



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Michael Lynch Michael.Lynch@jfs.ohio.gov

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

Non-discrimination rules

Rule Number(s): 5101:2-42-18.1 and 5101:2-48-13

Date of Submission for CSI Review: 12/17/21

Public Comment Period End Date: 12/24/21

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 2 rules (FYR? no)

Rescinded/___ rules (FYR?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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 5101:2-42-18.1 entitled **Non-Discrimination Requirements for Foster Care Placements** explains that race, color, or national origin (RCNO) may not be considered in the placement process for foster care placement. It outlines that what is prohibited and permitted in when selecting a foster care placement. It also details the steps that need to be taken should RCNO become a compelling factor in the placement process. In paragraph (J)(2) language was edited to comply with the CSI project to identify outdated Ohio Administrative Code methods of communication and ORC terms that require in-person interaction. The revisions dates for forms were removed throughout.

OAC rule 5101:2-48-13 entitled **Non-Discrimination Requirements for Adoptive Placements** explains that RCNO may not be considered in the placement process for an adoptive placement. It outlines that what is prohibited and permitted in when selecting an adoptive placement. It also details the steps that need to be taken should RCNO become a compelling factor in the placement process. Paragraph (F) was replaced, as the requirements were obsoleted per Procedure Letter No. 325 in January 2018. In paragraph (M)(2) language was edited to comply with the CSI project to identify outdated Ohio Administrative Code methods of communication

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

and ORC terms that require in-person interaction. The term “SACWIS” was changed to “Ohio SACWIS.” The revisions dates for forms were removed throughout.

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:	Authorized by:	Amplified:
5101:2-48-13	5103.03, 3107.031, 5153.166	5153.16, 3107.031
5101:2-42-18.1	5101.141, 5103.03, 5153.166	2151.412, 5153.16

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 5101:2-42-18.1 and 5101:2-48-13 do implement the Multiethnic Placement Act, Oct. 20, 1994, P.L. 103-382, as amended by Section 1808 of the Small Business Job Protection Act of 1996, Aug. 20, 1996, P.L. 104-188 (MEPA), and the Civil Rights Act of 1964 (Title VI).

The federal law prohibits delay or denial of the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved. Both rules outline the process that must be undertaken should RCNO become a compelling factor in the placement decision-making process.

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 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 foster and adoptive homes.

These rules ensure that foster and adoptive parents are not discriminated against based on race, color, or national origin, which is in the best interest of children. It also provides guidance to agencies on adhering to the federal requirements of the Multiethnic Placement Act. This rule helps to ensure that children’s needs are considered individually.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 and timely placement of children into foster and 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.

There were no stakeholders, as these rules were updated as part of a project by the CSI office to identify outdated Ohio Administrative Code methods of communication and ORC terms that require in-person interaction. There were no substantive changes made to the rule.

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

There were no stakeholders, as these rules were updated as part of a project by the CSI office to identify outdated Ohio Administrative Code methods of communication and ORC terms that require in-person interaction. There were no substantive changes made to 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 these rules as 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.*

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 being placed and all families that receive services.

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

There are no duplications as the rules are specific to foster care and adoption agencies and no other rules address these specific issues. These rules have been reviewed by the Partners for Ohio's Families Rule Review Board for duplication and approval, as well as 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.

ODJFS licensing specialists and technical assistance specialists monitor agencies to ensure the regulations are applied consistently.

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.

Rules 5101:2-42-18.1 and 5101:2-48-13 are applicable to 88 public and over 100 private agencies. Requirements must be met to obtain and/or maintain certification.

5101:2-42-18.1— The timeframes involve the completion of necessary forms should an agency feel that RCNO is a compelling reason in the placement decision-making process for a foster child. The forms may take 2-3 hours to complete along with the time to refer a child to the appropriate practitioner for further assessment. The nationwide average salary for a case worker is \$46,042/year or \$22.13/hour per the employment website, www.indeed.com. The cost to the agency may be \$44.26-66.39.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

5101:2-48-13-- The timeframes involve the completion of necessary forms should an agency feel that RCNO is a compelling reason in the placement decision-making process for a foster child. The forms may take 2-3 hours to complete along with the time to refer a child to the appropriate practitioner for further assessment. The nationwide average salary for a case worker is \$46,042/year or \$22.13/hour per the employment website, www.indeed.com. The cost to the agency may be \$44.26-66.39.

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

These rules protect the rights of potential and current foster and adoptive parents. The rules also ensure that placement is not delayed due to discrimination based upon race, color, and national origin. Most importantly, the rules ensure the individual needs of the child are being assessed to meet their needs.

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?

N/A

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

ODJFS has regional offices with technical assistance and licensing specialists that are able to assist agencies in understanding and adhering to these rules. Policy developers are also available to give technical assistance regarding the requirements of these rules.