

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR Chapter 5101:2-33 CCN 7515 02/14

Rule Number(s): 5101:2-33-80

Date: 4/9/14

**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☐ Rescinded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.

### **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.*

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OAC rule 5101:2-33-80, entitled "Retained applicant fingerprint database information exchange (Rapback)", provides guidance to agencies on the minimum requirements for the agency to process information received regarding the retained applicant database information exchange. No substantive changes were made.

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

Rule Number	Statutory Authority
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Rule 5101:2-33-80	ORC 5101.32
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**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.*

Rule 5101:2-33-80 does not implement a federal regulation and is 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.**

This rule is not written as a requirement of Federal Law, nor does it exceed any Federal requirements. This rule 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 5101:2-33-80, the purpose of the regulation is to ensure agencies adhere to the minimum requirements to process information received regarding the retained applicant database information exchange. This Rapback database allows for "real time" notification from BCII to ODJFS and then to the approving agency if a certified foster caregiver or any other adult in the household commits a crime. This allows quick action to re-evaluate the household and ensure the health, safety and welfare of the child is not in jeopardy. This is required by section 5101.32 of the Revised Code.

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

Rule 5101:2-33-80 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 rule was 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 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 rule also went through the clearance process on February 6, 2014 through February 20, 2014. There were no comments made during the clearance process.

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

The rule was reviewed and revised with the interested parties' involvement and language was developed and slightly altered to address the issues presented. There were no significant changes made as the rule is a requirement of statute.

**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 5101:2-33-80 as all parties involved were satisfied with the rule and because the rule is 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 rule 5101:2-5-13, 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. This rule is 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?**

There is no duplication as the rule is specific to foster care agencies and no other rules address these specific issues. This rule was reviewed by the legal staff at ODJFS prior to the clearance process to ensure it did 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 rule does 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.

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*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.*

Rule 5101:2-33-80 of the Administrative Code contains requirements for foster care agencies. There are eighty-eight county agencies and approximately one hundred private agencies affected. The private agency number can vary slightly due to agencies opening and closing monthly. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-33-80 – The agency adhering to certification requirements with regard to the minimum requirements for the agency to process information received regarding the retained applicant database information exchange.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. This process should take no more than 15 minutes.

#### **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 this rule is necessary.

This rule governs the implementation of Retained Applicant Database Information Exchange (RAPBACK) and in so doing sets the basic requirements for PCPAs to process and submit information for all certified foster or adoptive homes into the Statewide Automated Child Welfare Information System (SACWIS).

Background: In 2008, ODJFS implemented the Retained Applicant Fingerprint Database Information Exchange also known as RAPBACK through S.B. 163, 127th GA, bill's sponsor former Senator Tom Niehaus. This foster care reform bill was spurred by an incident in Clermont County known as the Marcus Fiesel case. In this case, a 3-year-old boy's foster parents bound him, tied him up and locked him in a closet where he died while they went to a family reunion in Kentucky for the weekend. Had the RAPBACK system been in place at that time, the outcomes may have been different, as that database would have disclosed that the foster parent had been arrested for domestic violence prior to the child's placement.

ODJFS worked in conjunction with the Office of the Attorney General, Bureau of Criminal Identification and Investigation, to create rules governing this database response system. Ohio Revised Code Section 109.5721 authorizes the Bureau of Criminal Identification and Investigation (BCII) to add certified foster caregivers, approved adoptive parents, and all other

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adults in their household to the RAPBACK database. Under RAPBACK, certified foster caregivers, approved adoptive parents, and all other adults living in their household are subject to a criminal background check. If a certified foster caregiver, approved adoptive parent or other adult in their household is fingerprinted in connection with a crime, BCII will immediately notify ODJFS. Upon such notification, ODJFS will inform the recommending or approving agency. RAPBACK is significant because the system provides agencies with valuable information regarding arrests for individuals in the database on a real time basis. The RAPBACK system allows state and county agencies to be notified immediately if a foster parent has been arrested for an offense that would preclude them from being certified as a foster parent. This allows child placing agencies to determine what, if any, action is necessary for the protection of the child.

### **Regulatory Flexibility**

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

For rule 5101:2-33-80 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 rule 5101:2-33-80 there is no fine 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.