

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR Chapter 5101:2-9 CCN7442 Beck 12/13

Rule Number(s): 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08,
5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19,
5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28,
5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34, 5101:2-9-36

Date: **/**/13

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded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.

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Regulatory Intent

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

Please include the key provisions of the regulation as well as any proposed amendments.

OAC rule 5101:2-9-02, entitled "Staffing requirements" provides guidance to agencies for the requirements the agency needs to ensure the proper amount of staff supervision ratios for children placed in a residential facility. A new paragraph (G) was added to require a criminal record check for anyone over eighteen years of age that resides with staff members in a residential facility. A new paragraph (H) was added to require a medical statement be completed for anyone over eighteen years of age that resides with staff members in a residential facility.

OAC rule 5101:2-9-03, entitled "Staff development and evaluation" provides guidance to residential facilities regarding training for staff of the facility. Paragraph (A) was amended to clarify information about transfer of learning components for staff members in training. Paragraphs (D) and (E) were broken up for clarity. No substantive changes were made.

OAC rule 5101:2-9-05, entitled "Requirements for residential parenting facility and crisis care facility furniture, materials and equipment; diaper changing" provides guidance regarding the various equipment and furniture for residential parenting and crisis care facilities. No substantive changes were made.

OAC rule 5101:2-9-06, entitled "General safety" provides guidance for residential facilities for safety in and around the facility. Paragraph (E) was amended to clarify information regarding smoking at a residential facility. No substantive changes were made.

OAC rule 5101:2-9-08, entitled "Fire safety" provides guidance for children placed in residential facilities for fire safety issues. Paragraph (A) was amended from ninety days to six months for a facility to obtain a fire inspection. Paragraph (B) was amended to require a fire inspection upon recertification of a facility. Paragraph (I) was amended to require the facility to maintain portable heaters in accordance with manufacturer's instructions.

OAC rule 5101:2-9-10, entitled "Storage of hazardous materials" provides guidance for residential facilities for the storage of hazardous materials. No substantive changes were made.

OAC rule 5101:2-9-11, entitled "Admissions and admissions log" provides guidance to residential facilities for the keeping of the admissions log of the facility. Paragraph (D) was amended to allow children under the age of six to be members of the facility for up to fourteen days. Former paragraphs (E) and (F) referring to teenage mothers, were deleted.

OAC rule 5101:2-9-12, entitled "Service plans" provides guidance to residential facilities regarding the service plan for children placed in the facility. Paragraph (A)(2)(e) was amended to add that a civil service employee engaging in social work or professional counseling for a residential facility can be from a local public entity.

OAC rule 5101:2-9-14, entitled "Medications" provides guidance to residential facilities regarding the distribution of medications to the children in the facility. Paragraph (A) was broken up into several other paragraphs for clarity. No substantive changes were made.

OAC rule 5101:2-9-16, entitled "Visiting and communications" provides guidance to residential facilities regarding visitation and communication for the children in the facility. Paragraph (E) was amended to allow the child of a facility the opportunity to contact his or her attorney, caseworker, custodial agency worker, probation officer, court appointed special advocate (CASA) and guardian ad litem. The rule previously stated the child shall be allowed to confer with these individuals which mandated an uncontrollable variable for the facility.

OAC rule 5101:2-9-17, entitled "Child's money" provides guidance to residential facilities regarding safe keeping of money belonging to children in the facility. A portion of paragraph (B) was broken out into new paragraph (C) for clarity.

OAC rule 5101:2-9-19, entitled "Personal belongings, hygiene, socialization, and education" provides guidance to residential facilities regarding the items listed in the title of the rule. No substantive changes were made.

OAC rule 5101:2-9-20, entitled "Food and nutrition" provides guidance to residential facilities for the proper nutritional requirements of the menu provided to children in the facility. No substantive changes were made.

OAC rule 5101:2-9-21, entitled "Care, supervision and discipline" provides guidance to residential facilities regarding the care, supervision and discipline of the children in the facility. No substantive changes were made.

OAC rule 5101:2-9-22, entitled "Isolation, seclusion and restraint" provides guidance to residential facilities regarding the isolation, seclusion and restraint of children in the facility. Paragraph (A) was amended to ensure that physical restraint only be used in accordance with written approval of a certified or licensed health care professional and a certified or licensed practitioner of behavioral science. Other non-substantive changes were made.

OAC rule 5101:2-9-23, entitled "Notification and documentation of critical incidents" provides guidance to residential facilities on documenting and reporting critical incidents of children in

the facility. Paragraph (A) was amended to require notification to the custodian of the child be shortened from twenty-four hours down to one hour for the purposes listed in the paragraph.

OAC rule 5101:2-9-24, entitled "Child and family complaint policy and procedure" provides guidance to residential facilities regarding the required policies and procedures for child and family complaints against the facility. No substantive changes were made.

OAC rule 5101:2-9-25, entitled "Residential parenting facility and crisis care facility location and programmatic requirements" provides guidance to residential facilities on the location and the programmatic requirements for the operation of the facility. Paragraph (C) was amended to allow a minor parent to either be employed or actively seeking employment.

OAC rule 5101:2-9-28, entitled "Bedrooms" provides guidance to residential facilities regarding bedroom dimensions, furniture and other requirements for children of the facility. Paragraph (S)(3) was amended to no longer allow drop-side cribs to be used in the facility.

OAC rule 5101:2-9-29, entitled "Bathrooms" provides guidance to residential facilities regarding bathroom requirements for the children of the facility. No substantive changes were made.

OAC rule 5101:2-9-30, entitled "Kitchens and kitchen supplies" provides guidance to residential facilities regarding kitchen requirements for the children of the facility. No substantive changes were made.

OAC rule 5101:2-9-32, entitled "Transportation" provides guidance to residential facilities regarding transportation requirements for the children of the facility. Paragraphs (B) and (C) were reformatted for clarity. No substantive changes were made.

OAC rule 5101:2-9-34, entitled "Building approval" provides guidance to residential facilities regarding building requirements for changing or adding to the building. No substantive changes were made.

OAC rule 5101:2-9-36, entitled "Additional requirements for children's crisis care facilities" provides guidance to residential facilities that provide crisis care for children. Paragraph (G)(3) was amended to update staff ratios in a crisis care facility. The ratios are now one staff for every five children present during awake hours. For children ages zero to twelve, including the children of child care staff, there must be at least one awake child care staff person on duty during sleeping hours for every eight children.

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

Rule Number	Statutory Authority
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Rule 5101:2-9-02	ORC 5103.03
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Rule 5101:2-9-03	ORC 5103.03, 5153.16, 5101.141
Rule 5101:2-9-05	ORC 5103.03
Rule 5101:2-9-06	ORC 5103.03
Rule 5101:2-9-08	ORC 5103.03
Rule 5101:2-9-10	ORC 5103.03
Rule 5101:2-9-11	ORC 5103.03
Rule 5101:2-9-12	ORC 5103.03
Rule 5101:2-9-14	ORC 5103.03
Rule 5101:2-9-16	ORC 5103.03
Rule 5101:2-9-17	ORC 5103.03
Rule 5101:2-9-19	ORC 5103.03
Rule 5101:2-9-20	ORC 5103.03
Rule 5101:2-9-21	ORC 5103.03
Rule 5101:2-9-22	ORC 5103.03
Rule 5101:2-9-23	ORC 5103.03
Rule 5101:2-9-24	ORC 5103.03
Rule 5101:2-9-25	ORC 5103.03
Rule 5101:2-9-28	ORC 5103.03
Rule 5101:2-9-29	ORC 5103.03
Rule 5101:2-9-30	ORC 5103.03
Rule 5101:2-9-32	ORC 5103.03
Rule 5101:2-9-34	ORC 5103.03
Rule 5101:2-9-36	ORC 5103.13

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?

If yes, please briefly explain the source and substance of the federal requirement.

Rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36 do not implement a federal regulation and are not being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

These rules are not written as a requirement of Federal Law, nor do they exceed any Federal requirements. Each of the rules is specific to child welfare and follows state statute to ensure the safety of the children in substitute care.

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)?

For rule 5101:2-9-02, the purpose of the regulation is to ensure the requirements the agency needs to have in place for the proper amount of staff supervision ratios for children placed in a residential facility.

For rule 5101:2-9-03, the purpose of the regulation is to provide guidance to residential facilities regarding training for staff of the facility.

For rule 5101:2-9-05, the purpose of the regulation is to provide guidance regarding the various equipment and furniture for residential parenting and crisis care facilities.

For rule 5101:2-9-06, the purpose of the regulation is to provide guidance for residential facilities for safety in and around the facility.

For rule 5101:2-9-08, the purpose of the regulation is to provide guidance for children placed in residential facilities for fire safety issues.

For rule 5101:2-9-10, the purpose of the regulation is to provide guidance for residential facilities for the storage of hazardous materials.

For rule 5101:2-9-11, the purpose of the regulation is to provide guidance to residential facilities for the keeping of the admissions log of the facility.

For rule 5101:2-9-12, the purpose of the regulation is to provide guidance to residential facilities regarding the service plan for children placed in the facility.

For rule 5101:2-9-14, the purpose of the regulation is to provide guidance to residential facilities regarding the distribution of medications to the children in the facility.

For rule 5101:2-9-16, the purpose of the regulation is to provide guidance to residential facilities regarding visitation and communication for the children in the facility.

For rule 5101:2-9-17, the purpose of the regulation is to provide guidance to residential facilities regarding safe keeping of money belonging to children in the facility.

For rule 5101:2-9-19, the purpose of the regulation is to provide guidance to residential facilities regarding personal belongings, hygiene, socialization, and education.

For rule 5101:2-9-20, the purpose of the regulation is to provide guidance to residential facilities for the proper nutritional requirements of the menu provided to children in the facility.

For rule 5101:2-9-21, the purpose of the regulation is to provide guidance to residential facilities regarding the care, supervision and discipline of the children in the facility.

For rule 5101:2-9-22, the purpose of the regulation is to provide guidance to residential facilities regarding the isolation, seclusion and restraint of children in the facility.

For rule 5101:2-9-23, the purpose of the regulation is to provide guidance to residential facilities on documenting and reporting critical incidents of children in the facility.

For rule 5101:2-9-24, the purpose of the regulation is to provide guidance to residential facilities regarding the required policies and procedures for child and family complaints against the facility.

For rule 5101:2-9-25, the purpose of the regulation is to provide guidance to residential facilities on the location and the programmatic requirements for the operation of the facility.

For rule 5101:2-9-28, the purpose of the regulation is to provide guidance to residential facilities regarding bedroom dimensions, furniture and other requirements for children of the facility.

For rule 5101:2-9-29, the purpose of the regulation is to provide guidance to residential facilities regarding bathroom requirements for the children of the facility.

For rule 5101:2-9-30, the purpose of the regulation is to provide guidance to residential facilities regarding kitchen requirements for the children of the facility.

For rule 5101:2-9-32, the purpose of the regulation is to provide guidance to residential facilities regarding transportation requirements for the children of the facility.

For rule 5101:2-9-34, the purpose of the regulation is to provide guidance to residential facilities regarding building requirements for changing or adding to the building.

For rule 5101:2-9-36, the purpose of the regulation is to provide guidance and staff ratios to residential facilities that provide crisis care for children.

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

Rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36 will be measured against the criteria specific to the rule content.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The rules were presented to several interest groups including Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, representatives from county agencies and the Ohio Council of Behavioral Health and Family Services Providers. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that the Office of Families and Children (OFC) conducted during 2012. The meetings were held in person and also allowed for online input toward rule suggestions and changes. The group discussed and came to conclusions on each rule. The rules also went through the clearance process on October 29, 2013. There were a few comments made and responses were provided to the stakeholders. No additional questions were received.

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

The rules were reviewed and revised with the interested parties' involvement and language was developed that was agreeable to all. There were ten comments received during the clearance process. The first nine comments were from Kathy Yuzwa, a Licensing Specialist with ODJFS.

Ms. Yuzwa had several suggestions and questions. ODJFS provided a response to each question and concern.

The last comment was received from David Shinall from the Dayton Pilot Program Group Homes. Mr. Shinall commented on rule 5101:2-9-36 concerning the staff ratios. He was confused by thinking this rule was applicable to all residential facilities and he thought the ratio was more restrictive. ODJFS responded by explaining this rule was only applicable to crisis care facilities. The proposed ratio is actually less restrictive than the original language and should save crisis care facilities money by not requiring as many staff to be on duty.

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 rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36 as all parties involved were satisfied with the rules and because the rules are driven by statute.

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.

For rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36, ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the Department set standards to ensure every institution and association that receives, or desires to receive and care for children, or places children in private homes is effectively and appropriately administering proper standards for safety. ODJFS also, according to statute, must be satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with. These rules are also specific because the safety of the children in care dictates a specified process to ensure compliance.

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

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There is no duplication as the rules are specific to foster care agencies and no other rules address these specific issues. These rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they do not duplicate any existing Ohio regulations.

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.

The rules do not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

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

The rules of the Administrative Code in Chapter 5101:2-9 contain requirements for foster care agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-9-02 – The agencies adhering to residential facility requirements with regard to the requirements the agency needs to have in place for the proper amount of staff supervision ratios for children placed in a residential facility. There is a cost involved in hiring staff which cannot be quantified due to variables such as the hourly rates.

5101:2-9-03 – The agencies adhering to residential facility requirements with regard to training for staff of the facility. There is a cost involved in training staff which cannot be quantified due to variables such as the hourly rates, the cost of the trainer and facilities.

5101:2-9-05 – The agencies adhering to residential facility requirements with regard to various equipment and furniture for residential parenting and crisis care facilities.

5101:2-9-06 – The agencies adhering to residential facility requirements with regard to safety in and around the residential facility.

5101:2-9-08 – The agencies adhering to residential facility requirements with regard to fire safety issues.

5101:2-9-10 – The agencies adhering to residential facility requirements with regard to the storage of hazardous materials.

5101:2-9-11 – The agencies adhering to residential facility requirements with regard to the keeping of the admissions log of the facility.

5101:2-9-12 – The agencies adhering to residential facility requirements with regard to the service plan for children placed in the facility.

5101:2-9-14 – The agencies adhering to residential facility requirements with regard to the distribution of medications to the children in the facility.

5101:2-9-16 – The agencies adhering to residential facility requirements with regard to visitation and communication for the children in the facility.

5101:2-9-17 – The agencies adhering to residential facility requirements with regard to safe keeping of money belonging to children in the facility.

5101:2-9-19 – The agencies adhering to residential facility requirements with regard to personal belongings, hygiene, socialization, and education of the children placed in the facility.

5101:2-9-20 – The agencies adhering to residential facility requirements with regard to the food served and the proper nutritional requirements of the menu provided to children in the facility.

5101:2-9-21 – The agencies adhering to residential facility requirements with regard to the care, supervision and discipline of the children in the facility.

5101:2-9-22 – The agencies adhering to residential facility requirements with regard to the isolation, seclusion and restraint of children in the facility.

5101:2-9-23 – The agencies adhering to residential facility requirements with regard to documenting and reporting critical incidents of children in the facility.

5101:2-9-24 – The agencies adhering to residential facility requirements with regard to the required policies and procedures for child and family complaints against the facility.

5101:2-9-25 – The agencies adhering to residential facility requirements with regard to the location and the programmatic requirements for the operation of the facility.

5101:2-9-28 – The agencies adhering to residential facility requirements with regard to the bedroom dimensions, furniture and other requirements for children of the facility.

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5101:2-9-29 – The agencies adhering to residential facility requirements with regard to the bathroom requirements for the children of the facility.

5101:2-9-30 – The agencies adhering to residential facility requirements with regard to the kitchen requirements of the facility.

5101:2-9-32 – The agencies adhering to residential facility requirements with regard to the transportation requirements for the children of the facility.

5101:2-9-34 – The agencies adhering to residential facility requirements with regard to the building requirements for changing or adding to the building.

5101:2-9-36 – The agencies adhering to residential facility requirements with regard to the operation of crisis care facilities. The staffing requirements were actually lowered and should save agencies money. There is still a cost involved in staffing a children’s crisis care facility and the exact cost cannot be quantified due to numerous variable such as salaries and training expenses.

The adverse impact would only be relegated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. There may be a cost involved dependent on what is required to comply. ODJFS reached out to stakeholders from the Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, and the Ohio Council of Behavioral Health and Family Services Providers for specific cost data. Of the shareholders who responded, the response was not fiscal in nature. No cost data was provided. The shareholder stated “...the clear sense was that professional judgment and agency policy should “set the parameters” and that it was difficult to “assign” a cost to the rules as varying circumstances and indirect costs impact each case/instance differently.”

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

To ensure the safety of children in substitute care, the adverse impact of these rules is necessary.

Regulatory Flexibility

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

For rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29,

5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36, there is no alternative means of compliance.

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?

For rules 5101:2-9-02, 5101:2-9-03, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34 and 5101:2-9-36 there are no fines or civil penalties for non-compliance 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 a regional office with a licensing specialist that will be assigned to assist the agency in the entire application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.