

Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

A Guide to Processing Outgoing Adoptions from the United States to Another Convention Country

Disclaimer: The following is intended as a general overview of the procedures for outgoing cases under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000 (IAA) and its implementing regulations. It is not a substitute for the actual Convention, the IAA, or regulations, nor is it a comprehensive summary of them for the individual provisions discussed. In the case of any inconsistencies, the Convention, the IAA, or regulations governs, as appropriate.

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Dear Members of the Intercountry Adoption Community:

This Guide provides an overview of the process for outgoing adoption cases under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the [Convention](#)). An outgoing case occurs when a child resident in the United States is adopted or will be adopted by individuals residing in another Convention country and will emigrate from the United States to that country. This Guide can serve as a useful resource for any party involved in an outgoing case, including birth parents, prospective adoptive parents, and adoption service providers. Our office publishes a related [guide](#) for State officials and State court judges.

We hope this guide will resolve all your questions regarding the rules and procedures governing outgoing Convention adoptions from the United States. If you feel there is something we have not addressed here, please contact us at adoption@state.gov, our dedicated e-mail box for intercountry adoption issues.

Sincerely,

Bureau of Consular Affairs
Department of State

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I. Introduction

A. Scope of this Guide

This guide addresses only outgoing intercountry adoptions - cases involving adoptive children who will be emigrating from the United States to another Convention country¹ in connection with an adoption.

B. The Convention

The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the [Convention](#)) entered into force for the United States on April 1, 2008. The Convention establishes international standards of practice for intercountry adoptions. A current list of the more than 100 countries party to the Convention is available on the Hague Conference on Private International Law [website](#).

The United States strongly supports the principles of the Convention, which strengthen protections for children, birth parents, and prospective adoptive parents in the adoption process. The Convention provides a framework for Convention countries to work together to ensure that intercountry adoptions take place in the best interests of children²; and, to prevent the abduction, sale, or trafficking of children in connection with intercountry adoption.

The U.S. law implementing the Convention, the Intercountry Adoption Act of 2000 (the [IAA](#)), designated the Department of State as the U.S. Central Authority (USCA or the Department) under the Convention. As Central Authority, the Department has lead responsibility for implementing the Convention and for carrying out central authority functions specified by the Convention. Compliance with the processes established by the IAA and its implementing regulations affords adoptees the recognition of their adoption in another Convention country. Compliance is also key to the adoptee's ability to enter and permanently reside in another Convention country.

II. Key Information on Outgoing Cases

For a glossary of key terms and abbreviations see Appendix 1.

¹ The term "Convention country" is used in this Guide as it is defined in [22 CFR 96.2](#) to mean "a country that is a party to the Convention and with which the Convention is in force for the United States." This guide does not address cases involving U.S. resident children emigrating from the United States to non-Convention countries or foreign-born children immigrating to the United States from another country (incoming cases).

² The term "best interests of the child" is used in this Guide as it is defined in [22 CFR 96.2](#) to "have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in a child's best interests."

A. Identifying an Outgoing Case

This section outlines the key factors to consider in determining if an adoption should be processed as an outgoing Convention adoption: whether the countries involved are parties to the Convention, and the residence of the child and prospective adoptive parent or parents (hereinafter prospective adoptive parent).³

Please note that a determination of the child's and prospective adoptive parent's residence is central to the receiving country's approval of the proposed adoption and its determination that the child will be able to enter and reside in the receiving country, which in turn are two of the prerequisites to the State court's finalization of a Convention adoption. See [IAA 303\(b\)](#).

1. Status of both the Country of Origin and Receiving Country as Convention Countries

The requirements for a Convention adoption apply only if the country of origin (the country from which the child is emigrating in connection with their adoption) and the receiving country (the country to which the child is immigrating in connection with their adoption) are parties to the Convention. In an outgoing case, the country of origin is the United States, which is party to the Convention, so the remaining question is whether the receiving country is also a party to the Convention. A complete list of countries that are party to the Convention is available on the Hague Conference of Private International Law website [Convention Status Table](#). Canada, the Netherlands, Mexico, Ireland, and the United Kingdom have historically been among the most common receiving countries in outgoing adoptions, and all are party to the Convention, but the United States processes outgoing adoptions to Convention countries worldwide.

2. Residence of the Child and Prospective Adoptive Parent

Residence of the child

The residence of the child to be adopted is a key element in determining whether an outgoing case should be processed as a Convention adoption.

U.S. citizen child in United States: In the Department's view, a U.S. citizen child who is living in the United States is generally presumed to be resident in the United States for

³ 3 With regard to individuals in the United States, this guide uses the language of "resident" as used in the IAA. When addressing issues regarding individuals outside the United States, the term "habitual residence" is used in line with the language of the Convention.

the purposes of applying the Convention under U.S. law, even if the child is also a citizen of another country.

U.S. legal permanent resident child in the United States: In the Department's view, a legal permanent resident living in the United States is generally presumed to be resident in the United States for the purpose of application of the Convention.

Non-U.S. citizen child in the United States: Conversely, a non-U.S. citizen child in the United States (not in legal permanent resident status) is generally presumed not to be resident in the United States for purposes of application of the Convention to an outgoing adoption. The Department should be contacted for a determination of the child's residence before the adoption proceeds. If the Department determines the child is resident in the United States, the habitual residence of the prospective adoptive parent will determine if the Convention is applied. If the Department finds the child is not resident in the United States, the United States would not be the country of origin for the purpose of an outgoing U.S. Convention adoption. The Central Authority of the child's country of habitual residence should be consulted regarding how the adoption may proceed.

Residence of the prospective adoptive parent

The residence of the prospective adoptive parent is another key element in determining whether a case should be processed as a Convention adoption under U.S. law.

U.S. legal permanent residents in the United States: In the Department's view, a legal permanent resident living in the United States is generally presumed to be resident in the United States for the purpose of completing a domestic (non-Convention) adoption.

Non-U.S. citizens in the United States in non-immigrant status: In the Department's view, a prospective adoptive parent who is present in the United States in a nonimmigrant status is generally presumed not to be resident in the United States. However, a prospective adoptive parent who is in a non-immigrant status in the United States that allows for long-term work or study, may seek to rebut this presumption and establish that they are resident in the United States such that the proposed adoption would not be subject to the Convention. In such a case, the adoption service provider and/or prospective adoptive parent should contact the Department for consideration of the prospective adoptive parent's residence before proceeding with an adoption. If the Department finds the prospective adoptive parent is not resident in the United States, they will need to apply to the Central Authority of the proposed receiving country in order to process a Convention adoption.


NOTE: If the Department determines a non-U.S. citizen prospective adoptive parent is resident in the United States, they may be able to pursue a domestic adoption, if permitted under State law. However, the prospective adoptive parent should first ensure the child will be able to enter and reside with the prospective adoptive parent in their


home country in the absence of evidence of having completed an adoption pursuant to the Convention.

Determination by a foreign Central Authority (and U.S. citizens living outside the United States): In the Department's view, if the Central Authority of the receiving country determines that the prospective adoptive parent is habitually resident in the receiving country for the purposes of the Convention, the parties to the adoption and the State court should defer to that determination regardless of the prospective adoptive parent's citizenship, including U.S. citizenship.

B. Steps in the Outgoing Convention Case Process

The discussion below summarizes the steps involved in an outgoing case (see the flowchart at Appendix 2 for a more abbreviated summary). Every case is different and may involve components not described. While the terms "prospective adoptive parent" and "child" are used below, cases may involve one or two prospective adoptive parents and more than one child. These steps are compliant with the Convention and the IAA, as well as its implementing regulations.

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

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

Content: In order to meet the requirements for an Hague Adoption Certificate (HAC) or Hague Custody Declaration (HCD), the child background study must include information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child. [22 CFR 97.3\(a\)](#)

Note: The accreditation regulations also set forth specific content elements for child background studies in outgoing cases. [22 CFR 96.53\(a\)](#)

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

📁 **Reasonable efforts to find a timely domestic placement.** In accordance with U.S. regulations, the accredited agency or approved person that provides adoption services in a Convention case demonstrates to the court with jurisdiction over the adoption that sufficient reasonable efforts to find a timely and qualified adoptive placement in the United States were made. If the birth parent(s) identified the specific prospective adoptive parent, as may be permitted by applicable State law, or in the case of relative adoptions or certain other special circumstances, the accredited agency or approved person may provide evidence of this as part of its showing that sufficient reasonable efforts were made. [22 CFR 96.54\(a\) and \(b\)](#)

- An accredited adoption service provider may provide adoption and other services to a birth parent(s), including providing access to information on prospective adoptive parents. However, in such cases, the birth parent(s) and not the adoption service provider must identify the specific prospective adoptive parent in order for the adoption service provider not to be required to complete the steps listed under [22 CFR 96.54\(a\)](#)
- The domestic placement procedures recognize that in some cases, "reasonable efforts" can include no efforts at all, if no such efforts are in the child's best interests. The regulations also permit a State court to accept or reject an accredited agency's or approved person's recommendation that it is not in the best interest of a particular child that the referenced procedures be followed. [22 CFR 96.54\(b\)](#)

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

📁 **Home study.** A home study on the prospective adoptive parent must be prepared that meets the requirements of the receiving country in which they reside and the U.S. State with jurisdiction over the adoption.).


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


- Information on the prospective adoptive parent's identity, eligibility, suitability to adopt, background, family and medical history, social environment, reasons for adopting, ability to undertake an intercountry adoption, and characteristics of the children for whom they would be qualified to care;
- Confirmation that a competent authority has determined that the prospective adoptive parent is eligible and suited to adopt and has ensured that the prospective adoptive parent has been counseled as necessary; and
- The results of a criminal background check. [22 CFR 97.3\(d\)](#); [IAA 303\(a\)\(2\)](#)


Preparation: The home study must be prepared in accordance with the laws


of the receiving country, under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority. [22 CFR 97.3\(d\)](#)


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

 **Prospective adoptive parent applies to adopt.** The prospective adoptive parent files an application to adopt with a foreign authorized entity.⁴ Once the application is reviewed and approved, the home study, the criminal background check, and the approval to adopt are transmitted to the U.S. authorized entity.

 **Placement proposal.** The U.S. authorized entity transmits to a foreign authorized entity for approval the child background study, proof that necessary consents have been obtained,⁵ and a proposed placement, along with the reason for its determination that the proposed placement is in the child's best interests, based on the home study and child background study and giving due consideration to the child's upbringing and his or her ethnic, religious, and cultural background. If the foreign authorized entity approves the match, the U.S. authorized entity can present it to the prospective adoptive parent. [22 CFR 97.3](#)

 **Prospective adoptive parent agrees to the proposed adoption.** The prospective adoptive parent informs the U.S. authorized entity of their desire to accept the proposed match. [22 CFR 97.3\(i\)\(1\)](#)

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

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

⁴ Foreign authorized entity means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case. [22 CFR 97.1](#)

⁵ Prior to consents, counseling is required for each person, institution, and authority (other than the child) whose consent is necessary for the adoption. [22 CFR 97.3\(g\)](#) Counseling of the child may also be required as appropriate in light of the child's age and maturity. [22 CFR 97.3\(h\)](#)

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

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

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

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

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

- The court's determination that the adoptive placement is in the best interest of the child and evidence related to that determination. [22 CFR 97.2\(b\)](#); [IAA 303\(a\)\(2\)\(A\)](#)
- The court's determination that the child is eligible for adoption;
- The court's grant of adoption or custody for purposes of adoption; and
- The court's verification that substantive regulatory requirements set forth in [22 CFR 97.3 \(a\)-\(k\)](#) for the following categories have been met:
 - a) preparation of child background study

- b) transmission of child data
- c) reasonable efforts to find domestic placement
- d) preparation and transmission of home study
- e) authorization for the child to enter the receiving country
- f) consent by foreign authorized entity
- g) guardian counseling and consent
- h) child counseling and consent; if appropriate
- i) authorized entity duties
- j) proper observance of the “no-contact” rule
- k) no improper financial gain

Obtaining an HAC or HCD.

Purpose of HAC and HCD:

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

The HAC is a document issued by the Secretary of State certifying that the U.S. adoption has been completed in accordance with the Convention and the IAA. Under Articles 23 & 24 of the Convention, an adoption certified by the competent authority of the country of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the receiving country, unless the adoption is manifestly contrary to the receiving country’s public policy, taking into account the best interests of the child.

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

Applying for an HAC or HCD:

Any party involved in an outgoing adoption may apply for an HAC or a HCD, including but not limited to an adoptive or prospective adoptive parent, birth parent(s), and the adopted child. Others may also apply if certain conditions are met.⁶ Each party eligible to apply will receive an HAC or HCD upon submission of a successful application by that party.

⁶ Other interested persons may also apply but must demonstrate that an HAC or HCD is needed to obtain a legal benefit or for the purposes of a legal proceeding. See [22 CFR 97.2](#).

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

- An official copy of the order of the adoption court finding that the child is eligible for adoption and that the adoption or grant of custody for purposes of adoption is in the child's best interests, and granting the adoption or custody for purposes of adoption;
- An official copy of the adoption court's findings verifying compliance with the requirements established in [22 CFR 97.3](#) or, if any of the requirements set forth in 97.3 is not verified in the adoption court proceedings, the applicant must include: 1) authenticated documentation showing that the requirements were met; and 2) a written explanation of why the adoption court's verification cannot be submitted; and
- Additional documentation requested by the Department at its discretion. [22 CFR 97.2](#)

Issuance of an HAC or HCD:

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

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

III. Important Roles and Considerations in Outgoing Convention Case Processing

As outlined in Part II of this Guide, the IAA and its implementing regulations establish certain requirements and procedures relevant to different parties to an outgoing adoption. The following summarizes important provisions of the IAA and regulations that all parties to an outgoing adoption should consider.

A. Accreditation/Approval Requirement for Adoption Service Providers Providing Adoption Services in Outgoing Cases

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

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

See [IAA 201](#); [22 CFR 96.12 - 96.15](#).

Public domestic authorities do not require accreditation or approval to provide adoption services. All other adoption service providers require accreditation or approval, must be supervised by an accredited or approved provider, or must have their work reviewed and approved by an accredited or approved provider.

Accreditation or approval under the regulations implementing the IAA is in addition to state licensing requirements. The accreditation regulations establish numerous requirements for adoption service providers relevant to outgoing case processing and are designed to ensure that U.S. adoption agencies perform their duties in a manner consistent with the Convention and the IAA. Additional requirements include record preservation and reporting certain information to the Department.

For more information on accreditation and approval of adoption service providers, visit our [website](#). Accreditation regulations, record keeping requirements, and reporting requirements are outlined in 22 CFR Parts 96, 97 and 99.

B. Public Domestic Authorities and U.S. State Courts

As previously noted, public domestic authorities do not need to be accredited or approved to provide adoptions services in outgoing cases and may serve as a U.S. authorized entity as described in this Guide. [22 CFR Part 97](#) Public domestic authorities involved in an outgoing Convention adoption are required to report to the Department information identified in regulation, including where the final adoption is taking place and the country to which the child is immigrating. [22 CFR 99.2\(c\)](#)

U.S. State courts act as competent authorities to determine that the adoptive placement is in the best interest of the child, and that the adoption meets the requirements of Articles 4 and 15 through 21 of the Convention and relevant State law, among other things. In addition, for the Department to issue a HAC or HCD, U.S. State court orders granting the adoption or custody for purposes of adoption submitted in support of the application for the HAC or HCD should verify compliance with each element of applicable regulations. Court orders that adhere closely to the language of the regulations and reference the relevant section of the regulations can help verification of compliance for HAC or HCD purposes. See also Part II.B, and [Obtaining a Hague Adoption Certificate \(HAC\) or Hague Custody Declaration \(HCD\)](#). See [IAA 303\(b\)](#), [22 CFR 97.3](#).

C. U.S. Department of State

The Department has several obligations with respect to outgoing Convention cases. The Department designates and monitors the performance of accrediting entities responsible for accrediting and monitoring the performance of agencies and individuals providing intercountry adoption services, including in outgoing cases.

In particular, the Department adjudicates applications for and issues HACs and HCDs. After a U.S. State court issues the adoption order or the order granting custody to the prospective adoptive parent for the purpose of adoption in the receiving country, parties to the adoption should submit an application to the Department for a Hague Certificate. If the U.S. State court issues a final adoption order, the applicant may apply for a HAC. If the U.S. State court grants custody for the purpose of finalizing the adoption in the receiving country, the applicant may apply for an HCD. When determining which certificate to apply for, applicants should look at the final action that takes place in the United States as it relates to the individual case. If the U.S. State court issues temporary custody to allow the child to bond with the family before finalizing the adoption in the United States, the applicant should wait until the adoption is final before applying for a certificate.

The HAC or HCD each includes a certification or declaration that the adoption or grant of custody was completed in accordance with the Convention. The Department will review the HAC or HCD application and will either issue the HAC or HCD or request additional information. 22 CFR Part 97

The Department provides information on the Convention and outgoing case processing to public domestic authorities, U.S. State courts, adoption service providers and others involved in outgoing adoptions, including through publication of this Guide. The following sections address the most frequently asked questions the Department receives regarding the outgoing process.

IV. Frequently Asked Questions

A. The Convention and Outgoing Cases, Generally

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

A current list of the more than 100 Convention countries with whom the Convention is in force with the United States can be accessed through the Department's website, at http://adoption.state.gov/country_information.php.

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

No. Only outgoing adoptions to Convention countries are covered by the Convention, the IAA, and [22 CFR Part 97](#). However, agencies are required to report information regarding both Convention and non-Convention countries to the Department.

A.3 Must a public domestic authority (an authority operated by a U.S. State, local, or tribal government) comply with IAA procedures for outgoing cases

when it is placing a child resident in the United States with a prospective adoptive parent in a Convention country?

Public domestic authorities do not have to be accredited or approved. However, a public domestic authority placing a child in an outgoing case should be aware that the outcome of the case depends on its completion of the steps outlined in the IAA, so that the U.S. State court is legally able to issue the order granting adoption or custody for purposes of adoption. Should the parties seek an HAC or an HCD, they would also need the public domestic authority to complete the requirements in [22 CFR Part 97](#) so the Department is legally able to issue an HAC or HCD.

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

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

- [22 CFR Part 96](#) (Accreditation of Agencies and Approval of Persons Under the Intercountry Adoption Act of 2000)
- [22 CFR Part 97](#) (Issuance of Adoption Certificates and Custody Declarations in Hague Convention Adoption Cases)
- [22 CFR Part 98](#) (Intercountry Adoption – Convention Record Preservation)
- [22 CFR Part 99](#) (Reporting on Convention and Non-Convention Adoptions of Emigrating Children).

A.5 *Can the receiving country Central Authority contact the Department with questions about an outgoing case?*

Yes. They can send questions to the Department at adoption@state.gov or send inquiries by mail or courier to the U.S. Central Authority for the Adoption Convention, U.S. Department of State, Office of Children's Issues SA-17, Floor 9, Washington, D.C. 20522-1709. A foreign country may also make inquiries to the USCA through its embassy in the United States. (Note that delivery by mail may take up to several weeks due to required security screening.)

B. Identifying an Outgoing Case

B.1 *How do you determine whether the Convention applies in a case involving a U.S. citizen prospective adoptive parent residing abroad who seek to adopt a child resident in the United States?*

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

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

A prospective adoptive parent should therefore consult the Central Authority of the receiving country prior to initiating an adoption to request a determination whether the Central Authority considers them to be habitually resident in that country. Contact information for Central Authorities can be found in the Country Information section of the adoption website, www.adoption.state.gov.

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

B.2 Do U.S. laws implementing the Convention apply to an adoption of a child resident in the U.S by a U.S. citizen residing in another Convention country if both the Department and the other Convention country's Central Authorities have determined the prospective adoptive parent to be habitually resident in the United States?

No, U.S. laws implementing the Convention would not apply. Only U.S. domestic adoption laws and regulations of the U.S. State where the adoption takes place would apply. However, if the Central Authority of the Convention country where the U.S. prospective adoptive parent resides considers the prospective adoptive parent to be habitually resident in that country, the prospective adoptive parent should proceed with the case as an outgoing Convention adoption and comply with the Convention country's local adoption laws and procedures so that the child can enter and reside in that country.

B.3 Who may conduct home studies in outgoing Convention cases?

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

B.4 What about military and other U.S. government employees stationed abroad?

A foreign country may consider a U.S. citizen prospective adoptive parent present in the foreign country, whether as part of the U.S. military or otherwise, to be habitually resident in that country and require them to follow a Convention adoption process in order for the child to enter that country legally and for the adoption to be recognized in that country. Prospective adoptive parents who are U.S. citizens residing abroad should consult the Central Authority in the Convention country where they reside.

B.5 *I am a U.S. citizen residing abroad, but my spouse or partner is not a U.S. citizen. Would the Convention apply to our adoption of a U.S. child?*

If a U.S. citizen residing in another Convention country, whose spouse or partner is not a U.S. citizen, plans to adopt a child residing in the United States, they should consult the Central Authority of the country in which they are residing prior to initiating an adoption. If the prospective adoptive parent holds dual citizenship in the United States and another Convention country, their spouse or partner is not a U.S. citizen, and/or the country in which they live considers them to be habitual residents, that country may require them to follow local adoption laws and procedures as the receiving country in a Convention adoption, in order for the child to enter that country legally.

C. Requirements in Outgoing Cases

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

Please see Part II.B and the flowchart in Appendix 2 for a summary of steps.

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

In summary, the child background studies should include information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child. A public domestic authority or an accredited adoption service provider must perform the child background study. Alternatively, when the child background study is not performed by an accredited adoption service provider, the background study must be reviewed and approved in writing by an accredited adoption service provider.

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

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

- (a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified a specific prospective adoptive parent or in other special circumstances accepted by the [U.S.] State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:
 - (1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parents in the United States;
 - (2) Listing information about the child on a national or State adoption exchange or registry for at least sixty calendar days after the birth of the child;
 - (3) Responding to inquiries about adoption of the child; and
 - (4) Providing a copy of the child background study to potential U.S. prospective adoptive parents.
- (b) The agency or person demonstrates to the satisfaction of the [U.S.] State court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

Section 96.54(a)(1)-(4) clearly identifies the domestic placement procedures that constitute “reasonable efforts” in most cases, with certain delineated exceptions.

The exceptions from the domestic placement procedures set forth in 22 CFR 96.54(a) include when the birth parent(s) have identified a specific prospective adoptive parent. The regulation does not preclude an accredited agency or approved person from providing adoption and other services to a birth parent(s), including access to information on domestic or foreign prospective adoptive parents. The birth parent(s) may identify/select a prospective parent based on information and counseling an adoption service provider has provided. Similarly, this provision of the regulations does not prohibit birth parent(s) who might choose to identify a prospective parent independently from receiving general counseling from adoption service providers. After the identification of a prospective adoptive parent, the birth parent(s) may continue to work with an adoption service provider to complete the adoption process, and the adoption service provider may provide the full range of other adoption services.

Documentation of reasonable efforts under 96.54(b) may include copies of print, media, and internet information on the child, copies of the adoption exchange or registry listing on the child, written responses to inquiries about the child, and proof that the child background study was sent to potential U.S. prospective adoptive parents.

22 CFR 96.54 recognizes that in some cases “reasonable efforts” can include no efforts at all, if no such efforts are in the child's best interests. The regulations also permit a

State court to accept or reject an accredited agency's or approved person's recommendation that it is not in the best interest of a particular child that the procedures set forth in 96.54(a)(1)-(4) be followed. This approach is fully consistent with the IAA and the Convention, which require merely that due consideration be given to placing the child in the country of origin.

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

Prospective adoptive parents should follow the court's rules. However, the accreditation regulations require the adoption service provider to provide an English copy or a certified English translation of the home study.

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

In accordance with the referenced regulation, adoption service providers ensure that a child background study is performed that includes the content specified in said provision. To the extent that certain information is unknown because the child is a newborn (e.g., social environment), the child background study can so indicate.

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

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

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

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

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

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

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

Federal regulations outline reporting requirements for outgoing Convention and nonConvention cases. In summary, the reporting provider (typically the primary provider in Convention cases or the provider responsible for child placement in non-Convention cases) reports to the Department's Office of Children's Issues for each outgoing case:

- (1) the name, date of birth of child, and place of birth of child;
- (2) the U.S. State from which the child is emigrating;
- (3) the country to which the child is immigrating;
- (4) the U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and
- (5) the reporting provider's name, address, phone number, and other contact information. [22 CFR Part 99.2\(c\)](#)

This report is required within 30 days of learning that the adoption case involves emigration of a child from the United States to a foreign country. Note that the primary provider will enter data directly into the accrediting entity's portal for transmission to the Department's Adoption Tracking Service (ATS). Public domestic authorities will not have access to the portal or ATS and will report cases on the [Reporting Requirements](#) page of the Office of Children's Issues' website which contains additional information on reporting requirements. Questions may be sent to the Office of Children's Issues at Adoption@state.gov.

C.10 I am a prospective adoptive parent resident in another Convention country. How can I be sure that the U.S. State adoption court will determine that reasonable efforts to find a timely adoptive placement for the child in the United States were made before I was selected?

It is important for prospective adoptive parents to discuss this issue with the U.S. accredited agency, approved person, or public domestic authority providing adoption

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

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

- Does this apply to cases where the child is transported to the Convention country either before or after the adoption is finalized?

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

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

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

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

The transfer of the child back to the United States, if appropriate, should take place under the same conditions and safeguards as the initial transfer to the receiving country. U.S. regulations provide that the “agency or person takes appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used....” [22 CFR 96.54\(h\)](#)

D. Hague Adoption Certificates (HACs) and Hague Custody Declarations (HCDs)

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

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

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

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

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

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

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

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

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

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

D.5 Is there an application fee?

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

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

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

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

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

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

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

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

D.9 Is there an appeal process for the denial of an HAC or HCD?

There is no "denial" of an HAC or HCD application under applicable regulations. If the Department, in the course of evaluating the application and supporting documentation, determines that additional information is necessary before it can issue an HAC or HCD, it will ensure that applicants have every opportunity to submit this information. However, if the applicant does not satisfy the Department's request for information within 120 days of that request, the Department may consider the application abandoned and not issue the HAC or HCD. Nothing in the regulations limits the number of times an application may be submitted to the Department. [22 CFR 97.3](#)

E. Entry Requirements

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

The entry requirements of receiving countries will vary and may include issuance of a visa to the child. During the U.S. State court proceedings, the parties must submit from the receiving country an entry authorization, pursuant to Article 5 of the Convention, stating that the child is or will be authorized to enter and reside permanently in the receiving country.

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

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

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

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

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

Generally, you will have to submit the court order (normally the adoption decree) that changes the child's name along with the passport application. Full information about applications for U.S. passports can be found on the [Department website](#).

E.5 *How can a public domestic authority, processing an outgoing Convention case from the U.S. to a foreign country, request a U.S. passport for the child that would allow him/her to travel to the foreign country for a bonding period, prior to finalizing the adoption in a U.S. state court?*

A U.S. citizen child who is in process of being adopted by a prospective adoptive parent from another foreign country under the Convention, can be issued a one-year limited validity U.S. passport that will allow him/her to travel to the receiving country with the prospective adoptive parent. Since the adoptee has not been formally adopted, the following original documents must be submitted when applying for a passport, along with a completed application [\(DS-11\)](#) and completed application package:

- A letter (on official letterhead stationery) from your agency or entity that has custody of the child stating the following:
 - The date on which the adoption will become final,
 - The child's current name (or birth name if the applicant is still using the birth name),
 - The name by which the child will be known after the adoption (if the name will be changed), and
 - The named individual(s) adopting the applicant has temporary custody of the child and also has permission to take the child out of the United States.
- A temporary custody order naming the public or private agency or entity custodians or guardians of the minor applicant.

E.6 *How do the parties finalize the adoption in the receiving country if the child departed the United States and entered the receiving country based on an U.S. custody order?*

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

E.7 *Who issues the Convention final adoption certification required under Convention Article 23 when the United States granted an HCD?*

In an outgoing case, the prospective adoptive parent should contact the Central Authority of the *receiving* country regarding final adoption certification since that country will be the state of the adoption under the Convention.

E.8 *How does a prospective adoptive parent obtain a visa to enter the United States to complete an outgoing adoption?*

Information on non-immigrant visas to enter the United States is available on the [Department's website](#) as well as the website of the [U.S. Embassy or Consulate](#) in the country where the PAP(s) reside.

Appendix 1: GLOSSARY OF TERMS AND ABBREVIATIONS⁷

⁷ All definitions of terms come from [22 CFR 96.2](#), unless otherwise stated. The regulations refer to the actions of the "Secretary;" however, the day-to-day exercise of the Secretary's functions related to the Convention has been delegated to the Department of State, Bureau of Consular Affairs.

The U.S. Code of Regulations sections [22 CFR 96.2](#) and [22 CFR 97.1](#) contain key definitions applicable to this guide. Following are the primary definitions used throughout this guide.

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

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

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

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

Adoption service means any one of the following six services:

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

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

Central Authority means the entity designated as such under Article 6(1) of the

Convention by any Convention country or, in the case of the United States, the United States Department of State. *Central Authority function* means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority.

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

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

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

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

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

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

Foreign authorized entity means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case. [22 CFR 97.1](#)

Hague Adoption Certificate (“HAC”) means a certificate issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in section 97.4(b), the IAA. [22 CFR Part 97](#)

Hague Custody Declaration (“HCD”) means a declaration issued by the Secretary in an outgoing case (where the child is emigrating from the United States to another Convention country) declaring that custody of a child for the purpose of adoption has been granted in the United States in accordance with the Convention and, except as provided in section 97.4(b), the IAA. [22 CFR Part 97](#)

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

Primary provider means the accredited agency or approved person that is identified pursuant to [22 CFR 96.14](#) as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

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

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

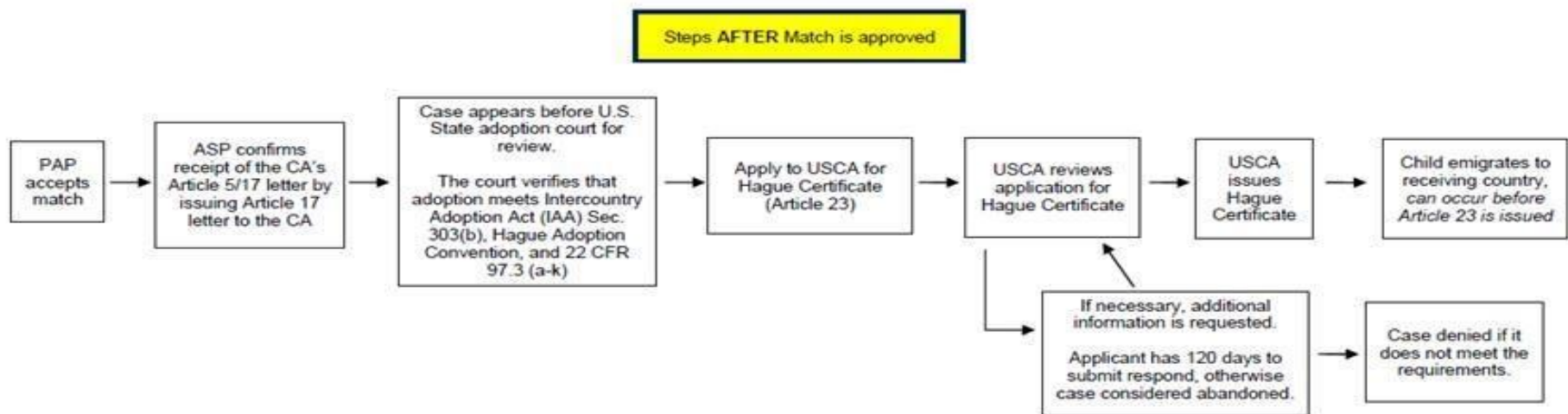
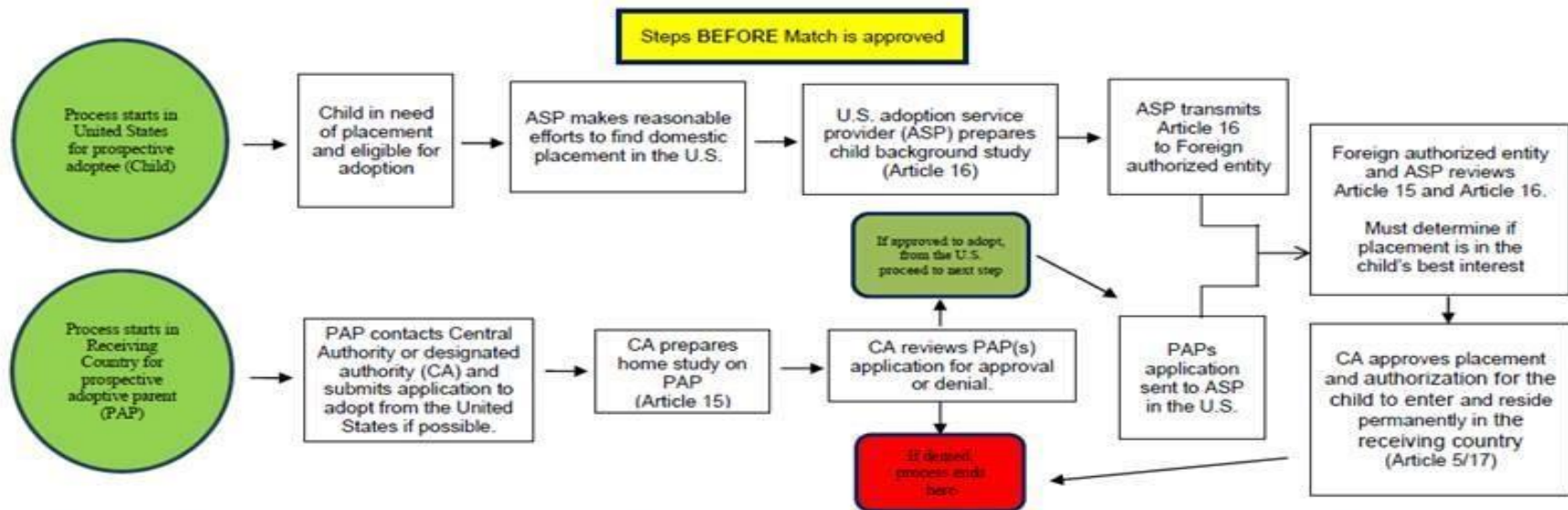
Secretary means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department official exercising the Secretary of State's authority under the Convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority.

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

U.S. authorized entity means a public domestic authority or an accredited agency or approved person pursuant to 22 CFR Part 96, or a supervised provider acting under the supervision and responsibility of an accredited agency or approved person. [22 CFR 97.1](#)

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

APPENDIX 2: FLOWCHART: SUMMARY OF STEPS IN AN OUTGOING CASE



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

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

Appendix 3: ADDITIONAL RESOURCES

Please note: The following links may be helpful to prospective adoptive parents. These are provided for quick reference purposes only and do not constitute an endorsement of the organization or the contents of the information. The Office of Children's Issues at the U.S. Department of State as the U.S. Central Authority cannot recommend specific organizations or agencies to assist families interested in intercountry adoption.

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

U.S. Department of State, Office of Children's Issues intercountry adoption homepage <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html>

U.S. Citizenship and Immigration Services adoption homepage <https://www.uscis.gov/adoption>

U.S. Department of Health and Human Services Child Welfare Information Gateway <https://www.childwelfare.gov/>

Hague Conference on Private International Law Adoption Convention homepage <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

