REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a), are set out in this Appendix.

EFFECTIVE DATE OF AMENDMENTS PROPOSED NOVEMBER 20, 1972, AND DECEMBER 18, 1972

Amendments of this rule embraced by orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93–595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 2074 of this title.

Rule 44. Proving an Official Record

(a) MEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) LACK OF A RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) OTHER PROOF. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This rule provides a simple and uniform method of proving public records, and entry or lack of entry therein, in all cases including those specifically provided for by statutes of the United States. Such statutes are not superseded, however, and proof may also be made according to their provisions whenever they differ from this rule. Some of those statutes are:

U.S.C., Title 28:

§ 661 [now 1733] (Copies of department or corporation records and papers; admissibility; seal)
§ 662 [now 1733] (Same; in office of General Counsel of the Treasury)
§ 663 [now 1733] (Instruments and papers of Comptroller of Currency; admissibility)
§ 664 [now 1733] (Organization certificates of national banks; admissibility)
§ 665 [now 1733] (Transcripts from books of Treasury in suits against delinquents; admissibility)
§ 666 [now 1733] (Same; certificate by Secretary or Assistant Secretary)
§ 670 [now 1743] (Admissibility of copies of statements of demands by Post Office Department)
§ 671 [now 1733] (Admissibility of copies of post office records and statement of accounts)
§ 672 [former] (Admissibility of copies of records in General Land Office)
§ 673 [now 1744] (Admissibility of copies of records, and so forth, of Patent Office)
§ 674 [now 1745] (Copies of foreign letters patent as prima facie evidence)
§ 675 [former] (Copies of specifications and drawings of patents admissible)
§ 676 [now 1736] (Extracts from Journals of Congress admissible when injunction of secrecy removed)
§ 677 [now 1740] (Copies of records in offices of United States consuls admissible)
§ 678 [former] (Books and papers in certain district courts)
§ 679 [former] (Records in clerks' offices, western district of North Carolina)
§ 680 [former] (Records in clerks' offices of former district of California)
§ 681 [now 1734] (Original records lost or destroyed; certified copy admissible)
§ 682 [now 1734] (Same; when certified copy not obtainable)
§ 685 [now 1735] (Same; certified copy of official papers)
§ 687 [now 1738] (Authentication of legislative acts; proof of judicial proceedings of State)
§ 688 [now 1739] (Proofs of records in offices not pertaining to courts)
§ 689 [now 1742] (Copies of foreign records relating to land titles)
§ 695 [now 1732] (Writings and records made in regular course of business; admissibility)
§ 695e [now 1741] (Foreign documents on record in public offices; certification)

U.S.C., Title 1:

§ 30 [now 112] (Statutes at large; contents; admissibility in evidence)

§30a [now 113] (''Little and Brown's'' edition of laws and treaties competent evidence of Acts of Congress)
§54 [now 204] (Codes and supplements as establishing prima facie the laws of United States and District of Columbia, etc.)
§55 [now 208] (Copies of supplements to Code of Laws of United States and of District of Columbia Code and supplements; conclusive evidence of original)

U.S.C., Title 5:
§490 [former] (Records of Department of Interior; authenticated copies as evidence)

U.S.C., Title 6:
§7 [now Title 31, §9306] (Surety Companies as sureties; appointment of agents; service of process)

U.S.C., Title 8:
§9a [see 1435(c)] (Citizenship of children of persons naturalized under certain laws; repatriation of native-born women married to aliens prior to September 22, 1922; copies of proceedings)
§356 [see 1443] (Regulations for execution of naturalization laws; certified copies of papers as evidence)
§399b(d) [see 1443] (Certifications of naturalization records; authorization; admissibility as evidence)

U.S.C., Title 11:
§44(d), (e), (f), (g) [former] (Bankruptcy court proceedings and orders as evidence)
§204 [former] (Extensions extended, etc.; evidence of confirmation)
§207(j) [former] (Corporate reorganizations; certified copy of decree as evidence)

U.S.C., Title 15:
§127 (Trade-mark records in Patent Office; copies as evidence)

U.S.C., Title 20:
§52 (Smithsonian Institution; evidence of title to site and buildings)

U.S.C., Title 25:
§6 (Bureau of Indian Affairs; seal; authenticated and certified documents; evidence)

U.S.C., Title 31:
§46 [now 704] (Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence)

U.S.C., Title 38:
§11g [see 302] (Seal of Veterans' Administration; authentication of copies of records)

U.S.C., Title 40:
§238 [former] (National Archives; seal; reproduction of archives; fee; admissibility in evidence of reproductions)
§270c [now 3133(a)] (Bonds of contractors for public works; right of person furnishing labor or material to copy of bond)

U.S.C., Title 43:
§§57–59 (Copies of land surveys, etc., in certain states and districts admissible as evidence)
§83 (General Land Office registers and receivers; transcripts of records as evidence)

U.S.C., Title 46:
§823 [former] (Records of Maritime Commission; copies; publication of reports; evidence)

U.S.C., Title 47:
§154(m) (Federal Communications Commission; copies of reports and decisions as evidence)
§412 (Documents filed with Federal Communications Commission as public records; prima facie evidence; confidential records)

U.S.C., Title 49:
§14(3) [see 706] (Interstate Commerce Commission reports and decisions; printing and distribution of copies)
§16(13) [former] (Copies of schedules, tariffs, etc., filed with Interstate Commerce Commission as evidence)
§19a(i) [former] (Valuation of property of carriers by Interstate Commerce Commission; final published valuations as evidence)

NOTES OF ADVISORY COMMITTEE ON RULES—1946
SUPPLEMENTARY NOTE REGARDING RULES 43 AND 44

For supplementary note of Advisory Committee on this rule, see note under rule 43.

NOTES OF ADVISORY COMMITTEE ON RULES—1966
AMENDMENT

Subdivision (a)(1). These provisions on proof of official records kept within the United States are similar in substance to those heretofore appearing in Rule 44. There is a more exact description of the geographical areas covered. An official record kept in one of the areas enumerated qualifies for proof under subdivision (a)(1) even though it is not a United States official record. For example, an official record kept in one of these areas by a government in exile falls within subdivision (a)(1). It also falls within subdivision (a)(2) which may be availed of alternatively. *Cf. Banco de Espana v. Federal Reserve Bank*, 114 F.2d 438 (2d Cir. 1940).

Subdivision (a)(2). Foreign official records may be proved, as heretofore, by means of official publications thereof. See *United States v. Aluminum Co. of America*, 1 F.R.D. 71 (S.D.N.Y. 1939). Under this rule, a document that, on its face, appears to be an official publication, is admissible, unless a party opposing its admission into evidence shows that it lacks that character.

The rest of subdivision (a)(2) aims to provide greater clarity, efficiency, and flexibility in the procedure for authenticating copies of foreign official records.

The reference to attestation by ''the officer having the legal custody of the record,'' hitherto appearing in Rule 44, has been found inappropriate for official records kept in foreign countries where the assumed relation between custody and the authority to attest does not obtain. See 2B Barron & Holtzoff, *Federal Practice & Procedure* §992 (Wright ed. 1961). Accordingly it is provided that an attested copy may be obtained from any person authorized by the law of the foreign country to make the attestation without regard to whether he is charged with responsibility for maintaining the record or keeping it in his custody.

Under Rule 44 a United States foreign service officer has been called on to certify to the authority of the foreign official attesting the copy as well as the genuineness of his signature and his official position. See Schlesinger, *Comparative Law* 57 (2d ed. 1959); Smit, *International Aspects of Federal Civil Procedure*, 61 Colum.L.Rev. 1031, 1063 (1961); 22 C.F.R. §92.41(a), (e) (1958). This has created practical difficulties. For example, the question of the authority of the foreign officer might raise issues of foreign law which were beyond the knowledge of the United States officer. The difficulties are met under the amended rule by eliminating the element of the authority of the attesting foreign official from the scope of the certifying process, and by specifically permitting use of the chain-certificate method. Under this method, it is sufficient if the original attestation purports to have been issued by an authorized person and is accompanied by a certificate of another foreign official whose certificate may in turn be followed by that of a foreign official of higher rank. The process continues until a foreign official is reached as to whom the United States foreign service official (or a diplomatic or consular officer of the foreign country assigned or accredited to the United States) has adequate information upon which to base a ''final certification.'' See *New York Life Ins. Co. v. Aronson*, 38 F.Supp. 687 (W.D.Pa. 1941); 22 C.F.R. §92.37 (1958).

The final certification (a term used in contradistinction to the certificates prepared by the foreign officials in a chain) relates to the incumbency and genuineness of signature of the foreign official who attested the copy of the record or, where the chain-certificate method is used, of a foreign official whose certificate appears in the chain, whether that certificate is the last in the chain or not. A final certification may be prepared on the basis of material on file in the consulate or any other satisfactory information.

Although the amended rule will generally facilitate proof of foreign official records, it is recognized that in some situations it may be difficult or even impossible to satisfy the basic requirements of the rule. There may be no United States consul in a particular foreign country; the foreign officials may not cooperate, peculiarities may exist or arise hereafter in the law or practice of a foreign country. See *United States v. Grabina*, 119 F.2d 863 (2d Cir. 1941); and, generally, Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform*, 62 Yale L.J. 515, 548–49 (1953). Therefore the final sentence of subdivision (a)(2) provides the court with discretion to admit an attested copy of a record without a final certification, or an attested summary of a record with or without a final certification. See Rep. of Comm. on Comparative Civ. Proc. & Prac., Proc. A.B.A., Sec. Int'l & Comp. L. 123, 130–131 (1952); Model Code of Evidence §§ 517, 519 (1942). This relaxation should be permitted only when it is shown that the party has been unable to satisfy the basic requirements of the amended rule despite his reasonable efforts. Moreover, it is specially provided that the parties must be given a reasonable opportunity in these cases to examine into the authenticity and accuracy of the copy or summary.

Subdivision (b). This provision relating to proof of lack of record is accommodated to the changes made in subdivision (a).

Subdivision (c). The amendment insures that international agreements of the United States are unaffected by the rule. Several consular conventions contain provisions for reception of copies or summaries of foreign official records. See, e.g., Consular Conv. with Italy, May 8, 1878, art. X, 20 Stat. 725, T.S. No. 178 (Dept. State 1878). See also 28 U.S.C. §§ 1740–42, 1745; *Fakouri v. Cadais*, 149 F.2d 321 (5th Cir. 1945), cert. denied, 326 U.S. 742 (1945); 5 *Moore's Federal Practice*, par. 44.05 (2d ed. 1951).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The amendment to paragraph (a)(1) strikes the references to specific territories, two of which are no longer subject to the jurisdiction of the United States, and adds a generic term to describe governments having a relationship with the United States such that their official records should be treated as domestic records.

The amendment to paragraph (a)(2) adds a sentence to dispense with the final certification by diplomatic officers when the United States and the foreign country where the record is located are parties to a treaty or convention that abolishes or displaces the requirement. In that event the treaty or convention is to be followed. This changes the former procedure for authenticating foreign official records only with respect to records from countries that are parties to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Moreover, it does not affect the former practice of attesting the records, but only changes the method of certifying the attestation.

The Hague Public Documents Convention provides that the requirement of a final certification is abolished and replaced with a model *apostille*, which is to be issued by officials of the country where the records are located. See Hague Public Documents Convention, Arts. 2–4. The *apostille* certifies the signature, official position, and seal of the attesting officer. The authority who issues the *apostille* must maintain a register or card index showing the serial number of the *apostille* and other relevant information recorded on it. A foreign court can then check the serial number and information on the *apostille* with the issuing authority in order to guard against the use of fraudulent *apostilles*. This system provides a reliable method for maintaining the integrity of the authentication process, and the *apostille* can be accorded greater weight than the normal authentication procedure because foreign officials are more likely to know the precise capacity under their law of the attesting officer than would an American official. See generally Comment, *The United States and the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents*, 11 HARV. INT'L L.J. 476, 482, 488 (1970).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 44 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Nov. 20, 1972, eff. July 1, 1975; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1966

Rule 44.1 is added by amendment to furnish Federal courts with a uniform and effective procedure for raising and determining an issue concerning the law of a foreign country.

To avoid unfair surprise, the *first sentence* of the new rule requires that a party who intends to raise an issue of foreign law shall give notice thereof. The uncertainty under Rule 8(a) about whether foreign law must be pleaded—*compare Siegelman v. Cunard White Star, Ltd.*, 221 F.2d 189 (2d Cir. 1955), and *Pedersen v. United States*, 191 F.Supp. 95 (D.Guam 1961), *with Harrison v. United Fruit Co.*, 143 F.Supp. 598 (S.D.N.Y. 1956)—is eliminated by the provision that the notice shall be ''written'' and ''reasonable.'' It may, but need not be, incorporated in the pleadings. In some situations the pertinence of foreign law is apparent from the outset; accordingly the necessary investigation of that law will have been accomplished by the party at the pleading stage, and the notice can be given conveniently in the pleadings. In other situations the pertinence of foreign law may remain doubtful until the case is further developed. A requirement that notice of foreign law be given only through the medium of the pleadings would tend in the latter instances to force the party to engage in a peculiarly burdensome type of investigation which might turn out to be unnecessary; and correspondingly the adversary would be forced into a possible wasteful investigation. The liberal provisions for amendment of the pleadings afford help if the pleadings are used as the medium of giving notice of the foreign law; but it seems best to permit a written notice to be given outside of and later than the pleadings, provided the notice is reasonable.