

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

Agency Name

Division

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**173-4-05.2**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Older Americans Act nutrition program: home-delivered meals projects.****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, 173.392; 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.**
5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Section 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:

ORC§106.03 requires each agency to review each rule no less often than once every five years.

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:

#### OVERVIEW (i.e, SUMMARY OF CONTENT)

The rule regulates AAA-provider agreements for home-delivered meals when those meals are paid, in whole or in part, with Older Americans Act funds and delivered to older Ohioans in the state of Ohio.

The rule makes requirements unique to this rule in the following 4 categories:

1. DELIVERY REQUIREMENTS: The rule requires maintaining (A) adequate availability (i.e., business hours) and (B) delivering when the consumer or the consumer's caregiver is home.
2. EMERGENCY CLOSINGS: The rule requires written contingency procedures for emergency closings including timely notification to consumers and the distribution of information on how to stock an emergency food shelves or the distribution of shelf-stable food for an emergency food shelves.
3. QUALITY ASSURANCE: The rule requires stakeholder outreach and annual quality-improvement plans.
4. DELIVERY VERIFICATION: The federal Uniform Administrative Requirements, Costs Principles, and Audit Requirements, especially 45 CFR 75.403, require all costs incurred under the Older Americans Act Nutrition Program to be reasonable and to be documented. Therefore, AAA-provider agreements must require providers to verify deliveries either electronically or by receiving a handwritten signature, initials, stamp, or mark to attest to the delivery.

The rule also references the following two requirements: (1) requirements for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds (cf. OAC173-3-06) and (2) requirements for every AAA-provider agreement for a nutrition project. (cf. OAC173-4-05).

#### SPECIFIC AMENDMENTS (i.e., SUMMARY OF CHANGES)

After comprehensively reviewing the rule, ODA proposes to do the following:

1. DELIVERY REQUIREMENTS:
  - a. ODA proposes to retain the availability requirements in (B)(1)(a)(i) and (ii) to

comply with §336 of the Older Americans Act Reauthorization Act of 2016 (the Act).

b. ODA proposes to delete (B)(1)(a)(iii), because ODA's amendment to (B)(2) would include the option afforded by (B)(1)(a)(iii) and ODA intends to delete duplicate requirements from rules.

c. In (B)(2), after "The provider shall only deliver meals to the consumer's home when the consumer or the consumer's caregiver is home," ODA proposes to insert a comma, then insert "unless otherwise authorized by the AAA." The new language will allow AAA-provider agreements to permit AAAs to authorize alternate delivery arrangements.

d. ODA proposes to delete (B)(3) because ODA's proposed new language for (E)(4) would include the protection presently afforded by (B)(3) and ODA intends to delete duplicate requirements from rules.

2. EMERGENCY CLOSINGS: ODA proposes to retain the current requirements for emergency closings without any amendments.

3. QUALITY ASSURANCE: ODA proposes to retain the current quality-assurance requirements without any amendments.

4. DELIVERY VERIFICATION: ODA proposes to replace (E) with new language having the following characteristics:

a. The language continues to require verifying every delivery to comply with 45 CFR 75.403.

b. The language expands the list of parties who may attest to a completed delivery from "consumers" to "consumers, consumers' caregivers, and delivery persons."

c. The language continues to allow identifiers of those attesting to delivery to include a variety of ways to identify: signatures, initials, stamps, marks, bar codes, passwords, and swipe cards.

d. The language continues to offer providers protection by prohibiting AAA-provider agreements from requiring providers to use a particular delivery-verification system, whether non-electronic, electronic, or a certain brand of electronic.

e. The language no longer mentions that providers need not obtain multiple verification for multi-meal deliveries, because it is redundant. The rule only requires verifying deliveries, not meals, so if a delivery has multiple meals in it, it would still only require a single verification. Deleting the language won't change create or eliminate any requirements for providers.

Please review the BIA for more information.

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: **6/7/2017**

(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 OAC173-4-04.1 (which 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:

According to comments received from certain providers, the proposed changes regarding (1) delivery requirements and (2) delivery-verification requirements are significant reductions in burden upon providers. Please review the BIA for detailed information.

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**

The amended rule would regulate AAA-provider agreements which are necessary to provide home-delivered meals paid, in whole or in part, with Older Americans Act funds.

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 amended rule would require documentation, service verification, and records retention.