

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Auctioneers - Online auctions held in conjunction with live auctions and ownership reporting requirements.

Rule Number(s): 901:8-2-05 and 901:8-2-11

Date: December 1, 2016

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☐ Rescinded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.

In 2016, H.B. 131, 131st G.A. clarified Chapter 4707 by stating that the chapter does not apply to “sales of real or personal property conducted by means of the internet provided that they are not conducted in conjunction with a live auction.” This amendment clarified that licensure requirements apply when auctions are conducted by means of the internet in conjunction with a live auction.

Ohio Administrative Code (OAC) section 901:8-2-11 is proposed in response to that legislative amendment. The rule outlines the procedure for holding online auctions in conjunction with live auctions. The rule requires entering into a contract and clarifies records that must be maintained for online auctions conducted in conjunction with live auctions.

In addition, OAC 901:8-2-05 is being amended to require the resubmission of an auctioneer license for Limited Liability Corporations (LLCs) who undergo controlling ownership interest changes. Pursuant to Ohio Revised Code (ORC) 4707.02(A), the Department shall not issue or renew an auction license if the person has been convicted of a felony or crime involving theft. By requiring the resubmission of a license application for entities that undergo changes in controlling interests, the Department can assure that the entity is not under the advice and control of a person unfit to be licensed by the Department.

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)?

The Department is tasked with regulating 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?

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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 (“Commission”) reviewed this rule and voted unanimously in favor of the proposed amendment during its public meeting on October 28, 2016. The Commission is comprised of four auctioneers with a minimum of five years auctioneering experience as well as one member of the public. The Commission was established to oversee the auctioneer industry in Ohio and to create ethical and licensure requirements. The current composition of the commission is:

Richard Kruse (Chairman) - Gryphon Auction Group

Bart Sheridan – Sheridan & Associates

Brad Hess – Hess Auction Co.

Larry Woods – Larry Woods Auctions

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 Commission stated the rule helped to clarify obligations of licensees when they conduct activity that falls within the purview of the Department’s regulation.

- 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.

This is a performance based regulation as the rule defines the required outcome but does not dictate the process.

- 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.

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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.

As it pertains to live auctions, this rule is 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. However, 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 and apprentice auctioneers in the state of Ohio.

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

According to section 4707.20 of the Revised Code, an auctioneer or auction firm must enter into a written contract with the consignee, and must maintain those contracts for a period of two years. Due to the recent legislative amendment, auctioneers must now also enter into auction contracts when auctions take place online simultaneously with a live auction.

LLC’s which undergo a change in controlling interest must submit a new application to the Department.

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.

As stated above, prior to legislative changes, auctioneers have always been required to enter into an auction contract for live auctions. The legislative changes clarified that Chapter 4707 applies to online auctions when they are performed in conjunction with a live auction. Therefore, the rule imposes no new requirements, and only extends the requirements for contracts and recordkeeping to those auctioneers and auctioneer firms already required to be licensed for online auctions conducted in conjunction with live auctions. The quantified impact of this rule is minimal based on the existence of a similar requirement.

LLC’s which undergo a change in controlling interest must pay either a \$100 or \$200 application fee with their new application to the Department. The application cost is dependent on the time in which they apply for their licensure. As the licensure is based on the state’s biennium, those who apply early in the biennium will pay \$200 and those who pay towards the end of the biennium will pay \$100.

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

This rule is being amended due to recent changes in the Revised Code which the Ohio General Assembly believed were necessary in order to regulate the auction community. Regardless, requiring auction contracts for these sales is essential in protecting consumers. These contracts ensure that the

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terms of the agreement are explained before the process so that all parties are on notice. Additionally, should a dispute arise from an auction, there is a record of what items were offered for sale. The rules found in Chapter 901:8-2 of the Administrative Code protect consumers on a daily basis by establishing a framework for auction transactions in the state of Ohio. For all of the reasons above, the Department believes that the regulatory intent of these rules justifies the adverse business impact.

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 manufacturer 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 to provide assistance.