

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: OLDER AMERICANS ACT NUTRITION PROGRAM: HOME-DELIVERED MEALS PROJECTS

Rule Number: 173-4-05.2

Date: March 13, 2017

Rule Types:

- ☒ 5-Year Review
- ☐ Rescinded
- ☐ New
- ☒ Amended
- ☐ No change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the regulations in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

OVERVIEW

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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. OAC[173-3-06](#)) and (2) requirements for every AAA-provider agreement for a nutrition project. (cf. OAC[173-4-05](#)).

SPECIFIC AMENDMENTS

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

See responses to public comments, post-comment-period rule draft, and RSFA for updates.

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 consumer*. The new language will allow AAA-provider agreements to permit providers to enter into alternate delivery arrangements with consumers who want to authorize such arrangements.
- d. In (B)(2), ODA proposes to remove an unnecessary comma after the word *consumer*.
- e. 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.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

ORC §§ [173.01](#), [173.02](#), and [173.392](#).

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

§305(a)(1)(C) of the Older Americans Act Reauthorization Act of 2016, 79 Stat. 210, 42 USC 3001 and 45 CFR 75.403 and 1321.11.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Title III-C of the Older Americans Act creates the Older Americans Act Nutrition Program. The Act also authorizes ODA to adopt rules to implement Older Americans Act programs, including the nutrition program. Therefore, ODA is not exceeding its federally-authorized scope of authority by adopting rules to implement the program.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rule exists as part of a chapter of rules ODA adopted to implement the Older Americans Act Nutrition Program for Ohio.

The rule also exists to comply with the state laws ODA listed in its response to question #2, especially ORC §173.392 and to implement statewide, uniform standards for AAA-provider agreements in Ohio for home-delivered meals paid, wholly or in part, with Older Americans Act funds.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

ODA will monitor area agencies on aging (AAAs) to ensure AAA-provider agreements comply with this rule. ODA and AAAs monitor providers to ensure providers comply with the AAA-provider-agreement terms required by this rule.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

ODA adopted this rule on September 1, 2016 in its current form. Almost immediately afterwards, ODA began to receive a modest, but consistent, level of feedback and recommendations for improvement from AAAs, providers, and consumers. ODA's legislative liaison also fielded inquiries and concerns from State Senators Gardner, Hite, Oelslager, and Tavares; State Representatives Gavarone, Grossman, and Merrin; Defiance County Commissioners; constituents; and others.

On December 12, 2016, Director Loucka joined Fairfield County Meals on Wheels staff to gain first-hand experience and feedback regarding the application of this rule.

Additionally, ODA staff also met with stakeholders on the following occasions:

- On October 17 and December 5, 2016, ODA staff met with Sen. Tavares, Rep. Grossman, LifeCare Alliance (a provider), and the Ohio Academy of Nutrition and Dietetics to discuss the nutrition rules adopted on September 1, 2016.

- On December 9, 2016, ODA staff made a presentation on ODA's nutrition rules to a meeting of Ohio Chapter of the Meals-on-Wheels of America Association. ODA staff also received feedback and fielded concerns of providers present at the meeting.
- On December 19 2016, Director Loucka met with Primetime Senior Center and discussed issues with home-delivered meals.
- On February 8, 2017, ODA hosted the Nutrition Rules Workgroup (a 5-hour event) to solicit the successes and concerns of AAAs in implementing the new rules for the Older Americans Act Nutrition Program in Ohio, which took effect on September 1, 2016.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The stakeholders ODA listed in its response to question #7 shared concerns such as the following:

- Some providers believe electronic verification is expensive.
- Some consumers may have physical issues that make responding to a doorbell a lengthy process if no one lives with them. Delivery persons must wait a long time to give the meal and wait for a signature if they don't use electronic verification.
- Some consumers have difficulty moving quickly and may want their meals delivered to an alternate location. For example, a consumer may want all meals delivered to a refrigerator in the consumer's garage because the consumer won't be able to answer the doorbell in a timely manner if the delivery is to the front door.
- Some consumers may routinely be at medical appointments during the delivery time.

Providers who verify deliveries manually and also use volunteers to deliver meals shared the following:

- Delivery verification is burdensome for the provider because it increases the duration of each meal delivery, which the provider estimated was an extra 2 minutes per delivery stop.
- Delivery verification is problematic for consumers, as exemplified below:
 - A consumer would rather refuse a meal than sign.
 - Consumers who routinely allow caregivers (e.g., a spouse) to sign for them also want their caregiver to be able to do so for delivery verification.
 - A consumer has macular degeneration and is physically unable to walk or sign.
 - Consumers may feel annoyed or fearful if delivery persons enter their homes to obtain their signatures.
- Delivery verification is problematic for some volunteers for the following reasons:
 - Certain volunteers said they would rather stop volunteering than collect handwritten signatures.
 - Volunteers in rural settings said delivering to neighbors and asking for their signatures turns their efforts from feeling neighborly to causing neighbors to feel embarrassed.
 - Certain volunteers expressed discomfort in seeing consumers in various stages of undress.
 - Certain volunteers felt guilty for causing less-than-ambulatory consumers to stand, walk, or sign.
 - Certain volunteers fear entering consumers' homes to obtain signatures—especially if they must go deep into the home and illicit activity is taking place in the home.
 - Certain volunteers feel obtaining verification is a distrust of delivery persons.

In response to this input, ODA proposes to reduce the burden associated with verifying each delivery by adopting the amendments ODA listed in its response to question #1.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

ODA proposes to amend the rule based upon the input provided by the stakeholders ODA listed in its response to question #7. ODA is not proposing to amend the rule based upon scientific data.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Congress established the parameters for the Older Americans Act Nutrition Program in the Act and the U.S. Dept. of Health and Human Services adopted federal rules to establish the Uniform Administrative Requirements, Costs Principles, and Audit Requirements. ODA did not consider alternatives to these standards. In a manner that complies with, and follows the intent of, the Act and federal rules, ODA is now proposing to amend the rule as an alternative to the current rule's delivery requirements and delivery-verification requirements.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Although the rule itself does not contain performance-based requirements, it is part of a system that awards AAA-provider agreements to providers based upon competitive bidding processes. The Uniform Administrative Requirements, Costs Principles, and Audit Requirements in [45 CFR Part 75](#) require federally-funded programs to use open and free competition when procuring for goods and services. Part of ODA's compliance with those federal rules is requiring all home-delivered meal projects to be competitively won through open and free competition. (See OAC [173-3-05](#)).

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ORC [§173.392](#) authorizes only ODA (i.e., no other state agency) to develop rules for contracts and grants between ODA's designees (e.g., AAAs) and providers (i.e., AAA-provider agreements) for the provision of goods and services to consumers through ODA-administered programs not using ODA provider certification under ORC [§173.391](#) (e.g., Older Americans Act Nutrition Program).

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Before the amended rule takes effect, ODA will post it in ODA's [Online Rules Library](#). ODA will also send an email to subscribers of our rule-notification service to feature the rule. ODA leadership will also notify the legislators, AAAs, providers, and constituents ODA mentioned in its response to question #7.

Through regular monitoring activities, ODA will monitor area agencies on aging (AAAs) to ensure its AAA-provider agreements comply with this rule. ODA and AAAs monitor providers to ensure providers comply with the AAA-provider-agreement terms required by this rule.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**

A recent count shows 114 providers have entered into AAA-provider agreements to deliver home-delivered meals paid, wholly or in part, with Older Americans Act funds.¹

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

ODA is proposing to reduce the adverse impact of the rule. The list below itemizes the adverse impacts and options for providers that will be in the rule after adopting ODA's proposed amendments:

- **Delivery:**
 - **Adverse Impacts:**
 - Meeting federal requirements to remain open for business at least five days per week.
 - Delivering meals.
 - **Options for Providers:**
 - Flexibility for providers to deliver on a per-meal basis or a periodic basis (i.e., one meal at a time or one delivery supplying meals for multiple mealtimes).
 - Flexibility to deliver to consumers when they are easily able to answer the door or according to consumer-authorized alternate delivery arrangements.
- **Emergency-Closings Adverse Impacts and Option:**
 - Notifying consumers of emergency closings.
 - Flexibility to either stock an emergency food shelf for each consumer or provide each consumer with instructions on how to stock their own emergency food shelf.
- **Quality-Assurance Adverse Impact and Option:**
 - Meeting quality-assurance requirements.
 - Flexibility to use electronic or manual means to meet requirements.
- **Delivery-Verification:**
 - **Adverse Impact:** Verifying each delivery.
 - **Options for Providers:**
 - Flexibility to use either electronic verification or manual verification.
 - Flexibility to obtain unique identifiers from consumers, their caregivers, or delivery persons.
 - Flexibility to collect attestations to deliveries by signatures, initials, stamps, marks, bar codes, passwords, or swipe cards.

c. Quantify the expected adverse impact from the regulation.

¹ OHIO DEPT. OF AGING. *Business Impact Analysis: Nutrition Rules*. (December 31, 2015) p. 11.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The Uniform Administrative Requirements, Costs Principles, and Audit Requirements in [45 CFR Part 75](#) require federally-funded programs to use open and free competition when procuring for goods and services. Part of ODA's compliance with those federal rules is requiring all home-delivered meal projects to be competitively won through open and free competition. (See OAC [173-3-05](#)). Through this process, each provider estimates its cost of doing business, puts the cost in a bid, then submits the bid to the AAA seeking a provider to win an AAA-provider agreement to administrate a home-delivered meals project paid with Older Americans Act funds. Providers who win a competition are paid according to what they bid. Therefore, if a provider estimates its adverse impact will increase, the provider will be paid for the increased impact by increasing the price in its bid. If a provider estimates its adverse impact will decrease, the provider may submit a more-competitive bid to ensure the provider wins the competition.

Fortunately, ODA doesn't propose adding requirements to this rule that would increase providers' operational costs. Instead, ODA proposes to give providers more options that may reduce providers' operational costs. In turn, the additional options may allow providers to submit more-competitive bids to AAAs during open and free competition for AAA-provider agreements.

After proposed amendments are adopted, the rule will require AAA-provider agreements to have the following adverse impacts and options for providers:

- **Delivery:**
 - **Adverse Impacts:**
 - Meeting federal requirements to remain open for business at least five days per week.
 - Delivering meals, which includes fuel, vehicle wear and tear, liability insurance, and paid employee wages.
 - **Options for Providers:**
 - Flexibility for providers to deliver on a per-meal basis or a periodic basis (i.e., one meal at a time or one delivery supplying meals for multiple mealtimes). *Because delivering periodically reduces fuel usage, vehicle wear and tear, and paid employee hours, this provision protects providers from clauses in AAA-provider agreements prohibiting periodic delivery.*
 - Flexibility to deliver to consumers when they are easily able to answer the door or according to consumer-authorized alternate delivery arrangements. *This may reduce the adverse impact of waiting to deliver the meal directly to the consumer if the consumer is unable to answer the door in a short period of time.*
- **Emergency-Closings Adverse Impacts and Option:**
 - Notifying consumers of emergency closings.
 - Flexibility to either stock an emergency food shelf for each consumer or provide each consumer with instructions on how to stock their own emergency food shelf. *The latter option costs less.*

- **Quality-Assurance Adverse Impact and Option:** Meeting quality-assurance requirements. *This could be as simple as an annual survey of consumers followed by an annual quality-improvement plan. ODA also gives providers flexibility to use electronic means to comply. For example, a provider may survey consumers by using a free survey from SurveyMonkey.com.*
- **Delivery-Verification:**
 - **Adverse Impact:** Verifying each delivery. *The adverse impact is justified because ODA must require AAA-provider agreements to require documentation to assure that payments of Older Americans Act funds for meals was reasonable. (cf., 45 CFR 75.403).*
 - **Options for Providers:**
 - Flexibility to use either electronic or manual verification. *Providers may choose to use electronic verification systems. Providers who do not want to purchase electronic verification may continue to use manual verification. In a recent analysis,² ODA demonstrated that of home-delivered meal providers, 63% were using electronic verification and 7% were shopping for electronic verification systems. 68% of the providers who were using electronic verification had already seen a return on their investment because their operational costs decreased after using electronic verification. Electronic verification systems offer providers efficiency and long-term savings. They can also eliminate concerns over collecting handwritten signatures and offer other cost-saving and person-centered features such as accounting, reporting, optimizing delivery routes, and allowing consumers to order from a menu for their next meal delivery.*
 - Flexibility to obtain unique identifiers from consumers, their caregivers, or delivery persons. *Providers who have been obtaining handwritten signatures or initials, from consumers are likely to find it quicker and easier to obtain similar identifiers from caregivers and delivery persons, which will reduce adverse impact.*
 - Flexibility to collect attestations to deliveries by signatures, initials, stamps, marks, bar codes, passwords, or swipe cards. *The provider may choose whichever identifier would cause the least adverse impact to collect.*

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

After ODA adopts the proposed amendments, the rule will have a lower adverse impact than the current rule because of the following:

- The amended rule contains no new requirements for providers.
- The amended rule offers greater flexibility to providers than the current rule which may reduce the adverse impact in the following ways:
 - The new opportunity for consumers to authorize alternative delivery arrangements may reduce delivery times.
 - The new ability to obtain unique identifiers from caregivers and delivery persons instead of consumers should make delivering easier and reduce delivery times.

² OHIO DEPT. OF AGING. *Business Impact Analysis: Nutrition Rules*. (December 31, 2015) Appendix J.

The greater flexibility may reduce providers' operational costs and may allow providers to submit more-competitive bids during free and open competition.

ODA also proposes to retain flexibility currently present in the rule which continue to give providers to use electronic verification or manual verification. Electronic verification can instantly bill AAAs for meals delivered, eliminate accounting responsibilities in the provider's office, and the software often includes route optimization. Providers who do not want to purchase electronic verification may continue to use manual verification.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Historically, this line of business is fulfilled by small businesses, as defined by ORC§[107.63](#). Every provider is likely to be a for-profit or non-profit business of less than 500 full-time employees with annual gross sales of less than \$6 million.

Nevertheless, ODA does not discriminate between providers based upon the size of their business or organization. For providers of any size, the rule offers the following areas of flexibility:

- Flexibility for providers to deliver on a per-meal basis or a periodic basis (i.e., one meal at a time or one delivery supplying meals for multiple mealtimes).
- Flexibility to deliver to consumers when they are easily able to answer the door or according to consumer-authorized alternate delivery arrangements.
- Flexibility to either stock an emergency food shelf for each consumer or provide each consumer with instructions on how to stock their own emergency food shelf.
- Flexibility to use electronic or manual verification.
- Flexibility to obtain unique identifiers from consumers, their caregivers, or delivery persons.
- Flexibility to collect attestations (from a consumer, caregiver or deliverer) to deliveries by signatures, initials, stamps, marks, bar codes, passwords, or swipe cards.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODA complies with ORC§[119.14](#), which requires exempting small businesses, which for this rule may mean "all providers," from penalties for first-time paperwork violations. Additionally, ODA plans to explain this law on the [Frequently Asked Nutrition Questions](#) page of ODA's [Online Rules Library](#) or including an explanation of this law in future training materials.

18. What resources are available to assist small businesses with compliance of the regulation?

AAAs are available to help providers of all sizes with questions about this rule. Each AAA works closely with providers to ensure they provide meals to consumers according to the rule's requirements.

ODA is available to help AAAs, providers of all sizes, and any other person with questions about this rule. AAAs, providers, and others may direct questions to ODA's Elder Connections Division or to [Tom Simmons](#), ODA's policy development manager.

Additionally, ODA maintains an [Online Rules Library](#) to help providers find rules regulating them. Providers may access the library 24 hours per day, 365 days per year.

173-4-05.2

Older Americans Act nutrition program: home-delivered meals projects.

In every AAA-provider agreement for a home-delivered meals project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

- (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Delivery:

(1) Availability:

(a) Per-meal delivery:

- (i) To consumers who choose to receive per-meal deliveries and require meals on five or more days per week, the provider shall deliver at least one meal per day for five or more days per week.

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.

- (ii) To consumers who choose to receive per-meal deliveries, but do not require meals on five or more days per week, the provider shall deliver at least one meal per day on days that the consumer requires meals.

~~(iii) To consumers who choose to regularly receive per-meal deliveries, but anticipate that they will not be home during an upcoming regular delivery, and who make arrangements with the provider to deliver an additional meal during a regular delivery for consumption at an upcoming time.~~

- (b) Periodic delivery: To consumers who choose periodic deliveries, in the AAA-provider agreement, the AAA shall not prohibit the provider from, in one delivery, delivering meals to cover multiple mealtimes.

(2) Successful deliveries: The provider shall only deliver meals to the consumer's

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.

The new language will allow AAA-provider agreements to permit providers to enter into alternate delivery arrangements with consumers who want to authorize such arrangements.

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home when the consumer, or the consumer's caregiver, is home, unless otherwise authorized by the consumer.

~~(3) Electronic systems: In the AAA-provider agreement, the AAA shall not prohibit the provider from using an electronic system to schedule meal deliveries and to optimize delivery routes.~~

(C) Emergency closings: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include the following:

- (1) Providing timely notification of emergency situations to consumers; and,
- (2) Either the distribution of:
 - (a) Information to consumers on how to stock an emergency food shelf; or,
 - (b) Shelf-stable meals to consumers for an emergency food shelf.

(D) Quality assurance:

- (1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.
- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(E) Delivery verification:

(1) The provider shall verify each meal delivery for which it bills the AAA using either an electronic or manual system. Regardless of the system used, the provider shall collect all the following information:

- (a) Consumer's name.
- (b) Delivery date.

ODA proposes to replace (E) with new language having the following characteristics:

- The language continues to require verifying every delivery to comply with 45 CFR 75.403.
- The language expands the list of parties who may attest to a completed delivery from *consumers* to *consumers, consumers' caregivers, and delivery persons*.
- Please review ODA's response to question #1 on the business impact analysis (BIA) for more information.

(c) Number of meals delivered.

(d) An identifier unique to the consumer, the consumer's caregiver, or the delivery person.

(2) The identifier in paragraph (E)(1)(d) of this rule may be a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.

(3) The identifier in paragraph (E)(1)(d) of this rule shall serve as an attestation that delivery was made as indicated by the system.

(4) In the AAA-provider agreement, the AAA shall not require the provider to use a particular system. Use of either system is acceptable.

~~(E) Delivery verification:~~

~~(1) At the time of each delivery, the provider shall verify that each meal for which it bills was delivered by one of the following two methods:~~

~~(a) The provider may use an electronic system if the system does all of the following:~~

~~(i) Collects the consumer's name, date, time, number of meals in the delivery, whether the delivery successfully reaches the consumer, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer.~~

~~(ii) Retains the information it collects.~~

~~(iii) Produces reports, upon request, that the AAA can monitor for compliance.~~

~~(b) The provider may use a manual system if the provider documents the consumer's name, date, time, number of meals in the delivery, and whether the delivery successfully reaches the consumer, and collects the handwritten signatures of the driver and the consumer. If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.~~

~~(2) In the AAA-provider agreement, the AAA shall not require the provider to obtain multiple verifications for multi-meal deliveries, because the verification under paragraph (E) of this rule is conducted per-delivery and the verification includes documenting the number of meals in the delivery.~~

~~(3) In the AAA provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires.~~



Department of Aging

John Kasich, Governor

Stephanie M. Loucka, Director

April 20, 2017

From March 13 to March 19, 2017, ODA posted its proposed amendments to OAC173-4-05.2 and the rule's business impact analysis on its website for an online public-comment period. During the comment period, 5 AAAs, 5 providers, and 2 interested parties each submitted at least one comment or question. In the table below, ODA lists the 24 comments and questions it received during the public-comment period. ODA also lists its responses to those comments or questions.

COMMENTS + QUESTIONS		ODA's RESPONSES
1.	(B)(2) Allowing the consumer to arrange delivery to a location other than the home may increase chances for fraud, confusion for delivery drivers and providers, as well as potential food safety issues. In the past, our area has had problems with neighbors accepting deliveries and not keeping the meals at safe temperatures and/or the meal not being received by the consumer, as well as delivery drivers leaving meals on porches in coolers. If the consumer will not be in the home for the delivery, the consumer should make arrangement for the provider to deliver at alternative day or time. <i>Hope Must, Council for Aging of Southwestern Ohio (AAA1)</i>	The goal of home delivered meals is and has always been, to place meals into the hands of their intended recipients. ODA's intent in allowing alternate delivery arrangements is to recognize the needs of consumers differ from one consumer to the next and to ensure no consumer is unnecessarily prevented from receiving a meal. This rule is intended to account for occasional and emergency situations that may warrant a consumer to request an alternate delivery arrangements. As always, eligibility requirements should be reviewed and re-assessments considered if an AAA or provider is concerned an elder does not appear to be home-bound or when indicators of potential fraud or concerns for consumer health and safety are present. Ultimately, it is up to each AAA to decide how best to implement this rule and document compliance with its terms for purposes of monitoring and auditing. AAAs have flexibility to make specific requirements in addition to the requirements of this rule, so long as those requirements do not violate state or federal law. Some examples include, but are not limited to: AAA agreements could authorize a provider to deny an alternate delivery arrangement where a provider would incur excessive costs, where the delivery environment is unsafe, or if seasonal temperatures could affect meal safety. This could be achieved in an AAA provider agreement by authorizing a provider: 1) to assess health and safety risks of drivers and consumers for purposes of determining normal and alternate meal deliveries, 2) to determine if an alternate arrangement would be economically burdensome to the provider due to driver time/mileage, 3) to assess environmental factors like summer temperatures and neighborhood surroundings to determine if a meal can be safely left on a consumer's porch.
2.	(B)(2) These comments are in reference to changes to the Older Americans Act Nutrition Program: Home-Delivered Meals Projects. While delivery of HDMS to an alternate location might be beneficial, AAAs still need the ability to incorporate regulations into the contract to prevent fraud. In reviewing page 2, section 1 about the delivery requirements of the business impact analysis, there is no language which would allow the AAA to restrict the ability or frequency of the provider to deliver a meal to an alternative location. For example, there are some clients that need the daily check provided by the meals drivers. Frequent use of alternative location would defeat the purpose of the daily check in. Similarly, the use of an alternative location should be at the convenience of the client, not the provider. Use of an alternative meal site might increase the potential for fraud – having solid counter requirements in place to prevent or detect fraud is necessary. As such, documentation requirements need to be established to allow the AAAs to oversee the use of alternative delivery sites. <i>Sharon Fusco, Council on Aging of Southwestern Ohio (AAA1)</i>	Providers should not suggest an alternate delivery location or alternate delivery arrangement to a consumer. Please note, this rule does not require a daily check in. Please also review ODA's response to comment #1.

COMMENTS + QUESTIONS		ODA's RESPONSES
3.	(B)(2) New language has been added to explain what constitutes a successful delivery: "The provider should only deliver meals to the consumer's home when the consumer or the consumer's caregiver, is home, unless otherwise authorized by the consumer." The additional comment block then reads "...AAA-provider agreements to permit providers to enter into alternate delivery arrangements with consumers who want to authorize such arrangements." Does the ODA have a preference as to how loosely the "arrangements" may be interpreted and managed? ... Can it be as loose as the consumer says you can leave his/her meal in a grocery sack that hangs on the front door? <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	AAAs have flexibility to make specific requirements in addition to the requirements of this rule, so long as those requirements do not violate state or federal law. As a reminder, this rule is intended to account for occasional and emergency situations that may warrant a consumer to request an alternative meal delivery arrangement. Therefore, eligibility requirements should be reviewed and re-assessments considered if an AAA or provider is concerned an elder does not appear to be home-bound or when indicators of potential fraud or concerns for consumer health and safety are present. Please also review ODA's response to comment #1.
4.	(B)(2) Does the arrangement need to be documented? If yes, what constitutes documentation? <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	Because state and federal law do not dictate what that documentation should look like, it is up to each AAA to decide how best to implement this rule and document compliance with its terms for purposes of monitoring and auditing.
5.	(B)(2) Can the arrangement be made between the driver and consumer solely, does someone need to sign off on it? (i.e. the assessor, a program supervisor, etc.) <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	It is up to each AAA to decide how best to implement this rule and document compliance with its terms for purposes of monitoring and auditing.
6.	(B)(2) Can the arrangement change from delivery to delivery? <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	It is up to each AAA to decide how best to implement this rule and document compliance with its terms for purposes of monitoring and auditing. However, this rule is intended to account for occasional and emergency situations that may warrant a consumer to request an alternate delivery arrangement. If a consumer is routinely requesting alternate arrangements, eligibility requirements should be reviewed and re-assessments considered if an AAA or provider is concerned an elder does not appear to be home-bound or when indicators of potential fraud or concerns for consumer health and safety are present.
7.	(B)(2) "unless otherwise authorized by the consumer" is very broad- would this be a temporary authorization or permanent? <i>Hope Must, Council for Aging of Southwestern Ohio (AAA1)</i>	This rule is intended to account for occasional and emergency situations that may warrant a consumer to request an alternate delivery arrangement. One example may include, but not be limited to: Mrs. Smith has a physical therapy appointment every Tuesday morning and asks for an alternate delivery arrangement on Tuesdays. If a consumer is routinely or permanently requesting alternate arrangements, eligibility requirements should be reviewed and re-assessments considered if an AAA or provider is concerned an elder does not appear to be home-bound or when indicators of potential fraud or concerns for consumer health and safety are present.

COMMENTS + QUESTIONS		ODA's RESPONSES
8.	(E)(1)(b) The requirement of documenting the time of delivery has been removed from the rule. PASSPORT rules do require this and most providers are providing service under both funding sources so we believe including this requirement in the OAA rules would provide consistency. <i>Emily Turlo, Ohio District 5 Area Agency on Aging, Inc. (AAA5)</i>	AAAs have flexibility to make specific requirements in addition to the requirements of this rule, so long as those requirements do not violate state or federal law.
9.	(E)(1)(d) We understand the desire for flexibility, but the driver having the ability to check off that the meal has been delivered as proof of delivery makes us a little uncomfortable as we have always felt that a staff person cannot verify service for the consumer. <i>Emily Turlo, Ohio District 5 Area Agency on Aging, Inc. (AAA5)</i>	Please review ODA's response to comment #8 for further information.
10.	(E)(1)(d) My only concern I found with the proposed changes is regarding the delivery verification process. I understand the reasoning behind the proposed change, but I'm concerned about the validity of the delivery person accounting for the meal being delivered. Will this allow the driver to have the flexibility to verify that a completed delivery was made at any time? Or will it be determined ahead of time and documented in the consumer's file, and only those with a specific arrangement will be permitted to do this? I see this as an opportunity for the delivery person to use it as a way to cut corners and deliver the meals quicker or easier. There is less accountability for the delivery person. Also, there could be possible food safety issues. <i>Jill Riffle, Direction Home Akron Canton (AAA10B)</i>	Please review ODA's response to comment #8 for further information.
11.	(E)(1)(d) The Agency has some concern with the accountability for the proposed changes to the delivery verification process. We understand the reasoning behind the proposed change, but have concerns about the validity of only the delivery person accounting for the meal being delivered. Will this allow the driver to have the flexibility to verify that a completed delivery was made at any time? Or will it be determined ahead of time and documented in the consumer's file, and only those with a specific arrangement will be permitted to do this? We see this as an opportunity for the delivery person to use it as a way to cut corners and deliver the meals quicker or easier. There is less accountability for the delivery person. Also, there could be possible food safety issues. <i>Abby Morgan, Direction Home Akron Canton (AAA10B)</i>	Please review ODA's response to comment #8 for further information.
12.	(E)(1)(d) We would like to see it made clear in the rule that the driver needs to sign the route log, or at the very least the driver's name needs to be on the route log. We use this information in our compliance reviews to know who the driver is in order to review employee/volunteer records. Therefore, we would like a requirement that the drivers signature or name be somewhere on the route log. <i>Emily Turlo, Ohio District 5 Area Agency on Aging, Inc. (AAA5)</i>	Please review ODA's response to comment #8 for further information.
13.	(E)(1)(d) I believe in the AAA nutrition provider meeting it was mentioned the driver could sign once to verify the meals. Is this still true for the revised rule? Currently, the route sheets list the number and type of meals to be delivered. The driver will adjust the route sheet, if a meal is not delivered (an individual is not home or refuses delivery). Is the driver's signature at the end of the route sheet adequate validation for any meals not signed for by the participant/caregiver? <i>Autumn Richards, Area Office on Aging of Northwestern Ohio, Inc. (AAA4)</i>	This rule allows the delivery person's unique identifier (e.g., handwritten signature) to verify every delivery on a route was made. If a provider lists many deliveries on one document, the delivery person could verify once on the document that each of the deliveries were made (or not made) as indicated on the document.

COMMENTS + QUESTIONS		ODA's RESPONSES
14.	(E)(1)(d) Is it of the opinion of the ODA that the driver's signature at the <u>top</u> of the delivery record would suffice as verification of the activities that occurred related to that day's and that route's activities? The comment block states, "The language continues to require verifying every delivery to comply with 45 CFR 75.403." Does indicating "yes" or "no" with a checkmark for each consumer's delivery and marking the delivery time, suffice as verifying that particular delivery? <i>EXAMPLE:</i> Volunteer delivery driver Mike Miller signed the top of V432's delivery record on March 17, 2017. He marked which clients received meals, versus any who were not home as he delivered. He marked the time that he was at each consumer's home, regardless of whether or not the delivery was successfully made. Is Mark Miller's signature signing the delivery record acceptable, or must he sign beside each consumer's delivery information? <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	Please review ODA's response to the previous comment. Additionally, this rule does not require reporting delivery times.
15.	(E)(1)(d) Does the ODA have a preference as to whether or not the AAAs and/or providers keep track of who eligible to sign for the meals beyond the consumer and the delivery driver? If yes, does ODA have a preference for the how the repository is managed? If no, is the assumption that any signature or mark next to a consumer's delivery suffices as verification? <i>EXAMPLE:</i> A consumer's daughter (Ann Brown) is in town for the weekend from out of state. She greets the driver at the door and states that her mother is sleeping. The daughter signs for the meal. In this case, the provider has no documentation for who Ann Brown is, and in the event that this record is pulled in an audit, LifeCare Alliance will not be able to say who Ann Brown is. <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	The Older Americans Act Nutrition Program is not a case-managed program. Neither the federal government nor ODA require a repository of caregiver information for this program. The following pertains to your "if no" assumption: There is no assumption that <i>any signature or mark</i> next to a consumer's delivery suffices as verification. This rule requires an identifier <i>unique</i> to the consumer, the consumer's caregiver, or the delivery person. A person who is not the consumer, the consumer's caregiver, or the delivery person is unauthorized to verify a delivery was made. Additionally, eligibility requirements should be reviewed and re-assessments considered if an AAA or provider is concerned an elder does not appear to be home-bound or when indicators of potential fraud or concerns for consumer health and safety are present. This could include concerns regarding a caregiver's status, such as in the example provided.
16.	(E)(1)(d) In regards to the proposed language under (E) Delivery verification, "(2) <i>The identifier in paragraph (E)(1)(d) of this rule may be a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card,</i>" can a sticker be added to the list of identifiers? <i>Jeanne Mbagwu, Area Agency on Aging, PSA2 (AAA2)</i>	Just as a USPS postage stamp is generally a sticker, it's permissible to interpret <i>stamp</i> in this rule to be a sticker, so long as the sticker is <i>unique</i> to the consumer, the consumer's caregiver, or the delivery person.
17.	<i>In General</i> The less specific the rules are, the more likely the individual AAAs are to develop their own guidelines as to how to administer the rulings. I certainly can see the Delivery Verification (E)(1)(d) Delivery (B)(2) changes being interpreted differently between our three AAAs – PSA2, PSA5, PSA6. <i>Cheryl Grossman, LifeCare Alliance (a provider)</i>	The current rule amendment being proposed is in direct response to requests from multiple providers and AAAs for greater flexibility surrounding delivery verification and delivery options. AAAs have flexibility to make specific requirements in addition to the requirements of this rule, so long as those requirements do not violate state or federal law.

COMMENTS + QUESTIONS		ODA's RESPONSES
18.	<i>In General</i> On behalf of the older adults throughout Wood County who have been impacted by the signature requirement, I would like to express appreciation to the Ohio Department of Aging for their consideration of this issue. As service providers, we understand the importance of accountability at all levels (to our constituents, their family members/caregivers, our elected officials and funders.) With the revision to the signature requirement, we will be able to provide and document the service while respecting the individual situations that our older adults face. We look forward to a continued dialog as we serve the elders in our communities. <i>Denise Niese, Wood County Committee on Aging, Inc. (a provider)</i>	We believe the increased flexibility should allow providers to develop more effective ways to deliver meals to consumers when those consumers have occasional or emergency situations that prevent typical delivery and verification methods.
19.	<i>In General</i> The Ohio Academy of Nutrition and Dietetics would like to comment that we are satisfied with the revisions being proposed to rule 173-4-05.2 OAC regarding the verification of delivery of home delivered meals. We appreciate Director Loucka and staff meeting with stakeholders and responding to our concerns about the verification process. <i>Kay Mavko, Ohio Academy of Nutrition and Dietetics (interested party)</i>	Please review ODA's response to comment #18.
20.	<i>In General</i> The new Rule regarding delivery options looks good. Thank you for hearing what providers have been saying. <i>Pat McKnight, Ohio Academy of Nutrition and Dietetics (interested party)</i>	Please review ODA's response to comment #18.
21.	<i>In General</i> As an agency, we support the proposed amendments as presented. We have encountered many of the same issues since the existing rule went into effect. With the amendments it will reduce delays in delivery, as well as allowing us to handle special delivery requests. Due to the current restrictions, we often were forced to cancel meals because we were unable to accommodate special delivery requests by clients. <i>Karen Pillion, SourcePoint (a provider)</i>	Please review ODA's response to comment #18.
22.	(E)(1)(d) Thank you for addressing the signature rule for Home Delivered Meal clients. This will reduce the financial burden to our agency. <i>Robin Richter, WSOS (a provider)</i>	Please review ODA's response to comment #18
23.	<i>In General</i> The proposed amendments to OAC173-4-05.2 will have a positive impact on our operations. Thank you for taking the time and effort to review the rules that would adversely affect our seniors and operations and making the necessary improvements. <i>Sheri Rychener, Fulton County Senior Center (a provider)</i>	Please review ODA's response to comment #18.
24.	<i>In General</i> Thank you for reviewing the proposed rule, specifically the signature requirement and the constraints it placed on meal providers. While our organization does not provide home delivered meals, I understand the concern providers have and appreciate your willingness to revisit this issue. <i>Connie Huntsman, O'Neill Senior Center, Inc. (interested party)</i>	Please review ODA's response to comment #18.

173-4-05.2

Older Americans Act nutrition program: home-delivered meals projects.

In every AAA-provider agreement for a home-delivered meals project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

- (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Delivery:

(1) Availability:

(a) Per-meal delivery:

- (i) To consumers who choose to receive per-meal deliveries and require meals on five or more days per week, the provider shall deliver at least one meal per day for five or more days per week.

- (ii) To consumers who choose to receive per-meal deliveries, but do not require meals on five or more days per week, the provider shall deliver at least one meal per day on days that the consumer requires meals.

- ~~(iii) To consumers who choose to regularly receive per-meal deliveries, but anticipate that they will not be home during an upcoming regular delivery, and who make arrangements with the provider to deliver an additional meal during a regular delivery for consumption at an upcoming time.~~

- (b) Periodic delivery: To consumers who choose periodic deliveries, in the AAA-provider agreement, the AAA shall not prohibit the provider from, in one delivery, delivering meals to cover multiple mealtimes.

(2) Successful deliveries: The provider shall only deliver meals to the consumer's

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.

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.

The new language will allow AAAs to authorize alternate delivery arrangements for consumers.

home when the consumer, or the consumer's caregiver, is home, unless otherwise authorized by the AAA.

The draft ODA published for the online public-comment period said *consumer*. It now says AAA.

→ ~~(3) Electronic systems: In the AAA-provider agreement, the AAA shall not prohibit the provider from using an electronic system to schedule meal deliveries and to optimize delivery routes.~~

(C) Emergency closings: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include the following:

- (1) Providing timely notification of emergency situations to consumers; and,
- (2) Either the distribution of:
 - (a) Information to consumers on how to stock an emergency food shelf; or,
 - (b) Shelf-stable meals to consumers for an emergency food shelf.

(D) Quality assurance:

- (1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.
- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(E) Delivery verification:

(1) The provider shall verify each meal delivery for which it bills the AAA using either an electronic or manual system. Regardless of the system used, the provider shall collect all the following information:

- (a) Consumer's name.
- (b) Delivery date.

ODA proposes to replace (E) with new language having the following characteristics:

- The language continues to require verifying every delivery to comply with 45 CFR 75.403.
- The language expands the list of parties who may attest to a completed delivery from *consumers* to *consumers, consumers' caregivers, and delivery persons*.
- Please review ODA's response to question #1 on the business impact analysis (BIA) for more information.

(c) Number of meals delivered.

The draft ODA published for the online public-comment periods mistakenly used said *may shall*. The rule now just says *shall*.

(d) An identifier unique to the consumer, the consumer's caregiver, or the delivery person.

(2) The identifier in paragraph (E)(1)(d) of this rule may be a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.

(3) The identifier in paragraph (E)(1)(d) of this rule shall serve as an attestation that delivery was made as indicated by the system.

(4) In the AAA-provider agreement, the AAA shall not require the provider to use a particular system. Use of either system is acceptable.

~~(E) Delivery verification:~~

~~(1) At the time of each delivery, the provider shall verify that each meal for which it bills was delivered by one of the following two methods:~~

~~(a) The provider may use an electronic system if the system does all of the following:~~

~~(i) Collects the consumer's name, date, time, number of meals in the delivery, whether the delivery successfully reaches the consumer, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer.~~

~~(ii) Retains the information it collects.~~

~~(iii) Produces reports, upon request, that the AAA can monitor for compliance.~~

~~(b) The provider may use a manual system if the provider documents the consumer's name, date, time, number of meals in the delivery, and whether the delivery successfully reaches the consumer, and collects the handwritten signatures of the driver and the consumer. If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.~~

~~(2) In the AAA-provider agreement, the AAA shall not require the provider to obtain multiple verifications for multi-meal deliveries, because the verification under paragraph (E) of this rule is conducted per-delivery and the verification includes documenting the number of meals in the delivery.~~

~~(3) In the AAA provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires.~~