



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:

Michael Lynch 614-466-8376 Michael.Lynch@jfs.ohio.gov

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

OFA: Family Child Care Licensing Rules FYR (1)

Rule Number(s): 5101:2-13-11, 5101:2-13-12, 5101:2-13-13, 5101:2-13-16, 5101:2-13-17,
5101:2-13-18, 5101:2-13-19, 5101:2-13-20, 5101:2-13-21, 5101:2-13-23, 5101:2-13-24

Date of Submission for CSI Review: 6/25/2021

Public Comment Period End Date: 7/2/2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? __)

Amended/ 11 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Rescinded/___ rules (FYR?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.

5101:2-13-11 "Indoor and outdoor space requirements for a licensed family child care provider" outlines indoor and outdoor space requirements in a licensed family child care home. Amendments to this rule include clarifying language about outdoor space, natural barriers, sandboxes, and other play/water equipment.

5101:2-13-12 "Safe equipment and environment for a licensed family child care provider" outlines the requirements for safe equipment and environments in a licensed family child care home. The amendment to this rule includes removing the requirement that alcohol shall be out of sight of children.

5101:2-13-13 "Sanitary equipment and environment for a licensed family child care provider" outlines the requirements for sanitary equipment and environments for a licensed family child care home. Amendments to this rule include listing items that need to be in each bathroom, clarifying storage of accumulated trash, handwashing, toothbrushing and cleaning and sanitizing requirements.

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5101:2-13-16 "Emergency and health-related plans for a licensed family child care provider" outlines medical, dental, first aid and communicable disease procedures, incident and injuries and disaster planning for a licensed family child care home. Amendments to this rule include clarifications for weather alert plans, emergency lockdown drills, storage of hazardous materials, communicable disease reporting, serious incidents, and child records. Amendments also include removing duplicative requirements for first aid supplies, caring for sick children, and cleaning schedules.

5101:2-13-17 "Programming and materials for a licensed family child care provider" outlines daily activities for a licensed family child care provider. Amendments to this rule include clarifying that materials are to be sufficient in quantity so that each child can be actively involved in an activity.

5101:2-13-18 "Group size and ratios for a licensed family child care provider" outlines the requirements for staff to child ratios and grouping for a licensed family child care provider. Amendments to this rule include clarifying attendance record documentation and clarifying circumstances when children count in group size.

5101:2-13-19 "Supervision of children and child guidance for a licensed family child care provider" outlines the requirements for supervision and acceptable and unacceptable discipline for a licensed family child care provider. Amendments to this rule include requiring the provider to be familiar with the needs of all children in care and clarifying new expulsion procedures.

5101:2-13-20 "Sleeping and napping requirements for a licensed family child care provider" outlines requirements for the use of cribs, mats, cots, and other sleep surfaces for a licensed family child care provider. Amendments to this rule include removing duplicative requirements for cleaning and sanitizing bed linens.

5101:2-13-21 "Evening and overnight care for a licensed family child care provider" outlines the evening and overnight care guidelines for a licensed family child care provider. Amendments to this rule include clarifying bedtime routines for children in care and removing duplicative requirements about bedtime activities and cleaning schedules for bed linens.

5101:2-13-23 "Infant care and diaper care for a licensed family child care provider" outlines requirements for caring for infants for a licensed family child care provider. Amendments to this rule include clarifying tummy time requirements, clarifying instructions for diapering products, and removing duplicative food/breast milk, cleaning, and sanitizing requirements.

5101:2-13-24 "Swimming and water safety requirements for a licensed family child care provider" outlines swimming and water safety requirements for a licensed family child care provider. Amendments to this rule include clarifying when the provider is to have written permission from the parent for water activities.

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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.

5101:2-13-11: 5104.017, 5104.018

5101:2-13-12: 5104.017, 5104.018, 5104.041, 2923.1212

5101:2-13-13: 5104.25, 5104.018, 5104.017

5101:2-13-16: 5104.017, 5104.018

5101:2-13-17: 5104.017, 5104.018

5101:2-13-18: 5104.017, 5104.018, 5104.01

5101:2-13-19: 5104.017, 5104.018, 5104.01

5101:2-13-20: 5104.017, 5104.018

5101:2-13-21: 5104.017, 5104.018

5101:2-13-23: 5104.017, 5104.018

5101:2-13-24: 5104.017, 5104.018

5101:2-13-26: 5104.018

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.

Yes, Child Care and Development Fund (CCDF) rules require lead agencies, such as the Department of Job and Family Services, to regulate specific health and safety topics related to the care of children. The proposed regulations are being adopted to comply with the requirements of the Child Care and Development Block Grant Act of 2014.

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

The 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)?

These rules, promulgated pursuant to the requirements of the Ohio Revised Code, establish regulations for health, safety, supervision, and programming standards for licensed family child care environments. These rules do not include any regulation that could inhibit small business in Ohio.

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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 licensing inspections, through the monitoring of incident reports submitted by regulated providers and through materials submitted to address non-compliances. 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. Members include for-profit and non-profit child care centers; parents; family child care home providers; county department of job and family services agencies staff; individual representatives of the teaching, child development, and health professions and other individuals interested in the welfare of children; and ex-officio members from other state agencies. The council reviewed these rules on January 12, 2021.

These rules were also available for the public clearance period from March 2, 2021 through March 16, 2021.

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

CCAC feedback was taken into consideration and implemented where appropriate. On March 2, 2021 through March 16, 2021, ODJFS made the proposed family child care licensing rules available for public comment and received two comments. Public comments were incorporated where appropriate after the ODJFS clearance process. Concerns were raised in relation to the serious incident reporting policy language. CCAC reviewed this part of the rule at two different rule review sessions to assist ODJFS in determining the most appropriate language.

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?

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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?

These rules were promulgated to comply with the statutory requirements of ORC 5104.; 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 licensed centers and family child care homes. ODJFS help desk staff provides support and assistance to licensed child care providers and families regarding the provisions of the rules. Formal notification of the rules is provided to child care providers, families, and others by use of an eManual for child care which is located at <http://emanuals.odjfs.state.oh.us/emanuals/>.

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 upwards of 270 Type A and 2034 Type B family child care providers throughout Ohio.

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

There are no anticipated new costs as a result of these rules. Costs already in place include indoor and outdoor play equipment, cleaning and sanitizing products, materials

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for child activity and development, and employer time for completion of forms or documentation.

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 following rules contain the existing requirements and accompanying estimated costs to licensed child care homes. Estimated costs were based on internet searches conducted during the drafting of these rules.

5101:2-13-11 – Family child care providers are required to have a home with adequate space that will determine the number of children that can be served. The cost will vary depending on the location of the home and if it is purchased or rented.

5101:2-13-12 – Family child care providers are required to have age-appropriate equipment available. The cost will vary depending on the amount and type of products used. Providers are required to have carbon monoxide detectors on-site. The costs for these detectors can range from \$25.00 and up.

5101:2-13-13 – Licensed family child care providers are required to use cleaning and sanitizing products and maintain liquid soap and paper towels. The cost will vary depending on the amount and type of products used. Providers are required to have liquid soap, maintain individually assigned towels or disposable towels and have disposable gloves, cleaning, sanitizing and disinfectant products.

5101:2-13-16 – Licensed family child care providers are required to obtain supplies and materials representative of the rule requirements. Cost will vary depending on the type of materials purchased, the number of children served, and the policy of the provider.

5101:2-13-17 – Family child care providers are required to obtain supplies and materials representative of the rule requirements. Cost will vary depending on the type of materials purchased, the number of children served, and the policy of the provider.

5101:2-13-18 – Family child care providers will need appropriate staff for ratio and group size and for completing attendance records. The costs will vary depending on the number of staff and children enrolled with the provider.

5101:2-13-19 – Family child care providers will need appropriate staff for supervision. The costs will vary depending on the number of staff and children enrolled in the program.

5101:2-13-20 – Family child care providers are required to obtain and maintain beds, couches, cots, or mats for children who sleep or nap in their homes. Costs range from

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\$12.00 to \$600.00 depending on the type of sleeping surface purchased. Licensed family child care providers are required to obtain and maintain cribs for infants who sleep or nap in their programs. Cribs range in price from \$200.00 up, depending on the type of crib.

5101:2-13-21 – Family child care providers are required to provide bedding if overnight care is provided. The costs will vary depending on the number of children served and what the provider provides for care compared to what the parent provides.

5101:2-13-23 – Family child care providers may provide items and materials associated with diapering if not supplied by the parent. The costs will vary depending on what items (such as diapers and wipes) the provider purchases when not provided by the parent.

5101:2-13-24 – Family child care providers are required to have a barrier on and around the pool if a pool is onsite. The cost will vary depending on the type of barrier used. Barriers permitted may be a fence or an approved cover.

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 licensing standards are mandated to ensure the health and safety of children. Ohio Revised Code requires type A providers and type B providers (who provide publicly funded child care) to be regulated.

Regulatory Flexibility

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

No. Licensing standards for family child care providers are mandated by the Ohio Revised Code.

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, eManual, and help desks.

ODJFS provides the following:

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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/>

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