

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-07

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: consumer contributions.

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?** 173.392; 42 U.S.C. 3030c-2; 45 C.F.R. 75.403(c), 1321.11(b), 1321.53, 1321.65(c), 1321.67.
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 for consumer contributions towards the cost of the goods and services they receive through Older Americans Act Program. These standards comply with 42 USC 3030c-2, 45 CFR 75.403(c), and 45 CFR 1321.67.

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

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

This rule refers to 2 federal laws requiring state standards for consumer contributions: (1) §315 of the Older Americans Act [42 USC 3030c-2] and (2) a federal rule [45 CFR 1321.67]. Those laws apply even if ODA doesn't refer to them in this rule. After consulting with JCARR's attorney, ODA believes those references are general references, not federal standards incorporated by reference. Providers must comply with the cited federal standards regardless of whether ODA cites them in this rule. ODA is not requiring AAAs to follow standards that would not exist had ODA not cited them in this rules. Therefore, to eliminate the problem caused by dated references to the federal poverty guidelines, which changes annually, ODA proposes the following amendments:

(1) Delete the citations of specific version of those laws.

(2) Use "federal poverty guidelines" and "guideline" instead of "federal poverty level" and "level."

(3) Replace the definition of "federal poverty level" in (D) with a general reference after the first usage of "federal poverty guideline" in (B)(1), saying, "...which the United States department of health and human services establishes annually according to section 673(2) of the Omnibus Reconciliation Act of 1981, 95 Stat. 511, 42 U.S.C. 9902 and published on <https://aspe.hhs.gov/poverty-guidelines>." This proposed amendment would identify the federal agency and federal authority requiring annual poverty guidelines to be published and identify the website on which they're published.

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.

On March 12, 2018, ODA made a revised filing to add "45 C.F.R. 1321.65(c)" to the list of codes to which this rule amplifies. In doing so, ODA did not revise the rule originally filed with JCARR.

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?**

The rule requires providers to "encourage" any consumer to voluntarily contribute to the cost of the goods and any goods and services they receive through the Older Americans Act programs. The rule also requires providers to request cost-sharing payments from consumers for certain good sand services consumers receive through the same programs. These are also required by federal law.

ODA estimates providers will not experience an increased adverse impact resulting from ODA's proposed amendments to remove dates from general references to federal law in this rule or to remove outdated threshold dollar amounts from this rule. These amendments may produce the following positive impacts:

(1) They will keep the rules in step with federal standards that may change annually (e.g., thresholds). The current version of the rule forces AAAs to use the version of federal rules 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 the 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? 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**

Paragraphs (B)(4) and (C)(2)(f) of this rule require the provider to account for all voluntary contributions and cost sharing. Although the rule does not say so, 45 CFR 75.403(g) and 1321.67(a)(3) also require accountability. Therefore, ODA proposes to retain this rule's accountability requirement.