

CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Howard Henry, Ohio Department of Agriculture

FROM: Jeffrey R. Kasler, Regulatory Policy Advocate

DATE: July 30, 2012

RE: CSI Review – Whitetail deer

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of four new rules proposed by the Ohio Department of Agriculture pertaining to the protection and health of Ohio's whitetail deer population and the associated businesses.

Rule 901:1-1-01 pertains to disease testing of captive whitetail deer. Registration, identification, and licensing requirements are provided as is the chronic wasting testing requirements for monitored captive deer.

Rule 901:1-1-02 pertains to the record keeping requirements for captive whitetail deer owners and monitored deer owners.

Rule 901:1-1-03 is a biosecurity rule that specifically pertains to fencing and health inspection requirements.

Rule 901:1-1-04 pertains to the actions taken if a captive whitetail deer is identified as having chronic wasting disease or tuberculosis. If this happens, the herd will be quarantined and tested to confirm a diagnosis; a positive diagnosis results in the herd being destroyed while a negative

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test result requires a herd plan be developed under the purview of the Department's Chief of the Division of Animal Health.

Regulatory intent

The proposed rules were drafted with the intent to protect the health of Ohio's whitetail deer population and the associated businesses, specifically the deer farming industry. The Department is required to adopt these rules under newly enacted House Bill 389 of the 129th General Assembly. Without the protective measures set forth in this proposed rule package, the Department states that Ohio captive whitetail deer farmers could not be participants in the interstate deer market because of the threats from diseases targeted under the draft rules.

Development of the regulation

The Whitetail Deer Farmers Association helped craft H.B. 389, which requires adoption of rules by the Department. Moreover, the draft rules were developed by an advisory committee comprised of representatives from the Whitetail Deer Farmers of Ohio, whitetail deer farm owners, a hunting preserve, veterinarians who treat captive whitetail deer, the Ohio Department of Natural Resources (ODNR), and the U.S. Department of Agriculture (USDA). The committee met three times and approved the rules before submission to the CSI Office.

The advisory committee effectively represents the regulated community, thus stakeholders were instrumental in the development of the proposed rules. There are a few points of interest pertaining to the advisory committee and how it developed the proposed rules:

- The committee incorporated into the proposed rules data provided by the USDA and regarding the frequency of testing whitetail captive deer for disease.
- The committee considered alternative regulatory schemes but found that (1) each was too restrictive of one industry segment or another, and (2) the proposed rules best struck a balance between the health and safety of the whitetail deer population and the needs of the industry.
- H.B. 389 grants ODNR parallel regulatory authority, so ODNR was included on the committee to prevent duplicative efforts.

Adverse impact

The proposed rules will impact captive whitetail deer farmers, hunting preserves, and owners of captive whitetail deer. There is a new license and annual registration fee of \$25;¹ according to the Ohio Legislative Service Commission's (LSC) fiscal note for H.B. 389, there are approximately 684 owners of captive whitetail deer and 29 hunting preserves with captive whitetail deer in Ohio, so the approximate annual impact to the regulated community will be \$17,825.

¹ For herds with more than 250 deer, the fee is higher, there are very few herds that size in Ohio.

Additional testing costs for deer that die can vary depending on the veterinarian collecting the samples as well as the time and place of death. It is expected that most tests will cost less than \$50; LSC estimated that approximately 2,000 chronic wasting tests were conducted in Ohio during 2010, which portends a maximum testing cost of approximately \$100,000.

Ultimately, the licensing and testing costs are proposed at the behest of the captive whitetail deer industry. In other words, the regulated community advocated for these requirements and associated fees because even one instance of chronic wasting disease can impact the industry's ability to access the interstate market.²

Recommendations

There are no recommended changes to the proposed rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed in filing the rule package with the Joint Committee on Agency Rule Review.

cc: David T. Daniels, Director, Ohio Department of Agriculture
Mark Hamlin, Lt. Governor's Office

² According to the Department, the captive whitetail deer industry raises over 15,000 deer and is an estimated \$59.2 million industry in Ohio.