



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: ODJFS

Rule Contact Name and Contact Information:

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

Adoption Rules & Forms- Five Year Review

Rule Number(s): 5101:2-48-05, 5101:2-48-12, 5101:2-48-13, 5101:2-48-16, and

5101:2-48-24

Date of Submission for CSI Review: 6/3/2022

Public Comment Period End Date: 6/9/2022

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 5 rules (FYR? yes)

Rescinded/___ rules (FYR?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 5101:2-48-05 entitled Agency Adoption Policy and Recruitment Plan provides guidance to agencies regarding the policies they are required to have in place. Form revision dates were removed throughout the rule. Paragraph (B)(14) was amended to include post adoption in the statement and (B)(14) (e) was removed as county agencies will no longer be determining the post adoption special services subsidy after July 1, 2022. The reference to the Indian Child Welfare Act of 1978 in paragraph (C) was updated.

OAC 5101:2-48-12 entitled Completion of the Adoption Homestudy provides guidance to agencies on the homestudy process for prospective adoptive applicants. Form revision dates were removed throughout the rule. Terminology regarding identity and the reference to Title II of the Americans with Disabilities Act of 1990 in paragraph (E) were updated. ‘Ohio’ was added in front of statewide automated child welfare information system throughout, so the system is properly identified.

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OAC 5101:2-48-13 entitled Non-discrimination Requirements for Adoptive Placements provides guidance to agencies regarding discriminating actions that are prohibited when making placement decisions, as well as required actions when race, color, or national origin is intended to be a factor in the decision-making process. The reference to the Indian Child Welfare Act of 1978 in paragraph (B) was updated.

OAC 5101:2-48-16 entitled Adoption Preplacement and Placement Procedures provides guidance to agencies in regards to the matching and placement requirements for children in their permanent custody. Form revision dates were removed throughout the rule. The reference to the Indian Child Welfare Act of 1978 in paragraph (V)(1) was updated. The reference to the Multiethnic Placement Act information in paragraph (KK) was updated.

OAC 5101:2-48-24 entitled Agency Adoption Review Procedures provides guidance to agencies on the requirements of the review process when a complaint is received from adoptive applicants or families. The grammar in paragraph (B)(2) was amended.

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:	Authorized by:	Amplified:
5101:2-48-05	3107.033, 5103.03, 5153.166	3107.031, 3107.032, 3107.033
5101:2-48-12	3107.032, 3107.033, 5103.03, 5153.166	2151.86, 3107.011, 3107.032, 3107.033, 3107.034, 3107.10, 5103.18
5101:2-48-13	5103.03, 3107.031, 5153.166	5153.16, 3107.031, 3107.033
5101:2-48-16	5101.141, 5103.03, 5153.166	5103.03, 3107.10, 5153.16
5101:2-48-24	3107.033, 5103.03	3107.031, 5103.03

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.

Rules 5101:2-48-05, 5101:2-48-13 and 5101:2-48-16 implement the Multiethnic Placement Act, the Civil Rights Act and the Indian Child Welfare Act, as they apply to the adoption process. The three rules were amended as part of the Five-Year Review and they do not exceed federal requirements.

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Rule 5101:2-48-12 implements Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and does not exceed federal requirements.

Rule 5101:2-48-24 does not implement a federal regulation and is not being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

These rules 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)?

The rules, which are promulgated pursuant to the requirements of the Revised Code, establish regulations for the minimum standards to ensure the safety and well-being of children being placed in adoptive homes.

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

The success of these regulations will be measured by the safety of children placed in out-of-home care with permanency through a finalization of adoption.

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.

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ODJFS presented at the Public Children Services Association of Ohio (PCSAO) on February 3, 2022, the Ohio Children's Alliance (OCA) committee on foster care and adoption on February 15, 2022, and the Ohio Adoption Planning Group (OAPG) on February 16, 2022 regarding the proposed rule changes. There were no questions or comments received.

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

There were no comments received from early engagement with stakeholders regarding the rules. The rules then went through the public clearance. One comment was received through the clearance process, which was open from April 20 to May 4, 2022, but the comment did not pertain to this rule package.

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?

There were no other alternatives considered for the rules as requirements are driven by statute.

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. ODJFS did not consider a performance-based initiative, but rather followed statutory language prescribing that the department set minimum standards to ensure the safety and well-being of all children entering adoptive homes.

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

There is no duplication as the rules are specific to adoption agencies and no other rules address these specific issues. ODJFS legal staff reviewed the rules to ensure there is no duplicative regulation in the Administrative Code.

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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 review the agencies to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

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

Requirements found in the proposed rules include eighty-eight public and over one hundred private agencies.

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

The adverse impact for 5101:2-48-05 involves the timeframes needed to create agency policies and plans to comply with applicable regulations. Each agency needs to a policy regarding their adoption application process, the adoption homestudy, and the adoption homestudy update and amendment procedures.

The adverse impact for 5101:2-48-12 involves the time and resources it takes for an agency to complete a homestudy. This would include the time to review the application and other documents submitted for the homestudy, the time to interview the applicants, as well as any other household members, complete a safety audit of the home, send in requests for abuse and neglect searches to be completed on adults in the home, send reference letters, and the time to communicate with the applicants regarding any additional documentation or concerns with the homestudy.

The adverse impact for 5101:2-48-13 are the timeframes involved are in completing the required documentation of whether there is a justified reason for race, color, or national origin to play a part in the decision-making process.

The adverse impact of rule 5101:2-48-16 involves the time to it takes to prepare a child for adoptive placement. This begins with working with the child on adoption planning issues and adoptive placement.

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The adverse impact for this rule 5101:2-48-24 would include the timeframes involved in developing the written procedures the agency will implement when a complaint is received regarding adoption, as well as the timeframes involved in implementing those procedures, and reviewing the information to handle the complaint.

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.

For 5101:2-48-05 the estimated time spent on the creation of an initial adoption policy and recruitment plan could range from approximately eight hours to several additional hours depending on the level of experience of the supervisor/social worker has and the thoroughness of the policy. The anticipated cost to comply with this rule would also depend on the wage for the specific worker, as well as their understanding of the adoption rules in general. According to Salary Expert, the average hourly rate of a child welfare caseworker is \$28 per hour. The anticipated cost of compliance for an impacted agency to comply with this rule would be at a minimum of \$224 that could increase upwards upon the initial creation, depending on variables. Also, the amount of time for future updates should be reduced to half the time, which would be lowered to a minimum amount of \$112. Costs associated with the rule are current costs.

The expected adverse impact for rule 5101:2-48-12 would depend on the individual family circumstances and the level of experience the assessor has. Additional monetary costs would include the price of completing criminal background checks, which is approximately \$60 for a combined BCI and FBI checks for each adult member of the home, the cost of the fire inspection, which varies among jurisdictions, and the cost of a well inspection, if applicants have well water. This cost also varies among jurisdictions. The costs and timeframes involved would vary depending on the experience and number of assessors employed at each agency assisting with completing homestudies. The average interviewing time for assessing a family for the homestudy may take anywhere from 8 hours to 15 hours. Then, the homestudy takes 3-6 months to complete or another 15-20 hours, depending on how pro-active applicant families are in submitting the required documentation and having a flexible schedule to meet with an assessor to conduct face to face interviews and the time to review and enter information in SACWIS. The supervisor may take at least 4 hours to review the final homestudy. According to Salary Expert, the average hourly rate of a child welfare caseworker is \$28 per hour and

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with a range of hours to be 27-39 hours, the anticipated cost of compliance for an impacted agency to comply with this rule would be at a minimum of \$756 that could increase upwards upon depending on the variables presented. Costs associated with the rule are current costs.

The expected adverse impact for rule 5101:2-48-13 would occur should an agency feel that RCNO is a compelling reason in the placement decision-making process for a foster child and the time is needed to complete the necessary forms. The forms may take 2-3 hours to complete along with the time to refer a child to the appropriate practitioner for further assessment. According to Salary Expert, the average hourly rate of a child welfare caseworker to be \$28 per hour. The anticipated cost of compliance for an agency to comply with this rule would be at a minimum of \$56. Costs associated with the rule are current costs.

The expected impact of rule 5101:2-48-16 contains various tasks by an assessor and/or a team of additional workers and/or supervisors to conduct additional activities, meetings and documentation that occur once a child is in the permanent custody (PC) of an agency through adoptive placement and essentially covers the majority of duties an assessor and/or adoption caseworker complete in their role. The amount of time spent preparing a child for adoptive placement varies per child's historical information, how much of the information has been received or needs to be requested and entered into SACWIS, the child's need for recruitment of an adoptive family and the amount of experience the assessor or caseworker may have within their roles. To find a minimum anticipated cost is difficult without some parameters provided. Therefore, to have an understanding of the cost is to break down the rule with by two paths of activities, if a child was matched or not matched within first month of PC. The parameters for the path of the matched child would need to include the child already being placed in a foster home that was also approved to adopt, with no significant issues of child or family presented and an overall rapid movement towards adoptive placement. This minimum total time if matched within 1st month of PC could be 19 hours.

Then, for the path of a child not matched within the first month of PC, but needed an additional six months to conduct recruitment activities before matching a family and adoptive placement occurs. This minimum total time if not matched within 1st month of PC, 6 months afterward includes the time spent on two additional subsequent matching conferences, 6 additional months of visits, child specific recruitment activities, then to include the time of the adoptive placement activities could be a total of 36 hours.

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According to Salary Expert, the average hourly rate of a child welfare caseworker to be \$28 per hour. The anticipated cost of compliance for an agency to comply with this rule would be at a minimum of \$532 if a child were matched within 1st month of PC or \$1008 if the child were to need recruitment and then matched 7 months after coming into PC. Costs associated with the rule are current costs.

The expected adverse impact for this rule 5101:2-48-24 includes time spent creating the required procedures for the agency to implement a procedure for complaints received regarding adoption and following through on the procedures. The estimated minimum amount of time spent on the creation of a procedure for complaints may be approximately four hours. The time spent following the procedures should a complaint be received would depend on the complaint, but it will include face-to-face meetings with multiple people regarding the complaint. This time spent could be approximately four hours. The anticipated cost to comply with this rule would also depend on the wage for the specific worker, as well as their understanding of the adoption rules in general. According to Salary Expert, the average hourly rate of a child welfare caseworker to be \$28 per hour. The anticipated cost of compliance for an agency to comply with this rule would be at a minimum of \$112 to create a procedure and an additional \$112 for following up on a complaint received. Costs associated with the rule are current costs.

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

To ensure the most appropriate placement selection for the child into a permanent, safe, loving home, the requirements of these rules are necessary.

Regulatory Flexibility

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

No, there is no alternative means of compliance.

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?

N/A

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

ODJFS has regional offices with technical assistance specialists and licensing specialists that will be able to assist agencies in creating adoption policies and making appropriate placement decisions for children in their permanent custody as well as with obtaining and maintaining compliance with these regulations. Policy developers are also available to give technical assistance regarding the requirements of these rules. JFS helpdesk is also available for directing questions via email at Help-Desk-OCF@jfs.ohio.gov.