

Secretary of State
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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 on

April 26, 2016 by the

Department of Human Services, Office of Child Welfare Programs

413

Agency and Division

Chapter Number

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to become effective April 26, 2016 through October 22, 2016.*

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

Rule Caption: *Amending rule about when the Department may waive the home study requirement for independent adoptions*

In the Matter of: *Temporary amendment of OAR 413-140-0032*

AMEND: 413-140-0032

ORS 109.309, 409.050, 418.005

Stat. Auth.

None.

Other Auth.

ORS 109.309, 409.010, 409.050, 418.005

Stats. Implemented

Rule Summary

The Department of Human Services is adopting temporary changes to OAR 413-140-0032 to allow the Department to waive the home study requirement when the birth mother retains parental rights as allowed under ORS [109.309\(7\)\(b\)](#).

Need for the Rules

OAR 413-140-0032 requires emergency amendment because the current rule prevents a home study waiver for a mother who has herself given birth to a child, regardless of genetic relationship. When this rule was originally drafted, the situation of in vitro fertilization was not very common and it was not necessary to spell out both biological and birth mother as two separate types of parents for purposes of granting a home study waiver. Without this amendment, mothers who have chosen to become mothers via in vitro fertilization, and

have given birth to their children, cannot then have their partner adopt the child without a home study. The amendment implements and clarifies the Department's authority pursuant to ORS [109.309\(7\)\(b\)](#).

Documents Relied Upon

None.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 413-140-0032 will result in serious prejudice to the public interest, the Department, and pending adoption cases involving a parent who is not the biological parent of the child but who is the birth mother with parental rights. The Department needs to proceed by temporary rule because the public, the Department, and families involved in pending adoptions will immediately benefit when the Department is able to waive the home study requirement in those cases to remove unnecessary barriers to family permanency.

413-140-0032

Waivers the Department May Issue

(Effective 01/01/14)

- (1) Waiver of the 90-day waiting period.
 - (a) In accordance with ORS 109.309 (10), the Department may waive the required 90-day waiting period for an adoption.
 - (b) Upon receipt of the adoption petition and accompanying documents, the Department will review and consider all items listed in OAR 413-140-0030 when determining whether to waive the required 90-day waiting period.
 - (c) The Department will provide written notification regarding the determination of the 90-day waiver request to the court, *petitioner* and, when applicable, the Oregon *licensed adoption agency* involved.
 - (d) The Department may reconsider the initial determination of the 90-day waiver request provided:
 - (A) All remaining items outlined in the Department's prior written notification have been sufficiently addressed; and
 - (B) The required 90-day waiting period has not expired.
- (2) Waiver of the Adoption Home Study.
 - (a) In accordance with ORS 109.309(7)(b), the Department has discretion to waive the home study requirement for some adoptions.
 - (b) The Department may consider a waiver of the *adoption home study* in an *independent adoption* when:
 - (A) One biological parent, including birth mother, or adoptive parent retains parental rights; ~~or~~
 - (B) The *petitioner* qualifies as a relative; ~~For~~ for the purpose of this rule, under a relative is an individual who meets the following conditions:
 - (i) At least one of the adopting petitioners is the biological or adoptive sibling or half-sibling, aunt, uncle, grandparent, great-aunt, great-uncle, or great-grandparent of the *child*; and either

- (ii) The *child* has lived with the *petitioner* since birth and for at least six months immediately prior to the petitioner's request to waive the *adoption home study* requirement; or
 - (iii) The *child* has lived with the *petitioner* on a continuous basis for at least one year prior to the petitioner's request to waive the *adoption home study* requirement.
- (c) The Department may consider waiving the *adoption home study* requirement in an *independent adoption* involving a *child* born to a *surrogate mother* when there is evidence documenting that the following conditions, as applicable, are met:
 - (A) At least one of the petitioners is a biological parent of the *child*; and
 - (B) When the *surrogate mother* is married:
 - (i) Her husband has consented to the adoption; or
 - (ii) There is a joint affidavit of non-paternity completed by the surrogate and her husband.
- (d) The following documents must be submitted to the Department before consideration may be given to a waiver of the *adoption home study* requirement:
 - (A) A Request for Waiver of the *Adoption Home Study* Form.
 - (B) Background checks as described in OAR 413-140-0065.
 - (C) A copy of the petition for adoption.
 - (D) Verification that the *child* being adopted shares a residence with the adopting *petitioner*.
 - (E) Additional information, when requested by the Department, to clarify any concerns that could compromise the safety, permanency or well-being of the *child* being adopted.
- (e) The Department does not waive the *adoption home study* requirement when there are safety, permanency, or well-being concerns that warrant completion of an *adoption home study*.
- (f) Any concerns that come to the attention of the Department regarding the ability of a *petitioner* to meet the standards set forth in OAR 413-140-

0033 may also be considered when determining whether the Department will waive the *adoption home study*.

- (g) Upon receipt of all requested documents listed in subsection (d) of this section, the Department will:
 - (A) Make a determination as to whether an *adoption home study* waiver is appropriate;
 - (B) Provide written notification of the Department's determination regarding the *adoption home study* waiver request to the court and *petitioner* or petitioner's attorney;
 - (C) Outline in written notification any remaining information the Department determines is needed to reconsider the petitioner's *adoption home study* waiver request; and
 - (D) Provide *petitioner* or petitioner's attorney with a list of Oregon licensed adoption agencies authorized to complete an *adoption home study* if the Department determines petitioner's request for waiver cannot be granted.

- (3) Waiver of the Placement Report.
 - (a) In accordance with ORS 109.309(8)(a), the Department has the authority to waive the *placement report* requirement.
 - (b) The Department must waive the *placement report* for an adoption in which one biological or adoptive parent retains parental rights.
 - (c) When a written request is received from the *petitioner*, the Department may waive the *placement report* for any of the following:
 - (A) An adoption for which the Department has waived the *adoption home study*;
 - (B) An independent or *out-of-state public agency adoption* in which the *petitioner* and the *child* are currently receiving services from the Department or a *licensed adoption agency* or have received services in the past 12 months and the Department or an Oregon *licensed adoption agency* provides a written recommendation that adoption is in the best interests of the *child*.
 - (C) When the adoptee is 14 years of age or older, has consented to his or her adoption, and an Oregon *licensed adoption agency* provides

a written recommendation that adoption is in the best interest of the *child*.

Stat. Auth.: ORS 109.309, 409.050, 418.005

Stats. Implemented: ORS 109.243, 109.309, 109.315, 109.328, 409.010