

**INSTRUCTIONS FOR SERVICE OF PROCESS  
ON A FOREIGN DEFENDANT  
PURSUANT FRCP 4(f)  
AND THE FOREIGN SOVEREIGN IMMUNITIES ACT**

Federal rule of Civil; Procedure 4(f)(2)(C)(ii)

Foreign Sovereign Immunities Act  
28 U.S.C. §1608(a)(3)  
28 U.S.C.§1608(a)(4)  
28 U.S.C.§1608(b)(3)(B)

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**Rules set by the U.S. Post Office regarding foreign mailings**

1. Do not use postage meter stamps.
2. Leave more than the exact amount for the postal fee.
3. Do not seal envelopes.
4. Make sure there is glue on the pink return receipt (Postal Form 2865).
5. Mailing labels are not accepted on foreign mailing envelopes. Addresses must be typed or handwritten on the envelope.
6. The following envelopes are Ineligible for Registered Mail:  
  
Mail presented in a padded envelope; envelope or mailer manufactured of spun-bonded olefin, such as Tyvek; plastic envelope or mailer; or envelope or mailer made of glossy-coated paper.
7. Packages weighing more than four pounds must be split up according to post office regulations.
8. Please check with your local Post Office for the appropriate customs forms as well as the most up to date forms.

Overnight mail such as FedEx DHL, etc. is acceptable, as long as you are able to obtain a signed returned receipt. When you deliver the documents to the Clerk, simply include a FED-EX or DHL envelope and an addressed waybill with you account number. Then later use the appropriate shipping company's website to print a tracking summary indicating that the package was delivered to its ultimate destination. Provide a copy of that tracking summary and cover letter to the Clerk as your Return of Service.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

**FOREIGN MAILING**

When you have to accomplish service overseas, either directly or through the U.S. Department of State, the Clerk strongly recommends you use FED-EX or DHL Express instead of the U.S. Postal Service. The U.S. Postal Service requirements for such service are complicated and if not followed to the letter will result in the return of a package to the sender, delaying its ultimate delivery. Using FED-EX or DHL, also avoids the necessity of giving the Clerk cash for postage.

When you deliver the documents to the Clerk, simply include a FED-EX or DHL envelope and an addressed waybill with your account number. Then later use the appropriate shipping company's website to print a tracking summary indicating that the package was delivered to its ultimate destination. Provide a copy of that tracking summary and a cover letter to the Clerk as your Return of Service.

If you have any questions, or would like a copy of our **INSTRUCTIONS FOR SERVICE OF PROCESS ON A FOREIGN DEFENDANT**, please see the secretary in the Clerk of Court's Office, Room 120.

PROCEDURES FOR SERVICE PURSUANT TO

RULE 4 (f) (2) (C) (ii)

For the office of the Clerk to serve a defendant pursuant to Rule 4(f)(2)(C)(ii) of the Federal Rules of Civil Procedure, we require that you furnish us with the following for each case involved:

(1) A letter, addressed to the Clerk of Court, J. Michael McMahon, requesting that he serve specified documents pursuant to Rule 4(f)(2)(C)(ii) of the Federal Rules of Civil Procedure. Include in this letter both the name(s) and address(es) of the defendant(s) to be served.

(2) One set of papers for each defendant to be served and one copy of the summons and set of papers (except for the complaint) being served on the defendant(s) for the Court file.

(3) One envelope, sufficient to hold an entire set of papers, addressed to each defendant with the law firm's return address.

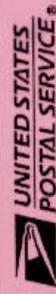
(4) A pink return receipt card (Postal Service Form #2865) made out to the defendant being served with the return address of the Clerk of Court. On the upper left hand corner of this card you must include both the case number and judge's initials. [See example on page 4.]

(5) A white return receipt (Postal Service Form #3806) made out to the defendant being served with the return address of the law firm. [See example on page 4.]

(6) A sum of money (cash only) sufficient for postage and registration and return receipt fees. If the amount of money tendered is insufficient, you will be contacted and the documents will be held in our office (Room 120) until additional funds are received. Money for each case must be kept separately.

All mailings are brought to the Post Office on Monday, Wednesday and Friday mornings at 9:00. Papers submitted to the Clerk's Office for mailings must be brought in no later than 4:30 P.M. the previous day. You may pick up the change from the amount tendered anytime after 11:A.M. on the day of mailing.

**NOTE: \* The Hague Convention places restrictions on which countries may be served under this provision. See page 6.**



Goose # and Judges initials

Administration des Postes des Etats-Unis d'Amérique

Return Receipt for International Mail (Registered, Insured, Recorded Delivery, Express Mail)

Postmark of the office returning the receipt

Par Avion

Return by the quickest route (air or surface mail), a découvert and postage free. The sender completes and indicates the address for the return of this receipt.

Name or Firm (Nom ou raison sociale) S.J. Michael, McMahon. United States District Court - SDNY Street and Number (Rue et no.) 500 Pearl Street City, State, and ZIP + 4 (Localité et code postal) New York, NY 10007

UNITED STATES OF AMERICA Etats-Unis d'Amérique PS Form 2865, February 1997 Avis de réception CN07 (Old C5)

Form with fields: Item Description, Registered Article, Insured Parcel, Office of Mailing, Addressee Name or Firm, Street and No., Place and Country.

Form with fields: Recorded Delivery, Express Mail International, Date of Posting, Signature of Addressee, Office of Destination, Employee Signature.

PS Form 2865, February 1997 (Reverse)

Registered No. Date Stamp

Table with columns: Handling Charge, Postage, Return Receipt, Restricted Delivery.

Customer Must Declare Full Value \$ With Postal Insurance Without Postal Insurance

OFFICIAL USE

Law Firm's name & address Defendant's name & address

PS Form 3806, Receipt for Registered Mail May 2004 (7530-02-000-9051)



LC557990898US

**United States Postal Service**  
**Customs Declaration**  
May be opened officially

See instructions on Reverse

Do not duplicate without USPS approval.

Category:  Gift  Commercial sample  Other

Quantity and detailed description of contents (1)

Weight (2)  
lb. oz.

Value (3)  
(US \$)

Total Weight (6)  
(7) (US \$)

Total Value (7) (US \$)

*For commercial items only*  
If known, HS tariff number (4) and country of origin of goods (5)

I, the undersigned, whose name and address are given on the form, certify that the particulars given in this declaration are correct and that this item does not contain any dangerous article or articles prohibited by legislation or by postal or customs regulations.

Date and sender's signature (8)

LC557990898US

**Customs Declaration CN 22 — Sender's Declaration**

I, the undersigned, whose name and address are given on the form, certify that the particulars given in this declaration are correct and that this item does not contain any dangerous article or articles prohibited by legislation or by postal or customs regulations. This copy will be retained at the post office for 30 days.

Sender's Name & Address

*Law Firm's Name & Address*

Addressee's Name & Address

*Defendants name & Address*

Date and sender's signature

PS Form 2976, January 2004

Detached from PS Form 2976, January 2004

Post Office Copy

As per the postal rules, a customs form (postal form 2976) must be included when using a letter sized envelope or if the documents to be served are between one and four pounds.

The Clerk's Office cannot accept for service pursuant to FRCP 4(f)(2)(C)(ii) , for any documents that are addressed to a defendant in certain countries that are parties to the HAGUE CONVENTION.

For a definitive up to date information about countries objecting to service by mail (Article 10 a), see the status table of the Hague Conference on Private International Law Hague Service Convention web page and review the reservations and declarations for each country.

The web site for the Status table is as follows:

[http://www.hcch.net/index\\_en.php?act=conventions.text&cid=17](http://www.hcch.net/index_en.php?act=conventions.text&cid=17)

The text of the Hague Convention can be found in Martindale Hubbell (Volume VII) and following Rule 4 of the Federal Rules of Civil Procedure (United states Code Annotated version). Additional information may be obtained from the State Department's Office of Special Consular Services in Washington, D.C.

PROCEDURES FOR SERVICE  
UPON A FOREIGN STATE OR POLITICAL SUBDIVISION  
PURSUANT TO THE FOREIGN SOVEREIGN IMMUNITIES ACT  
(DIRECT MAIL)

For the office of the Clerk to serve an agency or instrumentality of a foreign state pursuant to the Foreign Sovereign Immunities Act., 28 USC §1608 (a) (3), we require that you furnish us with the following for each case involved:

(1) A letter, addressed to the Clerk of Court, J. Michael McMahon, requesting that he serve specified documents pursuant to the Foreign Sovereign Immunities Act, 28 USC §1608 (a) (3). Include in this letter both the name(s), title(s) and address(es) of the person(s) to be served.

(2) One complete set of papers in English and one in that country's official language for each defendant to be served and one copy of each of these documents (except for the English complaint) for the Court's file. You must also include a Notice of Suit (in both English and the country's official language) which must be prepared pursuant to 22 CFR §93.2. a copy of these documents must also be tendered to the Clerk's Office along with the other papers mentioned in this paragraph.

(3) An affidavit from the translator stating his qualifications and that the translation is accurate [Rule 2101(b), Civil Practice Law and Rules of N.Y.] for each defendant to be served and one for the Court's file.

(4) A pink return receipt card (Postal Service Form #2865) made out to the defendant being served with the return address of the Clerk of Court. On the upper left hand corner of this card you must include both the case number and judge's initials. [See example on page 8.]

(5) A white return receipt (Postal Service Form #3806) made out to the defendant being served with the return address of the Clerk's Office. [See example on page 8.]

(6) A sum of money (cash only) sufficient for postage and registration and return receipt fees. If the amount of money tendered is insufficient, you will be contacted and the documents will be held in our office (Room 120) until additional funds are received. Money for each case must be kept separately.

All mailings are brought to the Post Office on Monday, Wednesday and Friday mornings at 9:00. Papers submitted to the Clerk's Office for mailings must be brought in no later than 4:30 P.M. You may pick up the change from the amount tendered anytime after 11:00 A.M.



**Return Receipt for International Mail**  
(Registered, Insured, Recorded Delivery, Express Mail)

Case # and  
Judge's initials

Administration  
des Postes des  
Etats-Unis  
d'Amérique



Postmark of  
the office  
returning the  
receipt  
Timbre du  
bureau  
renvoyant  
l'avis

**Par Avion**

Return by the  
quickest route  
(air or surface  
mail), a découvert  
and postage free.....

Name or Firm (Nom ou raison sociale)  
J. Michael McMahon

Street and Number (Rue et no.)  
United States District Court - SDNY

City, State, and ZIP + 4 (Localité et code postal)  
500 Pearl Street  
New York, NY 10007

UNITED STATES OF AMERICA  
Etats-Unis d'Amérique  
PS Form 2865, February 1997  
Avis de réception  
CN07 (Old C5)

Registered No. \_\_\_\_\_ Date Stamp \_\_\_\_\_

Reg. Fee \_\_\_\_\_

Handling Charge \_\_\_\_\_

Postage \_\_\_\_\_

Received by \_\_\_\_\_

Return Receipt Restricted Delivery \_\_\_\_\_

Customer Must Declare Full Value \$ \_\_\_\_\_

With Postal Insurance

Without Postal Insurance

Domestic insurance up to \$25,000 is included in the fee. International indemnity is limited. (See Reverse).

**OFFICIAL USE**

FROM J. Michael McMahon  
500 Pearl Street  
New York, NY 10007

TO Defendant's name & Address

All Entries Must Be in Ballpoint or Typed

To Be Completed By Customer

To Be Completed By Post Office

PS Form 3806, Receipt for Registered Mail (See Information on Reverse) May 2004 (7530-02-000-9051) Copy 1 - Customer For domestic delivery information, visit our website at www.usps.com ®

Item Description (Nature de l'envoi)  Registered Article (Envoi recommandé)  Letter (Lettre)  Matter (Autre)  Other (Autre)  Recorded Delivery (Envoi à livraison attestée)  Express national  Express international

Insured Parcel (Colis avec valeur déclarée)  Insured Value (Valeur déclarée) \_\_\_\_\_ Article Number \_\_\_\_\_

Office of Mailing (Bureau de dépôt) \_\_\_\_\_ Date of Posting (Date de dépôt) \_\_\_\_\_

Addresssee Name or Firm (Nom ou raison sociale du destinataire)  
China Town Station

Street and No. (Rue et No.)  
Defendant's name & address

Place and Country (Localité et pays) \_\_\_\_\_

This receipt must be signed by: (1) the addressee; or (2) a person authorized to sign under the regulations of the country of destination; or (3) if these regulations so provide, by the employee of the office of destination. This signed form will be returned to the sender by the first mail. (Ce récépissé doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à expéditeur.)

The article mentioned above was duly delivered. (L'envoi mentionné ci-dessus a été dûment livré.)

Signature of Addressee (Signature du destinataire) \_\_\_\_\_ Office of Destination Employee Signature (Signature de l'agent du bureau de destination) \_\_\_\_\_

Date \_\_\_\_\_

Completed at destination (A remplir par le bureau d'origine) \_\_\_\_\_

PS Form 2865, February 1997 (Reverse)

PROCEDURES FOR SERVICE  
UPON A FOREIGN STATE OR POLITICAL SUBDIVISION  
PURSUANT TO THE FOREIGN SOVEREIGN IMMUNITIES ACT  
(DIPLOMATIC CHANNELS VIA STATE DEPARTMENT)

For the office of the Clerk to serve an agency or instrumentality of a foreign state pursuant to the Foreign Sovereign Immunities Act, 28 USC §1608 (a)(4), we require that you furnish us with the following for each case involved:

(1) A letter, addressed to the Clerk of Court, J. Michael McMahon, requesting that he serve specified documents pursuant to the Foreign Sovereign Immunities Act, 28 USC §1608(a)(4). You must indicate what measures have been employed to effect service under (a)(1)-(3), e.g., that (a)(3) was attempted by the Clerk's Office on a specified date which was more than 30 days prior to this request and the return receipt has not been received by the Clerk's Office. Include in this letter both the name(s), title(s) and address(es) of the person(s) to be served.

(2) Two complete set of papers in English and two in that country's official language for each defendant to be served and one copy of each of these documents (except for the English complaint) for the Court's file. You must also include two copies, each, of the Notice of Suit (in both English and the country's official language) which must be prepared pursuant to 22 CFR §93.2. A copy of these documents must also be tendered to the Clerk's Office along with the other papers mentioned in this paragraph.

(3) An affidavit from the translator stating his qualifications and that the translation is accurate [Rule 2101(b), Civil Practice Law and Rules of N.Y.] for each defendant to be served and one for the Court's file.

(4) A green return receipt card (Postal Form 3811) which the Clerk's Office will address. The return address should be made out to the Clerk of the Court. On the upper left-hand corner of this card include the case number and the Judge's initials.

(5) A sum of money (cash only) sufficient for postage and certification and return receipt fees. If the amount of money tendered is insufficient, you will be contacted and the documents will be held in our office (Room 120) until additional funds are received. Money for each case must be kept separately.

## Checklist for Plaintiffs Service of Process upon a Foreign State

8/14/03

The U.S. Department of State is charged, under the Foreign Sovereign Immunities Act (FSIA), with handling service of process upon a foreign state or political subdivision through diplomatic channels. The Act specifies that when service of process upon a foreign state cannot otherwise be effected under FSIA, the clerk of court may dispatch a request to the **Secretary of State, attn: Director of Special Consular Services**, for service upon a foreign state defendant.

To avoid confusion and common mistakes, please take note of the following items before submitting a request for service under FSIA 1608(a)(4).

1. The defendant must be a foreign state or political subdivision, as defined in section 1603 of the Act, not an agency or instrumentality of a foreign state (to be served under section 1608(b) of the Act). The U.S. Department of State does not serve **natural persons** under the FSIA.
2. The Act allows for service under FSIA 1608(a)(4) only **after 30 days have passed** since service was attempted under section 1608(a)(3) (by any form of mail requiring a signed receipt). The U.S. Postal service and private courier services can deliver documents to virtually any location. Plaintiffs should attempt service under FSIA 1608(a)(3) unless a foreign state has specifically objected to service by mail. <sup>1</sup>
3. The documents must be **translated** into the official language of the foreign state to be served.
4. The summons sheet and the notice of suit should state a **60 day** (not 20 day) response time for the defendant.
5. The notice of suit (or default) should conform to the requirements of **22 CFR 93.2** (the statute specifically refers to notice of suit "in a form prescribed by the Secretary of State by regulation"). The notice of suit must contain a copy of the FSIA.
6. The Act requires plaintiff to have first attempted service under sections FSIA 1608(a)(1), (2) and (3) before proceeding to section 1608(a)(4). Thus, the U.S. Department of State requires a **statement in writing** from the plaintiff or the clerk certifying that these attempts were made or were otherwise not applicable.

7. There should be two copies of either (a) the summons, complaint and notice of suit or (b) a default judgment and notice of default (depending on the request).
8. In cases involving allegations of terrorism, plaintiffs should refer to section 1605(a)(7)(B) regarding arbitration requirements (however, we defer to the court as to the adequacy of any action taken by the plaintiffs in fulfillment of this requirement).
9. The Act requires the clerk of court dispatch the documents; however, a plaintiff may **provide written confirmation** that the court allowed plaintiff to act for the Clerk (after docketing).
10. The Director of Special Consular Services is presently, Edward A. Betancourt. All requests for FSIA 1608(a)(4) service of process should be addressed to:  
**Courier service:** Edward A. Betancourt, Director of Special Consular Services, U.S. Department of State, **2100 Pennsylvania Ave., NW 4FL (SA-29) Washington, DC 20520, tel. 202-736-9110**  
**Regular Mail:** Edward A. Betancourt, Director, CA/OCS/PRI **(SA-29)** , U.S. Department of State, Washington, DC 20520 (note, delays continue due to anthrax screening).
11. The U.S. Department of State does not normally serve on a foreign state any documents not specifically mentioned in the Act; however, it reserves executive authority to communicate with foreign governments. Note, a default judgment does **not** include a document(s) directing further hearings on a judgment.
12. As of June, 2002, the U.S. Department of State charges, in accordance with 22 CFR 22.1, a **\$650 fee** (cashiers check/ money order should be made out to the U.S. Embassy or Consulate involved).
13. Clerks who may have further questions regarding these issues may wish to refer to memos from the Administrative Office of U.S. Courts, dated, Nov. 7, 2000, May 20, 1982 and Nov. 6, 1980.

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<sup>1</sup> Presently: Argentina, Bulgaria, China, Czech Republic, Egypt, Germany, Greece, Kuwait, Latvia, Lithuania, Luxembourg, Mexico, Norway, Poland, Russian Federation, Republic of South Korea, San Marino, Slovak Republic, Sri Lanka, Switzerland, Turkey, Ukraine, Venezuela.

Source: [http://www.travel.state.gov/law/info/judicial/judicial\\_685.html](http://www.travel.state.gov/law/info/judicial/judicial_685.html)

PROCEDURES FOR SERVICE  
UPON AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE  
PURSUANT TO THE FOREIGN SOVEREIGN IMMUNITIES ACT

For the office of the Clerk to serve an agency or instrumentality of a foreign state pursuant to the Foreign Sovereign Immunities Act, 28 USC §1608(b)(3)(B), we require that you furnish us with the following for each case involved:

(1) A letter, addressed to the Clerk of Court, J. Michael McMahon, requesting that he serve specified documents pursuant to the Foreign Sovereign Immunities Act, 28 USC §1608(b)(3)(B). Include in this letter both the name(s), title(s) and address(es) of the person(s) to be served.

(2) One complete set of papers in English and one in that country's official language for each defendant to be served and one copy of each of these documents (except for the English complaint) for the Court's file.

(3) An affidavit from the translator stating his qualifications and that the translation is accurate [Rule 2101(b), Civil Practice Law and Rule of N.Y.] for each defendant to be served and one for the Court's file.

(4) A pink return receipt card (Postal Service Form #2865) made out to the person being served with the return address of the Clerk of Court. On the upper left hand corner of this card you must include both the case number and judge's initials. [See example on page 8.]

(5) A white return receipt (Postal Service Form #3806) made out to the defendant being served with the return address of the Clerk's Office. [See example on page 8.]

(6) A sum of money (cash only) sufficient for postage and registration and return receipt fees. If the amount of money tendered is insufficient, you will be contacted and the documents will be held in our office (Room 120) until additional funds are received. Money for each case must be kept separately.



LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

November 7, 2000

MEMORANDUM TO ALL CLERKS, UNITED STATES DISTRICT COURTS

SUBJECT: Service of Process in Foreign Countries (INFORMATION)

The Department of State has informed us that they have received a note of protest from the Russian Federation objecting to service of process by mail. This protest differs from those noted in earlier communications on this subject (memoranda dated May 23, 1990, May 20, 1982, and November 6, 1980) in that it concerns service upon a foreign state, not service upon a private entity located within the foreign state. This memorandum will provide information on foreign service of process in both situations.

Service on Foreign Governments

Rule 4(j)(1) of the Federal Rules of Civil Procedure provides for service of process on a foreign state pursuant to 28 U.S.C. § 1608. That section permits service by mail on foreign states, but section 1608(c) requires that for mail service to be effective, the postal receipt must be signed and returned. The State Department has advised that a number of countries, which are listed below, object to service by mail. If mail service is attempted in these countries, it could not only create diplomatic and foreign relations problems with those countries but also jeopardize the effectiveness of the service. Thus, even when a receipt is executed in a country that has objected to mail service, it is arguably executed without authority.

Accordingly, clerks should advise counsel who request their assistance with service by mail on countries included in the list below that service should instead be attempted under section 1608(a)(4), which is service through diplomatic channels. Normally, for service under this section, the State Department first requires evidence of attempted service by the means authorized in subsections 1608(a)(1), (a)(2), and (a)(3). The Department advises, however, that for countries which have protested service by mail, it will not require a showing that service has been attempted under (a)(3).

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A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Service on Private Parties

With respect to service on private parties, clerks should recall that the 1993 amendments to the Federal Rules of Civil Procedure amended the provisions for service upon an individual in a foreign country. Service by mail, to be addressed and dispatched by the clerk, is permitted by F.R.Civ.P. 4(f)(2)(C) "unless prohibited by the law of the foreign country." Accordingly, clerks should refrain from effecting service by mail addressed to those countries who have protested such service or who have entered reservations to mail service under Article 10(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters.

The following countries have objected to mail service in accordance with Article 10(a) of the Convention:

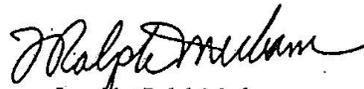
China	Czech Republic
Egypt	Germany
Greece	Republic of South Korea
Latvia	Luxembourg
Norway	Poland
Slovak Republic	Switzerland
Turkey	Venezuela

The State Department has also received notification from the governments of the following two countries, who are not parties to the Convention, that they object to service by mail:

Kuwait  
Russian Federation

The State Department suggests that countries that have objected to mail service on private parties also object to mail service on the state itself, so the same list is applicable to both situations.

Additional information about service of process abroad is available from the Department of State web site at [http://travel.state.gov/judicial\\_assistance.html](http://travel.state.gov/judicial_assistance.html). This includes Department of State circulars, "Service of Process Abroad," "Service Provisions of the Foreign Sovereign Immunities Act," "Operation of the Hague Service Convention," "Operation of the Inter-American Convention on Service," and "Preparation of Letters Rogatory."



Leonidas Ralph Mecham

cc: Chief Judges, United States District Courts