

The Hague Convention on Intercountry Adoption:

A Guide to Outgoing Cases from the United States

Updated December 2011

Disclaimer: The following is intended as a general overview of requirements for outgoing cases under the Hague Adoption Convention, the Intercountry Adoption Act of 2000 (IAA), and its implementing regulations. It is not a substitute for the actual Convention, IAA or regulations, nor is it a comprehensive summary of them or of the individual provisions discussed. In the case of any inconsistencies between this document and the Convention, IAA or regulations, the Convention, IAA or regulation governs, as appropriate.

Dear Members of the Intercountry Adoption Community:

This Guide is intended to provide an overview of the new process for outgoing Hague Convention adoption cases. An outgoing case occurs when a child resident in the United States is adopted or will be adopted by individuals residing in another Convention country and will emigrate from the United States to that country. We hope that this Guide will be a useful resource for any party involved in an outgoing case, including birthparent(s), prospective adoptive parent(s), adoption service providers, and public domestic authorities.

On December 12, 2007, the Department of State deposited the instrument of ratification of the [Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption](#) (Hague Adoption Convention). The Hague Adoption Convention entered into force for the United States on April 1, 2008.

The [Intercountry Adoption Act of 2000](#) (IAA) assigned to the Department of State (the Department) the primary responsibility for implementing the Hague Adoption Convention, an international treaty between the United States and more than 80 countries around the world. The Office of Children's Issues in the Department's Bureau of Consular Affairs is responsible for the day-to-day implementation of the Hague Adoption Convention.

Detailed regulations governing outgoing cases to Hague Adoption Convention countries ([22 CFR Part 97](#)) were published in the *Federal Register* on November 2, 2006. As a result, U.S. citizen and non-U.S. citizen children who are adopted or will be adopted by individuals residing in another Hague Adoption Convention country now have federal and international protections.

We stand ready to assist you with any concerns regarding Hague Adoption Convention rules and procedures. Your questions are always welcome at AdoptionUSCA@state.gov, our dedicated e-mail box for Hague Adoption Convention issues.

Sincerely,

Department of State, Bureau of Consular Affairs

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Part I: An Overview

A. Scope of this Guide

This guide addresses only outgoing cases (that is, those cases involving adoptive children who will be emigrating from the United States to a Hague Adoption Convention country with whom the United States has a treaty relationship (Convention country¹)).²

B. The Convention

The United States deposited its instrument of ratification for the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (or “the Convention”) on December 12, 2007. The Convention entered into force for the United States on April 1, 2008.

A [current list of the more than 80 Convention countries](http://adoption.state.gov/hague_convention/countries.php) with whom the Convention is in force with the United States can be accessed through the Department’s website, at http://adoption.state.gov/hague_convention/countries.php.

The United States strongly supports the principles of the Convention, which strengthen protections for children, birthparents, and prospective adoptive parents in the adoption process. The Convention provides a framework for Convention countries to work together to ensure that intercountry adoptions take place in the best interests of children³; and, to prevent the abduction, sale, or trafficking of children in connection with intercountry adoption.

Part II: Key Information on Outgoing Cases

A. Changes to the Intercountry Adoption Process Related to Outgoing Cases

The Convention entered into force for the United States on April 1, 2008, triggering several important changes to the way outgoing cases with Convention countries are handled in the United States. Transition cases, however, are processed under pre-Convention rules. (For detailed information on transition cases, please see section II.B.3 of this Guide.)

¹ The term “Convention country” is used in this Guide as it is defined in 22 CFR 96.2 to mean “a country that is a party to the Convention and with which the Convention is in force for the United States.”

² This guide does not address cases involving U.S. children emigrating from the United States to non-Convention countries or foreign born children immigrating to the United States from another country (incoming cases).

³ The term “best interests of the child” is used in this Guide as it is defined in 22 CFR 96.2 to “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.”

1. New Regulation of Outgoing Cases

The [Intercountry Adoption Act of 2000](#) (IAA), the domestic legislation implementing the Convention, imposed new requirements for adoption service providers, prospective adoptive parents, and U.S. State adoption courts involved in outgoing cases. These requirements are briefly summarized below and are discussed in greater detail in subsequent sections.

Adoption Services Providers:

- [22 CFR Part 96](#) contains the accreditation/approval requirements for adoption service providers providing adoption services⁴ in outgoing cases and establishes standards for accredited or approved adoption service providers that provide adoption services in outgoing cases.
- [22 CFR Part 99](#) requires adoption service providers, including public domestic authorities, involved in an outgoing adoption case to report certain information to the Department.

Prospective adoptive parents:

- After the U.S. State adoption court issues an adoption order or grant of custody for the purpose of adoption, prospective adoptive parents may apply for a Hague Adoption Certificate (“HAC”) or Hague Custody Declaration (“HCD”). See [22 CFR 97.2](#).

U.S. State adoption courts:

- [IAA § 303\(b\)](#) sets forth conditions for U.S. State adoption courts entering orders in outgoing cases.
- [22 CFR Part 97](#) sets forth the process for applying for and receiving an HAC or HCD in connection with an outgoing adoption case. (U.S. State adoption courts must verify compliance with each element of [22 CFR 97.3](#), using language that adheres as closely as possible to the regulations and making reference to the relevant section of the regulations in order for the Department to issue an HAC or an HCD).
- See also below, [Part II.C, Obtaining a Hague Adoption Certificate \(HAC\) or Hague Custody Declaration \(HCD\)](#).

2. Role of Department of State in Outgoing Cases

The Convention requires the designation of a Central Authority to discharge certain duties. The U.S. Department of State is the U.S. Central Authority (USCA) under the

⁴ Adoption services, as they are defined in [22 CFR 96.2](#) and used in this Guide, mean 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 child care or any other social service pending an alternative placement.

Convention for the United States. The Department's Bureau of Consular Affairs has day-to-day responsibility for USCA functions.

The Department thus has several obligations with respect to outgoing cases:

a. Adjudicating applications for and issuing HACs and HCDs.

After a U.S. State adoption court issues the adoption order or the order granting custody for the purpose of adoption, parties to the adoption should apply to the USCA for an HAC or HCD, as appropriate. The HAC or HCD each includes a certification or declaration that the adoption or grant of custody was completed in accordance with the Convention. The USCA will review the HAC or HCD application, and will either issue the HAC or HCD or request additional information.

b. Monitoring and Oversight

The Department's responsibilities with respect to accreditation/approval of adoption service providers in outgoing cases include, but are not limited to:

- selecting, designating, and monitoring the performance of accrediting entities. See [22 CFR Part 96](#), subpart B.
- overseeing accredited agencies and approved persons. See [22 CFR Part 96](#), subpart L. [Note: Accrediting entities have primary responsibility for monitoring and oversight of accredited agencies and approved persons. See [22 CFR Part 96](#), subparts I, J, and K.]

c. Congressional Reports

The Department must provide annual reports to Congress with information on its intercountry adoption activities, including “the number of intercountry adoptions involving emigration from the United States [outgoing cases], regardless of whether the adoption occurred under the Convention, including the country to which each child immigrated and the State from which each child emigrated.” See IAA § 104(b)(2), [42 U.S.C. 14914](#).

3. Accreditation/Approval Requirement for Adoption Service Providers Providing Adoption Services in Convention Cases

Once it is determined that a case is an outgoing case, only the following providers can offer or provide an [adoption service](#) in that case in the United States:

- an accredited agency,
- an approved person,
- a supervised provider,
- an exempted provider, or
- a public domestic authority.

(See [IAA § 201](#); [22 CFR §§ 96.12 - 96.15](#).) This accreditation/approval is in addition to state licensing requirements. The accreditation regulations published in February 2006 ([22 CFR Part 96](#)) are designed to ensure that U.S. adoption agencies perform their duties in a manner that is consistent with the Convention and the IAA.

In 2006, the Department designated two accrediting entities to perform accrediting functions—the Council on Accreditation (COA) and the Colorado Department of Human Services (CDHS). The Department monitors these accrediting entities to ensure that each performs its functions in compliance with the Convention, the IAA and its implementing regulations, other applicable law, and the respective accrediting entity agreement with the Department.

For more information on accreditation and approval of adoption service providers, visit our website, http://adoption.state.gov/hague_convention/accreditation.php.

B. Identifying an Outgoing Case

An intercountry adoption case is an outgoing case if it has ***all*** of the following components:

- The child being adopted is resident in the United States;
- The prospective adoptive parent(s) is (are) resident in a foreign Convention country, where they will move the child after adoption in the U.S. or plan to move the child for the purpose of adoption;
- The prospective adoptive parents initiated the adoption process by applying to the Central Authority in their country of residence on or after April 1, 2008 (the date the Convention entered into force for the United States).

1. Residence of the child

The Convention applies only where a child habitually resident in one Convention country (the country of origin) has been, is being, or is to be moved to another Convention country (the receiving country) for the purpose of adoption by prospective adoptive parent(s) habitually resident in the receiving country. [Convention Article 2](#). An adoption case is an outgoing Convention case only if the prospective adoptive parent(s) demonstrate their intent to move the child from the United States to another Convention country after adoption or for the purpose of the adoption. The intent to move the child is relevant because the key purpose of the Hague Adoption Convention is to protect a child involved in an intercountry adoption, as opposed to a purely domestic adoption.

The IAA, however, considers an adoption to be a “Convention adoption” if the child is simply resident in the United States.

2. Residence of prospective adoptive parent(s)

The residence of the prospective adoptive parent(s) is a case-by-case determination and will in most cases be evaluated by the receiving country prior to the State court adoption proceedings. In a Convention adoption, this determination is central to the receiving country's approval of the proposed adoption and its determination that the child will be able to enter and reside in the receiving country – two of the prerequisites to the State court's finalization of the adoption. IAA § 303(b)(incorporating by reference IAA § 303(a)(2); 22 CFR §§ 97.3(e)-(f) (2007).

In the Department's view, if the Central Authority of the receiving country has determined that the prospective adoptive parent(s) are resident in the receiving country, the State court should defer to this determination.

Similarly, in the Department's view, if the Central Authority of the prospective adoptive parent(s) treats the prospective adoptive parent(s) as resident(s) of the United States, the State court should defer to that determination.

However, if the Central Authority of the receiving country has not opined on the residence of the prospective adoptive parent(s), the Department recommends that a State court consider the immigration status of the prospective adoptive parent(s). In the Department's view, a rebuttable presumption should apply to those prospective adoptive parent(s) who were admitted into the United States under any of the non-immigrant visa categories that they are not resident in the United States.

3. Timing of case initiation; transition rule

The Convention entered into force for the United States on April 1, 2008.

The IAA's "transition rule", which is consistent with Article 41 of the Convention, addresses when the Convention applies to an intercountry adoption case between the United States and another Convention country. [IAA § 505\(b\)](#).

Under the transition rule, the Convention and the IAA *do not* apply in an outgoing case involving a U.S. resident child "if the prospective adoptive parent(s) of the child initiated the adoption process in their country of residence with the filing of an appropriate application" before April 1, 2008.

The Department considers the phrase "initiate the adoption process in their country of residence with the filing of an appropriate application" to mean a formal, written effort undertaken prior to April 1, 2008, to initiate the adoption process in the prospective adoptive parent(s)' country of residence filed with (received by) an authorized entity in that country.

Such formal, written efforts generally consist of a written application or request to start the adoption process filed with the foreign Central Authority, the responsible

government office, or any other entity delegated the authority to receive such applications/requests. This could include, depending on the legal structure of the country at issue, an application for screening of prospective adoptive parent eligibility to adopt filed with the appropriate entity authorized to conduct home studies.

C. Discussion of Steps Covered by the Convention, IAA, and Implementing Regulations on Outgoing Cases

The discussion below summarizes the steps involved in an outgoing case (see the flowchart at Appendix 1 for a more abbreviated summary). Every case is different and may involve components not described. While the terms “prospective adoptive parent” and “child” are used below, cases may involve one or two prospective adoptive parents and more than one child.

📁 **Child in need of placement.** The process begins with a child who is in need of placement. The child is determined to be eligible for placement by a U.S. authorized entity, which may be a public domestic authority (e.g., State or local child protective services agency); an agency or person that is accredited, or approved; or, a supervised provider. See [22 CFR 97.1](#), [97.2](#), [97.3\(b\)](#).

📁 **Child background study.** A U.S. authorized entity then prepares a child background study and obtains necessary consents. Requirements and accreditation/approval standards related to the child background study include:

Content: In order to meet the requirements for an HAC or HCD, the child background study must include 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. [22 CFR 97.3\(a\)](#). The accreditation regulations also set forth specific content elements for child background studies in outgoing cases. See [22 CFR 96.53\(a\)](#).

Preparation: The child background study must be completed by an accredited agency, exempt provider, or public domestic authority. [22 CFR 97.3\(a\)](#), [22 CFR 96.53\(b\)](#). When the child background study is not performed by an accredited agency the background study must be reviewed and approved in writing by an accredited agency. [22 CFR 96.53\(b\)](#).

📁 **Reasonable efforts to find a timely domestic placement.** The adoption service provider makes reasonable efforts in accordance with [22 CFR 96.54](#) to actively recruit prospective adoptive parents and make a diligent search for a timely domestic placement ([IAA 303\(a\)\(1\)\(B\)](#); see also [22 CFR 97.3\(d\)](#)). Section 96.54 outlines the recruitment measures that demonstrate reasonable efforts; reasonable efforts may include no efforts when in the best interests of the child. (See [22 CFR 96.54\(a\)\(1-4\)](#), [\(b\)](#).) Note that specific domestic parent recruiting requirements do not apply: 1) in the case of adoption by relatives; 2) in the case in which the birth parent(s) have identified

specific prospective adoptive parent(s)⁵; or, 3) in other special circumstances accepted by the State court with jurisdiction over the case. See [22 CFR 96.54\(a\)](#). The U.S. State adoption court's evaluation of the reasonable efforts made by the adoption service provider to find a timely domestic placement satisfies the due consideration provision of Article 4 of the Convention.

📁 Prospective adoptive parent wants to provide home for U.S. child in need.

A prospective adoptive parent who is resident in another Convention country decides to provide a home for a child in need of placement who is resident in the United States.

📁 Home study. The prospective adoptive parent has a home study prepared that meets the requirements of the receiving country in which he/she is, the U.S. State with jurisdiction over the adoption, and, if the prospective adoptive parent seek an HAC or HCD, [22 CFR part 97](#) (summarized below).

Content: In order to meet the requirements for an HAC or HCD, the home study must include:

- Information on the prospective adoptive parent's identity, eligibility, suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and characteristics of the children for whom they would be qualified to care;
- Confirmation that a competent authority has determined that the prospective adoptive parent is eligible and suited to adopt and has ensured that the prospective adoptive parent has been counseled as necessary; and
- The results of a criminal background check.

[22 CFR 97.3\(d\)](#); see [IAA, 303\(a\)\(2\)](#).

Preparation: The home study must be 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. [22 CFR 97.3\(d\)](#).

Transmission: A U.S. authorized entity must receive the home study from a foreign authorized entity. [22 CFR 97.3\(d\)](#).

📁 Prospective adoptive parent applies to adopt. The prospective adoptive parent files an application to adopt with a foreign authorized entity.⁶ Once the application is reviewed and approved, the home study, the criminal background check, and the approval to adopt are transmitted to the U.S. authorized entity.

📁 Placement proposal. The U.S. authorized entity transmits to a foreign authorized entity for approval the child background study, proof that necessary consents have been

⁵ This exception applies only when the birthparent has identified the prospective adoptive parent consistent with State law. See FAQ C.3 below for additional information.

⁶ 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. [22 CFR 97.1](#).

obtained,⁷ and a proposed placement, along with 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. See [22 CFR 97.3\(b\)](#), [97.3\(g\)-\(h\)](#). If the foreign authorized entity approves the match, the U.S. authorized entity can present it to the prospective adoptive parent. See [22 CFR 97.3\(f\)](#) (Consent by Foreign Authorized Entity), [22 CFR 97.3\(i\)\(2\)](#).

📁 **Prospective adoptive parent agrees to the proposed adoption.** See [22 CFR 97.3\(i\)\(1\)](#).

📁 **Entry authorization.** Once the prospective adoptive parent has accepted the match, the U.S. authorized entity must seek and obtain the authorization from the foreign authorized entity that the child will be able to enter and reside permanently in the receiving country. See [22 CFR 97.3\(e\)](#); [Convention Article 5](#). The parties will also need to obtain any visa required by the receiving country for entrance and a U.S. passport for the child's departure from the United States, if the child is a U.S. citizen.

📁 **U.S. State adoption court proceedings.** U.S. State adoption laws and court procedures vary widely. In every case, the prospective adoptive parent(s) must petition a U.S. State adoption court with jurisdiction over the case to adopt the child, and must present all supporting evidence required by State law.

Preliminary review: A U.S. State adoption court with jurisdiction over the adoption proceeding *may*, depending on U.S. State law, preliminarily review the proposed adoption to determine whether it is appropriate to grant initial guardianship to the prospective adoptive parent to travel with the child to the receiving country prior to a final adoption order. If guardianship is granted, the prospective adoptive parent will return to the U.S. State adoption court for the final adoption, if required.

Final review: After the foreign authorized entity provides the entry authorization, the U.S. State adoption court performs a final review of the proposed adoption. Section [303\(b\)](#) of the IAA imposes the following conditions on U.S. state court orders in outgoing cases:

In order to issue a final adoption order or an order granting custody for the purpose of adoption in an outgoing case, the U.S. State adoption court must have:

- Determined that the adoptive placement is in the best interests of the child;
- Verified documentation that a child background study has been completed;

⁷ Prior to consents, counseling is required for each person, institution, and authority (other than the child) whose consent is necessary for the adoption. [22 CFR 97.3\(g\)](#). Counseling of the child may also be required as appropriate in light of the child's age and maturity. [22 CFR 97.3\(h\)](#).

- Verified documentation that the adoption service provider has made reasonable efforts to place the child in the United States and has been unable to do so;
- Verified documentation of the U.S. authorized entity's determination that the adoptive placement is in the best interests of the child;
- Verified the home study on the prospective adoptive parent (background report);
- Verified the declaration by the Central Authority (or other competent authority) of the receiving country that the child will be permitted to enter and reside permanently in the receiving country;
- Verified the declaration by the Central Authority (or other competent authority) of the receiving country that the Central Authority consents to the adoption, if necessary; and
- Verified satisfactory evidence that Articles 4 and 15 through 21 of the Convention have been met.⁸

⁸ In summary, [Articles 4 and 15 through 21 of the Convention](#) require:

- 1) Article 4: That the competent authorities of the country of origin have established that the child is adoptable; have determined, after due consideration of opportunities for adoption in the country of origin, that an intercountry adoption is in the child's best interests; have ensured that the proper consents have been freely given and obtained without inducement or compensation of any kind from the persons, institutions and authorities whose consent is necessary for adoption; and have ensured, depending upon the age and maturity of the child, that the child has been counseled and due consideration granted to the child's wishes and opinions.
- 2) Article 15: That if the Central Authority of the receiving country is satisfied that the applicants are eligible and suitable to adopt, it shall prepare a report on the applicants and transmit that report to the Central Authority of the country of origin.
- 3) Article 16: That if the Central Authority of the country of origin is satisfied that the child is adoptable, it shall prepare a report on the child that gives due consideration to the child's upbringing and ethnic, religious and cultural background; ensure that consents have been obtained according to Article 4; determine whether the placement is in the best interests of the child; and transmit this information to the Central Authority of the receiving country.
- 4) Article 17: That a decision in the country of origin to place the child may only occur if the Central Authority of the country of origin has ensured that the prospective adoptive parents agree, the Central Authority of the receiving country has approved of the decision, both Central Authorities have agreed that the adoption may proceed, and that the requirements of Article 5 have been met. (Article 5 requires the competent authorities of the receiving country to: (a) determine that the prospective adoptive parent(s) are eligible and suitable to adopt; (b) ensure that the prospective adoptive parent(s) have been counseled as may be necessary; and (c) determine that the child is or will be authorized to enter and reside permanently in the receiving country.
- 5) Article 18: That the two Central Authorities shall take all necessary steps to obtain permission for the child to leave the country of origin and to enter and reside permanently in the receiving country.
- 6) Article 19: That the child may only be transferred if the requirements of Article 17 have been satisfied; that both Central Authorities shall ensure that the transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents; and that if the transfer does not take place, the reports referred to in Articles 15 and 16 are returned to the authorities who forwarded them.
- 7) Article 20: That the Central Authorities shall keep each other informed about the adoption process and measures taken to complete it, as well as the progress of the placement if a probationary period is required.

In addition, the following U.S. State adoption court findings are needed to support an HAC or HCD application:

- The court’s determination that the adoptive placement is in the best interest of the child and evidence related to that determination (22 CFR 97.2(b); IAA § 303(a)(2)(A));
- The court’s determination that the child is eligible for adoption;
- The court’s grant of adoption or custody for purposes of adoption; and
- The court’s verification that substantive regulatory requirements set forth in 22 CFR 97.3 (a)-(k) for the following categories have been met:
 - 1) preparation of child background study
 - 2) transmission of child data
 - 3) reasonable efforts to find domestic placement
 - 4) preparation and transmission of home study
 - 5) authorization for the child to enter the receiving country
 - 6) consent by foreign authorized entity
 - 7) guardian counseling and consent
 - 8) child counseling and consent
 - 9) authorized entity duties
 - 10) no contacts
 - 11) no improper financial gain

See 22 CFR § 97.2(b).

 **Obtaining an HAC or HCD.**

Purpose of HAC and HCD:

After a court grants the adoption decree or custody for the purpose of adoption, the parties should apply to the Department for an HAC or HCD to help to ensure that the adoption or grant of custody will be recognized by the receiving country. The application (Form DS5509 “[Application for a U.S. Hague Adoption Certificate or Custody Declaration](#)”) is available on the Department of State’s Intercountry Adoption website at:

http://adoption.state.gov/hague_convention/adoptions_from_us/certificates.php.

The HAC is a document issued by the Secretary of State certifying that the U.S. adoption has been completed in accordance with the Convention and the IAA. Under Articles 23 & 24 of the Convention, an adoption certified by the competent

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- 8) Article 21: That the receiving country shall take the measures necessary to protect a child if the child was transferred prior to an adoption and the Central Authority of the receiving country determines that continued placement with the prospective adoptive parents is not in the best interests of the child; that these measures shall include withdrawing the child from the prospective adoptive parents and arranging for temporary care, arranging without delay a new placement for the child in consultation with the Central Authority of the country of origin (though not an adoption unless the country of origin Central Authority has approved of the new prospective adoptive parents), and arranging the return of the child as a measure of last resort; and that the child, if of an appropriate age and maturity, be consulted and, where appropriate, his or her consent obtained in relation to measures described in this Article.

authority of the country of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the receiving country, unless the adoption is manifestly contrary to the receiving country's public policy, taking into account the best interests of the child.

The HCD is a document issued by the Secretary of State declaring that custody of a child for the purpose of adoption has been granted in the United States in accordance with the Convention and the IAA. The HCD may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship, depending on the immigration laws of the receiving country. It may also be useful in finalizing the adoption in the receiving country.

Applying for an HAC or HCD:

Any party involved in an outgoing adoption may apply for an HAC or a HCD, including but not limited to: adoptive or prospective adoptive parent, birth parent(s), and the adopted child. Others may also apply if certain conditions are met.⁹ Each party eligible to apply will receive an HAC or HCD upon submission of a successful application by that party.

The following items must be submitted along with the completed application form:

- An official copy of the order of the adoption court finding that the child is eligible for adoption and that the adoption or grant of custody for purposes of adoption is in the child's best interests, and granting the adoption or custody for purposes of adoption;
- An official copy of the adoption court's findings verifying compliance with the requirements established in [22 CFR § 97.3](#) or, if any of the requirements set forth in § 97.3 is not verified in the adoption court proceedings, the applicant must include: 1) authenticated documentation showing that the requirements were met; and 2) a written explanation of why the adoption court's verification cannot be submitted; and
- Additional documentation requested by the Department at its discretion.

See [22 CFR 97.2](#).

Issuance of an HAC or HCD:

The USCA will review the HAC or HCD application, and either issue an HAC or HCD or request additional information. If the party applying for the HAC or HCD fails to provide the required additional information within 120 days of the USCA's request, the USCA may consider the application abandoned. The Department will not issue an HAC or HCD without the submission of a complete application.

Emigration of Child to Receiving Country. The child and parent enter the receiving country. Post placement monitoring is performed, if required.

⁹ Other interested persons may also apply, but must demonstrate that an HAC or HCD is needed to obtain a legal benefit or for the purposes of a legal proceeding. See [22 CFR 97.2](#).

PART III: Frequently Asked Questions

A. FAQ's: The Convention and Outgoing Cases, Generally

A.1 Where can I find a current list of Convention countries?

A current list of the more than 80 Convention countries with whom the Convention is in force with the United States can be accessed through the Department's website, at http://adoption.state.gov/country_information.php.

A.2 Are adoptions to non-Convention countries covered by the Convention and the new regulations?

No. Only outgoing adoptions to Convention countries are covered by the Convention, the IAA, and [22 CFR Part 97](#). However, new reporting requirements in [22 CFR Part 99](#) apply to outgoing cases to both Convention and non-Convention countries.

A.3 Must a public domestic authority (an authority operated by a U.S. State, local, or tribal government) comply with IAA procedures for outgoing cases when it is placing a child resident in the United States with prospective adoptive parent(s) in a Convention country?

No. However, a public domestic authority placing a child in an outgoing case should be aware that the outcome of the case depends on its completion of the steps outlined in the IAA, so that the U.S. State court is legally able to issue the order granting adoption or custody for purposes of adoption. Should the parties desire an HAC or an HCD, they would also need the public domestic authority to complete the requirements in [22 CFR Part 97](#) so the Department is legally able to issue an HAC or HCD.

A.4 Where are the regulations on outgoing cases published?

The regulations on outgoing cases may be found in Title 22 of the Code of Federal Regulations:

- [22 CFR Part 96](#) (Accreditation of Agencies and Approval of Persons Under the Intercountry Adoption Act of 2000);
- [22 CFR Part 97](#) (Issuance of Adoption Certificates and Custody Declarations in Hague Convention Adoption Cases); and
- [22 CFR Part 99](#) (Reporting on Convention and Non-Convention Adoptions of Emigrating Children).

The regulations are available electronically through the Government Printing Office (GPO) website at www.gpo.gov. Regulations may be found using the title, date, or cite.

A.5 What are the applicable regulations for a U.S. adoption service provider placing infants from Guatemala in the United Kingdom or Ireland? Is this an incoming or an outgoing case?

It is neither an incoming nor an outgoing case. The terms “incoming case” and “outgoing case” refer to Convention adoption cases in which children immigrate to the United States or emigrate from the United States, respectively. (See definition for “Convention adoption,” [22 CFR 96.2](#)). The IAA and the regulations implementing the IAA do not specifically address U.S. adoption service providers providing adoption services in an adoption case between two other Convention countries. The U.S. adoption service provider must determine and comply with the requirements of the non-U.S. country of origin and the non-U.S. receiving country. The processing of Convention cases varies in each country. The U.S. adoption service provider must also continue to comply with any applicable U.S. State law requirements (including but not limited to state licensing requirements).

A.6 Can the receiving country Central Authority contact the USCA with questions about an outgoing case?

Yes. They can send questions to the USCA at adoptionusca@state.gov or send inquiries by mail or courier to the U.S. Central Authority for the Hague Intercountry Adoption Convention, U.S. Department of State, Office of Children’s Issues SA-29, 2100 Pennsylvania Avenue NW, 4th Floor, Washington, DC 20037. A foreign country may also make inquiries to the U.S. Central Authority through its embassy in the United States.

B. FAQ’s: Identifying an Outgoing Case

B.1 When will the Convention apply to outgoing cases?

The Convention has applied to outgoing cases since April 1, 2008, the Convention’s date of entry into force for the United States. See section [II.B.3](#) for transition rules affecting cases initiated prior to April 1, 2008.

B.2 What happens with respect to an outgoing case involving a U.S.-resident child that was in process *before* April 1, 2008 (the date the Convention entered into force for the United States)?

With respect to outgoing cases, if the prospective adoptive parent(s) of the child initiated the adoption process in their country of residence with the filing of an appropriate application before April 1, 2008, then the Convention and the IAA **will not apply** to that case, in accordance with U.S. transition provisions found in the IAA.

B.3 What does “initiated the adoption process . . . with the filing of an appropriate application” mean in outgoing cases?

See section [II.B.3](#) above. In short, the Department considers the phrase “initiate the adoption process in their country of residence with the filing of an appropriate application” to mean a formal, written effort undertaken prior to April 1, 2008, to initiate

the adoption process in the prospective adoptive parent(s)' country of residence filed with (received by) an authorized entity in that country. Note that prospective adoptive parents are subject to the requirements and procedures of their country of residence for obtaining approval for intercountry adoption from the United States.

Prospective adoptive parent(s) may want to provide their U.S. adoption service provider with a copy of the formal, written effort they undertook in their country of residence to initiate the adoption process. The U.S. adoption service provider should retain this documentation in the case file as evidence supporting the position that the case is a transition case. The U.S. state court in which the adoption case is brought may need access to this documentation to verify that the prospective adoptive parents made an "appropriate application" and that therefore the case is not subject to the Convention, the IAA, and its implementing regulations.

B.4 When does the "transition rule" apply to outgoing cases?

Under the IAA's "transition rule," the Convention and the Act *do not* apply in the case of a child emigrating from the United States "if the prospective adoptive parent(s) of the child initiated the adoption process in their country of residence with the filing of an appropriate application" before April 1, 2008.

The Department considers the phrase "initiate the adoption process in their country of residence with the filing of an appropriate application" to mean any formal, written effort undertaken prior to April 1, 2008, to initiate the adoption process in the prospective adoptive parent(s)' country of residence filed with (received by) an authorized entity in that country.

Such formal, written efforts may include a written application or request to start the adoption process to the foreign central authority, to the responsible government office, or to any other entity delegated the authority to receive such applications/requests. This could include, depending on the legal structure of the country where the adoption was initiated, an application for determination of the prospective adoptive parent's eligibility and suitability to adopt filed with the entity with jurisdiction over such process.

B.5 What if a family started an outgoing adoption case before April 1, 2008, but now wants to pursue a Convention adoption?

A family may re-start the case in the receiving country after April 1, 2008, as a Convention adoption, and must comply with any applicable Convention application requirements in the receiving country. Contact information for each Convention country's central authority is available on the Country Information section of the adoption website, www.adoption.state.gov.

B.6 What happens if it is unclear when the adoption case was initiated?

The Department works directly with the Central Authorities of receiving countries to resolve specific questions about whether an outgoing case may be treated as a non-Convention case (initiated before April 1, 2008) or a Convention case.

B.7 How do you determine whether the Convention applies in a case involving U.S. citizen prospective adoptive parent(s) residing abroad who seek to adopt a child resident in the United States?

The Convention applies to an outgoing (emigrating) adoption of a child resident in the United States by a prospective adoptive parent(s) resident in a foreign Convention country (receiving country), where the prospective adoptive parent(s) will move the child to the receiving country after the adoption is completed in the United States or if custody is granted in the United States for the purpose of final adoption in the receiving country.

U.S. citizens living abroad in another Convention country who plan to adopt a child residing in the United States or a third country, should be aware that the country in which they live may require them to follow local adoption laws and procedures as the receiving country in a Convention adoption, in order for the child to enter that country legally.

Prospective adoptive parents should therefore consult the Central Authority of the receiving country prior to initiating an adoption. Contact information for Central Authorities can be found in the Country Information section of the adoption website, www.adoption.state.gov. Prospective adoptive parents may also contact the Office of Children's Issues to seek assistance in accessing information from the receiving country on the applicable adoption and immigration requirements.

The receiving country may require that an adoption be processed as a Convention adoption even in cases where the child and the prospective adoptive parents are U.S. citizens. Adoptive parents' failure to comply with local adoption laws and procedures to which their adoption may be subject could result in the adopted child's inadmissibility to enter the receiving country or if admitted, difficulties regarding status and even custody.

B.8: Do U.S. laws implementing the Convention apply to an adoption of a child resident in the U.S by a U.S. citizen residing in another Convention country if both U.S. and the other Convention country's Central Authorities have determined the prospective adoptive parent to be habitually resident in the United States?

No, U.S. laws implementing the Convention would not apply. Only U.S. domestic adoption laws and regulations of the U.S. State where the adoption takes place would apply. However, if the Central Authority of the Convention country where the U.S. prospective adoptive parent(s) resides considers the prospective adoptive

parent(s) to be habitually resident in that country, the prospective adoptive parent(s) should proceed with the case as an outgoing Convention adoption case and comply with the Convention country's local adoption laws and procedures so that the child can enter and reside in that country.

B.9 Who may conduct home studies in outgoing Convention cases?

The foreign-authorized adoption service provider working with the prospective adoptive parent(s) is responsible for completing the home study. The home study must be prepared in accordance with the laws of the receiving country and must include the content described in [22 CFR § 97.3\(d\)](#).

B.10 What about military and other U.S. government employees stationed abroad?

A foreign country may consider U.S. citizen prospective adoptive parent(s) present in the foreign country, whether as part of the U.S. military or otherwise, to be habitually resident in that country and require them to follow a Convention adoption process in order for the child to enter that country legally and for the adoption to be recognized in that country. **Prospective adoptive parents who are U.S. citizens residing abroad should consult the Central Authority in the Convention country where they reside or may contact the U.S. Central Authority to seek our assistance in accessing information from the other Convention country about relevant immigration requirements.**

B.11 I am a U.S. citizen residing abroad, but my spouse or partner is not a U.S. citizen. Would the Convention apply to our adoption of a U.S. child?

If a U.S. citizen residing abroad in another Convention country, whose spouse or partner is not a U.S. citizen, plans to adopt a child residing in the United States, they should consult the Central Authority of the country in which they are residing prior to initiating an adoption. The Department would consider an adoption of a U.S. child by a U.S. citizen to be a U.S. domestic adoption if the prospective adoptive parent is domiciled in the United States or is planning on returning to establish a domicile in the United States at any point before the child's 18th birthday. However, if the prospective adoptive parent holds dual citizenship in the United States and another Convention country, their spouse or partner is not a U.S. citizen, and/or the country in which they live considers them to be habitual residents, that country may require them to follow local adoption laws and procedures as the receiving country in a Convention adoption, in order for the child to enter that country legally.

C. FAQ's: Requirements in Outgoing Cases

C.1 What are the key steps in processing an outgoing case?

Please see Part II.C and the [flowchart](#) in Appendix 1 for a summary of steps.

C.2 What are the requirements for child background studies?

Section [22 CFR 96.53\(a\)](#) sets forth specific elements for child background studies, and, pursuant to section [96.53\(b\)](#), a public domestic authority or an accredited adoption service provider performs the child background study. Alternatively, when the child background study is not performed by an accredited adoption service provider, the background study must be reviewed and approved in writing by an accredited adoption service provider.

C.3 What will the U.S. State court consider when evaluating documentation that an adoption service provider has made “reasonable efforts” to find a domestic placement for the child in accordance with sections [303\(a\)\(1\)\(B\)](#) and [303\(b\)\(1\)\(A\)](#) of the IAA?

The U.S. State adoption court should be mindful of the following provisions of the accreditation regulations. [22 CFR 96.54\(a\)-\(b\)](#) provides:

- (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 [U.S.] 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; and
 - (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 [U.S.] 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.

Section [96.54\(a\)\(1\)-\(4\)](#) clearly identifies the parent recruiting procedures that constitute “reasonable efforts” in most cases, with certain delineated exceptions.

22 CFR 96.54(a) does not directly address instances in which adoption service providers assist birth parent(s) in identifying prospecting adoptive parent(s). Section 96.54(a) states:

“Except in the case of adoption by relatives *or in the case in which the birth parent(s) have identified specific prospective adoptive parents(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”

Specifically, if the birth parent(s) have identified specific prospective adoptive parent(s) consistent with applicable State law, the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4) do not apply.

In accordance with 22 CFR 96.54(b), the accredited agency or approved person that provides adoption services in a Convention case is to demonstrate to the court with jurisdiction over the adoption that the birth parent(s) identified the specific prospective adoptive parent(s) if permitted by applicable U.S. State law as part of its showing that sufficient reasonable efforts were made.

An accredited agency or approved person may provide adoption and other services to a birth parent(s), including providing access to information on prospective adoptive parent(s). However, only the birth parent(s) can identify the specific prospective adoptive parent(s) in order for the exception to the adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4) to apply.

The Preamble to the Final Rule, issued on February 15, 2006, provides helpful background.¹⁰

¹⁰ The Preamble to 22 CFR Part 96, at 71 Fed. Reg. 8113-8114, states:

11. Comment: Several commentators recommend the elimination of the exception to the reasonable efforts provided in 96.54(a), which allows birth parents to identify specific adoptive parents. Other commentators would like the birth parents to have more input on who adopts their child.

Response: We have not made any changes in response to these comments, other than to clarify, in 96.54(b), that the standard does not, in fact, provide an exception to the “reasonable efforts” rule; rather it provides exceptions to the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4), thereby recognizing that in some cases, “reasonable efforts” can include no efforts at all, if no such efforts are in the child’s best interests. The regulations also permit a State court to accept or reject an accredited agency’s or approved person’s recommendation that it is not in the best interest of a particular child that the procedures set forth in 96.54(a)(1)-(4) be followed. This approach is fully consistent with the Convention, which requires merely that “due consideration” be given to placing the child in the United States, as well as with the IAA.

On the question of birthparent preferences, the rule aims for consistency with current practices under State law, by allowing birth parents to select among prospective adoptive parent(s), so long as State law permits them to do so. Some birth parents may prefer that their child be placed with a relative in another country who has the capacity to

C.4 In what language should parties submit documents to the U.S. State adoption court?

Prospective adoptive parents should follow the court's rules. 22 CFR 96.55(d) does, however, provide that the adoption service provider is responsible for providing an English copy or a certified English translation of the home study.

C.5 Some agencies provide services in newborn adoptions and therefore have little information about the child. Often, they produce what is called a "birth parent" study. Can this be submitted in accordance with 22 CFR 96.53(a), or do they need to call it a "child background study?"

In accordance with 22 CFR 96.53(a), adoption service providers ensure that a child background study is performed that includes the content specified in said provision. For the most part, information specified by the standard does not relate to the age of the child. To the extent that certain information is unknown because the child is a newborn (e.g., social environment), the child background study can so indicate.

C.6 What is a "medical history" referenced in 22 CFR 96.53(a)? Is this a synopsis of significant medical events in a child's life (e.g., immunizations, illnesses, surgeries)? Are actual medical records expected?

A "medical history" is generally understood to mean an account of all medical events a person has experienced. The standard, however, does not preclude submission of medical records.

C.7 Does the consent standard in 22 CFR 96.53(c) apply to unnamed fathers and/or fathers who cannot be located? Sometimes in these cases, the termination of parental rights (TPR) won't happen until several months later. If the child is placed with the prospective adoptive family while the TPR is pending, it is considered a legal risk placement?

Paragraph (1) of 22 CFR 96.53(c) refers to "persons, institutions, and authorities whose consent is necessary for adoption." Whether the consent of unnamed fathers and/or of fathers who cannot be located is necessary for adoption is a question of U.S. State law. If U.S. State law requires the consent of the birth father in addition to that of the birth mother, then the birth father is a "person whose consent is necessary for the adoption"

provide suitable care for the child. Other birth parents may prefer a non-relative placement abroad. Nothing in the Convention or the IAA warrants taking a course different from applicable State law on the question of birthparent preferences (emphasis added).

under this standard. See [71 Fed. Reg. 8111](#) (Feb. 15, 2006)(Comment and Response #4 to 96.53).

C.8 What types of notices will be provided from the receiving country to show that the child is eligible to enter and reside permanently in the receiving country? Who will provide such a notice to the U.S. State court?

Under Article 5 of the Convention, before a Convention adoption may take place, the receiving country must first determine that the child is authorized to enter and reside permanently in the receiving country. Generally, the Central Authority of the receiving country sends a letter expressly stating that the child is eligible to enter and reside permanently in the receiving country. The prospective adoptive parent(s) or the adoption service provider must provide the Article 5 letter to the U.S. State court in accordance with section 303(a)(2)(C)(i) of the IAA.

C.9 What are the reporting requirements for outgoing cases?

[22 CFR Part 99](#) outlines reporting requirements for outgoing Convention and non-Convention cases. In summary, the reporting provider (typically the primary provider in Convention cases or the provider responsible for child placement in non-Convention cases) reports to the Department's Office of Children's Issues for each outgoing case:

- (1) the 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) the reporting provider's name, address, phone number, and other contact information.

This report is required within 30 days of learning that the adoption case involves emigration of a child from the United States to a foreign country. Note that the primary provider in Convention cases will enter data directly into the Adoptions Tracking Service (ATS); providers in non-Convention cases, if not accredited or approved, will not have access to ATS and will report information directly to the Office of Children's Issues in the Department. For more information about reporting requirements, including a link to a form that can be used to submit required information about non-Convention cases by adoption service providers/reporting providers that are not accredited or approved can be found on our website under [Federal Reporting Requirements for Outgoing Adoption Cases](#). Questions may be sent to the Office of Children's Issues at AdoptionUSCA@state.gov.

C.10 I am a prospective adoptive parent resident in another Convention country. How can I be sure that the U.S. State adoption court will

determine that reasonable efforts to find a timely adoptive placement for the child in the United States were made before I was selected?

It is important for prospective adoptive parents to discuss this issue with the U.S. accredited adoption service provider or approved person providing adoption services in their case. That provider or person should know what measures, if any, were taken prior to their selection. Also, if the birth parent identified specific prospective adoptive parents and the provider or person did not undertake further parent recruiting procedures, the provider or person should know whether that identification was consistent with U.S. State law. Ultimately, however, the U.S. State court with jurisdiction over the adoption has the responsibility and final authority to determine whether reasonable efforts were made.

C.11 Pursuant to 22 CFR 96.54(k), an adoption service provider consults with the Department before arranging for the return to the United States of any child who has emigrated to a Convention country in connection with the child’s adoption.

➤ **Does this apply to cases where the child is transported to the Convention country before and after the adoption is finalized?**

Yes. Section 96.54(k) refers to cases of dissolution or disruption in which the child may be returned to the United States after being transferred to the receiving country following a U.S. adoption or U.S. grant of custody for the purpose of adoption abroad and thus applies to cases where the child is transferred to the Convention country both before and after the adoption is finalized.

➤ **What role does the Department undertake with regards to “consultation”? What issues go under consultation?**

Disrupted and dissolved outgoing cases are likely to be sensitive and extremely traumatic for the child. These cases also involve substantial coordination with the foreign government of the receiving country. The child retains U.S. citizenship, but may also have acquired citizenship in the receiving country. The consultation requirement allows the Department to become aware of the facts of a particular case and take case-specific action as appropriate.

➤ **Will escorts be required to transfer a child back to the United States, and if so, will the Department assist in arranging for escorts?**

The transfer of the child back to the United States, if appropriate, should take place under the same conditions and safeguards as the initial transfer to the receiving country. 96.54(h) provides that the “agency or person takes 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....”

D. FAQ's: Hague Adoption Certificates (HACs) and Hague Custody Declarations (HCDs)

D.1 What is the purpose of a Hague Adoption Certificate (HAC)?

[Article 23 of the Convention](#) states that an adoption made in accordance with the Convention shall be recognized by operation of law in other Convention countries when the competent authority of the country where the adoption takes place certifies that the adoption was made in accordance with the Convention, unless a country determines that the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

The HAC may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship, depending on the immigration laws of the receiving country.

D.2 What is the purpose of a Hague Custody Declaration (HCD)?

[Section 303\(c\) of the IAA](#) requires that the Department issue an official declaration that custody for the purpose of adoption has been granted in accordance with the Convention and the IAA upon receipt and verification of information that, in fact, the grant of custody meets the Convention and IAA obligations.

The HCD may be useful for the entry of the child into the receiving country for the purpose of permanent residence and citizenship, depending on the immigration laws of the receiving country. It may also be useful in finalizing the adoption in the receiving country.

D.3 Who can apply for a HAC or a HCD?

Any party involved in an outgoing adoption can apply for an HAC or HCD, including but not limited to: adoptive or prospective adoptive parent(s), birth parent(s), and the adopted child. A person not party to the adoption or custody proceeding may apply but must demonstrate that an HAC or HCD is needed to obtain a legal benefit or for purposes of a legal proceeding.

D.4 Will more than one copy of the HAC or HCD be issued?

Yes, each party eligible to apply may receive an HAC or HCD upon their successful submission of the required application and supporting information. A total of five (5) certificates are allotted per case. Each eligible applicant requesting a certificate in the case will be issued the official copy of the certificate. If the same applicant requests additional copies of the certificate, he/she will receive a scanned version of the certificate.

D.5 Is there an application fee?

No, there is no application fee for an HAC or HCD.

D.6 What will the Department accept as an official copy of a U.S. State court order?

An official copy is one obtained directly from the U.S. State adoption court authorities and which meets the applicable U.S. State authority's authentication requirements, if any, for copies of court orders. The copy must be a true and legible copy of the original adoption or custody order signed by the adoption court judge. Prospective adoptive parents may generally include a request for certified copies in the petition for adoption.

If there is any question about the authenticity of the official copy of a U.S. State court order, the Department will contact the appropriate U.S. State court administrative authorities directly to confirm that the order submitted to the Department is the same as the order actually issued in the case.

D.7 Is the U.S. State court system responsible for issuing HACs or HCDs?

No, the HAC or HCD will be issued by the Secretary of State through the Office of Children's Issues in the Bureau of Consular Affairs at the Department of State in Washington, D.C.

D.8 What is the "no contact" rule?

Pursuant to [22 CFR 97.3\(j\)](#), in order to obtain an HAC or HCD, there must not have been any contact between the prospective adoptive parent(s) and the birthparent, or any other person who has care of the child, before certain milestone events in the adoption process occur, unless the child is being adopted by a relative. Pre-adoption contacts between birth parent(s) and prospective adoptive parent(s) that comply with conditions established by a relevant U.S. State or public domestic authority are exempt from this rule.

D.9 Will an HAC or HCD be issued for transition cases (cases initiated with the filing of an appropriate application prior to April 1, 2008)?

No. If a case is not covered by the Convention, no HAC or HCD can be issued.

D.10 Is there an appeal process for the denial of an HAC or HCD?

There is no "denial" of an HAC or HCD application under [22 CFR 97.3](#). If the Department, in the course of evaluating the application and supporting documentation, determines that additional information is necessary before it can issue an HAC or HCD,

it will ensure that applicants have every opportunity to submit this information. However, if the applicant does not satisfy the Department's request for information within 120 days of that request, the Department will consider the application "abandoned" and will not issue the HAC or HCD. Nothing in the regulations limits the number of times an application may be submitted to the Department.

E. FAQ's: Entry Requirements

E.1 What are the entry requirements for the adopted child in the receiving country?

The entry requirements of receiving countries will vary, and may include issuance of a visa to the child. During the U.S. State court proceedings, the parties must submit from the receiving country an entry authorization, stating that the child is or will be authorized to enter and reside permanently in the receiving country.

E.2 If the child is a U.S. citizen, does the child retain U.S. citizenship or acquire the citizenship of the receiving country?

The child retains his/her U.S. citizenship but may also acquire the citizenship of the prospective adoptive parent(s) depending on their citizenship status, and the laws of the receiving country.

E.3 What passport does the child use to travel to the receiving country?

A U.S.-born child would be eligible for a U.S. passport, but the child may also have a passport of another nationality obtained by the prospective adoptive parent(s). U.S. law requires that all American citizens depart the United States on a U.S. passport. The prospective adoptive parent(s) will need to check with the receiving country's immigration authorities for entry requirements.

E.4 How can I obtain a U.S. passport for my adopted child in his/her adoptive name when that name differs from his/her name at birth?

Generally, you will have to submit the court order (normally the adoption decree) that changes the child's name along with the passport application. Full information about applications for U.S. passports can be found on the Department website at http://www.travel.state.gov/passport/passport_1738.html.

E.5 How do the parties finalize the adoption in the receiving country if the child departed the United States and entered the receiving country based on an U.S. custody order?

The parties finalize the adoption according to the receiving country's legal requirements, which will vary by country.

E.6 Who issues the Convention final adoption certification required under Convention Article 23 when the United States granted an HCD?

In an outgoing case, the central authority of the *receiving* country will issue the Convention final adoption certification since that country will be the “state of the adoption” under the Convention.

Glossary of Terms and Abbreviations¹¹

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.

Accrediting entity means an entity that has been designated by the Secretary to accredit agencies and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention.

Adoption means the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor’s legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).

Adoption court means the U.S. State court with jurisdiction over the adoption or the grant of custody for purpose of adoption. (22 CFR 97.1)

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)).

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

¹¹ All definitions of terms come from 22 CFR 96.2, unless otherwise stated. The regulations refer to the actions of the “Secretary;” however, the day-to-day exercise of the Secretary’s functions related to the Convention has been delegated to the Department of State, Bureau of Consular Affairs.

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 U.S. 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 (2) Approved by an 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.

Case Registry means the tracking system jointly established by the Secretary and the Department of Homeland Security 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.

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.

Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

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.

[The] Department refers to the U.S. Department of State.

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.

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. (22 CFR 97.1)

Hague Adoption Certificate ("HAC") 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 section 97.4(b), the IAA. (22 CFR 97.1)

Hague Custody Declaration ("HCD") 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 the purpose of adoption has been granted in the United States in accordance with the Convention and, except as provided in section 97.4(b), the IAA. (22 CFR 97.1)

IAA means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended.

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.

Outgoing Case occurs when a child resident in the United States is adopted or will be adopted by individuals residing in another Convention country and will emigrate from the United States to that country. Note: This term is not defined in the IAA or its implementing regulations.

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 or approved person that is identified pursuant to section 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 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.

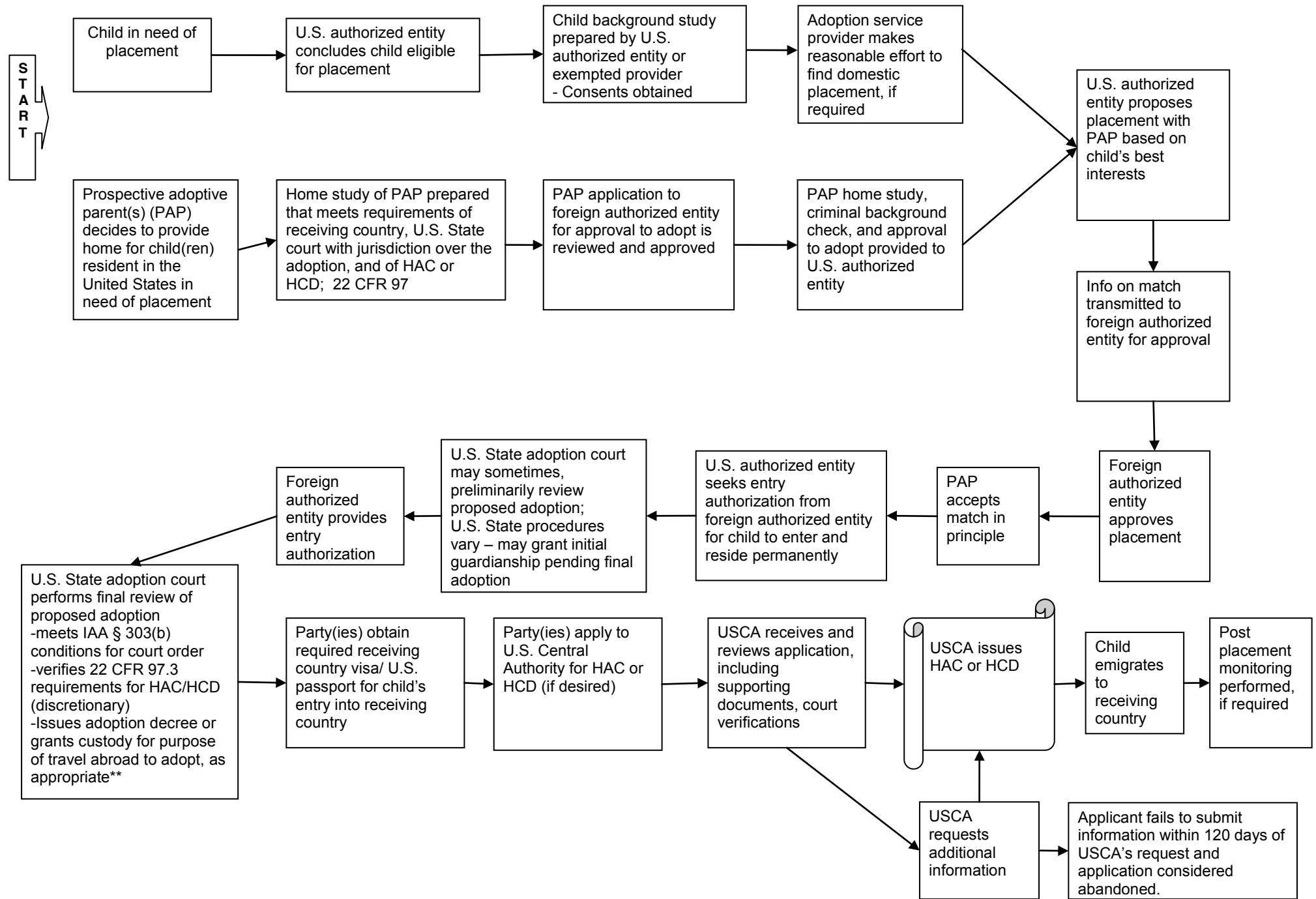
[U.S.] State means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

Supervised provider means any agency, person, or other nongovernmental 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 or approved person that is acting as the primary provider in the case.

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. (22 CFR 97.1).

USCA refers to the U.S. Central Authority under the Convention for the United States, which is the U.S. Department of State. The Department's Bureau of Consular Affairs has day-to-day responsibility for USCA functions.

APPENDIX 1: FLOWCHART: SUMMARY OF STEPS IN AN OUTGOING CASE



*Every case is different and may involve activity not described. Practices and procedures of receiving countries will vary.

**If PAP(s) are granted guardianship for child to travel to receiving country prior to final U.S. adoption, PAP(s) return to State court for final adoption, if required.

Appendix 2: LIST OF RESOURCES

Helpful Links and Parent Support Organizations

Please note: The following links may be helpful to prospective adoptive parents. These are provided for quick reference purposes only. The Office of Children's Issues at the U.S. Department of State as the U.S. Central Authority cannot recommend specific organizations or agencies to assist families interested in intercountry adoption. We advise that you only deal with reputable adoption service providers and that you do considerable research before beginning the adoption process.

For more information about the Convention or about intercountry adoption in general, please see the following links:

U.S. Department of State, Office of Children's Issues: Intercountry Adoption homepage <http://adoption.state.gov/>

U.S. Citizenship and Immigration Services homepage <http://www.uscis.gov> , Adoption page

Child Welfare Information Gateway <http://www.childwelfare.gov>

Hague Conference on Private International Law

http://www.hcch.net/index_en.php?act=conventions.text&cid=69

Other links which may provide information of interest to prospective adoptive parents include:

Adoptive Families Magazine www.adoptivefamilies.com

Adoptive Parents Committee <http://adoptiveparents.org>

Center for Adoption Support and Education (CASE) www.adoptionssupport.org

Center for Parent Education and Family Support www.cpe.unt.edu

Families Adopting in Response (FAIR) www.fairfamilies.org

International Adoption Center <http://www.adoptionclinic.org/>

The Joint Council on International Children's Services (JCICS)<http://www.jointcouncil.org/>

National Council For Adoption (NCFA) www.adoptioncouncil.org

North American Council on Adoptable Children (NACAC) www.nacac.org

Ethica www.ethica.org

Other Helpful Links:

The American Academy of Adoption Attorneys (AAAA) www.adoptionattorneys.org

The Evan B. Donaldson Adoption Institute www.adoptioninstitute.org

The American Academy of Pediatrics www.aap.org