

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

Agency Name

Division

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173-4-04

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Older Americans Act nutrition program: procuring for person direction.**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.**

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

This rule is part of a larger nutrition rule project. ODA proposes to adopt this new rule to replace the language in OAC173-4-05 on the minimum level of menu options and the language in OAC173-4-05.3 on alternative meal formats. 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 proposed new rule would establish person-direction requirements for the Older Americans Act Nutrition Program in Ohio. It replaces alternative meal language from the to-be-rescinded version of OAC173-4-05.3 and menu choice language from the to-be-rescinded version of OAC173-4-05.

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

* ODA proposed revising the rule's language to clearly indicate that person-direction is one requirement on which an AAA shall score a provider's bid. It is not the only requirement on which an AAA shall score a bid. The bid must comply with other ODA rules and be the "lowest responsive bid." Otherwise, a provider could win a bid even if its meals cost \$1,000 each because the provider offered more person direction than the next-lowest responsive bid.

* ODA proposed revising the rule to make it clear that "options between complete meals at each mealtime" is an example of person direction contained within the definition of "person direction." it is not, in itself, the definition of "person direction." To accomplish this, ODA proposed placing the examples of person direction in separate paragraphs from the main portion of the definition of "person direction." This spreads the definition and its examples over 3 paragraphs and makes reading the definition easier.

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 part of OAC173-4-05 (which ODA is simultaneously proposing to rescind) and all of OAC173-4-05.3 (which ODA is also 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 would be no cost of compliance directly associated with adopting this new rule to replace OAC 173-4-05 and 173-4-05.3. For information on the cost of complying with the new rule, please review the BIA and its appendices.

Additionally, the refiled version of the proposed new rule (July 14, 2016) would not increase the cost of compliance to providers. Instead, the refiled language would better foster competitive bidding by ensuring that providers with low responsive bids would not lose a round of competitive bidding to a provider who offers the most person direction at an extraordinarily high price. For more information, please review 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**

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**