for temporary accreditation will include a non-refundable fee for temporary accreditation set forth in a schedule of fees approved by the Secretary as provided in §96.8(a). Such fees may not exceed the costs of temporary accreditation and must include the costs of all activities associated with the temporary accreditation cycle (including, but not limited to, costs for completing the temporary accreditation process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities). The temporary accreditation fee may not include the costs of site visit(s). The schedule of fees may provide, however, that, in the event that a site visit is required to determine whether to approve an application for temporary accreditation, to investigate a complaint or other information, or otherwise to monitor the agency, 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. In such a case, the accrediting entity may estimate the additional fees and may require that the estimated amount be paid in advance, subject to a refund of any overcharge. Temporary accreditation may be denied or withdrawn if the estimated fees are not paid.

(b) An accrediting entity must make its schedule of fees available to the public, including prospective applicants for temporary accreditation, upon request. At the time of application, the accrediting entity must specify the fees to be charged in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become temporarily accredited.

PART 97—ISSUANCE OF ADOPTION CERTIFICATES AND CUSTODY DECLARATIONS IN HAGUE CONVENTION ADOPTION CASES

As used in this part:

(a) Adoption Court means the State court with jurisdiction over the adoption or the grant of custody for purpose of adoption.

(b) U.S. Authorized Entity means a public domestic authority or an agency or person that is accredited or temporarily accredited or approved by an accrediting entity pursuant to 22 CFR part 96, or a supervised provider acting under the supervision and responsibility of an accredited agency or temporarily accredited agency or approved person.

(c) Foreign Authorized Entity means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case.

(d) Hague Adoption Certificate means a certificate issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in §97.4(b), the IAA.

(e) Hague Custody Declaration means a declaration issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the Convention and, except as provided in §97.4(b), the IAA.

(f) Terms defined in 22 CFR 96.2 have the meaning given to them therein.

§ 97.2 Application for a Hague Adoption Certificate or a Hague Custody Declaration (outgoing Convention case).

(a) Once the Convention has entered into force for the United States, any party to an outgoing Convention adoption or custody proceeding may apply to the Secretary for a Hague Adoption Certificate or a Hague Custody Declaration. Any other interested person may also make such application, but such application will not be processed unless such applicant demonstrates that a Hague Adoption Certificate or Hague Custody Declaration is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary in the Secretary’s discretion.

(b) U.S. Authorized Entity means a public domestic authority or an agency or person that is accredited or temporarily accredited or approved by an accrediting entity pursuant to 22 CFR part 96, or a supervised provider acting under the supervision and responsibility of an accredited agency or temporarily accredited agency or approved person.

(c) Foreign Authorized Entity means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case.

(d) Hague Adoption Certificate means a certificate issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in §97.4(b), the IAA.

(e) Hague Custody Declaration means a declaration issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the Convention and, except as provided in §97.4(b), the IAA.

(f) Terms defined in 22 CFR 96.2 have the meaning given to them therein.
§ 97.3 Requirements subject to verification in an outgoing Convention case.

(a) Preparation of child background study. An accredited agency, temporarily accredited agency, or public domestic authority must complete or approve a child background study that includes information about the child’s identity, adoptability, background, social environment, family history, medical history (including that of the child’s family), and any special needs of the child.

(b) Transmission of child data. A U.S. authorized entity must conclude that the child is eligible for adoption and, without revealing the identity of the birth mother or the birth father if these identities may not be disclosed under applicable State law, transmit to a foreign authorized entity the background study, proof that the necessary consents have been obtained, and the reason for its determination that the proposed placement is in the child’s best interests, based on the home study and child background study and giving due consideration to the child’s upbringing and his or her ethnic, religious, and cultural background.

(c) Reasonable efforts to find domestic placement. Reasonable efforts pursuant to 22 CFR 96.54 must be made to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States and a timely adoptive placement in the United States not found.

(d) Preparation and transmission of home study. A U.S. authorized entity must receive from a foreign authorized entity a home study on the prospective adoptive parent(s) prepared in accordance with the laws of the receiving country, under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority, that includes:

(1) Information on the prospective adoptive parent(s)’ identity, eligibility, and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom they would be qualified to care;

(2) Confirmation that a competent authority has determined that the prospective adoptive parent(s) are eligible and suited to adopt and has ensured that the prospective adoptive parent(s) have been counseled as necessary; and

(3) The results of a criminal background check.

(e) Authorization to enter. The Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent(s).

(f) Consent by foreign authorized entity. A foreign authorized entity or competent authority must declare that it consents to the adoption, if its consent is necessary under the law of the relevant foreign country for the adoption to become final.
(g) Guardian counseling and consent. Each person, institution, and authority (other than the child) whose consent is necessary for the adoption must be counseled as necessary and duly informed of the effects of the consent (including whether or not an adoption will terminate the legal relationship between the child and his or her family of origin); must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind; and consent must not have been subsequently withdrawn. If the consent of the mother is required, it may be given only after the birth of the child.

(h) Child counseling and consent. As appropriate in light of the child’s age and maturity, the child must be counseled and informed of the effects of the adoption and the child’s views must be considered. If the child’s consent is required, the child must also be counseled and informed of the effects of granting consent, and must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind.

(i) Authorized entity duties. A U.S. authorized entity must:

(1) Ensure that the prospective adoptive parent(s) agree to the adoption;
(2) Agree, together with a foreign authorized entity, that the adoption may proceed;
(3) Take all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States; and
(4) Arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required; to return the home study and the child background study to the authorities that forwarded them if the transfer of the child does not take place; and to be consulted in the event a new placement or alternative long-term care for the child is required.

(j) Contacts. Unless the child is being adopted by a relative, there may be no contact between the prospective adoptive parent(s) and the child’s birthparent(s) or any other person who has care of the child prior to the competent authority’s determination that the prospective adoptive parent(s) are eligible and suited to adopt and the adoption court’s determinations that the child is eligible for adoption, that the requirements in paragraphs (c) and (g) of this section have been met, and that an intercountry adoption is in the child’s best interests, provided that this prohibition on contacts shall not apply if the relevant State or public domestic authority has established conditions under which such contact may occur and any such contact occurred in accordance with such conditions.

(k) Improper financial gain. No one may derive improper financial or other gain from an activity related to the adoption, and only costs and expenses (including reasonable professional fees of persons involved in the adoption) may be charged or paid.

§ 97.4 Issuance of a Hague Adoption Certificate or a Hague Custody Declaration (outgoing Convention case).

(a) Once the Convention has entered into force for the United States, the Secretary shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Secretary, in the Secretary’s discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and the IAA.

(b) If compliance with the Convention can be certified but it is not possible to certify compliance with the IAA, the Secretary personally may authorize issuance of an appropriately modified Hague Adoption Certificate or Hague Custody Declaration, in the interests of justice or to prevent grave physical harm to the child.

§ 97.5 Certification of Hague Convention Compliance in an incoming Convention case where final adoption occurs in the United States.

(a) Once the Convention has entered into force for the United States, any person may request the Secretary to certify that a Convention adoption in
an incoming case finalized in the United States was done in accordance with the Convention.

(b) Persons seeking such a certification must submit the following documentation:

(1) A copy of the certificate issued by a consular officer pursuant to 22 CFR 42.24(j) certifying that the granting of custody of the child has occurred in compliance with the Convention;

(2) An official copy of the adoption court’s order granting the final adoption; and

(3) Such additional documentation and information as the Secretary may request at the Secretary’s discretion.

(c) If a person seeking the certification described in paragraph (a) of this section fails to submit all the documentation and information required pursuant to paragraph (b) of this section within 120 days of the Secretary’s request, the Department may consider the request abandoned.

(d) The Secretary may issue the certification if the Secretary, in the Secretary’s discretion, is satisfied that the adoption was made in compliance with the Convention. The Secretary may decline to issue a certification, including to a party to the adoption, in the Secretary’s discretion. A certification will not be issued to a non-party requestor unless the requestor demonstrates that the certification is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary or the Department of Homeland Security (DHS). Convention record includes a record, generated or received by the Secretary or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Secretary or DHS performs a Central Authority function.

(e) A State court’s final adoption decree, when based upon the certificate issued by a consular officer pursuant to 22 CFR 42.24(j), certifying that the grant of custody of the child has occurred in compliance with the Convention, or upon its determination that the requirements of Article 17 of the Convention have been met constitutes the certification of the adoption under Article 23 of the Convention.

§§ 97.6–97.7 [Reserved]

PART 98—INTERCOUNTRY ADOPTION—CONVENTION RECORD PRESERVATION

Sec. 98.1 Definitions.
the first Convention record related to the adoption of the child. For an intercountry adoption or placement for adoption involving two Convention countries other than the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record in connection with the performance of a Central Authority function.

PART 99—REPORTING ON CONVENTION AND NON-CONVENTION ADOPTIONS OF EMIGRATING CHILDREN

§ 99.1 Definitions.
As used in this part, the term:
(b) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 99.2 Reporting requirements for adoption cases involving children emigrating from the United States.
(a) Once the Convention has entered into force for the United States, an agency (including an accredited agency and temporarily accredited agency), person (including an approved person), public domestic authority, or other adoption service provider providing adoption services in a case involving the emigration of a child from the United States must report information to the Secretary in accordance with this section if it is identified as the reporting provider in accordance with paragraph (b) of this section.
(b) In a Convention case in which an accredited agency, temporarily accredited agency, or approved person is providing adoption services, the primary provider is the reporting provider. In any other Convention case, or in a non-Convention case, the reporting provider is the agency, person, public domestic authority, or other adoption service provider that is providing adoption services in the case, if it is the only provider of adoption services. If there is more than one provider of adoption services in a non-Convention case, the reporting provider is the one that has child placement responsibility, as evidenced by the following factors:
(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;
(2) Accepting custody from a birthparent or other legal guardian for the purpose of placement for adoption;
(3) Assuming responsibility for liaison with a foreign government or its designees with regard to arranging an adoption; or
(4) Receiving information from, or sending information to a foreign country about a child that is under consideration for adoption.
(c) A reporting provider, as identified in paragraph (b) of this section, must report the following identifying information to the Secretary for each outgoing case within 30 days of learning that the case involves emigration of a child from the United States to a foreign country:
(1) Name, date of birth of child, and place of birth of child;
(2) The U.S. State from which the child is emigrating;
(3) The country to which the child is immigrating;
(4) The U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and
(5) Its name, address, phone number, and other contact information.
(d) A reporting provider, as identified in paragraph (b) of this section, must report any changes to information previously provided as well as the following milestone information to the
Secretary for each outgoing case within 30 days of occurrence:

(1) Date case determined to involve emigration from the United States (generally the time the child is matched with adoptive parents);

(2) Date of U.S. final adoption or date on which custody for the purpose of adoption was granted in United States;

(3) Date of foreign final adoption if custody for purpose of adoption was granted in the United States, to the extent practicable; and

(4) Any additional information when requested by the Secretary in a particular case.

§ 99.3 [Reserved]