

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-4-05

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act nutrition program: nutrition projects.

Agency Name: Department of Aging

Division:

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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?** 8/26/2021
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?** 121.07, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11, 1321.17
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3025, 3030c-2, 3030e, 3030f, 3030g-21; 45 C.F.R. 1321.11, 1321.17, 1321.67
6. **What are the reasons for proposing the rule?**

Section 173.392 of the Revised Code requires ODA to establish requirements to include in, or exclude from, AAA -provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds. The rules in Chapter 173-4 of the Administrative Code establish such requirements for the Older Americans Act Nutrition Program.

ODA proposes to amend this rule.

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

Rules 173-4-05 of the Administrative Code establishes requirements applying only to AAA-provider agreements for nutrition projects. On June 11, 2020, Governor DeWine issued executive order 2020 23D which authorized ODA to adopt emergency amendments to these rules. The emergency amendments gave providers flexibility to conduct certain responsibilities by telephone, video conference, or in person. On December 31, 2020, ODA adopted amendments to this rule that gave providers flexibility to do the same during a state of emergency declared by the governor. On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order 2021-09D to authorize ODA to adopt emergency rule 173-1-04 of the Administrative Code, which declares that providers have the same flexibility until the end of the federal public health emergency. ODA proposes to give providers these flexibilities until the end of federal public health emergency or on an ongoing basis, whether a state or federal emergency exists or does not exist.

ODA also proposes to amend this rule to do the following:

1. Add "flexibilities, and recommendations" after "requirements" in paragraph (A) of the rule.
2. Restate paragraph (A)(4)(c) of this rule to emphasize that an AAA must include the requirements of rules 173-4-10 and/or 173 4 10 of the Administrative Code in the AAA-provider agreement if the AAA requires the provider to provide grocery shopping assistance or grocery ordering and delivery. This is not a new requirement because the same is already required in rules 173-4-10 and 173 4 11 of the Administrative Code.
3. Delete the portions of paragraph (A)(9)(b) that cite an incorporation by reference, because ODA also proposes to define "Dietary Guidelines for Americans" in rule 173-4-01 of the Administrative Code and a definition in that rule applies to the rest of the chapter.
4. Replace "cultural considerations, preferences, and medically-tailored foods" with "cultural considerations and preferences and medically-tailored foods" to align with 42 U.S.C. 3030g-21.
5. Require AAAs to encourage providers to use, where feasible, locally-grown foods and identify potential partnerships and contracts with local producers and providers of locally-grown foods. Although this will count as a new "regulatory restriction" under R.C. §121.95, it is not a new requirement for providers. Instead, it requires the

AAA-provider agreement to encourage providers. The encouragement reiterates the encouragement found in 42 U.S.C. 3030g-21.

6. Replace the prohibition against AAA-provider agreements that prohibit providers from using 1 of 2 methods to determine nutritional adequacy with a requirement for AAA-provider agreements to give providers flexibility to choose either method. The impact is the same, but with one less "regulatory restriction" under R.C. §121.95.

7. Replace ". The record shall include" in paragraph (A)(13)(b) of this rule with "and" since the paragraph is still referring to the same requirement. This will eliminate another "regulatory restriction" under R.C. §121.95.

8. Insert "storage" between "handling" and "or delivery" in paragraphs (A)(13)(a)(i) and (A)(13)(a)(ii) of this rule.

9. Delete "written" in paragraph (A)(13)(b) of the rule to be clear that providers have flexibility to use either electronic records or written records.

8. Does the rule incorporate material by reference? No

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, 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.

Not Applicable

II. Fiscal Analysis

11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

\$0.00

Adopting ODA's proposed amendments to this rule will have no effect upon the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit (e.g., a meal). The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173 3 04 and 173 3-05 of the Administrative Code).

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

15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not Applicable.

III. Common Sense Initiative (CSI) Questions

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

17. Does this rule have an adverse impact on business? Yes

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? Yes

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit (e.g., a meal). The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173 3 04 and 173 3-05 of the Administrative Code).

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

- A. How many new regulatory restrictions do you propose adding? 1**

(A)(9)(f) "In the AAA-provider agreement, the AAA shall encourage providers to use, where feasible, locally-grown foods and identify potential partnership and contracts with local producers and providers of locally-grown foods"

- B. How many existing regulatory restrictions do you propose removing? 3**

(A)(4)(c) "...the provider shall offer grocery shopping assistance or grocery ordering and delivery."

(A)(9)(e) "...not prohibit the provider from using...."

(A)(13)(b) "The record shall include...."