

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

Agency Name

Division

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**173-4-05**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Meal service.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **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: **173.02; 173.392; Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.392, Sections 336 and 339 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006**

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

ODA is proposing this new rule as part of a larger effort to codify ODA's standards for agreements between AAAs and providers who are not providing services under a Medicaid-funded program (i.e., providers who are non-certified providers under section 173.392 of the Revised Code). This effort will bring ODA into compliance

with section 173.392 of the Revised Code, Section 305 (a)(1)(C) of the Older Americans Act, and 45 C.F.R. 1321.11.

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 regulates a meal service for non-certified providers paid through means of a provider agreement entered into with an AAA. Specifically, this rule:

1. Defines the term "meal service";
2. Itemizes the minimum requirements for a meal service, including the requirements for dietary guidelines and dietary reference intakes; menu planning; determining nutritional adequacy by the nutrient-analysis method or the menu pattern method; ingredient information; consumer choice; alternative meals (e.g., therapeutic meals, diabetic meals, vegetarian meals, ethnic or religious meals, etc.); medical food and food for special dietary use; and dietary supplements.
3. Establishes the unit of a meal service in a congregate nutrition program, home-delivered nutrition program, and a restaurant and grocery meal service.

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:**

On November 24, 2008, ODA revised this proposed new rule to:

1. Replace the words "means a service that" in paragraph (A) of the rule with the words "means a service through which a congregate nutrition program, a home-delivered nutrition program, or a restaurant or grocery meal service provides."

2. Revise this RSFA.

On November 25, 2008, ODA revised this proposed new rule to:

1. Revise the public hearing notice.

2. Revise this RSFA.

On January 5, 2009, ODA refiled this proposed new rule to:

1. Replace "The provider shall consider only the first two servings of fats and oils in a meal to be an accompaniment. The provider shall not serve more than two servings of fats and oils in a meal" in paragraph (B)(2)(b)(ii)(h)(ii) with "The provider shall not serve more than two servings of fats and oils in a meal. Fat used as an ingredient in a menu item is not counted."

2. Insert "or an LD" after "from the physician" in paragraph (B)(5)(a)(iv) of the rule.

3. Delete "from" from "2 ounces from of meat or meat alternate" in Table 2.4 of the rule.

4. Delete "from" from "This counts as two servings from of fruits or vegetables" in paragraph (B)(5)(f)(ii) of the rule.

5. Upload a hearing notice into the Register of Ohio to announce ODA's option to provide a second public hearing.

6. Revise this RSFA.

On January 9, 2009, ODA refiled this proposed new rule to:

1. Delete the last two sentences of paragraph (B)(1)(a) of the rule and all sub-paragraphs to paragraph (B)(1)(a) of the rule. That language formerly said, "The guidelines provide science-based advice to promote health and to reduce risk for major chronic diseases through diet and physical activity. This is a simplified

summary of the guideline's advice: (i) Consume a variety of foods within and among the basic food lists while staying within energy needs; (ii) Balance caloric intake with caloric expenditure to manage body weight; (iii) Be physically active thirty minutes each calendar day; (iv) Consume sufficient amounts of fruits and vegetables; whole grains; and non-fat (or low-fat) milk and non-fat (or low-fat) milk products while staying within energy needs; (v) Keep total fat intake between twenty to thirty-five per cent of the total caloric intake, with most fats coming from sources of polyunsaturated and monounsaturated fatty acids (e.g., fish and vegetable oils); (vi) Choose fiber-rich fruits, vegetables, and whole grains often; (vii) Choose and prepare foods with little salt to with a goal of no more than 2300 mg of sodium per calendar day; (viii) Select potassium-rich foods to increase the daily potassium intake (e.g., fruits and vegetables); (ix) If you consume alcoholic beverages, do so in moderation; and, (x) Prepare, handle, and store food safely.

2. Revise the public hearing notice.

3. Revise this RSFA.

On January 12, 2009, ODA refiled this rule to:

1. Delete paragraph (B)(2)(b)(ii)(c)(i) of the rule, which restricted providers who use the menu-pattern method to plan meals to using Table 2.1 to the rule to determine one serving of a meat or meat alternate.

2. Delete Table 2.1 to the rule.

3. Delete paragraph (B)(2)(b)(ii)(e)(i) of the rule, which restricted providers who use the menu-pattern method to plan meals to using Table 2.2 to the rule to determine one serving of bread or a bread alternate.

4. Delete Table 2.2 to the rule.

5. Delete paragraph (B)(2)(b)(ii)(f)(i) of the rule, which restricted providers who use the menu-pattern method to plan meals to using Table 2.3 to the rule to determine one serving of milk or a milk alternate.

5. Delete Table 2.3 to the rule.

6. Delete from paragraph (B)(5)(c)(ii) of the rule the words, "may follow the sample menu pattern in "Table 2.4" to this rule and" and "do the following."

7. Delete Table 2.4 to the rule.

8. Delete paragraph (B)(5)(c)(ii)(c) of the rule, which said, "Allow one carbohydrate choices per serving of bread or bread alternates and use the same items and serving sizes listed in 'Table 2.2' of this rule."

9. Revise this RSFA.

On January 21, 2009, ODA refiled the proposed new rules of Chapter 173-4 of the Administrative Code to:

1. Ensure due process of the law, as follows: When ODA original-filed the proposed new rules on November 21, 2008, the original public hearing notice referred to rules other than the proposed new rules of Chapter 173-4 of the Administrative Code. On November 25, 2008, ODA revise-filed the proposed new rules to revise the information on the public hearing notice, but kept the same public hearing date, which, unintentionally reduced the time required to notify the public of the December 22, 2008 public hearing on the proposed new rules of Chapter 173-4 of the Administrative Code (not those listed on the original-filed notice) to less than 31 days. Therefore, to make it possible for the public to have a 31-day period between the issuance of the public hearing notice and the hearing, on January 9, 2009, ODA refiled the rules with a revised public notice that announced a second public hearing for February 9, 2009. To ensure that JCARR did not place the proposed new rules on the consent agenda for its January 28th meeting (before the second public hearing), but, instead, placed the proposed rules on the consent agenda for its February 17, 2009 meeting (after the second public hearing), ODA refiled the rules again on January 21, 2009. In its January 21, 2009 filing, ODA did not change the language of the proposed new rules.

2. Revise this RSFA.

On January 21, 2009, for the second time on that day, ODA refiled this proposed new rule to:

1. Insert paragraph (B)(2)(b)(ii)(c)(iv) of the rule, which says, "When planning a meal under the menu-pattern method, the provider may use the guidelines on <http://aging.ohio.gov/information/nutrition/nutritionguidelinesandresources.aspx> to determine one serving of meat or meat alternate."

2. Insert paragraph (B)(2)(b)(ii)(e)(iv) of the rule, which says, "When planning a meal under the menu-pattern method, the provider may use the guidelines on <http://aging.ohio.gov/information/nutrition/nutritionguidelinesandresources.aspx> to determine one serving of bread or bread alternate."

3. Insert paragraph (B)(2)(b)(ii)(f)(iv) of the rule, which says, "When planning a meal under the menu-pattern method, the provider may use the guidelines on <http://aging.ohio.gov/information/nutrition/nutritionguidelinesandresources.aspx> to determine one serving of milk or milk alternate."

4. Delete "shall" from the end of paragraph (B)(5)(c)(ii) of the rule and add "shall to the beginning of paragraphs (B)(5)(c)(ii)(a) to (B)(5)(c)(ii)(f) of the rule.

5. Delete "and," from the end of paragraph (B)(5)(c)(ii)(e) of the rule and insert "and," to the end of paragraph (B)(5)(c)(ii)(f) of the rule.

6. Insert paragraph (B)(5)(c)(ii)(g) of the rule, which says, "May use the guidelines on <http://aging.ohio.gov/information/nutrition/nutritionguidelinesandresources.aspx> to plan a meal using carbohydrate choices."

7. Update this RSFA.

12. 119.032 Rule Review 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

ODA does not anticipate that the proposed adoption of this new rule would have any impact on the biennial budget established for ODA by the General Assembly because this proposed new rule should not create any expenses unforeseen when the General Assembly appropriate funds to ODA in Am. Sub. H. B. No. 119 (127th G. A.).

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

322-490-618 Federal Aging Grants.

3M3-490-611 Federal Aging Nutrition.

3M4-490-612 Federal Independence Services.

GRF-490-411 Senior Community 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:

ODA estimates that there will be no cost of compliance to any directly-affected person as a result of the adoption of this proposed new rule. A consumer is not required to pay for a meal service and, thus, has no cost of compliance. A provider who enters into a provider agreement under Chapters 173-3 or 173-4 of the Administrative Code is reimbursed for his/her fully-allocated costs, meaning any costs incurred by complying with this rule are compensated by funds administered under this Chapter. Additionally, the provider sets the rate of reimbursement since he/she bids on the opportunity to win a provider agreement through a competitive-bidding process under rule 173-3-05 of the Administrative Code.

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**