

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture_____

Regulation/Package Title: Administration – Livestock Exhibition

Rule Number(s): 901-19-01, 02, 03, 04, 05, 06, 07, 09, 10, 11, 12, 13, 19, 21, 31, 32, 33,
34, 35, 38, 39, and 40.

Date: October 22, 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☐ Rescinded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.

The rules in Chapter 901-19 of the Ohio Administrative Code outline the regulations for the exhibition of livestock in the state of Ohio. Exhibition of livestock generally occurs at a livestock show held at the Ohio state fair or a fair under the control of a county or independent agricultural society. The rules in this chapter set forth the governance and administration of these exhibitions and standards related to food safety and the health, safety, and welfare of livestock including grooming, commercial, or medical practices that are generally accepted in the community. The rules have been reviewed by the advisory committee on livestock exhibitions which meet annually to discuss these rules as well as other issues that pertain to the exhibition of livestock.

Pursuant to Ohio Revised Code 901.72, the rules adopted under which apply to exhibition-related food safety and the health, safety, and welfare of livestock shall apply to every exhibition. However, exhibitions may choose to adopt rules which do not apply to those issues. The rules as drafted indicate which rules are mandatory and which rules are optional for adoption by the exhibition.

The rules have been reviewed in accordance with Chapter 119 of the Revised Code and have undergone their five year rule review. A brief description of the rules and their proposed amendments are as follows:

OAC 901-19-01 outlines the definitions as used in the Chapter. The rule is being amended to include a definition of the term “drenching.” The term was previously undefined in the rule and there was some confusion as to the exact definition. After review of the advisory committee the following definition was approved: “drenching” means the act of using an instrument, including a bottle, placed in an animal’s mouth to orally administer a liquid, food, or any other substance.

OAC 901-19-02 sets forth the requirement that all exhibitions must be designated as terminal, partial terminal or non-terminal show. Terminal shows are shows where all animals must be consigned to slaughter at the conclusion of the show. Partial terminal shows are shows where at least the grand champion and the reserve grand champion must be slaughtered. The rule is being amended to make a stylistic change which should allow for easier comprehension of the rule.

OAC 901-19-03 outlines the regulations regarding auction sales at terminal and partial terminal shows. The rule requires that entrants to a terminal or partial terminal consent to participating in the subsequent auction sale. The carcasses of the slaughtered animals are offered up for auctions with the proceeds eventually going to the exhibitor or the owner of the livestock. The rule is being amended to make a stylistic change which does not effect the rule substantively.

OAC 901-19-04 outline the prohibited practices in all exhibition shows. These include improper use of drugs and unlawful substances. The rule is being amended to make stylistic changes which do not affect the substance of the rule. The rule is also being amended to place a code reference in the rule which directly points to additional unacceptable practices.

OAC 901-19-05 outline the responsibilities of the exhibition sponsor. These include record keeping requirements and maintaining a premium book which outlines the rules of the exhibition. The rule is being amended to make stylistic changes to the rule which help with comprehension.

OAC 901-19-06 set forth the drug use notification rules used by the exhibitor and the owner of the animal when exhibition animals have been recently exposed to drugs, generally for veterinarian purposes. The rule is being amended to break a part a long sentence and place it in list form.

OAC 901-19-07 requires that all exhibitors at county and independent fairs as well as the Ohio state fair complete a quality assurance program prior to exhibition. The rule is being amended to enumerate the paragraphs for easier reading.

OAC 901-19-09 sets forth the exception to paragraph (E) of rule 901-19-04. This exception allows the presence of drug residue in animals shown in non-terminal shows when the conditions of the rule are met. The rule is being amended to make stylistic changes which help to clean up the rule.

OAC 901-19-10 set forth the guidelines for testing requirements and sampling. The rule is being amended to remain consistent with the defined terms of the chapter.

OAC 901-19-11 sets for the rule for the humane treatment of livestock. The rule is being amended to make a grammatical change.

OAC 901-19-12 outlines the acceptable practices which protect and promote the health, safety, and welfare of livestock at these exhibitions. The rule is being amended to allow the practice of drenching of all livestock, rather than just lambs, if there is a medical condition diagnosed by a licensed veterinarian.

OAC 901-19-13 sets forth the unacceptable practices that are detrimental which to the health, safety, and welfare of livestock at these exhibitions. The rule is being amended to prohibit the drenching of all livestock animals, except for where permitted in rule 901-19-12. Additionally, the rule is being amended to add using an electrical, mechanical, or other device which enhances or changes the appearance of livestock unless prescribed by the exhibition veterinarian. Further, the rule is being amended to correct a previous error found in new paragraph (D). The rule as it currently exists states that the plugging of “tests” is an unacceptable practice. The rule should read “teats” and not “tests.” The rule has been amended to make that correction.

OAC 901-19-19 states that both the exhibitor and the owner of the livestock are absolutely liable to any discipline for the presence of an unlawful substance in livestock and any unacceptable practices that have been done to their livestock. The rule as currently written requires the Director shall mitigate discipline when the presence certain mitigating factors. The rule has been amended to change the “shall” to a “may”, giving the Director the option to mitigate the discipline. This is how the rule was originally intended to be written however it was incorrectly drafted.

OAC 901-19-21 outlines the possible disciplinary actions of individuals who violate these rules. The rule is being amended to make stylistic changes and to remove a code section which was placed in the rule in error. The code section applied to the criminal cultivation of illegal drugs. This is a criminal matter and will be left to the applicable authorities.

OAC 901-19-31 outlines the responsibilities of and the assistance allowed to be received by junior fair exhibitors. The rule is being amended to make a stylistic change which does not impact the substance of the rule.

OAC 901-19-32 is an optional rule which allows the exhibition to allow acceptable grooming practices for a particular breed of livestock which would normally be prohibited under rule 901-19-33. The rule is being amended to make stylistic changes which allow for easier interpretation.

OAC 901-19-33 the rule outlines the prohibited grooming practices in exhibitions. These grooming practices attempt to deceive exhibition judges in an attempt to gain an advantage. The rule is being amended to be a mandatory rule of all exhibitions. Additionally, the rule is being amended to specifically apply to only junior market livestock shows.

OAC 901-19-34 allows an exhibition to provide for an outstanding market project. The rule is being amended to make a small grammatical change.

OAC 901-19-35 is an option rule which if adopted by the exhibition would give the exhibition the ability to adopt disciplinary actions of another exhibition. For example, if one exhibition prohibited an exhibitor from participating in any exhibition for one year, another exhibition could also prohibit that exhibitor. The rule is being amended to make stylistic changes and to remove a code section which was placed in the rule in error. The code section applied to the criminal cultivation of illegal drugs. This is a criminal matter and will be left to the applicable authorities.

OAC 901-19-38 outlines false, deceptive, and unacceptable practices. The rule is being amended to make this rule mandatory for all exhibitions. Additionally, the rule is being amended to make a spelling change as well as a small grammatical change.

OAC 901-19-39 sets forth the ownership requirements for livestock entered in an exhibition. The rule is being amended to allow exhibitions the flexibility to allow households and exhibitors to enter multiple animals into the exhibition. This flexibility would allow junior exhibitors to have a reserve animal should their primary animal decease prior to the exhibition.

OAC 901-19-40 sets forth the meeting and notice requirements for the advisory committee on livestock exhibitions. The rule is being amended to comply with the incorporation by reference standards by placing the Department's website into the rule.

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

R.C. 901.72

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?

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?**

In order to ensure fairness in all livestock exhibitions, and to promote and protect the health, safety, and welfare of all livestock entered into exhibitions, these rules develop a general, uniform guideline for all exhibitions across the state of Ohio. Livestock exhibitions are vital in promoting the interest of young adults to pursue careers in agriculture and livestock management. These exhibitions give young adults a truly educational opportunity to experience a future career. These rules help to encourage these careers by ensuring that these exhibitions are conducted in a fair and equal manner. Further, the rules also are set out to protect the health, safety, and welfare of all animals involved.

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

This rule is considered successful when the Department finds few violations of these rules.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

This rule was reviewed by the members of the Advisory Committee on Livestock Exhibitions. This committee meets annually to discuss these rules as well as other administrative matters involving livestock exhibitions. These rules were reviewed by the entire committee on November 19, 2014 and on October 20, 2015. Additionally, a subcommittee was established to review the definition of “drenching” and the ownership requirement rules found in OAC 901-19-38. That meeting was held on June 10, 2015.

The members of the advisory committee on livestock exhibitions are:

David Daniels	Director, Ohio Department of Agriculture
Tony M. Forshey, DVM	State Veterinarian, Ohio Department of Agriculture
Leah Amstutz	Ohio Department of Education, Agricultural Education Service
Dave Benson	Fairfield County Fair, At-Large Member
Linda Borton	Ohio Farmers Union
Andrew Bowman, DVM	OSU College of Veterinary Medicine
Jim Chakeres	Ohio Poultry Association

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Randi Dibert	Ohio Purebred Dairy Cattle Assn
Elizabeth Harsh	Ohio Cattlemen's Association
Jim Heimerl	Hartford Independent Fair
Roger High	Ohio Farm Bureau Federation
Pat Lampert	National Farmers Organization
Dan Martin	Ohio Fair Managers Association
Lisa McCutcheon	OSU Extension, Licking County
Lucinda Miller	OSU Extension
Kelly Morgan	Ohio Pork Producers Council
Nancy Snook	OSU Extension, Noble County
Mike Stitzlein	Ohio Sheep Improvement Assn.
Virgil Strickler	Ohio Expositions Commission
Robert White	Ohio State Grange

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

After three meetings and many discussions the stakeholders have agreed on the amendments to the rules as put forth. There was a significant discussion on the definition of drenching and its general prohibition, the inclusion of household animals, and the changes to the prohibitive grooming practices. Throughout the process the stakeholders were deeply involved and have come to a consensus about these rules. They believe that the rules, as presented, represent the best regulatory structure for livestock exhibitions at this time.

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?

These rules are generally based on grooming, commercial, and medical practices that are commonly accepted within the agricultural and veterinary community. As veterinary science improves, the advisory committee adjusts its rules to reflect the most current scientific information that is available to them.

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?

As a general matter, 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.

These rules are performance based as they outline the end result and not the process of achieving that end result.

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

The Department is given the sole regulatory authority livestock exhibitions in 901.70.

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.

For the most part, these rules are already well implemented within the exhibition community. The Department works with all livestock exhibitions and their sponsors to educate and inform them on the regulations. Additional education and outreach will be performed with the affected communities by the Department. The Department ensures that all livestock exhibitions in Ohio are treated in a similar manner. Further, the advisory committee on livestock exhibition represents many exhibition interest groups throughout the state. The committee will communicate the changes to the rules to their constituents.

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 livestock exhibitions, exhibitors, and owners of exhibited livestock.

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

The rules do not impose any sort of licensing fees on exhibitions or exhibitors. Any entrance or licensing fees would be established by the exhibition themselves. The rules do provide guidelines as to permitted and prohibitive practices. Violations of the rules may result in a fine of any proceeds received from an exhibition. The exhibitions are required to keep records of drug testing all livestock animals entered into exhibitions. This requires time for compliance.

c. Quantify the expected adverse impact from the regulation.

The quantified adverse impact for the recordkeeping requirements is minimal. Individuals who are subject to disciplinary action for a violation of one of the rules of this chapter may be subject to the forfeiture of their prize. The amount of prize won varies dramatically from exhibition to exhibition. Some counties offer prizes and premiums that are lower than \$10 while the Ohio State Fair offers prizes and premiums that are several thousand dollars.

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

The regulatory intent of these rules is to protect the health, welfare, and safety of all livestock animals and to promote future careers in agriculture by ensuring that there is a fair and equitable exhibition of livestock. These rules do so in a manner that is not overly burdensome and only penalizes entrants for unfair and deceptive acts. For those reasons, the adverse impacts are considered justified.

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 the health, welfare, and safety of all livestock animals and to promote future careers in agriculture by ensuring that there is a fair and equitable exhibition of livestock exemptions for smaller exhibitors would not be equitable.

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?

The Department works with the violators to educate them to correct any potential future violations.

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

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