

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Auctioneer License Requirements

Rule Number(s): 901:8-2-01, 02, 04, 05, 06, 07, 08, 09 & 10.

Date: January 20, 2015

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

The rules in this package outline the regulations of the auctioneer profession in the state. The rules have been reviewed in accordance with section 119.032 of the Revised Code and are being amended as follows:

Rule 901:8-2-01 outlines the meeting requirements of the state auctioneer's commission. It sets forth the notice requirements of the commission. It is being amended to make small stylistic changes to the rule.

Rule 901:8-2-02 sets forth the procedure for obtaining an apprentice auctioneer license including, the application, forms, and fees required. Additionally, it states that the applicant must pass an examination and obtain a sponsor in order to become an apprentice auctioneer. The rule is being amended to make grammatical changes and to update code references.

Rule 901:8-2-04 sets forth the requirements of non-Ohio residents to obtain an auctioneer license through reciprocity. The rule is being amended to add the Department's website to the rule.

Rule 901:8-2-05 sets forth the procedure for renewing an already existing auctioneer license. The rule is being amended to make stylistic changes and to add limited liability companies to the list of business organizations required to submit a reapplication.

Rule 901:8-2-06 outlines the requirements of auctioneers regarding contracts and records. The rule states that all auctioneers shall enter into written contracts with the owner or consignee of the property they wish to offer for sale. The rule includes contract terms which are required in every contract. This rule is being amended to make a stylistic change which should help with comprehension.

Rule 901:8-2-07 sets forth the license procedure for corporations, partnerships, unincorporated associations, and auction firms. The rule outlines the application procedure and the information which is required. The rule is being amended to fix a grammatical error.

Rule 901:8-2-08 outlines the violations of this chapter. The rule states that there are minor and major offenses with different civil penalties attached to each. The rule is being amended to clarify a potential ambiguity in the rule.

Rule 901:8-2-09 outlines the auctioneer fund and how to make claims against the fund. The rule is being amended to make stylistic changes.

Rule 901:8-2-10 sets forth the procedure for obtaining an auction firm license. The rule is being amended to make stylistic changes.

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2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
R.C. 4707.19

3. **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.
No.

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

Not applicable.

5. **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)?**

Section 4707.02 of the Revised Code states that no person shall act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within this state without a license issued by the Department of Agriculture ("Department"). No auction shall be conducted in this state except by an auctioneer licensed by the Department. The Department is tasked to regulate the profession of auctioneers. Regulating auctioneers protects not only the buyers and sellers of goods but also the public at large through the establishment of minimum requirements of candidates and licensees and establishes a standard of professional conduct for all licensees. Regulations ensure that there are all auctions are open to the public and free of bidding restrictions. Additionally, regulations prevent against fraud and abuses of power. Further, regulating the auctioneer industry ensures that the profession remains in good standing by ensuring that all auctioneers are experienced, educated, and bound to a code of ethics.

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

The Department considers the rules successful when there is no increase in the number of auctioneer complaints filed annually. Additionally, the Department measures success through the number of auctioneers licensed and when auctioneer investigations find few violations.

Development of the Regulation

7. **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.**

The Ohio Auctioneers Commission ("OAC") reviewed these rules and voted unanimously in favor of the proposed amendments during their public meeting on January 16, 2015 OAC is comprised of four auctioneers with a minimum of five years auctioneering experience as well as one member of the public. OAC was established to oversee the auctioneer industry in Ohio and to create ethical and licensure requirements. The current composition of the commission is:

Douglas Walton (Chairman) - Walton Realty & Auction Co

Gary Cain - Gary W. Cain Realtors & Auctioneers

Richard Kruse - Gryphon Auction Group

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Bart Sheridan - Sheridan & Associates

Sherri Orr – Public Member

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

The OAC were very supportive of these rule changes as they generally make the rules easier to comprehend.

9. 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?

Not applicable.

10. 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?

Stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme at this time. For those reasons, no other regulatory alternatives were considered.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

As these rules generally outline the application requirements of auctioneers, performance based regulations would not be appropriate. These rules outline specifically what requirements are to be met in order to gain licensure.

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

Under Chapter 4707 of the Revised Code, the Department has sole and exclusive authority to regulate the auctioneer profession in the state of Ohio.

13. 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.

These rules are already implemented within the industry and the Department works with all licensed and apprentice auctioneers to educate and inform them on the requirements of this rule. Additional education and outreach will be performed with the affected communities of the changes made by the Department.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All licensed auctioneers, auction firms, and apprentice auctioneers in the state of Ohio.

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b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

According to section 4704.10 of the Revised Code, applicants for apprentice auctioneers and auction firms must annually pay a license fee of one hundred dollars. Additionally, auctioneers must pay a two hundred dollar license fee biennially.

According to section 4704.08 of the Revised Code, each applicant for the auctioneer examination must pay a \$25 examination fee whereas all applicants for the apprentice examination and firm managers must pay a \$15 examination fee in order to sit for the exam.

Individuals must request an exam application by mail or through the Department's website, this requires time for compliance.

Auctioneer applicants must include a two inch by two inch photograph with their application.

All applicants must pass an examination to be issued a license. The auctioneer examination consists of written and oral portions. Examinations are held at the Department at 8995 East Main Street, Reynoldsburg, Ohio and both portions are completed in the same day. Apprentice auctioneer examinees and auction firm manager examinees must complete a written examination to be granted a license. This requires time and travel for compliance.

c. Quantify the expected adverse impact from the regulation.

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.

According to section 4704.10 of the Revised Code, applicants for apprentice auctioneers and auction firms must annually pay a license fee of one hundred dollars. Additionally, auctioneers must pay a two hundred dollar license fee biennially.

According to section 4704.08 of the Revised Code, each applicant for the auctioneer examination must pay a \$25 examination fee whereas all applicants for the apprentice examination must pay a \$15 examination fee in order to sit for the exam.

The photographs required under this rule may be obtained at discount drug stores such as CVS or Walgreens for under \$12. Applicants may take these photos at home using their own camera for a lower cost.

Examinees must travel to the Department's campus located at 8995 East Main Street, Reynoldsburg, Ohio for the test. This requires time and money for travel which will vary depending on where the examinee is coming from in the state.

Auctioneer examinees must complete both a written and an oral examination to be granted a license. Apprentice auctioneer examinees and auction firm manager examinees must complete a written examination to be granted a license.

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

The regulatory intent of auctioneer rules is to protect consumer transactions and to promote confidence in the auctioneer profession by ensuring that those who enter the profession have the

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required expertise and experience necessary to conduct fair auctions. These rules achieve this protection while by requiring minimal time and money for compliance.

Regulatory Flexibility

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

As the primary purpose of this rule is to protect consumer transactions and to promote confidence in the auctioneer profession, exemptions for small businesses would not be applicable.

17. 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?

Paperwork violations rarely reach the enforcement stage so long as the auctioneer is willing to correct the violation and has no history of prior violations. First-time offenders are also routinely offered settlements that are appropriate to the circumstances of the violation.

18. What resources are available to assist small businesses with compliance of the regulation?

The Department has online resources and has field staff available through a 24 hour helpline to provide assistance. Training and seminars are also available.