

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Auctioneer License Examination Requirements

Rule Number(s): 901:8-2-03

Date: October 10, 2014

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☐ Rescinded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.

Ohio Administrative Code section 901:8-2-03 outlines the procedure for auctioneer licensure. The rule outlines the required application information as well as passing examination scores. The rule is being amended to increase the minimum oral examination passing score from 50 points to 70 points. Additional changes were made to include internal code references to help clarify the rule.

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.

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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 this rule and voted unanimously in favor of the proposed amendment during their public meeting on April 11, 2014. 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

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 stated the current passing verbal examinations score of 50% was not in line in with the passing written examination score of 75%. The commission believes that the current score of 50% is not high enough to ensure that qualified auctioneer candidates are entering the profession. Raising the score protects the profession of auctioneers and ensures that both the verbal and written examinations are given equal weigh when considering applicants.

- 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.

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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.

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. 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 4704.08 of the Revised Code, each applicant for examination must submit a 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.

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 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. 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 4704.08 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.

Examinees must complete both a written and an oral 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 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 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 through a 24 hour helpline to provide assistance. Training and seminars are also available.