

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR of OAC 5101:2-53 (ICWA) no change rule

Rule Number(s): 5101:2-53-07

Date: 8/21/2013

Rule Type:

☐ New

☒ 5-Year Review

☐ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

OAC 5101:2-53-07, "Permanent surrender or parental consent to adoptive placement of Indian children" describes the responsibilities of the public children services agencies (PCSAs) and private child placing agencies (PCPAs) when an Indian child has been permanently surrendered for adoption by the parent or custodian. No changes were made to this rule.

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2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Statutory Authority
5101:2-53-07	5103.03, 5153.16

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes. Rule 5101:2-53-07 implements the Indian Child Welfare Act (ICWA), as reauthorized by the "Child and Family Services Improvement Act" of 2006. It is being filed as part of the five year review and enforces the provisions of the ICWA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The requirements of this rule do not exceed the federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of the regulation in rule 5101:2-53-07 is to ensure that permanent surrenders and parental consents to adoptive placements are conducted in accordance with state law and that cases subject to ICWA are processed in accordance with federal regulations.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Compliance with rule 5101:2-53-07 is not being tracked. Agencies are expected to comply with ICWA regulations whenever applicable. Agencies undergo compliance reviews once every two years as part of the recertification process and must comply with the requirements of this rule.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Rule 5101:2-53-07 was reviewed during the Partners For Ohio's Families (PFOF) Initiative. Stakeholders included county agency staff. The clearance period for this rule was 4/16/2013 through 4/30/2013.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The PFOF committee reviewing this rule made no recommendations for changes to this rule.

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- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

There were no other alternatives considered for rule 5101:2-53-07 as all parties involved were satisfied with the rule and it mirrors federal language.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Rule 5101:2-53-07 requires specific processes in order to ensure compliance with federal ICWA regulations.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

There is no duplication as this rule specifically implements the requirements of the ICWA in the event of permanent surrender or parental consent to adoptive placement of Indian children. No other rules address these specific requirements.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

When this rule is final filed, a transmittal letter will be generated explaining the rationale for the changes. The transmittal letters can be viewed at

[http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-id\(87890\)\)&locSource=input&docLoc=%24REP_ROOT%24%23node-id\(87890\)&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-id(87890))&locSource=input&docLoc=%24REP_ROOT%24%23node-id(87890)&version=8.0.0).

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Rule 5101:2-53-07 contains requirements for private child placing agencies. Requirements must be met to obtain and/or maintain certification by the State of Ohio. There are currently 26 certified private child placing agencies in Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

5101:2-53-07 – Requires the agency to notify the designated agent of a child's tribe or tribal court in the event of a permanent surrender of the child or parental consent to adoptive placement of the child.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Efforts have been made to obtain an example of the cost when a private child placing agency is required to implement ICWA regulations. ODJFS licensing staff and the Ohio Association of Child Caring Agencies (OACCA) were asked to obtain feedback from private child placing agencies that have had experience implementing these regulations. Licensing staff and OACCA have been unable to determine any private child placing agencies that have had experience implementing the ICWA regulations.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The adverse impact is necessary to ensure compliance with federal regulations.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions and no alternative means of compliance for rule 5101:2-53-07.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or civil penalties for non-compliance with this rule other than the forfeiture of certification through denial or revocation.

18. What resources are available to assist small businesses with compliance of the regulation?

ODJFS has regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of chapter 5101:2-53 when the agency determines that a child may have Indian heritage.