

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-04

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: general requirements for AAA-provider agreements.

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?** 3/2/2018
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?** 173.01, 173.02, 173.392; 42 U.S.C. 3025(a)(1)(C); 45 C.F.R. 1321.11(a).
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 45 C.F.R. Part 75; 45 C.F.R. 1321.11(b), 1321.53.
6. **What are the reasons for proposing the rule?**

This rule exists as part of a chapter of rules ODA adopted to (1) implement the Older Americans Act Program for Ohio, (2) comply with the mandate in ORC§173.392, and (3) implement statewide, uniform standards (45 CFR Part 75) for AAA-provider agreements in Ohio for goods and services paid, wholly or in part, with Older Americans Act funds.

After reviewing this rule top-to-bottom, ODA proposes to amend it.

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

This rule implements 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 requires all providers entering into AAA-provider agreements to win those agreements through open and free competition with other providers. (See also OAC173-3-05.) 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 lower-cost bid to increase its chances of winning the competition.

In the current version of this rule, ODA makes 5 general references to the federal standards to which AAA-provider agreements are already subject and cites dates on which the version of the federal standard is the version to apply to today. After consulting with JCARR's attorney, ODA believes its references to federal standards in this rule are general references, not federal standards incorporated by reference. Providers must comply with the federal standards regardless of whether ODA refers to them in this rule. ODA is not requiring AAAs to follow standards that would not exist had ODA not referred to them in this rule. Because the makes general reference to the federal standards regulating AAA-provider agreements, ODA now proposes to delete the dates presently listed in those references.

- 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. 121.71 to 121.76, 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. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the proposed amendment of this rule will have no impact upon the biennial budget the Ohio General Assembly established for ODA.

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

Providers are directly affected by AAA-provider agreements. This rule requires AAAs to comply with federal law on competitive selection of providers. An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition.

ODA estimates providers will not experience an increased adverse impact resulting from ODA's proposed amendments to remove dates from general references in this rule to federal standards. These deletions may lead to the following positive effects:

(1) They will keep this rule in step with federal standards that may change annually (e.g., poverty level). The current version of this rule forces AAAs to use the version of federal ODA last cited in the current rule, even if the federal standard has since changed or changes annually.

(2) AAAs will no longer be required to retain access to old federal standards to comply with this rule.

(3) AAAs may take advantage of the newer, lower thresholds on competitive bidding and procure for goods and services through either the small or micro purchase options in 45 CFR 75.329. ODA estimates this will, in turn, reduce the adverse impact on the business community when submitting bids because small and micro-purchase bids aren't formal sealed bids, which require more paperwork.

Please review the BIA for additional information.

- 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

III. Common Sense Initiative (CSI) Questions

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

16. 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? Yes

As stated earlier, providers are directly affected by AAA-provider agreements. This rule requires AAAs to comply with federal law on competitive selection of providers. An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition. Please review the BIA for additional information.

- 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? Yes

An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

An adverse impact on the business community is the administrative effort to compile a formal bid when bidding on an AAA's request for proposals.