

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 4112-5-02

Rule Type: Amendment

Rule Title/Tagline: Definitions.

Agency Name: Ohio Civil Rights Commission

Division:

Address: 30 East Broad Street Fifth floor Columbus OH 43215

Contact: Stephanie Demers **Phone:** 614-466-6255

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 9/21/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 4112.04
5. **What statute(s) does the rule implement or amplify?** 4112.04, 4112.05
6. **What are the reasons for proposing the rule?**

Five-year review.
Review Date: 09/21/2018

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule outlines definitions of words when used in Chapter 4112. of the Revised Code and Chapters 4112-5 to 4112-7 of the Administrative Code.

The agency seeks to make the following amendments:

- Amend the definition of/reference to the word "accommodation" in paragraph (A) to not only include applicability to employment but to outline the fact the agency has jurisdiction over accommodation cases in public accommodation, housing and higher education and to point out the fact those situations are referenced in other sections of the Administrative Code.
- Delete "disability" as a protected class for which an employer may seek a BFOQ in paragraph (D). Under state and federal law, a BFOQ is only granted to employers for the purposes of hiring based on sex (gender), national origin, age, and religion, not race or disability.
- Change the definition of "employee" in paragraph (F) to provide guidance that an employee is defined and counted by the agency as someone in the employment of the employer on the date of the alleged unlawful occurrence. The current definition seems to only outline a definition of employee in a dual-employment situation when the person is a temporary employee placed with an employer.
- Amend paragraphs (B), (F), (H) and (I) to delete the word "such" purely for grammatical purposes.
- By adding "as applied to sections 4112.02, 4112.021 and 4112.022 in paragraph (H), the agency seeks to clarify that use of the term "disabled person" applies not only in an employment context, but also in housing (4112.02(H), public accommodations (4112.02(G), credit (4112.021) and higher education (4112.022).
- Amend paragraph (I) to correct misspelling of the words "confectioneries" (a to e) and air domes (one word to two).
- Eliminate the word "private" before housing accommodations in paragraph (J). The statutes make no reference to "private housing accommodations." The statute only references "housing accommodations." The definition outlined in this paragraph otherwise mirrors the definition of "housing accommodations" found in paragraph (A) (10) of section 4112.02.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

Not applicable.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Resubmitted as XML document instead of PDF as originally filed.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

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Not applicable.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not applicable.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

- 15. Was this rule filed with the Common Sense Initiative Office? No**

- 16. Does this rule have an adverse impact on business? No**

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

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? No

Rule Summary and Fiscal Analysis

(Part A – General Questions)

4112-5-02
Rule Number

Existing – Five-year review (Amended)
TYPE of rule filing

Rule Title/Tag Line

Definitions.

Ohio Civil Rights Commission

Agency Name

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RULE SUMMARY

1. Is this a five-year rule review?

Yes.

a. If so, what is the rule's five-year review date?

09/21/2018

2. Is this rule the result of recent legislation?

No.

a. If so, what is the bill number, General Assembly and Sponsor?

Bill Number: **N/A**

General Assembly: **N/A**

Sponsor: **N/A**

3. What statute is this rule being promulgated under?

R.C. 119.03.

4. What statute (s) grant the rule writing authority?

R.C. 119.03.

5. What statute(s) does the rule implement or amplify?

Sections 4112.04 and 4112.05 of the Revised Code.

6. What are the reasons for proposing (i.e., why are you filing,) the rule?

Five-year review.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The rule outlines definitions of words when used in Chapter 4112. of the Revised Code and Chapters 4112-5 to 4112-7 of the Administrative Code.

The agency seeks to make the following amendments:

- **Amend the definition of/reference to the word “accommodation” in paragraph (A) to not only include applicability to employment but to outline the fact the agency has jurisdiction over accommodation cases in public accommodation, housing and higher education and to point out the fact those situations are referenced in other sections of the Administrative Code.**
- **Delete “disability” as a protected class for which an employer may seek a BFOQ in paragraph (D). Under state and federal law, a BFOQ is only granted to employers for the purposes of hiring based on sex (gender), national origin, age, and religion, not race or disability.**
- **Change the definition of “employee” in paragraph (F) to provide guidance that an employee is defined and counted by the agency as someone in the employment of the employer on the date of the alleged unlawful occurrence. The current definition seems to only outline a definition of employee in a dual-employment situation when the person is a temporary employee placed with an employer.**
- **Amend paragraphs (B), (F), (H) and (I) to delete the word “such” purely for grammatical purposes.**
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- **Amend paragraph (I) to correct misspelling of the words “confectioneries” (a to e) and air domes (one word to two).**
- **Eliminate the word “private” before housing accommodations in paragraph (J). The statutes make no reference to “private housing accommodations.” The statute only references “housing accommodations.” The definition outlined in this paragraph otherwise mirrors the definition of “housing accommodations” found in paragraph (A)(10) of section 4112.02.**

- Of special note, reference to “private” makes it seem as if the agency has no jurisdiction over public housing providers. The agency routinely investigates cases against both private and public housing providers.
- The agency seeks to make similar amendments to section 4112-5-07 through deletion of all references to the word “private.”

8. Does the rule incorporate material by reference?

Chapter 4112 and section 4112.01(A)(13) of the Revised Code. Additionally, if accepted, the amended provisions would reference sections 4112-5-06, 4112-5-07 and 4112-5-08 of the Administrative Code, and sections 4112.02(A), 4112.021 and 4112.022 of the Revised Code.

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

Not applicable.

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed rule.

Not applicable.

Fiscal Analysis

11. 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.

Not applicable.

12. What are the estimated costs of compliance of all persons and/or organizations directly affected by the rule?

None.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).

No.

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA, Part C).

No.

Common Sense Initiative (CSI) Questions

15. Was this rule filed with the Common Sense Initiative Office?

Not applicable.

16. Does this rule have an adverse impact on business?

No.

- a. Does this rule require a license, permit or any other prior authorization to engage in or operate a line of business?
- 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?
- c. Does this rule require specific expenditures or the report of information as a condition of compliance?

No to all.