

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 of 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;

(ii) the record—or a copy—that is attested by an authorized person and accompanied by either 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 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 Rule 44(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.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44. Former section (d) related to proof of statutes, ordinances, and regulations was moved to new DR Rule 44-1. Former section (e) related to determinations of foreign law was moved to new DR Rule 44.1.