



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: The 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):

Indian Child Welfare Act Five Year Review

Rule Number(s): 5101:2-53-04, 5101:2-53-05, 5101:2-53-06, 5101:2-53-07, 5101:2-53-09

Date of Submission for CSI Review: 10/26/22

Public Comment Period End Date: 11/2/22

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? X)

Amended/___ 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Rescinded/___ rules (FYR?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.

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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 5101:2-53-04, "Indian Child Welfare Act (ICWA) notice requirements," outlines requirements for notifying an Indian child's parents or Indian custodian, the Indian child's Tribe, and the Bureau of Indian Affairs (BIA) regarding a child custody proceeding involving the Indian child. This rule has been revised to update the mailing address for the Midwest Regional Office of the BIA.

OAC 5101:2-53-05, "Voluntary agreement for temporary custody of Indian child," describes the responsibilities of a public children services agency (PCSA) or a private child placing agency (PCPA) when executing an agreement for temporary custody of an Indian child. The revision date for the JFS 01645 "Agreement for Temporary Custody of Child" has been removed.

OAC 5101:2-53-06, "Emergency removal and involuntary custody of Indian children," describes the responsibilities of PCSAs and PCPAs when an Indian child is in the agency's custody. This rule has been revised to update the mailing address for the Midwest Regional Office of the BIA.

OAC 5101:2-53-07, "Permanent surrender or parental consent to adoptive placement of Indian children," describes the responsibilities of PCSAs and PCPAs when an Indian child has been

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permanently surrendered for adoption by the parent or the Indian custodian. The revision date for the JFS 01666 "Permanent Surrender of Child" has been removed.

OAC 5101:2-53-09, "Procedures for the transfer of Indian children to a Tribal court, a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement," identifies requirements for transferring child custody proceedings to a Tribal court, a Tribal Title IV-E agency, or an Indian Tribe with a Title IV-E agreement. Review dates for the JFS 01661 "Interstate Compact Placement Request (ICPC 100A) and the JFS 01662 "Interstate Compact Report on Child's Placement Status (ICPC 100B) have been removed.

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 |
|--------------|-----------------------------|
| 5101:2-53-04 | 5103.03, 5153.166 |
| 5101:2-53-05 | 5103.03, 5103.15, 5153.166 |
| 5101:2-53-06 | 5103.03, 5153.166 |
| 5101:2-53-07 | 5103.03, 5153.166 |
| 5101:2-53-09 | 5103.03, 5101.141, 5153.166 |

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. Rules 2-53-04, 2-53-05, 2-53-06, 2-53-07, and 2-53-09 implement ICWA as reauthorized by the "Child and Family Services Improvement Act" of 2006.

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

The requirements of these rules do not exceed the 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 purpose of the regulation in rule 5101:2-53-04 is to provide instruction on notifying an Indian child's parents or guardian, the Indian child's Tribe, and the Bureau of Indian Affairs when the Indian child is the subject of a child custody proceeding.

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The purpose of the regulation in rule 5101:2-53-05 is to ensure that voluntary placement for temporary custody cases that are subject to ICWA are conducted in compliance with ICWA regulations.

The purpose of the regulation in rule 5101:2-53-06 is to ensure that agencies are in compliance with state law and with ICWA regulations when emergency removal of an Indian child from his or her home is necessary.

The purpose of the regulation in rule 5101:2-53-07 is to ensure that agencies are in compliance with state law and with ICWA regulations when a parent permanently surrenders an Indian child.

The purpose of the regulation in rule 5101:2-53-09 is to ensure that agencies are in compliance when ICWA requires that an Indian child is transferred to the jurisdiction of a Tribal court and to ensure that IV-E records are transferred when applicable so that a child remains IV-E eligible upon transfer.

The overarching public purpose of ICWA, passed in 1978, is to protect the best interests of Indian children and promote the stability of Indian tribes and families. These rules carry out the objectives of ICWA.

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

Agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of these rules. Agencies are expected to comply with ICWA regulations whenever applicable.

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.

N/A

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.

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The rules were available for review during external clearance from September 21, 2022 until October 5, 2022. There were no comments received during clearance. The rules and proposed changes were also shared with the Public Children Services Association of Ohio (PCSAO), which shared the rules via their weekly update to members and stakeholders on October 3, 2022. No comments were received to the rules.

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

There was no input provided by stakeholders.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

There were no other alternatives considered for rules 2-53-04, 2-53-05, 2-53-06, 2-53-07, or 2-53-09 as the rules mirror federal language.

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

There is no duplication as these rules specifically implement the requirements of the ICWA and there are no other rules that do.

14. 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.

When the rules are final filed, a transmittal letter will be generated explaining the changes to the rules and the rationale for the changes. The transmittal letters can be viewed at [http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-)

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Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The rules in Chapter 5101:2-53 contain requirements for private child placing agencies (PCPAs). Requirements must be met to obtain and/or maintain certification by the State of Ohio. There are currently 25 certified PCPAs in Ohio.

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

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.

5101:2-53-04 – Requires the agency to send notification to an Indian child's parents or custodian and each Tribe where the child is or may be a member, or eligible for membership if a biological parent is a member. Requires the agency to send a copy of the notification to the Bureau of Indian Affairs.

5101:2-53-05 – Requires the agency to submit a notification of a voluntary placement agreement to the designated agent of a child's tribe or the tribal court and document in the case record various custody information.

5101:2-53-06 – Requires the agency to notify the parents or Indian custodian and the Indian child's Tribe or Tribal court of all juvenile court proceedings involving foster care placement, termination of parental rights, pre-adoptive or adoptive placement and send various notification reports to the court and all parties involved.

5101:2-53-07 – Requires the agency to provide notification to a Tribe of all juvenile court proceedings affecting the Tribal member. Requires the agency to provide information to an Indian child who was adopted, but has reached age eighteen and is requesting the information about Tribal affiliations of the individual's biological parents.

5101:2-53-09 – Requires the agency to facilitate the transfer of a foster care or termination of parental rights proceeding to the jurisdiction of a child's Tribe when a request is made to do so by either parent, the Indian custodian, or the Indian child's Tribe. If the agency asserts that good cause exists for the court to deny the transfer, the rule requires the agency to provide the reasons in writing to the court and to the parties in the child custody proceeding. Requires the agency to provide records relating to the child custody proceeding to the Tribal court, if the Tribal court accepts the transfer.

The Office of Families and Children has reached out to the PCPAs and has asked Ohio Children's Alliance to obtain an example of the cost when a private child placing agency is required to implement ICWA regulations. One agency stated they had three ICWA cases many years ago and their estimate of the cost to implement the regulations for the three cases was approximately \$2000. Another agency had one possible ICWA case in the past year, and their estimated cost was \$2500 to implement ICWA regulations.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**
No.

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

The adverse impact is necessary to ensure compliance with federal regulations.

Regulatory Flexibility

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

There are no exemptions and no alternative means of compliance for rules 2-53-04, 2-53-05, 2-53-06, 2-53-07, or 2-53-09.

- 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?**

There are no fines or civil penalties for non-compliance with these rules other than the forfeiture of certification of PCPAs through denial or revocation.

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

ODJFS has regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of chapter 5101:2-53 when the agency determines that there is reason to know that a child is an Indian child.

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