Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Chapter 5101:2-48 Adoption rules.

Rule Number(s): 5101:2-48-03, 5101:2-48-06, 5101:2-48-08, 5101:2-48-09, 5101:2-48-10, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, 5101:2-48-12.1 and 5101:48-12.2

Date of Submission for CSI Review: 10/21/2020

Public Comment Period End Date: 10/28/2020

Rule Type/Number of Rules:

- ☐ New/___ rules
- X Amended/__10__ rules (FYR? _yes_)
- ☐ No Change/____ rules (FYR? ___)
- ☐ Rescinded/____ rules (FYR?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.

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):

   X **a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business**

   X **b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   X **c. Requires specific expenditures or the report of information as a condition of compliance.**

   X **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 5101:2-48-03, entitled "Requirement of social and medical history," provides guidance to agencies regarding the requirement to obtain information for the social and medical histories of the biological parents. Form revision dates were removed throughout the rule.

OAC rule 5101:2-48-06, entitled "Assessor roles and responsibilities for foster care and adoption," provides guidance to agencies, attorneys, and courts that employ or contract with assessors to provide specific foster care and adoption services. Form revision dates were removed throughout the rule.

OAC rule 5101:2-48-08, entitled “Adoption inquiry,” provides guidance to agencies on the procedures an agency must take when contacted by a prospective adoptive applicant. Form revision dates were removed throughout the rule and the state foster care and adoption website link was added.

OAC rule 5101:2-48-09, entitled “Application process and preservice training,” provides guidance to agencies regarding the process and training required for persons seeking adoption approval. A new paragraph (I) was added to require a search of the national sex offender registry

for adoptive applicants and adult household members. Form revision dates were removed throughout the rule.

OAC rule 5101:2-48-10, entitled "Restrictions concerning provision of adoption services," provides guidance to agencies regarding the criminal records check requirement for an adoption placement approval. Name of bureau of criminal investigation updated throughout the rule. Paragraphs (C) and (D) were amended to remove the violation section codes, provide reference to the offense list in appendix A to rule 5101:2-7-02 and to clarify rehabilitation standards. Paragraph (I) was deleted since the minimum age of a foster caregiver and an adoptive parent are aligned to be eighteen years old.

OAC rule 5101:2-48-11, entitled "Approval of a foster home for adoptive placement," provides guidance to agencies for persons wanting to add adoption approval to an existing foster care certification. Form revision dates were removed throughout the rule and name of bureau of criminal investigation updated.

OAC rule 5101:2-48-11.1, entitled "Foster caregiver adoption of a foster child or sibling group who has resided with the caregiver for at least six consecutive months," provides guidance to agencies regarding the adoption process for a child or sibling group who has resided with a caregiver for at least six consecutive months. Form revision dates were removed throughout the rule. Paragraph (J)(4) was reworded to remove BCI and FBI reports and change to criminal record checks, so sex offender checks would be included.

OAC rule 5101:2-48-12, entitled "Completion of the adoption homestudy," provides guidance to agencies on the homestudy process for prospective adoptive applicants. Paragraphs (Q)(1), (Q)(8) and (Q)(11) were amended regarding interviews, physical exams and references for prospective adoptive applicants. A new paragraph (Q)(6) was added to require a search of the national sex offender registry for adoptive applicants and adult household members. New paragraphs (Q)(15) and (Q)(16) were added to require smoke alarms and carbon monoxide detectors in the applicant's home. Paragraph changes were amended due to legislative changes in the Family First Prevention Services Act and to keep alignment with foster care requirements. Remove from paragraph (W) information about submitting JFS form 01318 "SACWIS Private Agency Provider Request" since private agencies have provider access to enter homestudies in SACWIS. Form revision dates were removed throughout the rule.

OAC rule 5101:2-48-12.1, entitled "Adoption homestudy updates," provides guidance to agencies regarding how to update the adoption homestudy every two years. Paragraph (D) was revised, since JFS form 01318 "SACWIS Private Agency Provider Request" since private agencies have provider access to enter homestudies in SACWIS. Paragraphs (E)(1), (E)(7), (E)(10) and (F) regarding interviews and references for prospective adoptive applicants were amended due to legislative changes in the Family First Prevention Services Act and to keep alignment with foster care requirements. A new paragraph (E)(11) was added to require a search of the national sex offender registry for adoptive applicants and adult household members. Paragraphs (G) and (H) were amended to since private agencies have provider access to enter homestudies in SACWIS. Form revision dates were removed throughout the rule.

OAC rule 5101:2-48-12.2, entitled "Required notification and adoption homestudy amendments," provides guidance to adoptive families regarding when they need to notify the agency of certain changes, and gives guidance to agencies regarding how to complete amendments. Paragraphs (E)(4) and (E)(5) were amended since private agencies have provider access to enter homestudies in SACWIS. Form revision dates were removed throughout the rule.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Rule Number	Statutory Authority
Rule 5101:2-48-03	ORC 3107.09, 3107.17, 5103.03
Rule 5101:2-48-06	ORC 3107.014, 3107.015, 5103.03
Rule 5101:2-48-08	ORC 3107.032, 3107.033, 5153.166
Rule 5101:2-48-09	ORC 2151.86, 3107.033, 5103.03
Rule 5101:2-48-10	ORC 2151.86, 5153.166
Rule 5101:2-48-11	ORC 3107.031, 3107.032, 3107.033, 5153.166
Rule 5101:2-48-11.1	ORC 3107.032, 3107.033, 5153.166
Rule 5101:2-48-12	ORC 3107.032, 3107.033, 5103.03, 5153.166
Rule 5101:2-48-12.1	ORC 5103.03, 5153.166, 3107.033
Rule 5101:2-48-12.2	ORC 5103.03, 5153.166, 3107.033

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.***

Rules 5101:2-48-09, 5101:2-48-10, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, 5101:2-48-12.1, and 5101:2-48-12.2 were amended as a result of the passage of the Family First Prevention Services Act. The FFPSA required states to document whether their foster care requirements aligned with federal model standards. Due to Ohio's alignment with the standards, several changes were made to foster care requirements. Because Ohio is required by ORC 3107.033 to align homestudy content between adoption and foster care whenever possible, changes were made to these rules.

Rules 5101:2-48-03, 5101:2-48-06, and 5101:2-48-08 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.

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

   Rules 5101:2-48-09, 5101:2-48-10, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, 5101:2-48-12.1, and 5101:2-48-12.2 do not exceed any Federal requirements. The rules are specific to child welfare and follow state statute to ensure the safety of the children in substitute care.

   Rules 5101:2-48-03, 5101:2-48-06, and 5101:2-48-08 are not written as a requirement of Federal Law, nor do not exceed any Federal requirements.

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)?**

   The rules, which are promulgated pursuant to the requirements of the Revised Code, establish regulations for the minimum standards to ensure the safety and well-being of children being placed in adoptive homes and to comply with Federal and State statue as described in recent legislation found in the Family First Prevention Services Act.

   Rule 5101:2-48-03 ensures the well-being of adopted children by requiring that all available social and medical information be recorded for the child, the biological parents, and their ancestors. This assures there is sufficient information available to place the child in an appropriate adoptive home, allows the adoptive family to make an informed decision about accepting placement of the child, and allows appropriate decisions to be made regarding subsidies and future services for the family.

   Rule 5101:2-48-06 ensures that children are safe and well cared for by requiring the assessors that work with foster and adoptive applicants and parents to meet minimum educational and training requirements.

   Rule 5101:2-48-08 provides guidance to agencies with procedures to conduct when contacted by persons interested in being adoptive parents.

   Rule 5101:2-48-09 ensures the safety and well-being of children by outlining application requirements to establish minimum standards for those interested in adoption. The rule also prescribes preservice training requirements for applicants interested in adoption, to ensure they have the knowledge and skills to determine if adoption is the appropriate choice for their family.

Rule 5101:2-48-10 ensures the safety and well-being of children placed in adoptive homes by establishing minimum criteria for criminal background checks for all adults in the home.

Rule 5101:2-48-11 ensures the well-being of children who may become available for adoption as it prescribes the requirements and process for adding adoption approval to an existing foster care homestudy.

Rule 5101:2-48-11.1 ensures the well-being of a child or sibling group who may become available for adoption while residing with the foster caregiver for at least six consecutive months.

Rule 5101:2-48-12 ensures the safety and well-being of children by outlining requirements to establish minimum standards for those interested in adoption and having an approved adoption homestudy.

Rule 5101:2-48-12.1 ensures the safety and well-being of children by outlining requirements to establish minimum standards for updating an approved adoption homestudy every two years.

Rule 5101:2-48-12.2 ensures the safety and well-being of children by outlining requirements for adoptive families to notify the agency of certain changes and gives guidance to agencies regarding how to complete amendments to the adoption homestudy.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
   The success of these regulations will be measured against the criteria specific to the content in each rule in assuring the safe placement of children into adoptive homes.

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?**
   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

   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 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 2019 to discuss the draft rules for foster care licensing and keeping the adoption homestudy aligned. The adoption rules affected in the discussions were 5101:2-48-09, 5101:2-48-10, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, 5101:2-48-12.1 and 5101:48-12.2. Discussions were held in person, by phone, and through email communication. The groups mainly discussed potential changes for foster care licensing and how some items were and were not necessary for an adoption homestudy approval.

The rules went through the ODJFS clearance process on July 9, 2020 through July 23, 2020. There were comments received from five stakeholders regarding seven of the rules. There were no revisions needed for rules 5101:2-48-03, 5101:2-48-06, and 5101:2-48-08. Rule 5101:2-48-10 had a minor revision to add a colon in a sentence. Rule 5101:2-48-12.1 was revised to correct wording to be consistent. Rules 5101:2-48-09, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, and 5101:2-48-12.2 were revised for clarification on completing the national sex offender registry check. Additionally, rule 5101:2-48-09 had a spelling error that was corrected and 5101:2-48-12 removed language regarding, "if the agency has access to SACWIS."

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 external clearance process on September 15, 2020 through September 29, 2020 and there were no comments received.

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 5101:2-48-03, 5101:2-48-06, 5101:2-48-08, 5101:2-48-09, 5101:2-48-10, 5101:2-48-11, 5101:2-48-11.1, 5101:2-48-12, 5101:2-

48-12.1, and 5101:2-48-12.2 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.***

    No. ODJFS did not consider a performance-based initiative, but rather followed statutory language prescribing that the department set minimum standards to ensure the safety and well-being of all children entering adoptive homes.

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 adoption agencies and no other rules address these specific issues. ODJFS legal staff reviewed the rules to ensure there is no duplicative regulation in the Administrative Code.

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.**

    ODJFS licensing specialists and technical assistance specialists monitor agencies to ensure the regulations are applied consistently. Partners for Ohio's Families regional teams have also been developed to offer technical assistance and improve consistency statewide.

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; and**
    b. **Identify the nature of all adverse impact (e.g., 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 Chapters 5101:2-48 contain requirements for 122 adoption agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-48-03 – The timeframes involved in obtaining and recording social and medical information regarding the birth parent and their ancestors. The amount of time and cost to carry out this requirement would vary greatly depending on the amount of information known by the birth parent and the complexities of any medical or social history to be recorded. The information to be recorded on the JFS 01616 comes from interviews with birth parents and other close friends or family who may have information. The time could be between one hour and six hours, depending on how much the family would like to share with the assessor.

5101:2-48-06 – The timeframes involved in ensuring that assessors have obtained the appropriate licensure and/or employment qualifications. Training classes are offered free of charge at the regional training centers throughout the state. The training centers typically offer both Tier I and Tier II at least one time each per year per region. The training centers are required to canvas the counties periodically for training needs and have the ability to add additional training sessions, if they are needed. In addition, timeframes are also involved regarding having assessor staff who shall complete required training courses within the required timeframes on an ongoing basis. The time needed to complete these requirements would depend on how many assessors are on staff at the agency, and where they are in their training cycle.

5101:2-48-08 – The timeframes involved with agencies entering information into SACWIS and replying back to interested adoptive parents. The time and cost would depend on the number of interested adoptive parents inquiring.

5101:2-48-09 – The timeframes involved in obtaining the required information and documentation to initiate an adoption homestudy and the cost involved with ensuring adoptive applicants complete preservice training requirements. The costs and timeframes involved would vary depending on the number of applicants in preservice classes, as well as the number of staff employed at each agency that will be assisting in completing homestudies. Preservice typically takes anywhere from 4-8 weeks to complete, depending on the training schedule. The average homestudy takes 3-6 months to complete, depending on how pro-active applicant families are in submitting the required documentation and completing training classes.

5101:2-48-10 – The timeframes and cost involved with agencies adhering to federal and state statutes with regard to criminal background checks to be completed by those seeking adoption homestudy approval. Agencies have reported an estimated cost of $80 to complete both BCI and FBI simultaneously. Additional costs would need to be factored in regarding how many staff are assisting with capturing fingerprints, and how many applicants must be fingerprinted.

5101:2-48-11 – The timeframes involved in compiling and reviewing information from the foster parent file and the applicants to add adoption homestudy approval to a foster care homestudy. The amount of time and cost to carry out this requirement would be dependent on several factors, such as caseload, length of time the adoption applicants have been foster parents, the size of the foster care file, etc. The average length of time to add adoption to an existing foster home certificate could range from one to three months.

5101:2-48-11.1 – The timeframes involved in compiling and reviewing information from the foster home file to add an adoption approval to a foster care homestudy when a family intends to adopt a child or sibling group who is or has been residing with the foster caregiver for at least six consecutive months. Depending on the individual family circumstances and the level of experience the assessor has, this may take anywhere from 2 hours to 4 hours. If the foster family has several children in the home, or is open to adopt several more children, then the primary cost would be the time it would take to complete the large family assessment form. Once the review of documentation was complete, as well as the completion of the large family assessment, if applicable, then the final cost would be the time it would take the agency to complete the expedited homestudy form for adding adoption approval in cases such as these. This time would largely depend on the level of experience of the assessor, as well as the number of children the family currently has living in the home. If the adoption homestudy is approved, then the agency would be required to send an approval letter to the family, which would take only a few moments to complete and mail to the family.

5101:2-48-12 –The adverse impact would be based on the time and resources it takes for an agency to complete a homestudy. This would include the time to review the application and other documents submitted for the homestudy, the time to interview the applicants, as well as any other household members, complete a safety audit of the home, send in requests for abuse and neglect searches to be completed on adults in the home, send reference letters, and the time to communicate with the applicants regarding any additional documentation or concerns with the homestudy. If the family has many household members, then there would be additional time needed to complete the large family assessment. Depending on the

individual family circumstances and the level of experience the assessor has, this may take anywhere from 8 hours to 15 hours. Additional monetary costs would include the price of completing criminal background checks, which is approximately $60 for a combined BCI and FBI checks for each adult member of the home, the cost of the fire inspection, which varies among jurisdictions, and the cost of a well inspection, if the applicants have well water. This cost also varies among jurisdictions. Once all documentation has been received and reviewed, the final timeframe would include how long it takes the assessor to actually complete the homestudy document and enter the information into SACWIS. The costs and timeframes involved would vary depending on the experience and number of assessors employed at each agency assisting with completing homestudies. The average homestudy takes 3-6 months to complete, depending on how pro-active applicant families are in submitting the required documentation and having a flexible schedule to meet with an assessor to conduct face to face interviews.

5101:2-48-12.1 — The timeframes involved in obtaining the required information and documentation to update an approved adoption homestudy. The costs and timeframes involved would vary depending on the number of approved adoptive homestudies, as well as the number of staff employed at each agency that will be assisting in completing homestudies. Additional costs could include the timeframe to update the large family assessment, if changes occurring over the last two years require an updated assessment. The timeframes required to complete all of these things would depend greatly on the assessor's level of experience, as well as how many household members there are and what has happened in the two year approval span that must be summarized. The average homestudy update takes 1-3 months to complete, depending on how pro-active approved families are in submitting the required documentation and having a flexible schedule to meet with an assessor to conduct face to face interviews.

5101:2-48-12.2 – The timeframes involved in obtaining the required information and documentation to amend an approved adoption homestudy. The costs and timeframes involved would vary depending on the changes an approved adoptive parent notifies the agency of, as well as the number of staff employed at each agency that will be assisting in amending homestudies. The average homestudy amendment takes 1-3 months to complete, depending on how significant the change is in the adoptive family.

The adverse impact would only be regulated to time spent adhering to rule regulations and documenting or reporting the information necessary for rule compliance.

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 adoptive placements, 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.

No, there is no alternative means of compliance.

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?

For rules 5101:2-48-03, 5101:2-48-06, 5101:2-48-17, 5101:2-48-18, 5101:2-48-20, 5101:2-48-21 there are no fines or civil penalties for non-compliance other than the potential loss of adoption homestudy approval.

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

ODJFS has regional offices with technical assistance specialists and licensing specialists that will be able to assist agencies in completing adoption homestudies and providing required supervision visits and postfinalization services. Policy developers are also available to give technical assistance regarding the requirements of these rules.