

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC- FC / Adoption Policy

Rule Number(s): 5101:2-5-13, 5101:2-48-05, 5101:2-48-09, 5101:2-48-12, 5101:2-48-13,
5101:2-48-24

Date: 2/6/17

Rule Type:

| | | |
|-----------|---|---------------|
| New | X | 5-Year Review |
| X Amended | | Rescinded |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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This Business Impact Analysis covers six rules to be amended as a result of a request from ODJFS management to allow more time for agencies to complete and submit required adoption and foster care policies, as well as a need to update the references to the Multi-Ethnic Placement Act, and an effort to put forth rules and regulations that are clear and accurately reflect the revised code requirements they are based on. The following is a brief summary of the proposed changes:

OAC rule 5101:2-5-13, entitled "Required agency policies, plans and procedures" provides guidance to agencies regarding the policies and practices they are required to have in place. Paragraphs (A) and (B) were amended to allow agencies ninety days to submit any revised plans or policies to the Ohio Department of Job and Family Services (ODJFS). The reference to the Multiethnic Placement Act in paragraph (A)(2) was updated. Paragraph (A)(7) was revised to more accurately describe the notification requirements. Paragraph (E) was added to align with the language in the adoption policy rule.

OAC rule 5101:2-48-05, entitled "Agency adoption policy and recruitment plan" provides guidance to agencies regarding the policies they are required to have in place. A new section was added to paragraph (B)(3) regarding notification requirements. This requirement was previously only in the foster care policy rule, and was added to this rule for clarity. Paragraph (B)(14) was amended to add and clarify policy requirements in relation to state and federal adoption assistance. Paragraph (B)(18) was removed as it was not consistent with current law. The reference to the Multiethnic Placement Act in paragraph (C) was updated. Paragraphs (E) and (H) were amended to allow agencies ninety days to submit any revised plans or policies to ODJFS. Paragraph (I) was amended to state that the fee schedule must not discriminate against adoptive applicants as well as approved adoptive parents. Paragraph (J) was amended to align with the child-specific recruitment requirements in 5101:2-48-16.

OAC rule 5101:2-48-09, entitled "Application process and preservice training" provides guidance to agencies related to application and training requirements for those interested in adopting. The reference to the Multiethnic Placement Act in paragraph (N) was updated.

OAC rule 5101:2-48-12, entitled "Completion of the adoption homestudy" provides guidance to assessors regarding the requirements for an adoption homestudy. The reference to the Multiethnic Placement Act in paragraph (F)(1) was updated.

OAC rule 5101:2-48-13, entitled "Non-discrimination requirements for adoptive placements" provides guidance to agencies regarding the actions they can and cannot take in making a decision for an adoptive placement. The reference to the

Multiethnic Placement Act in paragraph (B) was revised. Paragraph (I) was revised for clarity.

OAC rule 5101:2-48-24, entitled "Agency adoption review procedures" provides guidance to agencies regarding the procedures for reviewing complaints from adoptive applicants and adoptive families. Paragraph (E) was removed because it was an inaccurate directive. Adoptive families do not have a right to a state hearing if they believe they were denied a placement due to geographic location, however they may request an agency review.

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

| Rule Number | Statutory Authority |
|-------------------|---|
| Rule 5101:2-5-13 | ORC 5103.03, 5103.54, 5103.0316 |
| Rule 5101:2-48-05 | ORC 3107.032, 5153.166 |
| Rule 5101:2-48-09 | ORC 2151.86, 3107.033, 5103.03 |
| Rule 5101:2-48-12 | ORC 3107.032, 3107.033, 5103.03, 5153.166 |
| Rule 5101:2-48-13 | ORC 5103.03, 5153.16, 5153.166 |
| Rule 5101:2-48-24 | ORC 3107.033, 5103.03 |

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.

Yes, these rules implement the federal Multiethnic Placement Act (MEPA) Oct. 20, 1994, P.L. 103-382, as amended by Section 1808 of the Small Business Job Protection Act of 1996, P.L. 104-188 (MEPA), and the Civil Rights Act of 1964 (Title VI). MEPA was enacted to lessen delays in permanency for children in out of home care. MEPA prohibits agencies from delaying or denying placements because of the race, color, or national origin (RCNO) of the child or the family, it prohibits agencies from considering RCNO as a basis for denying approval for foster care or adoption. MEPA also requires agencies to diligently recruit a diverse group of foster and adoptive parents to better reflect the racial and ethnic make-up of the children they have in care.

These rules also implement the Indian Child Welfare Act (ICWA) of 1978, 25 U.S.C. 1901. ICWA was enacted to give tribal governments jurisdiction over their own child custody proceedings and protect the Native American culture from the unnecessary removal of native children by state agencies.

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4. 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.

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)?

The purpose of the regulations in these rules is to set policy standards and procedures for agencies to follow regarding the placement of children in substitute care that will ensure their safety and well-being is met while under the responsibility of the agencies.

6. 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 appropriate practices are followed and children are placed in loving and safe families.

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.

These rules were presented to several interest groups including the Ohio Association of Child Caring Agencies (OACCA), the Ohio Adoption Planning Group (OAPG) and at the public and private agency coordinator's meetings at the Central Ohio Regional Training Center. The information in the rules was also presented at the foster care licensing quarterly meeting in September 2016, the Child and Family Service Plan adoption subgroup meeting in 2016, and sent out to all adoption contacts at both public and private agencies. The rules were posted on the Ohio Rule Review website in fall 2016, and went through the internal and external clearance process in November/December 2016. No comments were received, internally or externally.

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

The rules were revised as a result of ODJFS management feedback that agencies should be allowed more time to create and submit policies when there are changes in regulation requiring policy revisions. Per stakeholder input, the amount of time allotted agencies to submit revised

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plans and policies was increased to ninety days. Upon further review, it was evidenced that there were additional regulations needing updated to accurately reflect the intent of the requirement. No private agency stakeholders commented on these rules during the clearance process.

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 these rules as all parties involved in the process were satisfied with rule language outcomes and because the rules are driven by statute or federal guidance.

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.*

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 substitute care homes.

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

There is no duplication in other rules. The rules in this package were reviewed by internal and external partners for duplication and approval. The rule revisions were also reviewed by the internal legal staff at ODJFS prior to the clearance process to ensure they do not duplicate any existing Ohio regulations.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

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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

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The rules of the Administrative Code in Chapters 5101:2-5 and 5101:2-48 contain administrative requirements for all agencies, both public and private. Requirements must be met by private agencies to obtain and/or maintain certification.

The adverse impact on the business community potentially involves approximately 110 private agencies.

5101:2-5-13 – The adverse impact would amount to time spent creating agency policies, adhering to those policies, and reporting the information necessary for rule compliance. The specific revisions made at this time would actually lessen the adverse impact of the rule.

5101:2-48-05 – The adverse impact of the requirements of this rule would involve the time needed to create agency policies and plans to comply with applicable regulations. The specific revisions made at this time would actually lessen the adverse impact of the rule.

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

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homestudy takes 3-6 months to complete, depending on how pro-active applicant families are in submitting the required documentation and completing training classes.

5101:2-48-12- The adverse impact for this rule 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 BCII 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 either enter the information into SACWIS if the agency has the needed access, or submit the JFS 01317 recommendation and JFS 01318 to ODJFS if they do not have the needed access. This time will depend on how much experience the assessor has in completing homestudies and how well they have gotten to know the family. If the homestudy is approved, then the assessor would also be required to send an approval letter to the family, which would take minimal time to complete and send to the adoptive parents.

5101:2-48-13- The timeframes involved are in completing the required documentation of whether there is a justified reason for race, color, or national origin to play a part in the decision-making process. If it is determined there is adequate reason, then the agency must contract with a licensed professional for an independent assessment to confirm. This contract amount would depend on the type of licensed professional contracted with, as well as the hourly rate of the professional and time it would take him/her to review the child's materials and interview the child. This requirement is derived from the ODJFS Corrective Action and Resolution Plan as a result of the Multiethnic Placement Act (MEPA) and Title VI of the Civil Rights Act of 1964. It should be noted that the requirement to contract with a licensed professional agency is for custodial agencies only. When discussed with the ODJFS staff member who reviews compliance

in this area, it was learned that no private agency has had to complete this requirement since it became effective.

5101:2-48-24 – The adverse impact for this rule would include the timeframes involved in developing the written procedures the agency will implement when a complaint is received regarding adoption, as well as the timeframes involved in implementing those procedures, and reviewing the information to handle the complaint.

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

The regulatory intent of the rules justifies the adverse impact of the regulations in order to ensure that agencies have the most appropriate policies and procedures in place for how they will care for children under their responsibility. These policies and practices will ensure that children are safe and well cared for, as well as having their basic needs met.

Regulatory Flexibility

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

No, there are 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 these rules there are no fines or civil penalties for non-compliance from ODJFS. If significant noncompliance was discovered then it would be possible for an agency to have their license revoked, resulting in substantial business losses.

18. 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 creating adoption policies and making appropriate placement

decisions for children in their permanent custody. Policy developers are also available to give technical assistance regarding these requirements. These rule revisions will be presented to agencies along with other foster care and adoption rules during the summer of 2015, as the effective dates draw near.