

SUBCHAPTER J—LEGAL AND RELATED SERVICES

PART 91—IMPORT CONTROLS

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AUTHORITY: Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2658.

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 each 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]

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AUTHORITY: 22 U.S.C. 2658, unless otherwise noted.

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

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 no-

tarial 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 Citizen Services.

[22 FR 10858, Dec. 27, 1957, as amended at 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.

[27 FR 12616, Dec. 20, 1962, as amended at 60 FR 51723, Oct. 3, 1995]

§ 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

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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, pro-

vided 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.

[22 FR 10858, Dec. 27, 1957, as amended at 27 FR 12616, Dec. 20, 1962; 60 FR 51721, Oct. 3, 1995]

§ 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

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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.

[27 FR 12616, Dec. 20, 1962, as amended at 60 FR 51721, Oct. 3, 1995]

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§ 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

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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.

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

§ 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

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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).

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

§ 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.

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

§ 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.

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(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.)

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

§ 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.

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

SPECIFIC NOTARIAL ACTS

§ 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).

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§ 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

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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.)

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

§ 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 acknowledger 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, 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]

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§ 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 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

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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. 1204).

§ 92.40 Authentication of foreign extradition papers.

Foreign extradition papers are authenticated by chiefs of mission.

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§ 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.

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(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

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genuineness 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.

[60 FR 51722, Oct. 3, 1995]

§ 92.56 Summary of procedure for taking depositions.

In taking a deposition on notice or executing a commission to take depositions, a notarizing officer should conform to any statutory enactments on the subject in the jurisdiction in which the depositions will be used. He should also comply with any special instructions which accompany the request for a deposition on notice or a commission. Unless otherwise directed by statutory enactments or special instructions, the officer should proceed as follows in taking depositions:

(a) Request the witnesses, whose testimony is needed, to appear before him; or, at the request of any party to the action or proceeding, request designated persons to supply him or the requesting party with needed records or documents in their possession, or copies thereof;

(b) When necessary, act as interpreter or translator, or see that arrangements are made for some qualified person to act in this capacity;

(c) Before the testimony is taken, administer oaths (or affirmations in lieu thereof) to the interpreter or translator (if there is one), to the stenographer taking down the testimony, and to each witness;

(d) Have the witnesses examined in accordance with the procedure described in §§ 92.57 to 92.60;

(e) Either record, or have recorded in his presence and under his direction, the testimony of the witnesses;

(f) Take the testimony, or have it taken, stenographically in question-and-answer form and transcribed (see § 92.58) unless the parties to the action agree otherwise (rules 30(c) and 31(b), Rules of Civil Procedure for the District Courts of the United States);

(g) Be actually present throughout the examination of the witnesses, but recess the examination for reasonable periods of time and for sufficient reasons;

(h) Mark or cause to be marked, by identifying exhibit numbers or letters, all documents identified by a witness or counsel and submitted for the record.

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

§ 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. The opposing counsel has the same right on cross-examination. 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

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(b), Rules of Civil Procedure for the District Courts of the United States.)

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

§ 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.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995; 61 FR 14375, Apr. 1, 1996]

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§ 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]

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§ 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.)

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

§ 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 Procedures for the District Courts of the United States.)

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

§ 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.

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

§ 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

fee prescribed in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

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

§ 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 (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, 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

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should require an interpreter to be present when his services are needed or are requested by any party or his attorney. (Section 1, 62 Stat. 835, 18 U.S.C. 3493.)

(4) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U.S.C. 3494) provides that the consular officer, who executes any commission authorized under the same section, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492) and who is satisfied, upon all the testimony taken, that a foreign document is genuine, should certify such document to be genuine under the seal of his office. This certification must include a statement that the officer is not subject to disqualification 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). For purposes of assessment of fees, the issuance of this certificate shall be regarded as a part of the consular service of executing the commission, and no separate fee shall be charged for the certificate.

(5) The consular officer should then forward such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the Department of State for transmission to the clerk of the court from which the commission issued. (Section 1, 62 Stat. 835; 18 U.S.C. 3494.) (See § 92.64 regarding the filing of depositions generally.)

(Sec. 303, 60 Stat. 1002, 62 Stat. 836; 22 U.S.C. 843, 18 U.S.C. 3496, E.O. 10307; 16 FR 11907, 3 CFR 1949-1953 Comp., page 387)

§ 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

it is being forwarded in the same condition as received from the foreign authorities. He should then place that sealed envelope in a second envelope, sealed with the wax engraving seal of the post, and bearing the title of the action and the name and address of the American judicial body from which the letters rogatory issued.

(3) Charges should be made for executing either of the certificates mentioned in paragraphs (c) (1) and (2) of this section, as prescribed by item 67 of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter), unless the service is classifiable in a no-fee category under the exemption for Federal agencies and corporations (item 83 of the same Tariff).

(4) The sealed letters rogatory should be transmitted by appropriate means to the court in which the action is pending. See title 28, section 1781, of the United States Code concerning the manner of making return to a court of the United States (Federal court).

(d) *Transmissions of commissions to foreign officials or other persons.* A commission to take depositions which is addressed to an official or person in a foreign country other than a United States notarizing officer may be sent directly to the person designated. However, if such a commission is sent to the United States diplomatic mission in the country where the depositions are intended to be taken, it should be forwarded to the Foreign Office for transmission to the person appointed in the commission. If sent to a United States consular office, the commission may be forwarded by that office directly to the person designated, or, if the notarial officer deems it more advisable to do so, he may send the commission to the United States diplomatic mission for transmission through the medium of the foreign office.

[22 FR 10858, Dec. 27, 1957, as amended at 32 FR 11775, Aug. 16, 1967; 60 FR 51722, Oct. 3, 1995]

§ 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

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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) _____,
(State)

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

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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 commission 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 wit-

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nesses 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 commissioner 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.

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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 commission was issued on application of the United States or when the commission 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 these regulations through the disbursing officer in his area in accordance with instructions which will be issued in each case.

(f) *Payment of fees by other parties.* When fees, compensation, and other expenses authorized by this section are chargeable to any party other than the United States, the commissioner shall undertake the execution of the commission only if such party deposits with the Department of State or with the appropriate Foreign Service post, in advance, an amount to be set by the court as apparently adequate to defray all fees, compensation, and other expenses authorized by this part. If the amount of the deposit is later found to be insufficient, the depositor shall be so notified, and the commissioner shall retain the commission and other papers until a sufficient supplemental

amount has been deposited. If the amount of the deposit exceeds the aggregate amount of fees, compensation, and other expenses authorized by this part, the excess shall be returned to the party, or parties, entitled thereto. 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.

§ 92.71 Fees for letters rogatory executed by officials in the United States.

Arrangements for the payment of fees should be made directly with the court in the United States by the party in the foreign country at whose request the depositions are taken, either through his legal representative in the United States or through the appropriate diplomatic or consular officer of his country in the United States. (See § 92.67 regarding the execution of letters rogatory in the United States.)

MISCELLANEOUS NOTARIAL SERVICES

§ 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 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

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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 authentications.)

(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).

COPYING, RECORDING, TRANSLATING AND PROCURING DOCUMENTS

§ 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

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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 ap-

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pend 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

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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

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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

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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

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and any order to show cause, rule, judgment or decree on the request of the Federal court or its marshal, and to make return thereof to such court after tendering to the witness his necessary travel and attendance expenses, which will be determined by the court and sent with the subpoena. When the subpoena or order is forwarded to the officer, it is usually accompanied by instructions directing exactly how service should be made and how the return of service should be executed. These instructions should be followed carefully.

§ 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 drawings 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).

AUTHORITY: 22 U.S.C. 2658; 28 U.S.C. 1608(a).

§ 93.1 Service through the diplomatic channel.

(a) The Director of the Office of Special Consular Services in the Bureau of Consular Affairs, Department of State ("The Managing Director for Overseas Citizen Service"), shall perform the duties of the Secretary of State under section 1608(a)(4) of title 28, United States Code.

(b) When the clerk of the court concerned sends documents under section 1608(a)(4), of title 28, United States Code, the Managing Director for Overseas Citizen Service shall promptly ascertain if the documents include the required copies of the notice of suit and of the summons and complaint (or default judgment), and any required translations. If not, he shall promptly advise the clerk of the missing items.

(c) Upon receiving the required copies of documents and any required translations, the Managing Director for Overseas Citizen Service shall promptly cause one copy of each such document and translation ("the documents") to be delivered—

(1) To the Embassy of the United States in the foreign state concerned, and the Embassy shall promptly deliver them to the foreign ministry or other appropriate authority of the foreign state, or

(2) If the foreign state so requests or if otherwise appropriate, to the embassy of the foreign state in the District of Columbia, or

(3) If paragraphs (c)(1) and (2) of this section are unavailable, through an existing diplomatic channel, such as to the embassy of another country authorized to represent the interests of the foreign state concerned in the United States.

(d) The documents, when delivered under paragraph (c) of this section, shall be accompanied by a diplomatic note of transmittal, requesting that the documents be forwarded to the appropriate authority of the foreign state or political subdivision upon which service is being made. The note shall state that, under United States law, questions of jurisdiction and of state immunity must be addressed to the court and not to the Department of