



Common Sense Initiative

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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: Family Child Care Licensing Rules FYR (2)

Rule Number(s): 5101:2-13-02, 5101:2-13-03, 5101:2-13-04, 5101:2-13-05, 5101:2-13-06,
5101:2-13-07, 5101:2-13-08, 5101:2-13-10, 5101:2-13-14, 5101:2-13-15, 5101:2-13-22,
5101:2-13-25,

Date of Submission for CSI Review: 7/9/2021

Public Comment Period End Date: 7/16/2021

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 11 rules (FYR? Y)

Rescinded/ 1 rules (FYR? Y)

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.

5101:2-13-02 "Application and amendments for a family child care provider license" outlines the process and requirements for applying for a family child care license. Amendments to this rule include clarifying the application process, application fee and requirements for voluntary withdraw of an application, clarifying the requirements for the FCC license, clarifying the information and electronic documentation providers keep current, and clarifying owner responsibilities. Amendments to the appendices include clarifying documents currently required to be submitted at the time of application, clarifying medical statement requirements, and adding a new appendix for documents needed for a permanent change of location.

5101:2-13-03 "Compliance inspection and complaint investigation of a licensed family child care provider" outlines guidelines and timeframes for inspections and investigations of the family child care home. Amendments to this rule include clarifying the complaint and compliance inspection requirements, removing the requirement for county agencies to complete JFS 01926, JFS 01526, JFS 01306, and JFS 01215 as this is all automated in OCLQS, adding clarification for county agencies when completing complaint investigations and providing copies of

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inspection reports. Amendments to the appendix include adding, removing, and clarifying moderate risk non-compliances and serious risk non-compliances.

5101:2-13-04 "Building department inspection and fire inspection for a licensed family child care provider" outlines the separate requirements of building and fire safety for type A home providers and type B home providers. Amendments to this rule include clarifying the type A home requirements for building and fire inspections, the type B home building requirements, procedures for approved spaces, and fire safety requirements. Amendments to the appendices include removing requirements for Type B home rooms or spaces higher than the second floor, removing the duplicative safety requirements for stairways, and clarifying procedures for storing flammable and combustible materials in type B homes.

5101:2-13-05 "Denial, revocation and suspension of a family child care application or license" outlines the parameters for denying an application and suspending or revoking a family child care provider license. Amendments to this rule include clarifying that situations when an application may be denied or a license can be revoked, removing the requirement that an application may be denied or a license revoked if the provider has accumulated eighteen or more points from moderate or serious risk non-compliances, adding that if the provider has been issued a notice of intent to revoke the program's license, they are to notify the families of all enrolled children and post the notice of intent in a noticeable location within forty-eight hours of receipt of the notice and clarifying the conditions of licensing actions that are not subject to administrative hearings.

5101:2-13-06 "Procedures for a family child care provider operating under a provisional license" outlines the operating requirements during the provisional license period. Amendments to this rule include clarifying that the provider is to have children, for whom the provider receives compensation, enrolled and attending the home and clarifying that if the provider has not served any children during the provisional period, the provisional period will continue for up to twelve additional months or until children have been enrolled, whichever comes first.

5101:2-13-07 "Provider responsibilities, requirements and qualifications for a licensed family child care provider" outlines the education, experience and other requirements to become a licensed provider. Amendments to this rule include clarifying vaccination documentation requirements, clarifying that the provider is not to be involved in any activities that interfere with the care, safety, and health of the children, clarifying timelines for when the provider is to update OCLQS, clarifying that the provider is responsible for all information provided to the county agency or ODJFS, clarifying Ohio Professional registry (OPR) requirements, documentation and recordkeeping responsibilities, and adding that the provider is to cooperate with other government agencies as necessary. Amendments to the appendices include clarifying requirements for verification of a high school education, clarifying required policies and procedures, adding that the home is to include policies and procedures about suspension and expulsion and compliance with the Americans with Disabilities Act, and adding where the public can find inspection reports, contact information for Health and Human Services and ODJFS Bureau of Civil Rights.

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5101:2-13-08 "Employees, child care staff members and substitute responsibilities and qualifications for a licensed family child care provider" is being rescinded due to the number of revisions and rearrangement of the paragraphs. This rule outlines the qualifications and responsibilities for all staff members and employees.

5101:2-13-08 "Employees and child care staff members responsibilities and qualifications for a licensed family child care provider" is being filed as a new rule due to the number of revisions and rearrangement of the paragraphs and to update the language regarding the Ohio Professional Registry. This rule outlines the qualifications and responsibilities for all child care staff members and employees.

5101:2-13-10 "Training and professional development requirements for a licensed family child care provider and child care staff members" outlines the initial and on-going training for providers and staff. Amendments to this rule include clarifying the requirements for management of communicable disease and child abuse and neglect recognition and prevention trainings, clarifying that child care staff members have ninety days after hire to complete trainings and cannot be left alone with children until completed, adding that the child care staff member meeting trainer requirements in appendix A to this rule is considered to meet the training requirement for first aid, CPR, or management of communicable disease. Staff members are not exempt from completing child abuse and neglect recognition and prevention training and clarifying substitute training requirements. Amendments to the appendices include clarifying course content and documentation requirements and amending the list of approved trainers for health trainings.

5101:2-13-14 "Transportation and field trip safety for a licensed family child care provider" outlines transportation and field trip requirements for a licensed family child care provider. Amendments to this rule include clarifying that supplies and medications may need to be taken on trips, removing the requirement that an adult must be present with the vehicle any time children are in the vehicle and at no time are children to be left unattended as this is duplicative of rule 5101:2-13-19, clarifying requirements for passengers and for employee or child care staff members who are drivers, clarifying child care transportation training requirements and driver requirements for public transportation drivers and contract drivers. Amendments to the appendices include removing requirement that the provider shall secure written permission for all field trip(s) and shall inform the parent about each trip in advance, removing Type A home vehicle requirements that expired January 1, 2017, and clarifying that drivers are considered passengers.

5101:2-13-15 "Child record requirements for a licensed family child care provider" outlines record requirements for a licensed family child care home. Amendments to this rule include clarifying requirements for medical exams and medical statements, clarifying the provider and child care staff member responsibilities and training for the JFS 01236, adding the definition of medical foods, and adding requirements for the completion of the JFS 01305, JFS 01217, JFS 01234 and JFS 01236.

5101:2-13-22 "Meal preparation/nutritional requirements for a licensed family child care

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provider" outlines meal and snack procedures for a licensed family child care provider. Amendments to this rule include clarifying meat, fruit and vegetable requirements for children's meals, adding that the provider is to ensure supplemental food is onsite at the home and that no child goes more than four hours without at least a snack or meal, except when sleeping, and moving all requirements for serving fluid milk in the FCC home into new appendix C to this rule.

5101:2-13-25 "Medication administration for a licensed family child care provider" outlines the requirements for administering medication for a licensed family child care provider. Amendments to this rule include revising the title to "Medication administration for a licensed family child care provider," clarifying the requirements for the JFS 01217 "Request for Administration of Medication for Child Care" and the JFS 01236 "Child Medical/Physical Care Plan for Child Care," clarifying the requirements for administering and storing non-prescription medications, and removing references to food supplements.

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 |
|--------------|---|
| 5101:2-13-02 | 5104.018, 5104.017, 5104.022, 5104.03 |
| 5101:2-13-03 | 5104.017, 5104.018, 5104.043, 5104.02, 5104.03, 5104.04 |
| 5101:2-13-04 | 5104.017, 5104.052, 5104.051, 5104.05 |
| 5101:2-13-05 | 5104.017, 5104.018, 5104.042, 5104.03, 5104.04 |
| 5101:2-13-06 | 5104.017, 5104.018, 5104.013, 5104.04, 5104.03 |
| 5101:2-13-07 | 5104.017, 5104.018, 5104.041, 5104.03, 5104.22 |
| 5101:2-13-08 | 5104.017, 5104.018 |
| 5101:2-13-10 | 5104.017, 5104.018 |
| 5101:2-13-14 | 5104.017, 5104.018 |
| 5101:2-13-15 | 5104.017, 5104.018, 5104.0110 |
| 5101:2-13-22 | 5104.017, 5104.018 |
| 5101:2-13-25 | 5104.017, 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.

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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.

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

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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 May 19, 2021.

These rules were also available for the public clearance period from May 21, 2021 through June 4, 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 May 21, 2021 through June 4, 2021, ODJFS made the proposed family child care licensing rules available for public comment and received twenty comments. Public comments were incorporated where appropriate after the ODJFS clearance process. Concerns were raised in relation to the discrepancy between our rules and the United States Department of Agriculture's (USDA) meal suggestions for children. As a result, ODJFS amended the rules to align with the USDA.

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?

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.

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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 application fees, costs associated with building and fire inspections, costs associated with completing health and professional development trainings, and employer time for completion of forms or documentation, and the costs for offering meals and snacks to children in care.

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.

5101:2-13-02 – A license fee is a charge of \$25.00 and amendments to a license costs \$25.00. Time involved in completing the online application and required documents and actual amounts cannot be estimated because costs will vary from provider to provider depending on their business model.

5101:2-13-03 – There will be costs associated with the provider having to provide written or electronic materials to address non-compliances as well as completing the JFS 01155 for appealing a non-compliance, if applicable.

5101:2-13-04 – Building inspections from the Ohio board of building standards is required for Type A Providers. The cost is difficult to determine because fees vary depending on the size of the building and types of inspections needed. Fire inspection(s) is required for Type A Providers. Local fire departments or the state fire marshal provide

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these at costs ranging from \$0.00 up to \$100.00. Type B Providers are required to follow basic fire safety measures which may have potential costs such as a fire extinguisher.

5101:2-13-05 – If a provider's license is suspended, the center must provide written notification to all parents. There will be time and there may be possible costs associated with this process.

5101:2-13-06 – All provisional licensed family child care providers must comply with all of the Chapter 5101:2-13 requirements. The costs associated with these requirements are detailed in the other rules in this chapter.

5101:2-13-07 – The actual amount cannot be estimated because the impact will vary from provider to provider depending on their business model. There will be impact associated with the provider time to fill out forms, complete required duties in the Ohio Professional Registry, create policies and procedures and attend required orientation and trainings.

5101:2-13-08 – The actual amount cannot be estimated because the impact will vary from provider to provider depending on their business model. There could be a time impact associated with child care staff members attending the required free orientation training and completing duties in the Ohio Professional Registry.

5101:2-13-10 – Family child care providers and child care staff members are required to take health and safety trainings as well as six hours of professional development each year. Costs will vary depending on the number of staff members the provider may employ. The Child Abuse and Neglect Recognition and Prevention is available free of charge.

5101:2-13-14 – Family child care providers and child care staff members may take children on field or routine trips. Costs will vary depending on the type of trip taken and the mode of transportation the program chooses.

5101:2-13-22 – Family child care providers may provide meals and snacks according to their policies or parents may provide the meals or snacks. Family child care providers will incur costs to purchase the food that meet the rule requirements. Costs will vary depending on the number of meals and snacks that are served.

5101:2-13-15 – Family child care providers are required to maintain child files. There are no new costs associated with this requirement and they will vary depending on the number of children enrolled.

5101:2-13-25 – Family child care providers may administer medication. Providers may need to spend time completing the JFS 01217 and ensure that a medical professional has completed it when needed. The impact will vary depending on the provider's policy.

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

The regulatory intent justifies the 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:

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/>