

<b>Policy Title:</b>	International Adoption and Special Immigrant Juvenile Status – <b>Temporary</b> OAR		
<b>Policy Number:</b>	I-G.1.14 413-120-0900 thru 0980		<b>Effective Date:</b> 6/30/10 thru 12/27/10

Approved By: *on file*

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### Reference(s):

- ORS 417.262
- ORS 417.265
- ORS 418.005; ORS 419B.529 – Implementing authority
- Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (PL 106-279)
- Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption
- CFR Title 22

### Form(s) that apply:

- CF, 253, State of Oregon Format/Outline for an Intercountry Home Study Request for Purposes of Adoption

### Rules:

#### **413-120-0900**

#### **Purpose**

These rules, OAR 413-120-0900 to 413-120-0980, describe:

- (1) The Department's responsibilities in cases that are subject to the requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (*Convention*) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA). The *Convention* and IAA apply to any case where a child who is a habitual resident of one *Convention country* has been, is being, or will be moved to another *Convention country* for the purpose of *adoption*. The *Convention* and IAA are intended to protect the rights of and prevent abuses against children, birth families, and adoptive parents involved in any *adoption* that is subject to the *Convention* and IAA and to ensure that such adoptions are in the best interests of the child.

- (2) The duty of the Department to enter into a formal agreement with the *foreign authorized entity* of the *receiving Convention country* for an *outgoing Convention adoption* to assure that the *prospective adoptive parents* are suitable and willing to adopt the child, support child safety, and assure the provision of needed services during the period of post-placement supervision prior to finalization of the *adoption*.
- (3) When the Department will consider and pursue *special immigrant juvenile status* for a child who was brought to the United States by a parent or legal guardian not for the purpose of *adoption*, does not have lawful permanent resident status (entered without inspection), cannot be returned safely to a parent or placed in the child's country of origin, and should remain in the United States pending finalization of a permanent plan other than return to parent.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

### **413-120-0905**

#### **Definitions**

The following definitions apply to OAR 413-120-0900 to 413-120-0980

- (1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.
- (2) "Central authority" means the entity designated as such by a *Convention country* that is authorized to discharge the duties imposed on Convention countries.
- (3) "Central authority functions" means any duty required to be carried out by a *central authority* or *foreign authorized entity* under the *Convention*.
- (4) "Convention" means the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoptions, concluded at The Hague, the Netherlands, on May 29, 1993, which went into effect in the United States on April 1, 2008.
- (5) "Convention adoption" means an *adoption* of a child who is a habitual resident in a *Convention country* by an individual in another *Convention country* when the child has been, is being, or will be moved between the two *Convention* countries for the purpose of *adoption*.
- (6) "Convention country" means a country that is a party to the *Convention*.
- (7) "Department" means the Department of Human Services, Child Welfare.
- (8) "Foreign authorized entity" means a foreign *central authority* or an accredited entity authorized by the foreign country to perform *central authority functions* in *Convention adoption* cases.

- (9) "Hague adoption certificate" means a certificate issued by the Secretary in an *outgoing Convention adoption* certifying that the child has been adopted in the United States in conformity with the *Convention* and IAA.
- (10) "Hague custody declaration" means a declaration issued by the Secretary in an *outgoing Convention adoption* declaring that custody of the child for purposes of *adoption* has been granted in the United States in conformity with the *Convention* and IAA.
- (11) "IAA" means the Intercountry Adoption Act of 2000, Public Law 106-279, 42 USC 14901 to 14954.
- (12) "Incoming Convention adoption" means a case in which a child who is a resident of another *Convention country* has been, is being, or will be moved to the United States for placement and *adoption*.
- (13) "Outgoing Convention adoption" means a case in which a child in the United States has been, is being, or will be moved to another *Convention country* for placement and *adoption*.
- (14) "Prospective adoptive parents" means the parents, family members, or other people who reside in the residence, or the physical home location of the family, who have been studied and approved by a *foreign authorized entity* to adopt a child in the legal and physical custody of the Department and with whom the Department has made an official decision to place the child in the family home for the purpose of *adoption*.
- (15) "Receiving Convention country" means a *Convention country* in with a child who is the subject of an outgoing *adoption* will be placed for purposes of *adoption*.
- (16) "Relative" has the meaning given that term in OAR 413-070-0063.
- (17) "Secretary of State" means the Secretary of the United States Department of State, the *central authority* for the United States.
- (18) "Special immigrant juvenile status" means the legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection.
- (19) "U.S. State Department" means the United States Department of State.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0910**

##### **Duty to Provide Information to Convention Case Registry**

- (1) Notwithstanding any other Department rule regarding the disclosure of information related to adoptions, the Department must provide all information to the U. S. State

Department that is required for registry reporting. This includes, but is not limited to, information on each of the following actions for a *Convention adoption*, either incoming or outgoing, pending or finalized by the Department:

- (a) A child immigrating to the United States for the purpose of *adoption*;
  - (b) A child emigrating from the United States for the purpose of *adoption*;
  - (c) Number of disruptions;
  - (d) Number of dissolutions; and
  - (e) Average length of time to finalization.
- (2) The Department must maintain a database of all Oregon, licensed, private agency *adoption* placements, disruptions, finalizations, and dissolutions. This information must be reported to the U.S. Department of Health and Human Services Administration for Children, Youth, and Families Children's Bureau.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0920**

##### **Adoption of a Child Immigrating to the United States (Incoming Convention Adoption)**

- (1) An *incoming Convention adoption* can involve a child who ---
- (a) Holds or is eligible for dual United States and foreign citizenship; or
  - (b) Is undocumented, but the *foreign authorized entity* of the child's birth country has determined that the *Convention* applies to the *adoption*.
- (2) The Department will cooperate with each applicable *foreign authorized entity* and comply with the requirements of the *Convention* and IAA with respect to each *incoming Convention adoption*.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0925**

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

- (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:
- (A) Is a *relative*;
  - (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-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 "Working with Relatives Toward Placement of Children", OAR 413-070-0060 to 413-070-0087; I-F.6 "Sibling Placement Planning in Adoption", OAR 413-110-0100 to 413-110-0140; I-G.1.5 "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0080; and I-G.3.2 "Post Legal Adoption Services", OAR 413-130-0150 to 413-130-0180.
- (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* 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 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) Minimum requirements regarding face-to-face visits with the child, the *prospective adoptive parents*, other individuals living in the home of the *prospective adoptive parents*, and other individuals who may have information about the child's adoptive placement.
  - (ii) Minimum standards for written reports on contacts with the child, prospective adoptive family, other family members, and collateral contacts.
  - (iii) 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*.
  - (iv) Confirmation that the *foreign authorized entity* consents to the *adoption* of the child by the prospective adoptive family.
  - (v) 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 413-120-0945.
  - (k) Assure that the child's move to the *receiving Convention country* will be made under secure and appropriate circumstances and document the arrangements that have been made.
- (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 making findings in support of an application for an *Hague adoption certificate* and allowing international travel for placement in the prospective adoptive home, finds that the prospective adoptive placement is in the best interests of the child, authorizes the child to travel to the foreign country for placement with the *prospective adoptive parents*, and authorizes 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

#### **413-120-0930**

#### **Transition, Travel, Placement, and Registration Requirements**

For an *outgoing Convention adoption*:

- (1) The Department is responsible for assuring that the child is fully prepared for transition to a new home, community, and country.
- (2) A component of transition is establishing that the region the child will travel to and reside in is approved as a safe place to travel by the U.S. State Department. The International Affairs and Diversity Program office serves as the liaison with U.S. State Department and the applicable Consular office and makes the determination about travel safety.
- (3) The child's move to the *receiving Convention country* must be made under secure and appropriate circumstances or in the company of the child's *prospective adoptive parents*.
- (4) The child must carry a regular passport from all countries in which the child is a citizen.
- (5) If the *receiving Convention country* requires a *Hague custody declaration*, the individual accompanying the child during travel must carry a copy of the *Hague custody declaration*.

- (6) After a child is placed in another country for the purpose of *adoption*, the Department must register the child with U.S. State Department as a United States citizen living abroad.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0940**

##### **Post-Placement Supervision**

- (1) Notwithstanding the provisions of OAR 413-120-0830 the Department may not consent to an *outgoing Convention adoption* until at least 6 months after the child has been placed with the *prospective adoptive parents*. This post-placement supervision period may not be waived.
- (2) The Department must keep the *foreign authorized entity* fully informed about the *adoption* process and the steps taken to complete the *adoption*.
- (3) The Department must comply with the requirements of each of the following subsections:
  - (a) Monitor the child's *adoption* placement by reviewing the 90-day written progress reports received from the *foreign authorized entity*.
  - (b) Assess, based on the information in the 90-day reports, whether the child is adjusting to and being integrated into the prospective adoptive family's household.
  - (c) Complete all necessary steps related to the *adoption* assistance process, if applicable.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0945**

##### **Finalization and Post-Finalization Duties**

- (1) After the post-placement supervision period has expired and before finalization of an *outgoing Convention adoption* the Department must submit to the *foreign authorized entity* proof of the Department's consent to the child's *adoption*.
- (2) An *outgoing Convention adoption* must be finalized in Oregon pursuant to ORS 419B.529.
- (3) Concurrent with finalization of the *outgoing Convention adoption* the Department must request an order from the court making all of the necessary findings required by the *Convention* and IAA to support an application for a *Hague adoption certificate*.

- (4) After finalization of the *outgoing Convention adoption* the Department must apply for a *Hague adoption certificate*. To apply for a *Hague adoption certificate* the Department must submit all of the following to the Secretary of State:
- (a) A completed *Hague adoption certificate* application on the form prescribed by the Secretary;
  - (b) A certified copy of the court's order finding that the child is eligible for *adoption*, that the *adoption* is in the child's best interest, granting the *adoption*, and verifying that the requirements of 22 C.F.R. 97.3 have been met; and
  - (c) Any other additional documentation and information required by the Secretary of State.
- (5) For an *outgoing Convention adoption*, the Department must request two original Hague adoption certificates. The Department provides one original *Hague adoption certificate* to the adoptive parents and enters one original *Hague adoption certificate* into the sealed *adoption* record.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005, 419B.529

#### **413-120-0950 Adoption Assistance**

To be eligible for *adoption* assistance a child who is the subject of a *Convention adoption* must be a United States citizen and meet all other eligibility requirements under Child Welfare Policy I-G.3.1 "Adoption Assistance", OAR 413-130-0000 to 413-100-0130.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

#### **413-120-0960 Disclosure to the Adoptive Family**

The Department must provide the *prospective adoptive parents* in an *outgoing Convention adoption* all the child summary and medical history, as defined in the Child Welfare Procedure Manual, in both the original format and translated into the primary language of the *prospective adoptive parents*.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

## 413-120-0970

### Hague Custody Declarations

- (1) When a child will be placed for *adoption* in a *Convention country* the Secretary of State may issue a *Hague custody declaration* acknowledging that legal custody of the child has been granted to *prospective adoptive parents* for the purpose of immigration and *adoption* in another *Convention country*. If the *receiving Convention country* requires a *Hague custody declaration* for placement of a child for *adoption* in the *receiving Convention country*, the Department must apply for and obtain a *Hague custody declaration* by completing the U.S. State Department's application and submitting the application with a court order with the proper findings supporting the application.
- (2) The *Hague custody declaration* must accompany the child when the child leaves the United States and travels to the other *Convention country*.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

## 413-120-0980

### Special Immigrant Juvenile Status

- (1) The Department may apply for *special immigrant juvenile status* for a child in the legal and physical custody of the Department if all of the following requirements are met:
  - (a) The juvenile court has determined that the child is a dependent ward and eligible for long term foster care;
  - (b) The child is a minor;
  - (c) The Department has determined that:
    - (A) The child cannot return to a parent due to abuse, neglect, abandonment, or similar circumstances; and
    - (B) It is not in the child's best interests to return to the child's country of nationality or the country of nationality of the child's parents;
  - (d) The permanency plan for the child has been changed by the court from return to parent to another permanent plan; and
  - (e) The child is not a United States citizen and does not have lawful permanent resident status.
- (2) Department staff must consult with and obtain approval from the Children, Adults and Families Diversity and International Affairs Program Manager before applying for *special immigrant juvenile status* for a child in the legal and physical custody of the Department.

- (3) To apply for *special immigrant juvenile status* the Department must:
- (a) Obtain a court order before the child's eighteenth birthday that makes the necessary findings to support an application for *special immigrant juvenile status*;
  - (b) Complete and submit all necessary U.S. Citizenship and Immigration Service forms and applications for *special immigrant juvenile status*.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

### **Procedure(s) that apply:**

Adoption of a Child by a Family in Another Country, Ch. 5 Sec. 15

[http://www.dhs.state.or.us/caf/safety\\_model/procedure\\_manual/ch05/ch5-section15.pdf](http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch05/ch5-section15.pdf)

### **Contact(s):**

- Beth Englander, (503) 947-5358

### **Policy History:**

- [12/28/10](#)