

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**

A Statement of Need and Justification must accompany this form.

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted

upon filing by the

Department of Human Services, Office of Child Welfare Programs

413

**Agency and Division**

**Chapter Number**

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to become effective January 1, 2016 through June 28, 2016.\*

*\*Temporary rules are effective for a maximum of 180 days including the effective date.*

**Rule Caption:**      *Clarifying the definition of "relative" applicable to outgoing intercountry Convention adoptions*

**AMEND:**      413-120-0925

ORS 417.262, 418.005

**Stat. Auth.**

None.

**Other Auth.**

ORS 417.262, 417.265, 418.005

**Stats. Implemented**

## Rule Summary

The Department of Human Services, Office of Child Welfare Programs, is adopting temporary amendments to clarify who is considered a "relative" for purposes of intercountry adoptions subject to The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA).

# STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules must accompany this form.

Department of Human Service, Office of Child Welfare Programs

413

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**Agency and Division**

**Chapter Number**

**In the Matter of:** *Temporary amendment of OAR 413-120-0925*

**Rule Caption:** *Clarifying the definition of "relative" applicable to outgoing intercountry Convention adoptions*

## Need for the Rules

OAR 413-120-0925 needs to be amended because the current definition of "relative" is not correct for purposes of rules regarding the adoption of a child emigrating from the United States. The amendment clarifies who qualifies as a relative for purposes of those adoptions.

## Documents Relied Upon

None.

## Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 413-120-0925 will result in serious prejudice to the public interest, the Department, and children and families involved in the adoption of a child emigrating from the United States. Without the amendment, the incorrect definition of "relative" will apply to these adoptions. The Department needs to proceed by temporary rule because the public, the Department, and children and families involved in those intercountry adoptions will immediately benefit because it will be clear which types of relatives the rule applies to.

## 413-120-0925

### Adoption of a Child Emigrating from the United States (Outgoing Convention Adoption)

*(Amended 05/01/14)(Temporary Effective 01/01/16 - 06/28/16)*

- (1) The Department may pursue an *outgoing Convention adoption* provided that:
  - (a) It is in the best interest of the *child*;
  - (b) The *child* has not been abducted, sold, or trafficked in connection with the *adoption*; and
  - (c) The prospective adoptive parent meets all of the following requirements:
    - (A) Is one of the following:
      - (i) ~~a~~ A relative as described in OAR 413-120-0000(63)(a)(A), (B), or (C);
      - (ii) A relative as described in OAR 413-120-0000(63)(b)(A) or (G); or
      - (iii) An individual with a relationship to the *child* or young adult's half-sibling through the half-sibling's legal or biological father or mother as described in subparagraph (i) or (ii) of this paragraph for the purpose of placing the half-siblings together.
    - (B) Has been assessed, approved, and trained; and
    - (C) Has been determined able and willing to permanently provide for the safety, well-being, and special needs of the *child*.
- (2) An *outgoing Convention adoption* may involve a *child* who meets the requirements of one of the following subsections:
  - (a) The *child* is, or is eligible to become, a --
    - (A) United States citizen;
    - (B) Legal United States resident; or
    - (C) Dual United States and foreign citizen.
  - (b) The *child* is undocumented, but the *foreign authorized entity* of the child's birth country has determined that the *Convention* applies to the *adoption*.

- (3) *Adoption* planning for a *child* that may be the subject of an *outgoing Convention adoption* must comply with other Department rules, including Child Welfare polices: I-AB.4 "CPS Assessment", OAR [413-015-0400 to 413-015-0485](#); I-F.2 "Determining the Appropriateness of Adoption as a Permanency Plan for a Child", OAR [413-110-0300 to 413-110-0360](#); I-E.1.1 "Search for and Engagement of Relatives", OAR [413-070-0060 to 413-070-0087](#); I-F.6 "Sibling Adoption Placement Planning", OAR [413-110-0100 to 413-110-0150](#); I-G.1.2 Identification and Consideration of Potential Adoptive Resources", OAR [413-120-0700 to 413-120-0760](#); I-G.1.5 "Adoption Placement Selection", OAR [413-120-0000 to 413-120-0060](#); and I-G.1.10 "Supervision and Support of an Adoptive Placement", OAR [413-120-0800 to 413-120-0880](#).
- (4) Before a *child* may be placed in a prospective adoptive home in another *Convention country* the Department must meet the requirements of each of the following subsections:
- (a) Make a written determination that the *child* is eligible for *adoption*, that an *outgoing Convention adoption* is in the child's best interests, and that placement with the *prospective adoptive parents* is in the best interests of the *child*.
- (b) Complete or obtain a written *child* background study that includes information about the child's identity; upbringing; adoptability; ethnic, religious, and cultural background; social environment; family history; personal medical history; family medical history; and special needs.
- (c) Determine that the *prospective adoptive parents* meet the [definition of ~~relative~~ requirements of paragraph \(1\)\(c\)\(A\) of this rule](#) and document that determination.
- (d) Work with the *foreign authorized entity* in the *receiving Convention country* to determine whether the *prospective adoptive parents* are suitable, qualified, and eligible to adopt the *child*. To do so the Department must meet the requirements in each of following paragraphs:
- (A) Provide a copy of the child's background study to the *foreign authorized entity* in the *receiving Convention country*.
- (B) Obtain from the *foreign authorized entity* a comprehensive *home study* on the *prospective adoptive parents* that is prepared in accordance with the laws of the receiving country; meets the standards established by the Department using the Department's Hague Home Study template; addresses the capacity of the *prospective adoptive parents* to meet the child's safety,

permanency and well-being needs; and includes all of the following:

- (i) Information on the *prospective adoptive parents*, including: identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for *adoption*, ability to undertake an inter-country *adoption*, and the characteristics of a *child* for whom they would be qualified to care;
  - (ii) Confirmation that a *foreign authorized entity* has determined that the *prospective adoptive parents* are eligible and suitable to adopt and has ensured that the *prospective adoptive parents* have been counseled as necessary;
  - (iii) The results of a criminal background check; and
  - (iv) Information from competent references for the *prospective adoptive parents*.
- (C) Obtain written confirmation from the *foreign authorized entity* that the *prospective adoptive parents* have completed a minimum of 10 hours of Department-approved training that includes training on all of the following:
- (i) The effects of physical, emotional, and sexual abuse and neglect on a *child*;
  - (ii) The effects of drugs and alcohol on a *child*;
  - (iii) The effects of relocating a *child* and transition issues;
  - (iv) The significance of the birth family, include grief and loss issues;
  - (v) Openness in *adoption*;
  - (vi) Attachment process and attachment difficulties;
  - (vii) Positive behavior management; and
  - (viii) The specific needs of the *child* to be adopted by the *prospective adoptive parents*.

- (D) Provide notice to the *foreign authorized entity* studying the prospective adoptive family and providing required training to the *prospective adoptive parents* that the Department does not condone the use of corporal punishment.
- (E) Obtain from the *foreign authorized entity* a written, signed Supervision Agreement using the approved Department form that describes the responsibilities of the Department and *foreign authorized entity* with regard to the child's placement with the *prospective adoptive parents* and includes each of the following:
  - (i) Requirements for face-to-face visits with the *child* and the *prospective adoptive parents* at least every 30 days. These meetings must occur in the prospective adoptive home at least once every 60 days.
  - (ii) Requirements for face-to-face visits in the prospective adoptive home with other individuals living in the home who can provide information about the child's safety and well-being, as well as any concerns with the placement.
  - (iii) Requirements for contact at least once every 30 days with professional persons who have established a relationship to the *child* who can provide collateral observations regarding the child's functioning and the adoptive placement.
  - (iv) Minimum standards for written reports to be provided every 90 days on contacts with the *child*, prospective adoptive family, other family members, and collateral contacts.
  - (v) Confirmation that the *child* will be authorized to enter and reside in the receiving country permanently or on the same basis as the *prospective adoptive parents*.
  - (vi) Confirmation that the *foreign authorized entity* consents to the *adoption* of the *child* by the prospective adoptive family.
  - (vii) Confirmation that the *foreign authorized entity* agrees that the child's *adoption* by the prospective adoptive family may proceed.
- (e) After the *child* is fully free for *adoption*, establish proof of citizenship for the *child* and apply for applicable passports.

- (f) Submit to the *foreign authorized entity* written confirmation of the reasons the Department determined that the proposed adoptive placement is in the best interests of the *child*.
  - (g) Establish a direct means for the child's collateral contacts in the *receiving Convention country* to communicate any health or safety concerns about the *child* to the Department.
  - (h) Counsel and inform the *child*, as appropriate in light of the child's age and maturity, of the effects of the *adoption*, consider the child's views regarding the *adoption*, and document the discussion and how the child's views were considered.
  - (i) If the child's consent to the *adoption* is required, counsel and inform the *child* about the effects of granting consent, obtain written consent from the *child* in a manner that assures the consent is given freely and without any inducement by compensation of any kind, and document the discussion.
  - (j) Determine whether the *receiving Convention country* requires a *Hague custody declaration* prior to placement of the *child* in the home of the *prospective adoptive parents*, and, if required, apply for and obtain a *Hague custody declaration* from the U.S. State Department, as provided in OAR 413-120-0970.
  - (k) Assure that the child's move to the *receiving Convention country* will be made under secure and appropriate circumstances and in the company of the child's *prospective adoptive parents*, caseworker, or with another adult.
- (5) Following completion of all of requirements in section (4) of this rule and prior to the *child* traveling to the *receiving Convention country* for placement with the *prospective adoptive parents*, the Department must obtain an order from the court that makes findings --
- (a) In support of an application for a *Hague adoption certificate*;
  - (b) That the prospective adoptive placement is in the best interests of the *child*;
  - (c) Authorizing the *child* to travel to the foreign country for placement with the *prospective adoptive parents*; and

- (d) Authorizing release of the court order for purposes of affecting the child's placement.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005