

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

Agency Name

Division

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173-4-03

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Older Americans Act nutrition program: consumer enrollment.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
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, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 70 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (July 1, 2016).**
5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Sections 331 and 336 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.69 (October, 2015 edition).**

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

Adopting this rule is part of a larger nutrition rule project. For more information, please review the business impact analysis (BIA).

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:

This rule establishes the enrollment process for the Older Americans Act Nutrition Program.

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:

On May 2, 2016, ODA made a revised filing of this rule to (1) update references to the Act in the "statutory authority" and "rule amplifies" sections after the rule text and (2) upload a revised public hearing notice for a public hearing on the same date

and time and in the same location.

On May 3, 2016, ODA made a revised filing of this rule to replace the comma after "173.392" in the "statutory authority" section with a semicolon, to replace the comma after "173.392" in the "rule amplifies" section with a semicolon, and to replace ".,." in the "rule amplifies" section with a semicolon. Also on May 3, 2016, ODA made a subsequent revised filing because ERF did not show that the CSIO documents were uploaded in the previous filing.

On July 20, 2016, ODA refiled the rule. In doing so, ODA proposed the following amendments in response to testimony provided at ODA's May 25, 2016 public hearing:

* In paragraphs (B)(1), (B)(2), (B)(3), (B)(3)(a), and (B)(3)(e), ODA proposed replacing occurrences of "assess" with "verify." "Assess" is a loaded word that implied a more-comprehensive evaluation. ODA only intends for providers to verify that consumers' meals meet the requirements in OAC173-4-02 before a provider enrolls the consumer.

* ODA proposed revising the rule to clarify that when consumers are discharged before the provider has an opportunity to verify eligibility, the provider may temporarily deem the discharge order to be sufficient verification under limited conditions. For example, a registered nurse conducts all verifications on weekdays during normal business hours. Meanwhile, an area hospital often discharges its patients on Friday evenings (i.e., after the provider's nurse is able to verify if Older Americans Act funds may pay for home-delivered meals). If the hospital discharge papers indicate that the consumer requires home-delivered meals after discharge and that the consumer meals would meet the requirements for payment, then Older Americans Act funds may pay for the consumer's meals provisionally (i.e., until Monday when the provider's registered nurse can conduct the customary eligibility verification.

After "Statutory Authority," ODA also proposed changing the date of the reference to 45 C.F.R. 1321.11 to July 1, 2016 to reflect the latest version of the federal rule. (Cf. Administration for Community Living. Final Rules. Federal Register. Vol. 81. No. 107. Friday, June 3, 2016. Pp. 35644-35648.) This would have no effect on the rule's content.

12. Five Year Review (FYR) Date:

(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

Adopting the proposed new rule to replace the rule ODA is simultaneously proposing to rescind would not impact the biennial budget the Ohio General Assembly established for ODA.

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

GRF-490-411 Senior Community Services.

3220-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence 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:

There is no cost of compliance directly associated with ODA's proposed adoption of this new rule to replace the current rule that ODA is simultaneously proposing to rescind. For information, please review the BIA and its appendices.

Additionally, ODA's proposed amendments on July 14, 2016 would not increase the cost of compliance. For further information, please review the memorandum of response to CSIO and the hearing summary report.

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? **No**

This rule is part of a larger rule package that has adverse impacts upon Ohio businesses, but this rule does not have adverse impacts on Ohio businesses. Instead, this rule details the enrollment process for persons (not businesses) who want to enroll in the Older Americans Act Nutrition Program.

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**