



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

Jacquie Keller-Potvin Jacquelyn.keller-potvin@agri.ohio.gov

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

Auction School Rules

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

Date of Submission for CSI Review: September 3, 2020

Public Comment Period End Date: September 25, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 7 rules (FYR? 7)

Rescinded/___ rules (FYR?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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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?

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.

Rule 901:8-3-01 sets forth the definitions as used in the chapter. This rule is being proposed as no change.

Rule 901:8-3-02 sets forth the general prohibitions and conditions for auction schools. This rule has been amended for stylistic changes.

Rule 901:8-3-03 sets forth the application procedures for an auction school. This rule has been amended for stylistic changes and typographical corrections.

Rule 901:8-3-04 sets forth the prohibited acts of an auction school. This rule has been amended for stylistic changes and typographical corrections.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Rule 901:8-3-05 sets forth requirements of the facility, fees, and records to be kept by the auction school. This rule has been amended for stylistic changes.

Rule 901:8-3-06 sets forth requirements of the instructors at the auction school. This rule has been amended for stylistic changes.

Rule 901:8-3-07 outlines the mandatory curriculum for the auction schools. This rule has been amended for stylistic changes and to remove duplicate language.

- 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.**

Revised Code 4707.19

- 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.

No.

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

Not applicable.

- 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)?**

Section 4707.04 of the Revised Code states that the Ohio Auctioneer Commission (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 seller 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 all auctions are open to the public and free of unfair 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.

- 7. 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

- 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.

All of the following stakeholders were contacted via email on July 1, 2020.

Ohio Auctioneer's Association

Wade Baer – Ohio Auctioneer's Association President

Rachel Winder – Benesch Law Government Relations Manager

Theresa Blocher – Ohio Auctioneer Commission Chairwoman

Debbie Schnaidt – Ohio Auctioneer Commission Member

Kevin Wendt – Ohio Auctioneer Commission Vice Chairman

Larry Woods – Ohio Auctioneer Commission Member

Denise Martin – Ohio Department of Agriculture

Morgan Lyles – Ohio Department of Agriculture

Sean Brown – Ohio Department of Agriculture

Donna Potter – Ohio Department of Agriculture

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

During the stakeholder comment period, no comments were received.

- 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?**

Not applicable.

- 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?**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

13. 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 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.

14. 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. The rules have been evaluated with the corresponding Revised Code section and duplicate regulation has been removed.

15. 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 these rules. Additionally, education and outreach will be performed with the affected communities of the changes made by the Department.

Adverse Impact to Business

16. 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; and

All auction schools, apprentice auctioneers, and auctioneer instructors in the state of Ohio.

b. Identify the nature of all adverse impact (e.g., 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.

c. Quantify the expected adverse impact from the regulation.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 record 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.

17. 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 by requiring minimal time and money for compliance.

Regulatory Flexibility

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

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

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?

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 have their cases reviewed on a case-by-case basis, and are offered resolutions proportionate to their violations.

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

The Department has online resources and has staff available to provide assistance. Training and seminars are also available.