

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

**Tom Simmons**

Contact

**50 West Broad Street 9th floor Columbus OH  
43215-3363**

Agency Mailing Address (Plus Zip)

**614-728-2548**

Phone

Fax

**tsimmons@age.ohio.gov**

Email

**173-39-02.19**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Kosher option.****RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **No**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.391**5. Statute(s) the rule, as filed, amplifies or implements: **173.524**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The Ohio Department of Aging (ODA) is filing this rule to comply with the statutory requirements to review every rule before the deadline that ODA established for each rule. This review must occur no less often than once every five years. ODA's deadline for this rule is September 30, 2014.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE,

then summarize the content of the rule:

In 2009, House Bill No. 1 of the 128th General Assembly enacted section 173.402 of the Revised Code, which House Bill No. 59 of the 130th General Assembly renumbered to be section 173.524 of the Revised Code.

The section says that any consumers who are enrolled in the PASSPORT Program may request to have their home-delivered meals be kosher.

To implement this requirement into rules, ODA adopted rule 173-39-02.19 of the Administrative Code in 2009. The rule made the following 3 requirements:

1. Any consumer who is enrolled in the PASSPORT Program has the option to choose a kosher home-delivered meal if the consumer's case manager has authorized a home-delivered meal. This prevented the PASSPORT Program from reimbursing a provider for delivering kosher meals to Consumer X if Consumer X's case manager did not authorize home-delivered meals for Consumer X.
2. Providers of kosher home-delivered meals shall comply with the requirements for all home-delivered meals "as much as possible" in rule 173-39-02.14 of the Administrative Code. "As much as possible" comes from section 173.524 of the Revised Code. It gives the provider flexibility in meeting nutrient requirements and other requirements in rule 173-39-02.14 of the Administrative Code in order to comply with "kosher practices for meal preparation and dietary restrictions."
3. Providers shall only furnish kosher home-delivered meals that are kosher according to (a) a recognized kosher certification or (b) kosher establishment under orthodox rabbinic supervision. ODA consulted with Ohio Jewish Communities to develop the language for this.

ODA plans to make two technical amendments to the rule. ODA has been systematically replacing occurrences of "PASSPORT administrative agency" ("PAA") with "ODA's designee." ODA proposes to do the same with this rule. Likewise, ODA has been replacing many occurrences of the verb "to provide" with "to furnish." Lastly, ODA replaced "a...meal" with "the meals" in paragraph (C) of the rule.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not*

*incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **9/30/2014**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the rule, even after ODA's proposed amendments, would have no impact upon the biennial budget that the Ohio General Assembly established for ODA because the line item that funds the PASSPORT Program is under the Ohio Dept. of Medicaid. ODA also estimates that rule, even after ODA's proposed amendments, would have no impact upon budget line item GRF-651-525.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-651-525 Medicaid/Health Care Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that ODA's proposed amendments to the rule would create no cost of compliance to any directly-affected person, especially because the amendments are not substantive.

For more information, please see ODA's responses to questions 14 and 15 of the business impact analysis (BIA).

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

### **S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

Section 173.524 of the Revised Code requires ODA to "ensure" that the meals are kosher. Since the rule's inception in 2009, ODA has required the meals to be certified as kosher by (1) a recognized kosher certification or (2) a kosher establishment under orthodox rabbinic supervision.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The rule requires providers to "furnish evidence" to ODA's designee that the home-delivered kosher meals that it furnishes are certified as kosher by (1) a recognized kosher certification or (2) a kosher establishment under orthodox rabbinic supervision.