



Department of  
Aging

**John Kasich**, Governor  
**Bonnie Kantor-Burman**, Director

## NOTICE

### ***ADDITIONAL HEARING***

On July 6, 2012, ODA refiled proposed new rules 173-4-05.1 and 173-4-05.2 of the Administrative Code. ODA will conduct an additional public hearing to obtain comments concerning ODA's proposed amendments to the rules.

ODA will conduct the hearing on **July 16, 2012** at 50 W. Broad Street, 10th floor; Conference **Room 10A**; Columbus, OH 43215. The hearing will begin at **11:30AM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

ODA will consolidate this public hearing with other public hearings on July 16, 2012 to reduce the state's administrative expenses and to reduce the general public's costs associated with traveling to Columbus to participate in public hearings.

ODA proposes to amend its rules for **Non-Medicaid Nutrition Programs and Nutrition-Related Services** in Chapter 173-4 of the Administrative Code to implement the new, federal **Dietary Guidelines for Americans** and to make other changes. Section 119.03 of the Revised Code requires ODA to conduct a public hearing to obtain comments concerning ODA's proposed amendments.

Any person may direct written comments or requests for information concerning the proposed actions to Tom Simmons, ODA's rules manager, on or before the date of the hearing by writing to [rules@age.state.oh.us](mailto:rules@age.state.oh.us).

#### **173-4-05.1 Methods for determining nutritional adequacy.**

Below are the details about the refile that ODA listed for item #11 on the rule summary and fiscal analysis (RSFA) for proposed new rule 173-4-05.1 of the Administrative Code:

On July 6, 2012, ODA refiled the rule to:

1. Create an easier-to-read beginning of the rule by:
  - a. Moving the table entitled, "DRI Nutrient-Value Requirements," so that it appears before paragraph (A) of the rule. This prevents breaking up the content of paragraph (A) of the rule and its sub-paragraphs with a table. It also prevents having the table divided over pages 1 and 2 of the rule when the rule is viewed in the official .pdf format.

50 W. Broad Street / 9th Floor  
Columbus, OH 43215-3363 U.S.A.  
[www.aging.ohio.gov](http://www.aging.ohio.gov)

614-466-5500 (Main)  
614-466-5741 (Fax)  
DIAL 711 (TTY)

- b. Moving the table entitled, "Menu pattern," so that it appears before paragraph (B) of the rule. This prevents breaking up the content of paragraph (B) of the rule from its sub-paragraphs.
  - c. Inserting "the provider complies with the following" after "if" in paragraph (A) of the rule.
  - d. Adding the sub-title "Software" to the beginning of paragraph (A)(1) of the rule.
  - e. Adding the sub-title "Compliance ranges" to paragraph (A)(2) of the rule.
  - f. Moving the language on compliance ranges from paragraph (A)(2) of the rule into paragraphs (A)(2)(a) and (A)(2)(b) of the rule. This divides the "per meal" requirements from the "menu averaging" exception.
  - g. Moving the content of paragraph (A)(3) of the rule on serving three meals a day to new paragraph (A)(2)(a) of the rule.
2. Insert "and" in paragraph (B)(1) of the rule in between "meat alternate" and "a vegetable in the same meal."
  3. Replace the second occurrence of "entrees" in paragraph (B)(2)(d) of rule with "entrées."
  4. Delete "or entrees" as it occurred in paragraph (B)(2)(d) of the rule in the phrase, "or lentil soups or entrees." This also matches the language in the table entitled, "Serving Sizes for Meat and Meat Alternates."
  5. Replace "they" in paragraph (B)(2)(d) of the rule with "the meals."
  6. Replace ", in particular:" in paragraph (B)(3)(a) of the rule with ", especially".
  7. Replace "The provider shall consider all vegetables (and full-strength vegetable juices) and all fruits (and full-strength, unsweetened fruit juices) to be vegetables and fruits." that was paragraph (B)(3)(b) of the rule with, "The provider shall consider all full-strength vegetable juices and all full-strength, unsweetened fruit juices to be vegetables and fruits." Otherwise, the rule would say that the provider shall consider vegetables...and fruits...to be vegetables and fruits.
  8. Insert "per serving" to the end of paragraph (B)(3)(e) of the rule.
  9. Replace "once per month, or twice a month" in paragraph (B)(3)(g) of the rule with "once per month, or twice per month."
  10. Insert "to be" in paragraph (B)(3)(h) of the rule in between "noodles" and "a vegetable."
  11. Insert "to be" into paragraph (B)(4)(b) of the rule in between "vegetables..." and "a serving of bread."
  12. Insert "to be" into paragraph (B)(4)(c) of the rule in between "vegetables" and "a serving of bread."
  13. Insert "in" into paragraph (B)(4)(d) of the rule in between "the guidelines" and "the...table to this rule."
  14. Insert "than" into paragraph (B)(5)(a) of the rule in between "no more" and "one per cent."
  15. Insert "to be" in paragraph (B)(5)(b) of the rule in between "juice" and "both a serving of fruit and a serving of milk."
  16. Replace "tofu both a meat and a milk alternate" in paragraph (B)(5)(c) of the rule with "tofu to be both a serving of meat alternate and a serving of milk alternate."

17. Insert "in" into paragraph (B)(6)(e) of the rule in between "the guidelines" and "the...table to this rule."
18. Insert "and the 'Dietary Guidelines for Americans'" after "dietary reference intakes" in paragraph (B)(8)(b)(i) of the rule.
19. Make the following changes regarding salt shakers in response to testimony provided at the June 21, 2012 public hearing by the Beverly Laubert, the State Long-Term Care Ombudsman:
  - a. Delete "Therefore, the provider shall not supply any salt shakers to consumers or seasoning meals because this would disable a provider from ensuring that its meals comply with federal law. Yet, no provider shall prevent a consumer from using his or her own salt to season his or her food" from paragraph (B)(8)(b)(i) of the rule.
  - b. Replace paragraph (B)(8)(b)(ii) of the rule, which said, "A provider shall not purchase salt shakers with Older Americans Act funds." The new language says, "A provider shall not seek Older Americans Act funds from the AAA as a reimbursement for any costs it incurs to purchase salt shakers or salt packets for use by a consumer as an accompaniment to a meal. A provider may use other funding sources to supply salt seasonings as an accompaniment to a meal. Consumers may bring their own salt for seasoning their food."
  - c. Replace paragraph (B)(8)(b)(iii) of the rule, which said, "The provider shall prefer to serve herbal or granulated seasonings instead of salt." The new language says, "The provider shall prefer to provide herbal or granulated seasonings, instead of salt, for use by a consumer as an accompaniment to a meal."
20. Upload [this] new public hearing notice.
21. Revise [the] RSFA.

#### **173-4-05.2 Therapeutic and modified meals.**

Below are the details about the refiling that ODA listed for item #11 on the rule summary and fiscal analysis (RSFA) for proposed new rule 173-4-05.1 of the Administrative Code:

On July 6, 2012, ODA refiled the rule to:

1. Replace "physician's order" in paragraph (A)(1)(b) of the rule with "order of the physician, or another healthcare professional with prescriptive authority."
2. Replace "it when" in paragraph (A)(1)(c) of the rule with "the order any time."
3. Replace "an LD" in paragraph (A)(1)(d) of the rule with "a LD."
4. Replace "Lima beans" in paragraph (A)(3)(b)(iii) of the rule with "lima beans."
5. Replace the comma after "peas" in paragraph (A)(3)(b)(iii) of the rule with a semicolon.
6. Replace "health care" in paragraph (B)(2) of the rule with "healthcare."
7. Replace "includes" in paragraph (B)(3)(d)(iii) of the rule with "include."
8. Upload [this] new public hearing notice.
9. Revise [the] RSFA.

