



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job and Family Services

Rule Contact Name and Contact Information:

Mike Lynch Michael.Lynch@jfs.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

OCF: Model Foster Home Standards

Rule Number(s): 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32 and 5101:2-5-33

Date of Submission for CSI Review: 1/16/20

Public Comment Period End Date: 1/23/20

Rule Type/Number of Rules:

☐ New/\_\_\_ rules

☐ No Change/\_\_\_ rules (FYR? \_\_\_)

☒ Amended/\_\_\_ rules (FYR? X)

☐ Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- ☒ **a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business**
- ☒ **b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ **c. Requires specific expenditures or the report of information as a condition of compliance.**
- ☒ **d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

- 2. 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 5101:2-5-09, entitled "Personnel and prohibited convictions for employment," provides guidance to agencies on the process for the evaluation of background checks for staff and other agency personnel. New paragraphs (G), (H) and (P) were added to comply with new legislation requiring alleged perpetrator checks and more extensive criminal background checks for employees of agencies. All additions are the result of the passage of the Family First Prevention Services Act and HB 166 of the 133<sup>rd</sup> General Assembly.

OAC rule 5101:2-5-09.1, entitled "Criminal records check required for certain prospective employees and certified foster caregivers," provides guidance to agencies on the process for the evaluation of criminal background checks for foster caregivers and agency staff members. A new paragraph (Q) was added to require a search of the national sex offender registry for potential foster caregivers. All additions are the result of the passage of the Family First Prevention Services Act and HB 166 of the 133<sup>rd</sup> General Assembly.

OAC rule 5101:2-5-18, entitled "Waivers and Variances," provides guidance on the procedure for requesting a waiver of foster care rules. Paragraph (A)(1) was removed due to a legislative

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change which eliminated that specific language. This change is the result of the passage of HB 166 of the 133<sup>rd</sup> General Assembly.

OAC rule 5101:2-5-20, entitled "Initial application and completion of the foster care homestudy," provides guidance to agencies on the application and homestudy process for a foster care applicant. Paragraphs (K)(1), (K)(5), (K)(6) and (K)(9) regarding interviews, physical exams, immunizations and references for foster care applicants were amended due to legislative changes in the Family First Prevention Services Act.

OAC rule 5101:2-5-24, entitled "Foster home recertifications," provides guidance to agencies on the recertification requirements for foster caregivers. Paragraph (E)(3) was added to comply with the immunization requirement of the Family First Prevention Services Act.

OAC rule 5101:2-5-32, entitled "Occupancy limitations and accessibility," provides guidance to agencies on the occupancy limits in a foster home. Paragraph (B)(6) was amended to align the language concerning capacity exceptions with the Family First Prevention Services Act.

OAC rule 5101:2-5-33, entitled "Foster caregiver preplacement and continuing training," provides guidance to agencies on the requirements for the training of foster care applicants and the ongoing training of certified foster caregivers. New paragraphs (C)(1)(a)(vii), (ix) and (x) were added to require pre-placement training topics for CPR, first aid, medication administration and procedures for reporting child abuse or neglect. Paragraph (C)(2)(a)(v), (xv), (xvi) and (xvii) were added to include new training topics for family foster homes. All additions are the result of the passage of the Family First Prevention Services Act and HB 166 of the 133<sup>rd</sup> General Assembly.

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

Rule Number	Statutory Authority
Rule 5101:2-5-09	ORC 2151.86, 5103.03, 5103.0310, 5103.037
Rule 5101:2-5-09.1	ORC 2151.86, 5103.03, 5103.0310
Rule 5101:2-5-18	ORC 5103.02, 5103.03
Rule 5101:2-5-20	ORC 5103.03, 3107.033
Rule 5101:2-5-24	ORC 5103.03, 5103.18
Rule 5101:2-5-32	ORC 5103.03
Rule 5101:2-5-33	ORC 5103.03, 5103.0316

### **4. 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.***

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Rules 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33 were amended as a result of the passage of the Family First Prevention Services Act and HB 166 of the 133<sup>rd</sup> General Assembly.

Rules 5101:2-5-09 and 5101:2-5-09.1 implement background check requirements for agency employees and foster caregivers as a result of the Family First Prevention Services Act.

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

These rules do not 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.

**6. 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)?**

All of the rules are a result of the general rule writing authority regarding the safety of children in care as directed in section 5103.03 paragraph (A) of the Revised Code and to comply with Federal and State statute as described in recent legislation found in the Family First Prevention Services Act and HB 166 of the 133<sup>rd</sup> General Assembly.

For rule 5101:2-5-09, the purpose of the regulation is to provide guidance regarding the required background procedures for employees of agencies.

For rule 5101:2-5-09.1, the purpose of the regulation is to provide guidance on criminal background checks for employees and foster caregivers.

For rule 5101:2-5-18, the purpose of the regulation is to provide guidance regarding waivers for agencies and foster homes.

For rule 5101:2-5-20, the purpose of the regulation is to provide guidance on the completion of a foster care homestudy.

For rule 5101:2-5-24, the purpose of the regulation is to provide guidance for the recertification of a foster home.

For rule 5101:2-5-32, the purpose of the regulation is to provide guidance on the number of children allowed in a foster home.

For rule 5101:2-5-33, the purpose of the regulation is to provide guidance pre-placement and continuing training for foster caregivers.

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

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Rules 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33 will be measured against the criteria specific to the rule content. Licensing specialists will monitor compliance ensuring the health and safety of children in care and preventing those who are ineligible/prohibited to provide care.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

No.

**Development of the Regulation**

**9. 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.*

ODJFS has met with Ohio Children's Alliance (OCA), the Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings and on several other occasions during the past year to discuss the draft rules. Discussions were held in person, by phone, and through email communication. The groups discussed potential changes, provided feedback and came to conclusions on each rule.

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

The rules went through the clearance process from November 19, 2019 through December 3, 2019. There were comments received by ten stakeholders. After this clearance period one rule, 5101:2-5-09, was revised and went through the clearance process again from December 23, 2019 through December 30, 2019. There were comments received by three stakeholders. Rules 5101:2-5-20, 5101:2-5-24 and 5101:2-7-02 went back through clearance from January 10, 2020 through January 17, 2020 to add a religious exemption to the immunization requirements for foster caregivers and to allow the grandfathering of existing foster caregivers without having to comply with the immunization requirements. The stakeholder's names, comments and the ODJFS responses are listed below.

**The November 19, 2019 through December 3, 2019 comments were:**

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**Rachel Melampy of Butler County Children Services:** *JFS 01653 Confused about the medical form and the change for other household members not needing the second section completed. What documentation will we be collecting to confirm they had their medical screening completed? The new form indicates that section two is only needed for applicants.*

**Response:** *Thank you for your comment. The requirements are now different for a household member verses an applicant. Household members are only required to complete the first section. A physical exam is required for applicants, so section II is the requirement for the exam.*

**Angie Verity of Athens County Children Services:** *5101:2-5-24 (E)(9) Based upon background check audits the last two years, this rule needs to be revised to state that the criminal records check for foster caregivers and adult household members shall be conducted four years from the date of the previous background check was completed. The rule currently states "every four years prior to recommending a foster home for re-certification." This is not the standard that licensing agencies are being held to so the rule should be updated to reflect what is actually required during licensing audits.*

**Response:** *Thank you for your comment. Ohio Revised Code 2151.86 (A)(3) states: "Before a recommending agency submits a recommendation to the department of job and family services on whether the department should issue a certificate to a foster home under section 5103.03 of the Revised Code, and every four years thereafter prior to a recertification under that section, the administrative director of the agency shall request that the superintendent of BCII conduct a criminal records check with respect to the prospective foster caregiver and a criminal records check with respect to all other persons eighteen years of age or older who reside with the foster caregiver." The rule reflects the language in ORC.*

**Angie Verity of Athens County Children Services:** *5101:2-5-33(C)(2)(X) and (V) First aid and a child and adult CPR Training program. The rule specifies American red Cross, American Heart Association which are not training programs but actually certification programs. So are you requiring training or certification? Training implies we have discretion to use a resource that doesn't include certification which will be quite costly for agencies to comply with and keep up on.*

**Response:** *The Federal model standards do not require certification, only completion of training.*

**Angie Verity of Athens County Children Services:** *5101:2-5-33 (F)(3) I thought that the rule was being relaxed to allow for more online/DVD training? This is actually restricting it more. Seems contrary to what we have heard foster parents saying they need more flexibility for online and DVD training.*

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**Response:** *The rule is not being relaxed to allow additional outside the classroom training, but it is more lenient in allowing the training to occur via video conferencing which eliminate travel for the foster caregiver.*

**Angie Verity of Athens County Children Services:** *5101:2-5-33 (F)(5) This is confusing. How are we supposed to know if a training they completed online was with a live synchronous trainer/facilitator? Does it say this somewhere on a certificate? I just think that these two areas will be complicated and hard to track. i.e. was it a 1/4 of training hours training or a 50% training?*

**Response:** *The agency needs to specify details such as these in the ITNA. Anything the caregiver does outside the ITNA doesn't have to be used or accepted.*

**Tami Ward of Sandusky County JFS:** *1. If currently licensed foster parents who choose to not vaccinate their children and do not have a doctor recommendation are they forced to terminate licensure? Same for flu shot and whooping cough?*

*2. Swimming Pools - barrier on all sides = yard fencing?*

*3. CPR - certified or attended?*

*4. Medication administration - what specifically should be covered? Vague*

*5. What is considered "proper water temperature"?*

**Response:** *Thank you for your comments. 1. A foster home must be in compliance with the immunization requirements.*

*2. Swimming pools must have a barrier. For inground swimming pools a barrier can include a fenced in yard (fence around parameter of the house) with the house being the 4<sup>th</sup> "barrier" with safety device on door leading outside (i.e., high lock, alarm). For above ground pool, assure no ladder in pool or if a deck around the pool a locked gate/means to not have access to the pool; if off the house (deck off house with above ground pool) same as inground pool access from the house.*

*3. CPR training must be completed. Certification is not required. Online options are available from ARC to meet this requirement.*

*4. The medication administration topic will be covered in pre-placement training and will address how medication should be administered to children in foster care.*

*5. The rule has been clarified to show the proper temperature is not to exceed 120-degrees Fahrenheit. The information can be found here:*

*[https://inspectapedia.com/plumbing/Hot\\_Water\\_Temperature\\_Laws.php](https://inspectapedia.com/plumbing/Hot_Water_Temperature_Laws.php)*

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**Julie Lundy of Pike County Children Services:** *\*The CPR/First Aid training requirement needs clarification regarding whether it requires CPR certification.*

*\*Is alcohol required to be locked up or just above the refrigerator? (reasonably safeguarded)*

*\*What is proper water heater temperature?*

*\*If a foster home gets an insect infestation is it closed, do we move the kids, until they pay \$1300 to have bedbugs removed?*

**Response:** *Thank you for your comments. The rule specifies the training must be completed. Certification is not necessary.*

*There is nothing in the rule specifying it must be locked. This should be an ongoing assessment based on the child's age, development and any concerns with adolescent substance abuse issues.*

*See the response above about the proper water heater temperature.*

*Insect infestation would be handled the same as any other item of the safety audit.*

**Debby Wilson – Foster caregiver:** *Hello my name is Debby Wilson, My husband of 33 years & I have been foster parents for over 8 years & have often been requested by name by the counties that we have worked with over the years. We are passionate about helping children & making a difference in their lives & we work well with the biological families as well. We have 3 highly success college graduated adult children two of which are married, one grandchild, & another on the way. All of our biological children were selectively vaccinated with ONLY school required vaccines, no boosters, & no further vaccines after starting kindergarten. Our youngest went into the medical field & had to have titers proving that she was still immuned & she was without all the extra boosters. We also have an adopted 3 1/2 year old that is the joy of our lives & for medical reasons, can't be & won't be vaccinated. Our private agency is aware of our son's vaccination status & therefore gave us a heads up regarding the new proposed ODJF vaccine policies. At my request, they emailed me the exact proposal. FIRST, IF you are going to require all foster parents & their children be vaccinated, then it is only reasonable to require that ALL ODJF & ALL private foster agencies be subject to the same vaccine rule & requirement. They are the ones going into multiple homes each day, exposing themselves & various children to whatever they carry in from the previous home & putting them at a higher risk than a stay at home mom such as myself. SECOND, the state of Ohio currently accepts ALL three vaccine exemptions (Religious, Philosophical/conscious, or medical). Therefore, you cannot mandate foster families & their children to be vaccinated as it violates state law where we are allowed exemptions. This is what the Ohio law states: Denial, Harassment of, or Failure to Inform parents of their Right to Reasons of Conscience, Religious, or Medical Vaccine exemptions in the state of Ohio is Unethical. Rights to freedom of conscience/religion and informed consent are*

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*protected by the Ohio and US Constitutions, and state law specifically allows parents to decline any or all vaccines. ORC Ann. § 3313.671 Proof of required immunizations – exceptions. ODJF is both state & federally funded, therefore, by Ohio state law, parents are entitled to assert their exemption freedoms & refuse vaccination of their families. My question is, is ODJF going to allow us those freedoms in order to remain or become foster parents. I'm a stay at home & rarely leave my home so that I can care for our foster children. I am 53 years old & have only had the actual flu one time in my entire life Without a flu shot. My husband is 54 & has only had it twice, once from the actual flu vaccine in which he was hospitalized (he never got another) & the second time 20 years later. Our 3 older children (ages 23, 26, & 28 years old) have never to this day had the flu & have only had a stomach bug once in their lives. We have had 49 foster children ranging from 1 week to 17 1/2 years of age, in our care & none have ever gotten so much as a cold while in our care. Although 2 toddlers did come with colds when they arrived. We are a very healthy family that eats well, practice good hygiene, & regularly disinfect our home during cold & flu season. The precautions that we take far outweigh the efficacy of most vaccines, especially the ineffective flu shot that averages a 9-17% effectiveness. Heck without it, we have a 50/50% chance of Not getting the flu. I am requesting that ODJF abide by Ohio law when it comes to our biological & adoptive children, as well as our own bodies, & allow us to keep our legal state vaccine exemptions based on religion, philosophical/conscious, &/or medical exemptions. This is extremely important in our community & county as there are currently 9 really good foster families, including us, who are willing to let our licenses expire & 2 families or more that have decided to Not license until they know if this rule is going to go into effect or not. At this time, there has been a lot of push back within our agency & county on this issue & the state is already short on foster families so this new policy is going to make it even harder to attract & keep good foster homes. Please do NOT make the mistake of allowing this proposal to become a reality. Ohio needs good foster homes, don't make it any harder than it already is by using your authority to overreach & remove our parental freedoms to choose what we feel is in the best interest of our children & families. Losing current &/or future foster families because of ODJF potential vaccine policy & rule changes will Not be good for our community, county, or the state of Ohio. Foster families just want to help care for children for however long we are needed. We can't do that if you take our freedoms away. You either trust our decisions to do what is best for our families or you don't. Stop trying to micromanage us & allow us the freedom to do our jobs.*

*Sincerely,*

*Debby Wilson*

**Response:** *Thank you for your comment. The new federal model standards that are reflected in rule allows for an exemption to the immunization requirement if there is a health reason/risk for*

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*the individual. There is no state law regarding immunizations for foster homes, so, therefore, there are no exemptions in state law for foster homes. This is a Federal model standard.*

**Wendy Barcus of Perry County Children Services:** 5101:2-5-20 (K)(6)(a) Will the rule not allow for religious objections to vaccinations for the foster caregivers own children? (b) What if there is a shortage of the flu vaccination that year and some household members are not priority for receiving it?

**Response:** *Thank you for your comment. The new federal model standards that are reflected in rule allows for an exemption to the immunization requirement if there is a health reason/risk for the individual. There is no state law regarding immunizations for foster homes, so, therefore, there are no exemptions in state law for foster homes. This is a Federal model standard.*

**Susan Heisler of Beech Brook:** JFS 01348 Safety Audit Comments:

*1) What is considered to be "proper water heater temperature"?*

*2) No specific items needed for first aid supplies? Any recommendations on what you want them to have available?*

*3) Will fire inspection be updated to include working carbon monoxide detectors on each level and smoke alarms near all sleeping areas now as well as each level?*

**Response:** *The rule has been clarified to show the proper temperature is not to exceed 120-degrees Fahrenheit. The information can be found here:*

[https://inspectapedia.com/plumbing/Hot\\_Water\\_Temperature\\_Laws.php](https://inspectapedia.com/plumbing/Hot_Water_Temperature_Laws.php)

*We have no recommendations for the first aids supplies. It's up to the agency.*

*It hasn't been suggested to be added to the fire inspection form so, at this time, no.*

**Kelly Gruber of the Institute for Human Services:** *The Ohio Child Welfare Training Program (OCWTP) has thoroughly explored this issue and supports the rule and the FFPSA leadership council's recommendation to provide CPR and First Aid training without requiring certification. The OCWTP recommends the training be provided by a certified CPR/First Aid instructor or taken through an organization such as the American Red Cross or the American Heart Association.*

**Response:** *Thank you for your comment and support.*

**Jaqueline Fletcher of CCDCFS:** *Immunizations for homes certified after June 1, 2020: are there opportunities for a grace period for current applicants?*

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*Can the CPR/first aid class be completed online and is certification required? Will there be specific language added regarding who will be responsible for the added cost for agencies? Are there any class size restrictions?*

*50% of preservice may be completed via live synchronous training. If this is the case, how do we verify that applicants viewed and comprehend to the content of presentation?*

*Can agencies require all household members to have their physician complete the medical statement to ensure the safety, health or care of any foster child who may be placed in the home?*

*Any vehicle owned/leased by a foster parent is to be legal for transportation. Legal transportation includes having a valid license, insurance, and registration. Are agencies expected to request a copy of the applicant's vehicle registration?*

*Can page 3 under residential history be revised? The current application requests the city & state, when the entire address is required for SACWIS entry.*

**Response:** *Thank you for your comments. The June 1<sup>st</sup> date was set so that any applicants in the process would still have time to comply.*

*There is no certification required, just completion of the course. You should consult your licensing specialist for guidance regarding online courses. The cost is not addressed. There is nothing in rule regarding class size, so it would be up to the presenter.*

*The rule states that synchronous training is where the trainer or facilitator is available real time online to deliver the training. It is the same as classroom training except completed via the internet. So, any comprehension evaluation would be the same as a classroom training.*

*The rules are the minimum standards. Agencies may require more stringent items at their discretion.*

*It is up to the agency how to ensure compliance. You should also consult your licensing specialist for technical assistance.*

*The JFS 01691 has been revised to reflect the entire address.*

**The December 23, 2019 through December 30, 2019 comments were:**

**Mary Wachtel of the Public Children Services Association of Ohio:** *Thank you for the opportunity to comment on this rule. We appreciate that ODJFS has made additional changes since the rule was originally in Clearance in November 2019, however, we continue to have questions.*

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1) To whom do these background check requirements apply? Our understanding is that these requirements apply to residential facilities, including those run by PCSAs. However, some sections of the rule refer to the “agency” while other sections specify “in a residential setting.” See (G) which states that “Pursuant to section 5103.037 of the Ohio Revised Code, prior to hiring or appointing a person as board president, administrator or officer, an agency is to:.....” and (S) which states that “Effective April 1, 2020, an individual is not eligible for employment or approval as an employee, board president, administrator or officer in a residential setting if either.....”

Please clarify if these requirements apply to agencies overall or only to residential settings. The language in these sections should be aligned to reflect that clarification.

2) On what basis is the “summary report of a search of the uniform statewide automated child welfare information system” as required by ORC 5103.037 limited to the alleged perpetrator search as outlined in Section (P) of this rule?

3) Please clarify which provisions of FFPSA and the National Model Licensing Standards require these changes to background checks. In addition, please clarify if all of these changes are due to the FFPSA and National Model Licensing Standards or if other factors are driving these changes.

**Response:** Thank you for your comments.

1. These requirements are applicable to any agency certified by ODJFS. The term “agency” is a defined term in OAC 5101:2-1-01 (B) (12) “Agency” means a PCSA, private child placing agency (PCPA) or private non-custodial agency (PNA) **certified** by ODJFS. If a PCSA has no function certified by ODJFS, then they are exempt from this requirement. But, if a PCSA has a function that is certified by ODJFS, this rule would be applicable to the certified function.

2. ORC 5103.037 references ORC 5103.18, which is the alleged perpetrator search as described in paragraph (P) of the rule.

3. The requirements for the board president, officer or administrator is located in ORC 5103.037. The requirements for the additional background checks for employees are required by section 471(a)(20)(D) of the Social Security Act.

**Richard Tvaroch of Trumbull County Children Services:**

1. To whom do these background check requirements apply? Our understanding is that these requirements apply to residential facilities, including those run by PCSAs. However, some sections of the rule refer to the “agency ” while other sections specify “in a residential setting.” See (G) which states that “Pursuant to section 51013.037 of the Ohio Revised Code, prior to hiring or appointing a person as board president, administrator or officer, an agency is to: 26..

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*” and (S) which states that “Effective April 1, 2020, an individual is not eligible for employment or approval as an employee, board president, administrator or officer in a residential setting if either 26 26 ”*

*Please clarify if these requirements apply to agencies overall or only to residential settings. The language in these sections should be aligned to reflect that clarification.*

*2. For the few PCSAs that run PCSAs, please clarify how do the proposed changes relate to, and are impacted by ORC 5153.113, Fitness Of Child Welfare Applicant.*

*3. On what basis is the “summary report of a search of the uniform statewide automated child welfare information system ” as required by ORC 5103.037 limited to the alleged perpetrator search as outlined in Section (P) of this rule?*

*4. Please clarify which provisions of FFPSA and the National Model Licensing Standards require these changes to background checks. In addition, please clarify if all of these changes are due to the FFPSA and National Model Licensing Standards or if other factors are driving these changes.*

*Section L that is being removed from the rule:*

*"an agency may conditionally hire a prospective employee until the criminal records check ...is completed and the agency receives the results..."*

**Response:** *Thank you for your comments. For the majority of the comments 1, 2 and 3, see the answer above.*

*Regarding comment 2, and ORC 5153.11, I'm uncertain what you mean by “For the few PCSAs that run PCSAs.” If you are referencing a certified function of a PCSA, ORC 5153 is not applicable. ORC 5153 is applicable to functions of a PCSA that is not certified by ODJFS.*

*For comment 4: Paragraphs (A)(1) and (B)(1) of section 2151.86 of the Revised Code have been amended to require an agency to complete criminal background checks, including FBI checks, on any person under final consideration for employment as a person responsible for a child's care in out-of-home care. The results must be reviewed prior to hire (which required the elimination of paragraph (L) in the rule). This check must also be completed every four years thereafter. In addition to new employees, FFPSA revised the federal requirements in section 471(a)(20)(D) of the Social Security Act to require the same background checks for all current staff working in a residential setting, including but not limited to employees, volunteers, interns, and individuals who are subcontracted by the agency to work at the residential setting.*



*New alleged perpetrator searches for employees were driven by the federal requirements in section 471(a)(20)(D) of the Social Security Act and the state requirements in section 5103.0310 of the Revised Code.*

**Summer Repass of Sandusky CDJFS:** *Can the agency still conditionally hire employees while waiting for their background check results, or do they have to be received back before employment may begin?*

*Thank you,*

*Summer Repass*

*Training Officer*

*Sandusky CDJFS*

**Response:** *Thank you for your comment. No. Due to the change in paragraphs (A)(1) and (B)(1) of section 2151.86 of the Revised Code, the results must be reviewed prior to hire (which required the elimination of paragraph (L) in the rule).*

**11. 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.

**12. 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 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33 as all parties involved were satisfied with the rules and because the rules are driven by statute.

**13. 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 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33, 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,

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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. Performance-based regulations were not considered in the context of safety standards for children in custody, which are largely driven by state and federal statute

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

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.

**15. 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**

**16. 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 5101:2-5 contain requirements for foster care agencies that include eighty-eight public and over one-hundred private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

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5101:2-5-09 – The agencies adhering to policies specific to the process for the evaluation of background checks for staff and other agency personnel.

5101:2-5-09.1 – The agencies adhering to residential facility requirements with regard to the process for criminal background checks for agency employees and foster caregivers.

5101:2-5-18 – The agencies adhering to policies specific to the process of requesting waivers for foster homes and agencies.

5101:2-5-20 – The agencies adhering to the process of completing a homestudy for foster care.

5101:2-5-24 – The agencies adhering to the process for completing a recertification of a foster home.

5101:2-5-32 – The agencies adhering to the capacity limits in a foster home.

5101:2-5-33 – The agencies adhering to training requirements for foster caregivers.

Each agency operates differently, with differing numbers of providers to be certified, and varying numbers of employees available to conduct the requirements of provider certification and re-certification, and the exact cost impact can vary greatly based upon individual business structure. The adverse impact would be vary based upon staffing and time spent adhering to rule regulations and reporting the information necessary for rule compliance, employee time involved in compliance with the day-to-day activities and requirements of operating a foster care agency as well as a residential facility. An example would be the most extensive rule changes regarding background checks in rules 5101:2-5-09 and 5101:2-5-09.1. An agency that employs several people would incur a greater cost than a small agency with few employees.

**17. 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**

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

For rules 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33, there are no apparent alternative means of compliance or possible exemptions given the nature of the rules.

**19. 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?**

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For rules 5101:2-5-09, 5101:2-5-09.1, 5101:2-5-18, 5101:2-5-20, 5101:2-5-24, 5101:2-5-32, and 5101:2-5-33, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

**20. 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.