



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: 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):

OFA: 2021 Child Care Day Camp Pandemic Rule

Rule Number(s): 5101:2-18-03.1

Date of Submission for CSI Review: 2/1/21

Public Comment Period End Date: 2/8/21

**Rule Type/Number of Rules:**

New/ 1 rule

Amended/        rules (FYR? No)

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Rescinded/        rules (FYR?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

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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.*

5101:2-18-03.1 “Transitional Pandemic Requirements for Approved Child Day Camps” is a new rule that is being proposed to define transitional pandemic requirements for approved child day camps with the following guidelines: Approved child day camps are to follow all of the approval requirements of Chapter 5101:2-18. The child day camp is to follow updated handwashing procedures for administrators, child day camp staff members, employees, and children. The child day camp may use non-permanent sinks to meet the handwashing requirements of this chapter. The child day camp is to also assess for temperature and the COVID-19 symptoms listed in appendix A to the rule and follow all isolation or quarantine protocols. Isolation or quarantine protocols will be completed in coordination with the local health department or in compliance with the Ohio department of health (ODH) and United States centers for disease control and prevention (CDC) guidelines. The child day camp will ensure that all administrators, child day camp staff members, employees, and children wear a face covering that covers the individual’s nose and mouth while indoors, unless not medically or developmentally appropriate. The child day camp provider will report all COVID-19 positive tests to their local health department and to ODJFS. There are new procedures if the day camp needs to divide a room into smaller spaces to serve multiple groups of children. The transitional pandemic rule is valid until the governor of Ohio rescinds the state of emergency and/or directs ODJFS to return to full child day camp requirements.

**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.**

5104.21, 5104.22

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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.*  
No, these rules do not implement a federal requirement.
5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**  
These regulations 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)?**  
This rule, promulgated pursuant to the requirements of the Ohio Revised Code, establishes operating, health and safety guidelines during the COVID-19 pandemic for approved child day camps. The rule establishes new permanent transitional pandemic regulations for child day camps.
7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**  
The success of these regulations is determined during inspections conducted at the initial issuance of approval and at least once each summer, through the monitoring of incident reports submitted by regulated providers and through complaint investigations. Stakeholders also provide continuous input into the regulation and their ability to comply with the rules.
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.*  
Not applicable.

### **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 Child Care Advisory Council (CCAC) consists of twenty-two voting members appointed by the director of Ohio Department of Job and Family Services as prescribed in section 5104.08 of the Ohio Revised Code. CCAC reviewed the rules on 1/12/2021. Comments were received and reviewed for consideration.
- These rules were also available for the public clearance period from 1/14/2021 through 1/28/2021.
10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

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CCAC comments included that handwashing requirements for staff seemed excessive and suggested language changes for consistency throughout the rule. These comments, as well as any comments received during the public Clearance period, were taken into consideration prior to original filing the rules.

**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?**

This rule was promulgated to comply with the statutory requirements of ORC 5104.21 and 5104.22. ODJFS consulted with the Ohio Department of Health for guidance related to pandemic precautions and were advised to include the items indicated in the rule as they are the most appropriate to protect the health and safety of the staff and children being served by the provider. Therefore, alternative regulations were determined to be inappropriate.

**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. The concept of performance-based regulations were determined to be ill-suited for rules in this context.

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

Rules are reviewed by ODJFS rule specialists and legal staff to ensure there is no duplication of our agency or other agency rules.

**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 utilize a software system to inspect approved child day camps. ODJFS help desk staff provides support and assistance to approved child day camp providers and families regarding the provisions of the rules. Formal notification of the rules is provided to child day camp providers, families and others by use of an eManual for child care which is located at <http://emanuals.odjfs.state.oh.us/emanuals/>. Email updates from ODJFS can be received by signing up at <http://www.odjfs.state.oh.us/subscribe/> as well as an RSS feed at <http://www.odjfs.state.oh.us/ccupdates>.

### **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**

There are approximately 108 registered day camps throughout Ohio. Of these, 10 are registered and approved day camps. All day camps are required to register; however, in order to provide publicly funded child care (PFCC) day camps must be approved as well. The pandemic requirements are specific to approved day camps.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The costs associated with these rules can vary based on the cost of the handwashing materials, the time necessary to report information to ODJFS and the local health department, and the costs for a divider if the provider chooses to use one.

**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 costs of a provider to comply with the requirements of the rules can vary greatly based on a number of factors and variables, including, but not limited to facility size, business model, number of children enrolled in the program as well as the impact of COVID-19 on the child day camp staff and enrolled children. For example, an approved day camp may experience an increase in expenditures for the purchase of personal protective equipment (PPE), staffing resources if staff are exposed to COVID-19, if the program chooses to divide classroom spaces into smaller spaces, or if the program chooses to install additional handwashing locations.

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

The regulatory intent justifies the financial impact child care providers may incur because these approval standards are mandated to ensure the health and safety of children. Ohio Revised Code requires approved child day camps to be regulated. Additionally, the COVID-19 pandemic has required child care programs to adjust to reduce the impact of the pandemic.

### **Regulatory Flexibility**

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

No. The concept of an alternative means of compliance is not suited for these COVID-19 protocols.

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**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?**

Not applicable.

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

ODJFS provides technical assistance through technical assistance staff, technical assistance documents, video conferences, emails, eblasts, RSS feeds, eManual, help desks and through the Ohio Child Care Resource and Referral Association.

ODJFS provides the following:

Child Care Policy Helpdesk:

**CHILDCAREPOLICY@jfs.ohio.gov**

1-877-302-2347 option 4

EManual for child care located at: **<http://emanuals.odjfs.state.oh.us/emanuals/>**

Email updates from ODJFS can be received by signing up at:

**<http://www.odjfs.state.oh.us/subscribe/>**

RSS feeds sign up at: **<http://www.odjfs.state.oh.us/ccupdates/>**