

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:

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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?** 10/5/2021
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. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3030d; 45 C.F.R. Part 75, 1321.11, 1321.53
6. **What are the reasons for proposing the rule?**

Section 173.392 of the Revised Code requires ODA to adopt rules to establish requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds. The rules in Chapter 173-3 of the Administrative Code establish these requirements.

ODA proposes to amend this rule.

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

Rules 173-3-05 of the Administrative Code lists the procurement standards for services paid with Older Americans Act funds.

ODA proposes to amend this rule to achieve the following:

1. Replace occurrences of "goods and services" with "services."

2. Reorganize paragraph (A).

3. Reduce words that imply requirements for outdated modes of communication by (1) replacing "If an AAA submits a written request to ODA" with "To request authorization from ODA," (2) removing requirements for the request to be written, (3) replacing "submits its written request" with "make its request," (4) replacing "written request" with "request," (5) replacing "submit" with "provide," and (6) replacing "document its efforts" with "retain records of its efforts."

8. Does the rule incorporate material by reference? Yes

9. 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.

This rule references a rule in the Code of Federal Regulations which the general public may readily access on <https://ecfr.federalregister.gov/>.

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

ODA made a revised filing of this rule to upload a revised public hearing notice. In doing so, ODA did not revised the rule itself.

II. Fiscal Analysis

11. 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

The adoption of the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

An inherent adverse impact of competition is that every provider who wants to win an AAA-provider agreement to receive Older Americans Act funds for providing a service must prepare a bid to submit to the AAA.

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit {i.e., per job (e.g., home modification), per item (e.g., a meal), or per a period of time (e.g., personal care)}. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code).

Please review the business impact analysis for more 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

15. 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

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

17. 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**

There is no requirement for a provider to enter into an AAA-provider agreement in order 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 the Older Americans Act programs to its lines of business, it must enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

- 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**

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- 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**

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

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding? 0

B. How many existing regulatory restrictions do you propose removing? 1

(A) [to become (A)(1)] "...the AAA shall comply with the requirements in...."