

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Procedure for Complaints of Alleged Discriminatory Acts, Policies or Practices in the Foster Care or Adoption Process that Involve Race, Color or National Origin and Multiethnic Placement Act (MEPA) agency administrative requirements

Rule Number(s): 5101:2-33-03, and 5101:2-33-11

Date: January 30, 2015

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☐ Rescinded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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The outline of: Rule 5101:2-33-03 - Any individual may file a complaint alleging a discriminatory act, policy or practice involving race, color or national origin (RCNO) in the foster care or adoption process of a private child placing agency (PCPA), or private noncustodial agency (PNA). The complaint may be filed with any PCPA, PNA, or ODJFS Bureau of Civil Rights.

The outline of: Rule 5101:2-33-11 - Each private child placing agency (PCPA) shall designate a person to serve as the agency's internal Multiethnic Placement Act (2/06) (MEPA) monitor. Private child placing agencies (PCPA) may share MEPA monitors from another PCSA or PCPA to fulfill MEPA monitoring functions.

The MEPA monitor shall review and monitor foster care and adoptive placement decisions.

Note: The amendments to these rules are primarily to make clarifying language changes and to correct typographical errors; however, new form requirements have been added that may constitute additional time for PCPAs to complete.

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

Rule Number	Statutory Authority
5101:2-33-03	5101.141, 5103.03, 5153.16
5101:2-33-11	5101.141, 5103.03, 5153.166

**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.**

Yes, U.S. Department of Health and Human Services (HHS) put Ohio under an indefinite corrective action and resolution plan (CARP) for Hamilton County's noncompliance of the Multiethnic Placement Act (MEPA). For the resolution to the problem, the counties cases are to be monitored on a regular basis for discriminatory issues. MEPA training and technical assistance are offered to counties on an "as needed" basis.

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

The rules do not include provisions not specifically required by the Federal government.

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)?

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This rule prohibits PCPA's, and PNA's, involved in foster care or adoption placements from delaying, denying, or otherwise discriminating when making a foster care or adoption placement decision on the basis of the parent or child's race, color, or national origin. Failure to comply is a violation of title VI of the Civil Rights Act.

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

Outcomes will be measured on how well the PCPA, and PNA, agencies follow their procedures on discriminatory complaints and how the agencies resolve these complaints in a timely manner.

In addition, on how thoroughly the MEPA monitor reviews agency's cases and dissolve discriminatory issues that may be found in the cases.

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.

October 14, 2014 through November 14, 2014, these rules were posted on Ohio's Families and Children Rule Review website: (www.ohiorulereview.org), and December 8 through 22, 2014 the rules were posted on the Job and Family Services website: (<http://www.odjfs.state.oh.us/clearances/public/index.aspx>) for stake holders to review and comment.

The stakeholders have access to review and make comments on the rules.

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

A request was made to change the timeframe on when an agency must forward a complaint form to ODJFS Bureau of Civil Rights from within "three working days" to within "five working days". The timeframe "three working days" stands; the review team felt that three days was enough time for the counties to forward the complaint form.

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?

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No alternative regulations were considered at this time of amending rules for clarifying, non-substantive changes.

- 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.

ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the Department set standards to ensure MEPA compliance of every child in care being prepared for adoption placement.

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

Division specialists and legal staff at ODJFS reviewed these rules 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; Private child placing agency (PCPA), and private noncustodial agency (PNA).
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and Failure to comply with rules would result in possible corrective action plan (CAP) and on-going training and technical assistance to those agencies not in compliance. The time involved in preparing written notice for procedures on discrimination complaints; the cost of providing procedures to prospective and existing

foster caregivers. The cost of designating a MEPA monitor; completing the JFS 01668 and JFS 01420 forms; and creating written standards of conduct.

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.*

Staff spending time in revisiting their case file, reading documented notes to making sure there was no race, color or national origins stated; Staff spending time receiving technical assistance and training. In addition, the cost and time involved in selecting a MEPA monitor, completing forms; and creating written standards of conduct.

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

If the agencies do not follow the guidelines set forth by the state’s rules and policy, the state will be fined for being out of compliance with the rules set forth by U.S. Department of Health and Human Services.

Regulatory Flexibility

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

There is no alternative means of compliance with these rules.

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?

There are no fines, but failure to comply with rules would result in a possible corrective action plan (CAP) and on-going training and technical assistance to those agencies not in compliance.

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

The CDJFS enforces the rules set forth by ODJFS. ODJFS provides technical assistance through technical assistance staff, eManuals, and the Help Desk.

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eManuals for children in substitute care located at:
<http://emanuals.odjfs.state.oh.us/emanuals/>