



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

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

Auctioneer Rules

Rule Number(s): 901:8-2-01, 02, 03, 04, 05, 06, 07, 08, 09, 10, and 11.

Date of Submission for CSI Review: May 28, 2020 & July 16, 2020

Public Comment Period End Date: June 19, 2020 & July 23, 2020

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR? 0)

Amended/ 8 rules (FYR? 8)

Rescinded/ 3 rules (FYR? 3)

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 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.

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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.

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 provide flexibility in the location of the commission meetings and change chairman to chairperson.

Rule 901:8-2-02 sets forth the requirements of non-Ohio residents to obtain an auctioneer license through reciprocity. This rule is being amended to remove a duplicate requirement found in Revised Code and stylistic changes.

Rule 901:8-2-03 outlines the auctioneer license procedure and the deposit or return of license. This rule is being amended to remove any duplicate requirements found in Revised Code and stylistic changes.

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Rule 901:8-2-04 sets forth the requirements of non-Ohio residents to obtain an auctioneer license through reciprocity. This rule is being amended to make stylistic changes.

Rule 901:8-2-05 sets forth the procedure for renewing an already existing auctioneer license. The rule is being amended to remove duplicate requirements found in Revised Code and stylistic changes.

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 remove duplicate requirements found in Revised Code.

Rule 901:8-2-07 sets forth the license procedure for corporations, partnerships, unincorporated associations, and auction firms. This rule is amended to create a list of requirements and stylistic changes.

Rule 901:8-2-08 outlines the violations of this chapter. The rule states that there are minor and major offense with different civil penalties attached to each. The rule is being amended to add clarification and stylistic changes.

Rule 901:8-2-09 outlines the auctioneer fund and how to make claims against the fund. The rule is being amended to remove duplicate requirements found in Revised Code.

Rule 901:8-2-10 sets forth the procedure for obtaining an auction firm license. The rule is being amended to remove duplicate requirements found in Revised Code and stylistic changes.

Rule 901:8-2-11 outlines procedures for online auctions held in conjunction with a live auction. The rule is being amended for stylistic changes.

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.

R.C. 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.

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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 4707.02 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 seller 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. Finally, regulation of the industry provides recourse to persons aggrieved by auctioneer misconduct through financial responsibility requirements and the establishment of the auction recovery fund.

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.

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.

The draft rules were posted on the Department's webpage from May 4, 2020 to May 18, 2020. A notice of the draft rules comment period was sent to the following email addresses on May 4, 2020.

Wade Baer – wade@baerauctions.com

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Rachel Winder – rwinder@beneschlaw.com

Ohio Auctioneer’s Association – director@ohioauctioneers.org

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

The Department did not receive any comments during the May 4, 2020 to May 18, 2020 comment period.

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?

Previously stakeholder participation has indicated to the Department that this is the best regulatory scheme. 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.*

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.

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 Department has sole and exclusive authority to regulate the auctioneer profession in the state of Ohio.

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 all licensed and apprentice auctioneers to educate and inform them on the requirements within the rules. Additional education and outreach will be performed with the affected communities of the changes made by the Department.

Adverse Impact to Business

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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 licensed auctioneers, auction firms, and apprentice auctioneers 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 4704.10 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, which requires time for compliance.

All applicants must pass an examination to receive 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 the verbal and written components of the exam 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 auctioneer 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.

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.

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

17. 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 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 this rule 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 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.

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 for no expense to the licensee due to funding distributed by the Department from the auction education fund.