

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Chapters 5101:2-5 and 5101:2-33 Beck CCN 8225

Rule Number(s): 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80

Date: 11/1/18

**Rule Type:**

New  
 Amended

5-Year Review  
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

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[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

OAC rule 5101:2-5-04, entitled "Recertification of an agency to perform specific functions," provides guidance to agencies on the process for agency recertification. Paragraph (A) was amended to update the revision date on the JFS 01290 form. No other changes were made.

OAC rule 5101:2-5-13.1, entitled "Disaster preparedness plan requirements," provides guidance to agencies on requirements in case of a disaster. Paragraph (A) was amended to remove dated language. No substantive changes were made.

OAC rule 5101:2-5-27, entitled "Agency procedure for the termination of a foster home certificate," provides guidance to agencies on how to terminate a foster home certificate. Paragraph (B) was removed as the information was outdated. No other changes were made.

OAC rule 5101:2-5-29, entitled "Agency requirements for foster home records," provides guidance to agencies on foster home records. Paragraph (E) was amended to remove dated language. No other changes were made.

OAC rule 5101:2-5-36, entitled "Additional requirements for an agency that acts as a representative of ODJFS in recommending treatment foster homes for certification," provides guidance to agencies on additional requirements for treatment foster homes. Paragraphs (O)(2) and (O)(3) were amended to break out the paragraphs for clarification and to align the rule with rule 5101:2-7-16 of the Administrative Code.

OAC rule 5101:2-5-37, entitled "Additional requirements for an agency that acts as a representative of ODJFS in recommending medically fragile foster homes for certification," provides guidance to agencies on more specific requirements for medically fragile foster homes. Paragraph (Q) amended to break out the paragraphs for clarification and to align the rule with rule 5101:2-7-17 of the Administrative Code.

OAC rule 5101:2-5-40, entitled "Preplacement and continuing training programs," provides guidance to agencies on creation and maintenance of foster caregiver training programs. Paragraph (B) was amended to add a reference regarding amendments to the training plan.

OAC rule 5101:2-33-80, entitled "Rapback," provides guidance to agencies on the procedures for receiving and responding to a hit from the Rapback criminal record system. Paragraph (C) was removed due to referring to an outdated form. Paragraph (D) was amended to ensure all agencies enter the proper information into SACWIS. Other changes were made throughout the rule due to procedural changes that have occurred since the last rule review.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Rule Number	Statutory Authority
Rule 5101:2-5-04	ORC 5103.03
Rule 5101:2-5-13.1	ORC 5103.03, 5103.07, 5153.166
Rule 5101:2-5-27	ORC 5103.03
Rule 5101:2-5-29	ORC 5103.03
Rule 5101:2-5-36	ORC 5103.03, 5103.0316
Rule 5101:2-5-37	ORC 5103.03, 5103.0316
Rule 5101:2-5-40	ORC 5103.0316
Rule 5101:2-33-80	ORC 5101.32

**3. 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 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80 do not implement a federal regulation and are 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.

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

These rules are not written as a requirement of Federal Law, nor do they exceed any Federal requirements. Each of the rules is specific to child welfare and follows state statute to ensure the safety of the children in substitute care.

**5. 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)?**

For rule 5101:2-5-04, the purpose of the regulation is to provide guidance to agencies on the process for agency recertification. This regulation is needed to ensure agencies are recertified

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using the minimum certification standards needed to maintain a competent and adequate institution for the placement of foster children.

For rule 5101:2-5-13.1, the purpose of the regulation is to have a plan for the minimum process necessary for the agency to continue to operate during a disaster. This regulation is needed to ensure the continued care for children placed under the agency's oversight.

For rule 5101:2-5-27, the purpose of the regulation is to guide agencies on items regarding the termination of a foster home certificate. This regulation is needed so that an agency is aware of the items that must be met for the safety of the children in their care.

For rule 5101:2-5-29, the purpose of the regulation is to provide agencies with guidelines for the safe keeping and content of foster home records. This regulation is needed to ensure the confidentiality of the information of the foster caregivers as well as the children in care.

For rule 5101:2-5-36, the purpose of the regulation is to ensure agencies have additional guidelines for foster homes that provide care for treatment level foster children. This regulation is needed to ensure children placed with the agency that need more intensive care, receive the services needed to carry on with their daily life.

For rule 5101:2-5-37, the purpose of the regulation is to ensure agencies have additional guidelines for foster homes that provide care for medically fragile level foster children. This regulation is needed to ensure children with extensive medical needs have the care to properly address their needs.

For rule 5101:2-5-40, the purpose of the regulation is to provide guidelines of a training program for a foster care agency to ensure the agency is in compliance with statutory requirements. This regulation is needed to ensure the agency is providing adequate training to foster caregivers so that the home can properly and adequately provide care for the children placed there.

For rule 5101:2-33-80, the purpose of the regulation is to provide guidance to agencies on the procedures for receiving and responding to a hit from the Rapback criminal record system. This regulation is needed to comply with statutory requirements surround criminal background checks.

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

Rules 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80 will be measured against the criteria specific to the rule content.

## **Development of the Regulation**

**7. 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 rules were presented to several interest groups including Ohio Children's Alliance (OCA), the Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings conducted by ODJFS. The groups discussed potential changes, provided feedback and came to conclusions on each rule. The rules also went through the clearance process on October 15, 2018 through October 29, 2018. There were no comments and no additional questions were received.

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

There were no additional comments provided during the clearance process.

**9. 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.

**10. 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 rules 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80 as all parties involved were satisfied with the rules and because the rules are driven by statute.

**11. 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.*

For rules 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80, ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set standards to ensure every institution and association that receives, or desires to receive and care for children, or places children in private homes is effectively and appropriately administering proper standards for safety. ODJFS also, according to statute, must be satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions

and associations are being complied with. These rules are also specific because the safety of the children in care dictates a specified process to ensure compliance.

**12. 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 foster care agencies and no other rules address these specific issues. These rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they do not duplicate any existing Ohio regulations.

**13. 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.**

The rules do not prescribe anything that would not be applied consistently. 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**

**14. 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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 rules of the Administrative Code in Chapters 5101:2-5 and 5101:2-33 contain requirements for foster care agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-5-04 – The agencies adhering to certification requirements with regard to the process for agency recertification.

5101:2-5-13.1 – The agencies adhering to certification requirements with regard to emergency planning in case of a disaster. As a state supervised, county administered CPS system, planning for disaster response and recovery in Ohio occurs at both the state and county levels. Program

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Instruction, ACYF-CB-PI-07-05 issued by the U.S. Department of Health and Human Services, Administration for Children and Families on February 28, 2007 delineates the criteria for disaster preparedness and recovery plans. This rule is the result of the Federal requirement.

5101:2-5-27 – The agencies adhering to certification requirements for terminating a foster care certificate including the time involved in preparing the proper forms and submission of information to ODJFS.

5101:2-5-29 – The agencies adhering to certification requirements with regard to the keeping of foster home records which might include making copies and housing of the files.

5101:2-5-36 – The agencies that choose to certify treatment foster homes, adhering to certification requirements with regard to guidelines and requirements for treatment level foster homes which would include the time involved in creating a service plan that addresses the child's needs for a treatment foster home.

5101:2-5-37 – The agencies that choose to certify medically fragile foster homes, adhering to certification requirements with regard to guidelines and requirements for medically fragile level foster homes which would include the time involved in creating a service plan that addresses the child's needs for a medically fragile foster home. This might also include the cost of any special medical equipment and services for this type of child.

5101:2-5-40 – The agencies adhering to certification requirements with regard to the creation and implementation of a foster care training program including the cost of the time to complete a training program and present it to ODJFS for approval. Pre-placement training requirements are specific to ORC section 5103.039.

5101:2-33-80 – The agencies adhering to the procedures for receiving and responding to a hit from the Rapback criminal record system.

The adverse impact would only be relegated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. The rules would be quantified by varying factors such as the agency employee's time involved in compliance with the day to day activities and requirements of operating a foster care residential facility.

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

To ensure the safety of children in substitute care, the adverse impact of these rules is necessary. Chapter 5103 of the Revised Code charges ODJFS with the direction of oversight for children in care. Specifically ORC 5103.03 grants ODJFS the authority to write rules in order to "...pass upon the fitness of every institution and association that receives, or desires to receive and care

for children, or places children in private homes.” To accomplish this result, the adverse impact of these rules is necessary.

### **Regulatory Flexibility**

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

For rules 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80, there is no alternative means of compliance.

**17. 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?**

For rules 5101:2-5-04, 5101:2-5-13.1, 5101:2-5-27, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, 5101:2-5-40 and 5101:2-33-80 there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

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

ODJFS has a regional office with a licensing specialist that will be assigned to assist the agency in the entire application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.