



# Common Sense Initiative

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## Business Impact Analysis

Agency, Board, or Commission Name: **OHIO DEPT. OF AGING**

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Regulation/Package Title (a general description of the rules' substantive content):

### TRANSPORTATION

Chapter 173-3 of the Administrative Code establishes 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.

Chapter 173-39 of the Administrative Code establishes the requirements to become, and to remain, an ODA-certified provider.

Rule Number(s): 173-3-06.6 and 173-39-02.18

Date of Submission for CSI Review: September 10, 2024

Public Comment Period End Date: September 23, 2024 at 11:59PM.

#### Rule Type/Number of Rules:

☐ New/ # rules

☐ No Change/ # rules (FYR? ☐)

☒ Amended/ 2 rules (FYR? ☒)

☐ Rescinded/ # rules (FYR? ☐)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

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**The rule(s):**

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

**Regulatory Intent**

**2. Please briefly describe the draft regulation in plain language.**

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

**173-3-06.6:** This rule establishes requirements to include in, or exclude from, every AAA<sup>1</sup>-provider agreement (i.e., contract or grant) for transportation that is paid, in whole or in part, with Older Americans Act funds.

**173-39-02.18:** This rule establishes the specific requirements to become, and to remain, an ODA-certified provider of non-medical transportation.

**Both Rules:** In response to stakeholder recommendation in #9, ODA proposes to amend each rule to achieve the following:

- 1. No longer require a daily inspection of a vehicle that never transports consumers/individuals in a wheelchair.
- 2. No longer require a daily vehicle inspection form.
- 3. Eliminate the ODA-approved daily vehicle inspection forms ([ODA0008](#) and [ODA0011](#)) because most items are inspected by a certified mechanic during the annual vehicle inspection and because checking these items on a daily basis seems unreasonable since the Board of Emergency Medical, Fire, and Transportation Services (EMFTS) does not require a daily inspection for licensed ambulettes.
- 4. Require the following daily vehicle inspection for only a vehicle that transports consumers/individuals in a wheelchair:
  - a. An inspection that ensures permanent fasteners, safety harnesses or belts, and access ramp or hydraulic lift are working.
  - b. An inspection of which the provider retains a record. There is no requirement or encouragement to use a form.

This daily inspection of only the workability of wheelchair-related items without a form is comparable to the Ohio Department of Developmental Disabilities' (ODODD's) daily inspection in rules [5123-9-18](#), [5123-9-24](#), and [5123-9-26](#) of the Administrative Code.

- 5. Add a check to the *annual* vehicle inspection form (ODA0004) to ensure that each vehicle has (1) an isolation and biohazard kit and (2) a 2-way communication device. Adding these items ensures compliance with RC§4766.14. These items are currently listed on forms ODA0008 and ODA0011 for *daily* inspection.

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<sup>1</sup> "AAA" means "area agency on aging."

6. Add a check to the *annual* vehicle inspection form (ODA0004) to ensure that each vehicle has (1) a seatbelt cutter and (2) a first aid kit. These items are currently listed on forms ODA0008 and ODA0011 for *daily* inspection.

Please review ODA's responses to #10 and #16 for more information.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

173-3-06.6: RC §§ [121.07](#), [173.01](#), [173.02](#), [173.392](#), [4766.14](#), and [4766.15](#).

173-39-02.18: RC §§ [121.07](#), [173.01](#), [173.02](#), [173.39](#), [173.391](#), [173.52](#), [173.522](#), [4766.14](#), and [4766.15](#).

**4. 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.**

173-3-06.6: [42 USC 3025](#) says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and [45 CFR 1321.9](#) requires ODA to "develop policies governing all aspects of [Older Americans Act] programs."

173-39-02.18: In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application for a Medicaid waiver authorizing the state to launch and maintain the Medicaid-funded component of the PASSPORT Program, [42 CFR 441.352](#) requires ODA to establish provider-certification requirements to safeguard the health and welfare of individuals who receive services through the program.

**5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

173-3-06.6: This rule does not exceed any federal requirements. It exists to implement the state laws that ODA listed in its response to #2, which require ODA to establish the qualifications for AAA-provider agreements, and the federal law and federal regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

173-39-02.18: This rule does not exceed any federal requirements. It exists to comply with the state laws that ODA listed in its response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT Program.

**6. 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)?**

173-3-06.6: These rules exist to (1) comply with the state laws mentioned in ODA's response to #3, which require ODA to establish requirements for AAA-provider agreements, and (2) ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

173-39-02.18: This rule exists to comply with the state laws mentioned in ODA's response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT Program.

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

**173-3-06.6:** To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (i.e., auditing) requirements under [45 CFR Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements, the rule is judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

**173-39-02.18:** ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. [173-39-04] ODA will judge the proposed amendments to this rule to be a success when ODA and its designees find few violations against it during structural compliance reviews or investigations of alleged incidents.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. 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's guide [Participating in ODA's Rule Development](#) and the [main rules webpage](#) on ODA's website encourage stakeholders and the general public to contact ODA's policy-development manager at [rules@age.ohio.gov](mailto:rules@age.ohio.gov) to give input on improving ODA's rules. On August 5, 2024, a provider, Complete Adult Day, emailed ODA to say that many transportation providers view the daily vehicle inspection as an activity that 'does not significantly contribute to our operations.' The provider recommended replacing form ODA0008 with a simpler form that would take less time each day to complete.

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

In response to the outreach from the Complete Adult Day, ODA compared its vehicle-inspection requirements to those of the Board of EMFTS and ODODD, and decided to go further to relieve providers of the daily inspection burden. ODA now proposes to make the 6 changes listed in ODA's response to question #2.

**11. 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?**

Scientific research is not the impetus for amending each rule.

**12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

**173-3-06.6:** [RC§173.392](#) requires ODA to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation ODA listed in its response to #3 require ODA to develop policies for all aspects of the Older Americans Act programs.

**173-39-02.18:** [RC§173.391](#) requires ODA to adopt rules to establish requirements for ODA-certified providers. Additionally, federal rules require ODA to establish adequate requirements for providers to assure the health and safety of individuals enrolled in the PASSPORT Program.

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

**173-3-06.6:** [RC§173.392](#) authorizes only ODA to adopt rules to establish requirements for AAA-provider agreements.

**173-39-02.18:** [RC§173.391](#) authorizes only ODA to develop qualifications for ODA-certified providers of services to individuals enrolled in ODA-administered programs.

**14. 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.**

**Both Rules:** Before the proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules.

**173-3-06.6:** Through regular monitoring (i.e., auditing) requirements under [45 CFR Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements.

**173-39-02.18:** Through regular monitoring activities, ODA and its designees will monitor ODA-certified providers for compliance. [173-39-04]

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

**173-3-06.6:** Every provider with an AAA-provider agreement for transportation or for an adult day service, because [rule 173-3-06.1 of the Administrative Code](#) requires adult day transportation to comply with rule 173-3-06.6 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-3-06.6 of the Administrative Code, or unless the caregiver transports or designates another person or non-provider, other than the center provider, to transport the consumer to and from the center.

**173-39-02.18:** Every ODA-certified provider of non-medical transportation or for an ODA-certified adult day service, because [rule 173-39-02.1 of the Administrative Code](#) requires adult day transportation to comply with rule 173-39-02.18 of the Administrative Code, unless the provider subcontracts with another provider that complies with rule 173-39-02.18 of the Administrative Code, or unless the caregiver transports or designates another person, other than the center's provider, to transport the individual to and from the center.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.***

**Both Rules:** The following are the adverse impacts of each rule:

- General requirements for every AAA-provider agreement or to become and to remain an ODA-certified provider. These include compliance with (1) requirements established in either rule 173-3-06 or 173-39-02 of the Administrative Code, (2) requirements on topics (e.g., background checks) that are referenced in rule 173-3-06 or 173-39-02 of the Administrative Code, but established outside of either rule (e.g., RC §§ [173.38](#) and [173.381](#)), and (3) requirements on topics (e.g., records retention) that are established in rule 173-3-06 or 173-39-02 of the Administrative Code and also outside of either rule (e.g., [45 CFR 75.361](#)).
- Specific requirements unique to transportation: (1) availability, (2) the degree to which drivers help consumers/individuals to transfer between the vehicle and the pick-up location or drop-off location, (3) vehicle requirements, and (4) driver qualifications. ODA's proposed amendments to each rule will reduce the adverse impact of the vehicle requirements. Please review ODA's response to question #2 for a list of the 6 changes to vehicle inspections.

**173-3-06.6:** 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 trip. 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 CFR 75.329](#) and rules [173-3-04](#) and [173-3-05](#) of the Administrative Code).

**173-39-02.18:** The amount the PASSPORT Program pays providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. The costs incurred as a result of this rule are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies and procedures. Providers set the prices they bill to the PASSPORT Program. In turn, the PASSPORT Program pays each provider the amount the provider bills, so long as the price billed does not exceed the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule [5160-1-06.1](#) of the Administrative Code, ODM establishes the units of service for the PASSPORT Program..

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Yes. The 6 changes that ODA listed in its response to question #2 will reduce the adverse impact on providers by (1) eliminating the daily inspection for vehicles that never transport a consumer/individual in a wheelchair and (2) significantly reducing the daily inspection for vehicles that transport consumers/individuals in a wheelchair.

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

**173-3-06.6:** [RC§173.392](#) requires ODA to develop rules establishing standards for AAA-provider agreements (i.e., contracts and grants) and [RC§173.01](#) requires ODA to represent the interests older Ohioans. Establishing standards for AAA-provider agreements in this rule ensures the health and safety of the older Ohioans who are consumers of transportation through Older Americans Act programs, which fulfills both statutes. There is no requirement for a provider to enter into an AAA-provider agreement in order to provide transportation 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 may enter into an AAA-

provider agreement in order for those Older Americans Act programs to pay the provider for the trips it wants to provide to consumers of those programs. Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing transportation to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide transportation without entering into an AAA-provider agreement when paid by private pay, third-party insurers, or other government programs that do not use Older Americans Act funds. Additionally, ODA is proposing to reduce the adverse impact.

**173-39-02.18:** ODA is required to develop rules establishing requirements for ODA-certified providers and to ensure the health and safety of individuals enrolled in programs that require ODA's certification (e.g., the PASSPORT Program). Providers voluntarily apply for ODA certification. Certification is not required to provide non-medical transportation unless a provider wants a government program that requires certification to pay the provider. Compliance with these rules is only required if a provider voluntarily chooses to obtain ODA's certification. Additionally, ODA is proposing to reduce the adverse impact.

### **Regulatory Flexibility**

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

Because the primary purpose of these rules is to ensure the health and safety of consumers/individuals enrolled in ODA-administered programs, the rules treat all providers the same, regardless of their size.

#### **19. 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's primary concern is the health and safety of individuals receiving services from ODA-certified providers. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

#### **20. What resources are available to assist small businesses with compliance of the regulation?**

ODA and its designees are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's rules and policy administrator, with questions about these rules.