

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Captive Whitetail Deer Rules

Rule Number(s): 901:1-1-01 through 901:1-1-04

Date: 6-28-2012

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☐ Rescinded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.

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.

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The rules in this package are being adopted as directed by R.C. 943.24. The rules are intended to protect the health of Ohio's captive whitetail deer population and the associated businesses; the primary health concern is chronic wasting disease and its potential for unchecked spread.

901:1-1-01 is a health monitoring and disease testing rule. This rule includes definitions and a requirement for those persons who own captive whitetail deer, but are not required to be licensed by R.C. 943, to register their herds for monitoring.

Identification requirements for all captive whitetail deer are listed here; as well as the chronic wasting disease testing requirements for monitored captive deer.

901:1-1-02 contains the recordkeeping requirements for captive whitetail deer. All owners must keep a current inventory report; and monitored captive deer owners are required to report escapes and thefts.

901:1-1-03 is a biosecurity rule that contains fencing requirements, for those not regulated by ODNR, and initial and annual inspection requirements. These inspections are to identify signs of chronic wasting disease and any potential threats to the health of the deer population.

901:1-1-04 addresses what is to happen in the event a captive whitetail deer with chronic wasting disease is identified. If testing reveals chronic wasting disease or tuberculosis, the herd will be quarantined and if further test confirm the diagnosis the herd will be destroyed. Herds that have been diagnosed but are not positive for either disease will require a herd plan to be developed with the Chief of ODA, Division of Animal Health, before releasing the quarantine.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 943.24

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, the regulation does not directly implement a federal requirement. There are federal rules pertaining to captive whitetail deer, and chronic wasting disease, however those rules govern the interstate transport of the animals only.

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

The Ohio rules do meet or exceed the federal rules in order to insure that all Ohio captive whitetail deer will remain eligible for interstate transport.

- 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)?**

ODA is required to adopt rules by newly enacted R.C. 943.24. These rules, and the legislation directing their creation, are aimed at safeguarding the captive whitetail deer farming industry in Ohio. Without the health and disease prevention precautions in these rules the interstate deer market would be closed to Ohio farmers.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success will be a continued absence of chronic wasting disease in Ohio captive whitetail deer.

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 statutory authority for the rules comes from House Bill 389, legislation that the Whitetail Deer Farmers of Ohio helped create in conjunction with the bill's sponsors. The rules were developed in conjunction with an advisory committee that consisted of representatives from the Whitetail Deer Farmers of Ohio, owners of whitetail deer farms, a hunting preserve representative, veterinarians who work with captive whitetail deer, representative from the Ohio Department of Natural Resources, and representatives from ODA and USDA's veterinarian staff. The advisory committee three times over a six week period and reviewed and approved the rules prior to their submission to the CSI office.

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

The stakeholders, in the form of the advisory committee, were instrumental in the structure of the rules and provided input on nearly every detail in the rules.

- 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?**

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ODA and the advisory committee used USDA provided data on the amount of testing required to be confident that the captive whitetail deer populations in Ohio are not carriers of chronic wasting disease. The rules incorporate this data into the required testing rates for the statutory categories of deer.

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?

Alternative regulatory schemes were considered by the advisory committee, but were found to be too restrictive to one segment of the industry or another. The balance between health safety and the needs of the industry is reflected in the rules.

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.*

The rules are primarily for the purpose of protecting the health of Ohio's captive whitetail deer, and where appropriate are focused on the outcome of chronic wasting disease free deer. However, regulations pertaining to health and the prevention of the spread of disease do require some process based regulation. An example is the fencing requirement in 901:1-1-03, a minimum eight foot fence is a required specification to prevent deer from jumping the fence. The regulation is left to be performance based, in that only height is specified, the deer owner is left with the most appropriate choice of materials and methods for the area. This methodology is used whenever possible in other regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio Department of Natural Resources has parallel regulatory authority through the enacting legislation, HB 389, and was included in the advisory committee to insure the prevention of any duplicative efforts. A thorough effort has been made to remove any overlaps with ODNR's authority as granted in HB 389.

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.

ODA will educate the regulated community, in conjunction with the Whitetail Deer Farmers of Ohio, prior to the effective date of the rules. Thereafter all captive whitetail deer must be registered or licensed with ODA, and rule will be applied based on the statutory category of deer.

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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;**

The rules will impact all captive whitetail deer farmers, hunting preserves, and owners of captive whitetail deer who have the deer for non-commercial purposes.

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

Whether the owner is obtaining a license or registering their deer with ODA, the annual expected cost is twenty-five dollars. If there is a licensee with a herd over two hundred and fifty head, the license fee is higher but it is that there will be very few herds of that size.

Captive deer with status and captive deer with certified chronic wasting disease status herds are currently participants in a voluntary program with requirements equivalent to those in these rules. Those herds will see no increased costs in terms of testing or manpower used in conducting tests.

Monitored captive deer herds will, under the legislation and rules, will encompass herds that have not been regulated in the past. Increased costs will come in the form of additional testing, at death of the deer, and tagging of animals when moved.

- 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 the LSC Fiscal Note & Local Impact Statement for HB 389, there are approximately 684 propagators of captive whitetail deer and 29 hunting preserves with captive whitetail deer currently in Ohio. The total impact of licensing to those owners will be \$17,825 annually.

Testing costs for deer that die and fall within the rules testing requirements can vary depending on the veterinarian collecting the samples and the time and place of death. Most tests are expected to be less than fifty dollars for the actual collection of the sample and test. As noted in the LSC analysis, ODA conducted approximately 2000 chronic wasting disease tests for all of 2010.

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

The licensing and testing costs are at the behest of the captive whitetail deer industry and their access to the interstate market. Even one instance of chronic wasting disease could have a dramatic impact on the ability of this industry to market its product. This is an industry that raises over 15,000 deer and is an estimated \$59.2 million industry in Ohio providing over 1,250 jobs.

Regulatory Flexibility

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

The rules were drafted to provide the maximum amount of flexibility and least amount of oversight while still protecting the health of the deer population.

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, such as that on annual inventories, are typically sorted out between ODA staff and the herd owners, only persistent problems would lead to further action.

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

ODA, Division of Animal Health, will provide educational assistance any business needing requesting such. The Whitetail Deer Farmers of Ohio will also be a resource for any person entering the industry.