

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-05

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: procurement standards.

Agency Name: Department of Aging

Division:

Address: 30 E Broad St. 22nd Floor Columbus OH 43215-3414

Contact: Tom Simmons

Phone: 614-202-7971

Email: tsimmons@age.ohio.gov

I. Rule Summary

1. Is this a five year rule review? Yes

A. What is the rule's five year review date? 7/10/2025

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. 1321.9

5. What statute(s) does the rule implement or amplify? 173.39, 173.392; 42 U.S.C. 3030d; 2 C.F.R. Part 300, 45 C.F.R. 1321.9, 1321.55

6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No

A. If so, what is the citation to the federal law or rule? Not Applicable

7. What are the reasons for proposing the rule?

This rule exists to list the procurement standards for services paid, in whole or in part, with Older Americans Act funds. The standards protect providers who compete to win AAA-provider agreements from unfair competition.

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

This rule lists the procurement standards for services paid, in whole or in part, with Older Americans Act funds. It protects providers who compete to win AAA-provider agreements from unfair competition.

On October 2, 2024, the US Dept. of Health and Human Services (HHS) announced in the Federal Register that on October 1, 2025, it will replace 45 CFR Part 75 with 2 CFR Part 300, which incorporates 2 CFR Part 200 with exceptions. 45 CFR Part 75, 2 CFR Part 200, and 2 CFR Part 300 are each entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements." In response, ODA proposes to amend this rule to replace references to 45 CFR Part 75 with references to 2 CFR Parts 200 and 300.

ODA also proposes to update references to the federal rules that establish the micro-purchase threshold and the simplified acquisition threshold.

ODA proposes for these changes to take effect on October 1, 2025.

- 9. Does the rule incorporate material by reference? No**
- 10. 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

- 11. 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

- 12. 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

Amending this rule will not impact the biennial budget that the Ohio General Assembly established for ODA in House Bill 96 (136th GA).

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

This rule requires AAAs to comply with procurement standards for services paid, in whole or in part, with Older Americans Act funds. The standards protect providers who compete to win AAA-provider agreements from unfair competition. Please review ODA's response to question #18 for more information.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

16. 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

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

18. 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

There is no requirement for a provider to enter into an AAA-provider agreement to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add Older

Americans Act programs to its lines of business must enter into an AAA-provider agreement for those Older Americans Act programs to pay the provider for the service that it wants to provide to consumers through those programs.

A provider establishes the rate that it is paid for providing a service through Older Americans Act programs when the provider responds to an AAA's request for proposal (RFP) with a bid on what it will charge per unit of service if the AAA determines that its bid is a winning bid. If the provider's bid wins, then the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 2 CFR 200.319 and (until October 1, 2025) 45 CFR 75.329, plus rules 173-3-04 and 173-3-05 of the Administrative Code). The amount that the provider bids, and is later paid, is an all-inclusive rate. It is intended to cover all costs incurred in providing the service, including administration, training, and reporting.

The specific adverse impact this rule is the requirement to follow federal procurement standards, which protects providers who compete to win AAA-provider agreements from unfair competition and prohibits unauthorized unbid AAA-provider agreements. If an AAA seeks authorization to bypass competitive bidding by claiming that only a single provider can provide the service, the rule requires providing ODA with evidence that the AAA contacted providers who are in the planning and service area (PSA) or willing to operate in the PSA. These providers may be the same providers offering the service to consumers through other state programs (e.g., the PASSPORT Program, MyCare Ohio). Additionally, this rule does not require an AAA to choose only one winner when procuring for a service. If an AAA awards multiple AAA-provider agreements for the same area in a PSA, the AAA gives consumers in that area an option to choose between providers.

By updating references to federal rules in ODA's rules on the same day of the changes to federal rules, ODA will eliminate the possibility that an AAA or provider who uses the rules will make decisions based on rescinded federal rules.

Please review the business impact analysis (BIA) for more information.

- 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 Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

B. How many existing regulatory restrictions do you propose removing from this rule?

Not Applicable

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

Not Applicable

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable