

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Auction School Rules Five Year Rule Review

Rule Number(s): 901:8-3-01, 02, 03, 04, 05, 06, & 07.

Date: April 6, 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☐ Rescinded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 auction schools 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 901:8-3-01 sets forth the definitions as used in the chapter. The rule is being amended to define “Commission” to mean the Ohio auctioneer commission.

Rule 901:8-3-02 sets forth the general prohibitions and conditions for auction schools. It is being amended to clarify a potential ambiguity in the rule.

Rule 901:8-3-03 sets forth the application procedures for an auction school. The rule is being amended to make stylistic and grammatical changes.

Rule 901:8-3-04 sets forth the prohibited acts of an auction school. It is being amended to make grammatical and stylistic changes to the rule.

Rule 901:8-3-05 sets forth requirements of the facility, fees, and records to be kept by the auction school. The rule is being amended to make grammatical and stylistic changes to the rule.

Rule 901:8-3-06 sets forth requirements of the instructors at the auction school. The rule is being amended to make grammatical and stylistic changes to the rule.

Rule 901:8-3-07 outlines the mandatory curriculum for the auction schools. The rule is being amended to make grammatical and stylistic changes to 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)?

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Section 4707.04 of the Revised Code states that the OAC shall establish requirements and standards for courses of study in auctioneering. The OAC is tasked to regulate the profession of auctioneers, including any education required. Regulating auctioneers and their education requirements protects not only the buyers and sellers of goods but also the public at large through the establishment of minimum education 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 OAC 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 OAC 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 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?

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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.

Section 4707.04 of the Revised Code states that the OAC may establish requirements and standards for courses of study in auctioneering. The OAC triennially shall review courses of study in auctioneering that are offered at institutions in order to determine whether the courses comply with those requirements and standards. The OAC is statutorily obligated to establish specific courses for study, as such, performance based regulations would not be appropriate.

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 OAC 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 current and prospective auction schools 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 auction schools, apprentice auctioneers, and auctioneer instructors 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 4704.04 of the Revised Code, the OAC reviews applications of institutions that wish to become an approved auction school. If an institution is not approved, the institution may reapply for approval within a year of the disapproval. Institutions must apply in writing and compile the necessary information and documentation as listed in Ohio Administrative Code 901:8-3-03 which requires time for completion.

Ohio Administrative Code 901:8-3-05 requires record keeping for each enrolled student for a minimum of ten years. This results in employer time for compliance as well as space for the records.

Ohio Administrative Code 901:8-3-06 establishes minimum requirements for instructors at auction schools. The rule outlines minimum experience requirements in a variety of fields. Additionally, the rule outlines certain prohibitions which would prohibit an individual from

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becoming an auctioneer instructor. The rule requires that the auction schools maintain records of every instructor who has taught at their institution for a period of ten years. This results in employer time for compliance as well as space for the records.

As further stated, in section 4704.04 of the Revised Code, the OAC has the authority to establish curriculum for all approved auction schools. Ohio Administrative Code 901:8-3-07 outlines the mandatory curriculum as approved by the OAC.

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.

There is no monetary cost to apply to become an auction school however, there is minimal administration time for the compilation of the necessary records and information found in 901:8-3-03. Additionally, there is no formal application for prospective schools. The record keeping requirements listed above require minimal time for compliance and storage.

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

The intent of regulating auction schools 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, education, 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 entity 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.