



## 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:

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

Adoption and MEPA Rules

Rule Number(s): 5101:2-33-03, 5101:2-33-11, 5101:2-33-13, 5101:2-33-70

Date of Submission for CSI Review: 10/20/20

Public Comment Period End Date: 10/27/20

Rule Type/Number of Rules:

New/\_\_\_ rules

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

Amended/\_\_\_4\_\_\_ rules (FYR? \_\_\_yes\_\_\_)

Rescinded/\_\_\_ rules (FYR?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 5101:2-33-03 entitled "Procedure for complaints of alleged discriminatory acts, policies or practices in the foster care or adoption process that involve race, color or national origin,"** details the procedure that each public children services agency (PCSA), private child placing agency (PCPA), and private noncustodial agency (PNA) shall follow when a complaint of discrimination is filed. The revision dates were removed throughout.

**OAC rule 5101:2-33-11, entitled "Multiethnic Placement Act (MEPA) agency administrative requirements, "** details the responsibilities of the public children services agency and private child placing agency to designate MEPA monitors and the duties of the MEPA monitor. The rule also details the annual requirements of each private non-custodial agency, public children services agency, and private child placing agency to submit data and complete a Biennial Comprehensive Assessment. Paragraph (D) and (E) were deleted, as the requirements were obsoleted per Procedure Letter No. 325 in January 2018. The requirement for agencies to review and update their foster care and adoption recruitment plans annually

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was added. Wording in paragraph (F) was clarified. The revision dates were removed throughout.

**OAC rule 5101:2-33-13, entitled "Administrative procedures for falsification in adoption,"** provides guidance to agencies on the procedures that must be followed if the agency suspects a false statement or false documents has knowingly been submitted during the homestudy process. The rule details the steps to be taken if this is discovered before and after approval of the homestudy. Adoptive parent was changed to adoptive family throughout the rule for consistency.

**OAC rule 5101:2-33-70, entitled "Statewide automated child welfare information system (SACWIS) access,"** provides guidance to agencies on how to obtain access and on what information is to be entered into SACWIS. Additionally, the rule states who may be granted access to SACWIS and the responsibility of those with access to maintain confidentiality of the information within SACWIS. Wording in paragraph (E) was clarified. Paragraph (F) was removed due to redundancy, as a result lettering was changed as needed throughout the rule. 30 Days to Family specialist were added to the list of staff that could be granted access to SACWIS. There was a correction to a paragraph referenced from another rule. The revision dates 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 Number	Statutory Authority
Rule 5101:2-33-03	ORC 5101.141, 5103.03, 5153.16
Rule 5101:2-33-11	ORC 5101.141, 5103.03, 5153.166
Rule 5101:2-33-13	ORC 3107.033
Rule 5101:2-33-70	ORC 5101.134

**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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Rule 5101:2-33-11 does 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. Furthermore, child welfare services programs must ensure diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed. States are to include a provision for diligent recruitment in their title IV-B State Plans. The diligent recruitment requirement in no way mitigates the prohibition on denial or delay of placement based on race, color or national origin.

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

This is not applicable to rules 5101:2-33-03, 5101:2-33-13, nor 5101:2-33-70 as they do not implement a requirement of Federal Law, nor do they or rule 5101:2-33-11 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.

Rule 5101:2-33-03 provides a procedure for agencies to follow in the event an individual file a complaint of discrimination involving race, color, or national origin. The rule establishes timelines and outlines investigative steps. This rule ensures that foster and adoptive parents are not discriminated against based on race, color, or national origin, which is in the best interest of children.

Rule 5101:2-33-11 provides guidance to agencies on adhering to the federal requirements of the Multiethnic Placement Act. Additionally, the rule details the annual requirement of Public Children Services Agency to review and update their foster and/or recruitment plan within SACWIS by June 30th. This rule helps to ensure that foster care and adoptive placements are not delayed or denied based on race, color, or national origin, which is in the best interest of children.

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Rule 5101:2-33-13 provides guidance to agency's when they suspect a false statement has been made or false documentation has been provided during the homestudy process. The rule outlines the steps the agency must take when falsification occurs.

Rule 5101:2-33-70 protects the best interest of child and families being served by ensuring that only individuals with a need have access to the Statewide automated child welfare information system which contains sensitive and confidential information. It provides guidance to agencies on who may be granted that access.

**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 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 comments received on [www.ohiorulereview.org](http://www.ohiorulereview.org) during the public posting period regarding clarification on wording in rule 5101:2-33-03 and 5101:2-33-11. There were also comments on wording clarification and redundancy in rule 5101:2-33-70. The PCSAO legislative committee reviewed the rules and provided no input. There were no additional public comments made on the rule package.

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

There were comments received on [www.ohiorulereview.org](http://www.ohiorulereview.org) during the pre-clearance posting period that were reviewed. Comments received during the public posting period on [www.ohiorulereview.org](http://www.ohiorulereview.org) regarding clarification on wording in rule 5101:2-33-03 and 5101:2-33-11. There were also comments on wording clarification and redundancy in rule 5101:2-33-70.

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The comments made during this period had no impact on the initial draft. The rules went through the clearance process from 9/24/20 to 10/8/20 and received no comments.

**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.***

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 adoption agencies and no other rules address these specific issues.

**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 (PFOF) regional teams have also been developed to offer technical assistance and improve consistency statewide. All request

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for access to SACWIS are reviewed by Office Information Systems. MEPA is a federal law and instances of non-compliance can be met with financial consequences for the state.

### **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 5101:2-33 contain administrative requirements for agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The nationwide average salary for a case worker is \$46,042 or \$22.13/hour per the employment website, [www.indeed.com](http://www.indeed.com).

5101:2-33-03 --The timeframes involved include providing documentation of the right to file a complaint along with timeframes provided in the event that a complaint is filed. Once an individual makes an inquiry about becoming a foster or adoptive parent the agency has seven day to provide the written procedure to file a complaint involving race, color or national origin. The complainant is required to file a complaint with the agency, or ODJFS-Bureau of Civils Rights (ODJFS-BCR). Within two year from the date of the occurrence or from learning about the occurrence of discrimination. The ODJFS-BCR has 120 days to make any recommendations regarding the complaint. The cost incurred would relate to the time staff from the agency use to send the ODJFS-BCR the complaint, which would be less than one hour at an average hourly rate of \$22.13.

5101:2-33-11—The timeframes involve gathering information to review and update their foster and/or adoption requirement plan with SACWIS annually by June 30th. The cost incurred would relate to the time staff from the agency use to review the plan and make any needed changes that could vary depending on the changes made. This plan is already a administrative requirement, so reviewing the plan or making change could take 1-5 hours depending on edits, for a total of \$22.13-\$110.65.

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5101:2-33-13 —The timeframes involve the agency making their agency administrator aware of any falsification that occurs regarding the homestudy process. Additionally, if there is a child placed in the home the agency with custody of the child must be notified with 24 hours of the administrator being notified. All other timeframes involved the individual(s) who engaged in the falsification. The time spent completing the investigation will vary depending on the subject of the investigation. The time incurred may include travel time, the staff may spend 2-10 hours depending on gathering information, completing interviews, and documenting the information gathered. The total cost may average \$44.26-\$221.30.

5101:2-33-70 The timeframes involve the actives performed to obtain access to the Statewide automated child welfare information system. The timeframe involved completing a form and requesting access which would be less than one hour at an average hourly rate of \$22.13.

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

The rules protecting the rights of potential and current foster and adoptive parents. They also ensure that placement is not delayed due to discrimination based upon race, color, and national origin. Ensuring that homestudies are truthful and accurate assist agencies in making safe placements for children. Guidance about who may access the Statewide Automated Child Welfare Information system (SACWIS) and the use of information contained in the system is necessary for agency administrative functioning.

**Regulatory Flexibility**

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

No, alternative means of compliance based on agency size does comport with the subject matter and context of these 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?**

For rules 5101:2-33-03, 5101:2-33-13, there are no fines or civil penalties for non-compliance other than the potential loss of adoption homestudy approval.

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Rule 5101:2-33-70, misuse or unauthorized use of the confidential information housed within the Statewide Automated Child Welfare Information System has criminal penalties listed in section 5101.99 of the ORC and administrative penalties for Public Children Services Agencies.

**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. Policy developers are also available to give technical assistance regarding the requirements of these rules.