



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Education

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

Chapter 3301-37 of the Administrative Code regarding child day-care programs

Rule Number(s): 3301-37-01 Definitions; 3301-37-02 Compliance and Investigation;
3301-37-03 Program; 3301-37-04 Staff; 3301-37-05 Facility; 3301-37-06 Equipment and
Supplies; 3301-37-07 Policies and Procedures; 3301-37-08 Child Information; 3301-37-09
School food services; 3301-37-10 Behavior management/discipline; 3301-37-11
Management of communicable disease; and 3301-37-12 Diapering

Date of Submission for CSI Review:

Public Comment Period End Date: 11/25/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___X___ rules (FYR? _Y_)

Rescinded/___ rules (FYR?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.

Ohio law requires the state board of education to formulate and prescribe by rule minimum health and safety standards to be applied to preschool programs operated by local school district boards of education, county boards of developmental disabilities, educational service centers, joint vocational schools, community schools, and eligible chartered nonpublic schools. The rules regulate staff roles and responsibilities, indoor and outdoor facility dimensions and qualities, disease prevention and management, discipline policies and child safety requirements, among others.

Proposed amendments to the rules provide clarifications, reorganization based on stakeholder input, and align the content with updated made by the Ohio Department of Job and Family Services chapter 5104, as required by Ohio revised Code 3301.53(C).

The Common Sense Initiative (CSI) applies to the rules under review that regulate programs operated by businesses. While most entities the department licenses are not in this category, eligible chartered nonpublic and community schools would be. Eligible nonpublic schools are private schools that hold valid charters issued by the Ohio's State Board of Education and maintain compliance with the *Operating Standards for Ohio's Schools* (Chapter 3301-35 of the Administrative Code). These schools are not supported by local or state tax dollars and

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require families to pay tuition. As such, the following business impact analysis applies only to eligible chartered nonpublic and community schools.

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.

Section 3301.53 of the Revised Code specifically authorizes the State Board of Education to formulate minimum standards to be applied to preschool programs, including those operated by eligible nonpublic and community schools. Section 3301.53 also requires that the rules adopted by the State Board of Education meet or exceed the requirements of Chapter 5104., which are the statutes and rules adopted by the Ohio Department of Job and Family Services.

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.

Code of Federal Regulations 45, parts 98 and 99, declare that each state is allowed maximum flexibility in developing child care programs and policies that best suit the needs of the children and parents within the state.

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

The rules that set out who must obtain a license, what qualifications and training program personnel need to have, ratios and maximum class sizes by age, and what kind of environment must be provided, are established by each state pursuant to its law and, therefore, differ among states.

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 protect the health and safety of children served in care and education settings. Young children look to their parents, teachers, and care givers to meet their needs for safe environments in which to grow, develop, and thrive. Current brain research confirms the life-long impact the first five years has on a child's future education, relationships and earning power. Basic health and safety requirements provide the foundation for quality programs that in turn support the children they serve.

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

Annual on-site monitoring visits, on-going technical assistance and participation in continuous improvement efforts, including the creation, review and approval of corrective action plans provides benchmarks and measures related to the success of rules.

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An annual report provided to the Governor and General Assembly by the Office of Early Learning and School Readiness outlines important outcomes of licensing performance, including the number of programs receiving compliance visits. Violations occurring most frequently are summarized in the report to ensure they are addressed through guidance and technical assistance. The report is posted on the [department's website](#) each year for the public to review.

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.

The Department engaged stakeholders throughout the revision process. Specifically, State Support Teams, Child Care Resource and Referral Agency staff, and preschool providers through technical assistance calls, visits, and email communications. Licensing Specialists kept a record of suggested rule changes from programs throughout the years intervening five-year rule review and used those suggestions to develop revisions. The revisions were posted for public comment June 1 – July 1, 2020. A notification of opportunity to review revisions was sent directly to all programs licensed by the Ohio Department of Education.

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

All stakeholder input was considered when updating the rules. Among comments provided, none related to any potential adverse impact on business. All written comments from the electronic postings and interactions with licensed preschool providers were considered and subsequently incorporated into the drafts, as applicable. A small number of revisions were suggested, with the majority of public comment relating to requests for implementation technical assistance.

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?

The American Public Health Association (APHA) and the American Academy of Pediatrics (AAP) jointly published *Caring for Our Children: National Health and Safety Performance*

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Standards; Guidelines for Out-of-Home Child Care Programs. The publication was the product of a five-year national project funded by the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau (MCHB). The comprehensive set of health and safety standards contained within the report was a response to a multi-year effort by advocates to increase the quality child care. In the years that followed, experts in the field have repeatedly reaffirmed the need for these standards. A second and third edition of *Caring for Our Children* have been published that address new knowledge generated by increasing research into health and safety in early care and education programs. The increased use of the standards both in practical onsite applications and in research documents the value of the standards and validates the importance of keeping the standards current. *Caring for Our Children* has served as yardstick for measuring progress in the field, charts the future of care in education settings, and provides for a technical manual on best-practices.

The proposed regulation incorporates the ten basic health and safety standards highlighted in the aforementioned *Caring for Our Children* report including compliance and investigation, program, staff, facilities, equipment and supplies, policies and procedures, child information, school food services and management of behavior/discipline and communicable diseases.

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?

Alternatives were not considered as the rules are required by section 3301.53 of the Revised Code.

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. Performance-based regulations define the required outcome, but do not dictate the process the affected community must follow to achieve compliance. The regulations were developed to implement specific state mandates intended to maximize the health, safety and general well-being of children in care and education settings.

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

Besides chartered nonpublic and community schools, the department licenses childcare programs that are operated by public educational entities; therefore, the department reviewed Ohio's *Operating Standards for Ohio School Districts and Schools* (Chapter 3301.35 of the Administrative Code) to ensure that the child-day care rules did not duplicate regulations contained within those rules. Additionally, the Ohio Department of Job and Family Services

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regulates privately-operated child care programs and staff from the agency participated in the review of the rules in order to eliminate duplication and promote proper alignment.

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.

Technical assistance is available to programs through virtual trainings and posted checklists, guides, and forms that help programs comply with the regulations. These include but are not limited to: preparation for an on-site visit; completing forms related to staff and child requirements; selecting a curriculum; COVID-19 related health procedures; keeping children safe while learning and playing; and professional development training information. The department will provide assistance to the field on proposed changes to the rules. Additionally, training is provided for Licensing Specialists (field personnel) who conduct on-site visits to ensure consistency in reporting compliance. Licensing supervisors are made available to assist field personnel before, during and after on-site visits.

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.

Scope: Eligible nonpublic and community schools

- **3301-37-01 Definitions**
 - A crib must meet federal guidelines; an adverse impact would be the cost of new cribs that needed to be purchased by a program.
 - Cribs may range in price from \$130.00 - \$500.00. Most manufacturers offer a discount if an old crib is traded in towards a new purchase. Discounts may also be offered when certain quantities are purchased.
- **3301-37-02 Compliance and Investigation**
 - An application for a required preschool program license must be completed, using administrators’ time.
 - Average cost of administrative time: \$10.00-\$18.00 per hour

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- Administrative time needed: one hour to complete a three page application or a one page addendum.
 - The program must submit a copy of a fire inspection; food license or food license exemption; and building approval with its application.
 - The charge for a documented fire inspection approval can range from \$0.00- \$50.00.
 - The charge for a food license ranges from \$300.00 - \$600.00
 - The charge for a documented building approval can range from \$0.00 to approximately \$300.00
 - Reports and records must be submitted as requested by the department, staff and child records must be made available for inspection, and, when appropriate, a corrective action plan must be submitted for violations.
 - Average cost of administrative time: \$10.00-\$18.00 per hour
 - Administrative time needed: 4-6 hours per year
- **3301-37-03 Program**
 - Curriculum required
 - A curriculum may be purchased or developed by the program.
 - Purchased curriculum can range in price from \$60.00 to \$200.00.
 - Cots or mats for resting or napping are required for children attending programs for five or more hours per day.
 - Programs may request parents provide a mat for their child, which would offset the cost for a program.
 - Cots cost approximately \$130.00 for a pack of six.
 - Parent/teacher conferences are held twice per year.
 - Average cost of teacher time: \$8.75-\$18.00 per hour.
 - 30 hours of teacher time per year for a class of 20 children.
 - \$360.00-\$540.00 per year.
 - A parent handbook is required.
 - If printed and distributed, the cost of paper and printing would apply at a rate of \$20.00-\$35.00 per year for a class of twenty.
 - The handbook may be posted online, which would offset printing costs.
- **3301-37-04 Staff**
 - In-service Training
 - There can be a cost implication for in-service trainings for staff. However, there are many training opportunities that are free of charge that are provided by the state, including those provided for online. It would be up to the individual program to pay for a given training or to seek one out that is provided for free of charge.
- **3301-37-05 Facility**
 - Building approval to serve children under the age of five years old must be on file.
 - Local building authorities set their own cost.

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- The price of documented approval can range from \$0.00 to approximately \$300.00.
 - Annual fire inspection
 - Local authorities set the price of the fire inspection.
 - The price of documented approval can range from \$0.00- \$50.00.
 - Availability of a working phone.
 - \$25.00 per month is the estimated cost for a land line.
 - Safe indoor space of 35 square feet per child.
 - The program must provide classroom space through purchase or rental And cost will vary depending the location and condition of the facility.
 - Safe outdoor space 60 square feet per child.
 - The program must provide outdoor space through purchase or rental and cost will vary depending the location and condition of the property.
 - Any swimming pool or body of water two feet deep or more must be fenced or otherwise made inaccessible.
 - The cost of fencing varies with the type and style selected. Chain link fence costs approximately \$107.00 for each fifty-foot segment, not including gates, posts and labor.
 - The surface of any outdoor play space shall offer protection from falls. The cost of rubber mulch for a 20x20 playground space averages \$800.00.
 - Garden mulch is less expensive and would offset this expense.
- **3301-37-06 Equipment and supplies**
 - Indoor furniture/Classroom Materials
 - Average cost to equip one classroom to serve 20 children would range from \$7,000.00 to \$15,000.00 depending on the quality of material purchased, including tables, chairs, storage units, blocks, easels, materials used to learn about mathematics and science, play equipment and supplies. The cost of computers and other electronics is not included.
 - Outdoor equipment
 - Average costs can range from a few hundred dollars for balls, plastic scooters, pails, and shovels to \$35,000.00 for elaborate structures and play equipment.
 - Supplies
 - Cleaning and sanitizing supplies for the purpose of disease prevention may total an average of \$50.00 per year per classroom.
 - First aid supplies
 - \$10 to \$75.00 per year per classroom.
 - Protective mats
 - The average cost for a mat is \$120.00. The number of mats needed would depend on the type of indoor climbing equipment, the number of children, and the type of tumbling and play activities the program supports.
 - Electrical outlet covers
 - \$4.00 for 24 plugs
 - Potty chair if needed

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- \$22.00 per potty
- **3301-37-07 Policies and Procedures**
 - Time spent developing policies and procedures
 - The rules provide the structure for the development of policies and procedures needed to meet the requirements for posted documents, parent handbook, staff credentials, and health and safety. Sample documents are provided for on the department's website that assist a program preparing for an initial licensing visit.
 - Average cost of administrative time ranges from \$10.00 to \$18.00 per hour.
 - Administrative time needed: 24 hours for initial policies and procedures
 - Cost \$240.00-\$432.00 for initial
 - 4 hours per year for updates
 - \$40.00-\$72.00 for updates
 - Locked medication storage
 - Lock boxes are available for \$10.00-\$20.00
- **3301-37-08 Child Information**
 - Administrator and teacher time to review information
 - Time reviewing child information: four hours per class of 20 children per month, some of which is teacher time (3 hours per month) and some is administrative time (1 hour per month).
 - Average cost of administrative time: \$10.00-\$18.00 per hour
 - Average cost of teacher time: \$8.75-\$18.00 per hour
- **3301-37-09 School Food Services**
 - Food license
 - Cost \$300.00-\$600.00
 - Meals and snacks
 - Parents may provide snacks or pay for meals and snacks.
 - Discounts and/or reimbursements are available when program is part of the federal food program.
 - If the program supplies the snacks, average daily cost of snacks for a class of 20 children may range from \$10.00-\$14.00 depending on the food that is served
 - Average daily cost of snacks for a class of 12 infants and toddlers may range from \$6.00-\$10.00 if provided by the program.
 - Average daily cost of meals for a class of 20 children may range from \$30.00-\$48.00 depending on the food that is served and economy of scale when class is part of a program with larger number of students.
 - Average daily cost of meals for a class of 12 infants and toddlers may range from \$18.00-\$28.00 if provided by the program.

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- **3301-37-10 Behavior management/discipline**
 - No cost implication. This section details requirements that must be in policy.
- **3301-37-11 Management of Communicable Disease**
 - No cost implication. This section details requirements that must be in policy.
 - With the global pandemic of COVID-19, the Departments of Education and Job and Family Services have made grant money available to licensed programs to off-set costs of extra cleaning, barriers, distancing, and operating with fewer children. The pandemic has cost these programs money, but the state agencies have provided over \$60 million dollars since June 2020 to help with the costs.
- **3301-37-12 Diapering**
 - Diapering supplies, when needed, include :
 - changing table: \$100.00 per class room
 - changing table paper: \$10.30 per roll (14.5inches by 225 feet)
 - gloves: \$59.00 for 1,000 gloves
 - Container that can be sanitized for used diapers: \$20.00-\$80.00

The chart that follows attempts to summarize many of the costs associated with the requirements set forth in the rule package. However, the variables created by differences in approach to meeting the requirements on the part of programs do not allow for a range of possible costs of “doing business.” Additionally, some items relate only to start-up and are purchased once and occasionally replaced (e.g. cribs, cots, tables, chairs, changing tables) whereas other cost items (e.g. meals, snacks, gloves, first aid supplies) are purchased on a daily or otherwise frequent basis.

Cost Categories	Partial and approximate costs for Infant/Toddler class for 12 children	Partial and approximate costs for Preschool class for 20 children
Cribs	\$1560.00-\$6,000.00	n/a
Cots	n/a	\$0.00-\$435.00
Completion of the License Application	\$10.00-\$18.00	\$10.00-\$18.00
Fire Inspection	\$0.00-\$50.00	\$0.00-\$50.00
Food License	\$300.00-\$600.00	\$300.00-\$600.00
Building Approval	\$0.00-\$300.00	\$0.00-\$300.00
Reports and Records Maintenance	\$10.00-\$18.00	\$40.00-\$108.00
Curriculum	\$0.00-\$200.00	\$0.00-\$200.00
Parent/Teacher Conferences	\$216.00-\$324.00	\$360.00-\$540.00

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Handbook	\$0.00-\$18.00	\$0.00-\$35.00
Protective Playground Cover	\$0.00-\$800.00	\$0.00-\$800.00
Classroom Materials and Supplies	\$4,200.00-\$9,000.00	\$7,000.00-\$15,000.00
Outdoor play Area	\$200.00-\$35,000.00	\$200.00-\$35,000.00
Cleaning Supplies	\$10.00-\$75.00	\$10.00-\$75.00
Tumbling/Protection Mats	\$120.00	\$120.00
Outlet covers	\$4.00	\$4.00
Potty Chairs	\$22.00	\$0.00
Policies and Procedures	\$42.00(updates)- \$432.00(initial)	\$42.00(updates)- \$432.00(initial)
Locked Medication Container	\$20.00-\$80.00	\$20.00-\$80.00
Time reviewing Child Information	\$120.00-\$216.00 admin/year \$274.00-\$640.00 (teacher/year)	\$120.00-\$216.00 admin/year \$274.00-\$640.00 (teacher/year)
Meals	\$18.00-\$28.00 per day for a class of 12 infants and toddlers to the extent they consume a diet beyond formula.	\$30.00-\$48.00 per day for a class of 20 preschools
Snacks	\$0.00-\$10.00 dollars depending on what is served and if parents supply.	\$0.00-\$14.00/day for a class of 20 preschoolers depending on what is served and if parents supply the snack
Diapering: changing table, changing table paper, container for soiled diapers, gloves	\$600.00-\$800.00 /year	n/a

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

The rules ensure the basic health and safety of children and are required by statute.

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Regulatory Flexibility

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

Yes. Section 3302.07 of the Revised Code authorizes the State Superintendent of Public Instruction to waive specific statutory provisions and rules to implement a proposed innovative education pilot program (IPP).

By definition, “innovative education pilot program” means a practice new to the district/building (innovative) that requires a limited period (pilot) to implement fully and can be sustained by the district/building after the allowable waiver period has expired.

While some rules can be waived, pursuant to section 3302.07 of the Revised Code, statutes and rules related to the employment of staff; the education of children with disabilities; and the health and safety of students cannot be waived. Any waiver application for preschool rules must be approved by the department.

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?

A corrective action plan is required from the program when a violation is found. However, for minor violations, specifically those related to paperwork, on-the-spot technical assistance is offered to help programs achieve compliance.

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

Information is available on the [department's website](#). This site is the home for information related to children in preschool and provides important updates for programs regarding child development, curriculum, program resources and professional development opportunities.

Technical assistance can be accessed by phone or email from the Office of Early Learning and School Readiness, with contact information, by region, provided at the link above. Consultants who conduct on-site visits provide specific and in-person technical assistance at least annually. Webinars are offered on specific topics and also offer updates on policies and procedures.