

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Apiary Five Year Rule Review

Rule Number(s): 901:5-55-01, 02, 03, 04, 05, 06, 07 and 08.

Date: May 9, 2017

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☒ Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules contained in this chapter establish an apiary program to ensure a healthy beekeeping industry in the state of Ohio. Honey bees have always played a vital role in agriculture and as such the Ohio Department of Agriculture (“Department”) has overseen their inspection since House Bill 28 was approved on April 21, 1904. Honey bees not only provide honey but are a vital source of pollination for many of the fruit and vegetable crops grown in Ohio such as apples, melons, cucumbers, and pumpkins. They are also used to pollinate seed crops such as sunflower and canola.

The Department’s apiary program coordinates state and county inspection services that help to ensure a healthy beekeeping industry. In 2014, 4,435 beekeepers registered in accordance with Ohio Revised Code section 909.02 which represents 6,028 apiaries, and an estimated 39,055 colonies. Additionally, the apiary program works with several national groups and the USDA in providing samples for the study of Colony Collapse Disorder which caused massive colony deaths in various parts of the nation, including Ohio.

The rules contained in this package focus on science-based practices which support responsible apiary practices while allowing Ohio to continue to grow the apiary industry.

Rule 901:5-55-01 outlines the definitions to be used in the chapter. The rule is being amended to alphabetize the existing list of definitions as well as adding definitions which will help to clarify the language of the rules in the chapter. The terms added are “Department”, “Queen rearing operation”, and “USDA/EPA”.

Rule 901:5-55-02 sets forth registration requirements for apiaries. Pursuant to 909.02 of the Revised Code, all individuals who own or possess bees must register their apiary with the Department. This rule outlines who, what, and where individuals can register. The rule is being amended to clarify portions of the rule which may have been confusing. Further, the rule now points to the Department’s website where individuals can find an application to register their apiary.

Rule 901:5-55-03 sets forth the list of serious bee diseases. The list of diseases contained in the rule outline the diseases which are a threat to the bee industry in the state. The rule is being amended for stylistic reasons and to correct two of the diseases scientific nomenclature. Further the rule adds three diseases to the list. These diseases are: *Nosema ceranae*, *Tropilaelaps* spp., and European foulbrood (*Melissococcus plutonius*).

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Nosema disease is widespread and causes serious damage to adult honey bees thus reducing the life span of individual bees and weakening or killing colonies. Infected nurse bees do not fully develop and infected queens die off prematurely. In colonies with high mite levels, Tropilaelaps causes damage similar to Varroa which is already listed in the rule. Death occurs in both brood and adult bees. This leads to colony decline and collapse, and can cause bees to abscond from their hives. Finally, European foulbrood is a bacterial disease that effects honey bee larvae before the capped stage. European foulbrood disease is characterized by dead and dying larvae

Rule 901:5-55-04 has been rescinded and replaced due to the Legislative Service Commissions 50% rule. The new rule outlines inspection procedures for all Ohio apiaries.

Rule 901:5-55-05 has been rescinded and replaced due to the Legislative Service Commissions 50% rule. The rule outlines the ways the Department can gain access to a property in order to inspect an apiary. The rule states a search warrant may be obtained by the Department in order to inspect an apiary so long as the Department has made reasonable efforts to notify the bee keeper.

Rule 901:5-55-06 sets forth the procedure for confirming that an apiary has a serious bee disease. The rule is being amended to comply with formatting rules and to make the rule easier to read and understand.

Rule 901:5-55-07 has been rescinded and replaced due to the Legislative Service Commissions 50% rule. The rule outlines the disease controls which may be taken by the Department or the owner of the apiary. This rule allows an apiary to comply with certain corrective actions which eradicate the disease from the apiary without its entire destruction.

Rule 901:5-55-08 outlines the special inspection fees issued by the Department. The rule is being amended to comply with formatting rules and to make the rule easier to read and understand.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
Revised Code 909.03.
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.

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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 (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Department is statutorily tasked with making and enforcing such rules and orders that are necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any bee diseases or Africanized honey bees preventing the spread of harmful pests in the state of Ohio. Honey bees have always played a vital role in agriculture and as such the Ohio Department of Agriculture (“Department”) has overseen their inspection since House Bill 28 was approved on April 21, 1904. Honey bees not only provide honey but are a vital source of pollination for many of the fruit and vegetable crops grown in Ohio such as apples, melons, cucumbers, and pumpkins. They are also used to pollinate seed crops such as sunflower and canola.

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

The Department will continue to inspect apiaries and investigate any concerns regarding the bee population. The rules will be judged as being successful when inspections and investigations find few violations and when there is no increase in the number of serious bee diseases in the state.

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.

found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department.

Ginz Zirkle – American Hort

Craig Regelbrugge – American Hort

Chris Henney – Ohio Agribusiness Association

Margo Long – Ohio Agribusiness Association

Andrew Allman – Ohio Agribusiness Association

Tadd Nicholson – Ohio Corn & Wheat Growers Association

John Torress – Ohio Corn & Wheat Growers Association

Scott Lucas – Ohio Department of Transportation

Terri Barnhart – Ohio Department of Transportation

Amalie Lipstreu – Ohio Ecological Food & Farm Association

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Adam Rissien – Ohio Environmental Council
Jack Shaner – Ohio Environmental Council
Jack Irvin- Ohio Farm Bureau
Larry Antosch – Ohio Farm Bureau
Adam Sharp – Ohio Farm Bureau
Joe Logan – Ohio Farmers Union
Linda Borton – Ohio Farmers Union
John Dorka – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care
Roni Peterson – Ohio Nursery and Landscaping Association
Lonnie Alonso – Ohio Pest Management Association
Karen Holt – Ohio Produce Growers Marketing Association
John Armstrong – Ohio Seed Improvement Association
Kirk Merritt – Ohio Soybean Council
Tim Arbeit – Ohio State Bee Keepers Association
Brian Laurent – Ohio Turfgrass Foundation
Lonnie Alonso – Pesticide Applicators for Responsible Regulation
Belinda Jones – Pesticide Applicators for Responsible Regulation

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

The Department has maintained an active and open line of communication with the stakeholder group listed above. Thus far, the stakeholders have been very supportive of the program as operated by the Department.

The Ohio State Beekeeper Association submitted several comments with regards to the rule. Many of the comments and suggested changes require a statutory change prior to an amendment to the administrative code. More specifically, OSBA made a request that inspections occur when temperatures are above sixty-five degrees. The current rule allows for inspections to take place when temperatures are above fifty degrees. If the Department were to adopt the suggested change, there would be fewer days available for inspections. Inspectors are currently instructed to take extra precautions, including consideration of wind and sunlight conditions when inspecting hives in temperatures approaching 50 degrees so as to not damage the hive. Further, the Department has had no reported of chilled bees as a result of an inspection for over five years. Therefore, the Department declined to adopt OSBA's suggested changes.

In addition, OSBA made a request to further define the educational and/or experience requirements of a deputy state apiarist. The Department takes its role very seriously in the selection of the positions by selecting individuals with the education and experience necessary for the job. However, there are numerous other considerations to be taken into account when determining these positions. The minimum qualifications must be balanced against ensuring that there is an adequate supply of these apiarists to sufficiently cover

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inspections. Placing specific requirements on this position could result in a drought of qualified candidates which would result in fewer inspections and possible higher levels of infestation and disease. Regardless, the Department believes that the proposed rule offers the best option at this time to maximize the success of the program with the resources available.

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 were developed using the best scientific data available. The Department along with county apiary inspectors perform over 4,000 inspections annually. Further, the Apiary program works regularly with national groups and the United States Department of Agriculture to stay current with local and national apiary news and information.

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?

Stakeholder participation in reviewing the rules in this package has indicated to the Department that this is the best regulatory scheme at this time. For that reason, no other regulatory alternatives were considered.

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 contained in this package are performance based as they define the required outcome. It is up to the individual to determine how and when they will fulfill these requirements.

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 through Revised Code 909.02 to make and enforce such rules and orders as in his judgment are necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any bee diseases or Africanized honey bees.

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.

The Department has always maintained a constant line of communication with the deputy state apiarists, the apiary industry, and other key stakeholder groups regarding the implementation of this program. Additional education and outreach will be performed with

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the affected communities of the changes by the Plant Health Division. The staff members of the Plant Health Division ensure that all individuals in Ohio are treated in a similar manner.

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;

Any person keeping one or more honey bee colonies.

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

Each apiary must pay a registration fee. Further, the apiary may be inspected by either the Department or the county apiary for any serious bee disease. Should any hive contract a serious bee disease, it will be subject to immediate quarantine. Further, there is a possibility that the entire apiary also be quarantined. Quarantine may result in further costs associated with treatment or destruction of the hive.

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.

Each apiary must pay a \$5.00 registration fee.

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

The Department is directed by statute to protect the health of Ohio’s apiary industry. By establishing an inspection program, the Department is preventing the artificial spread of serious bee diseases, helping to maintain a vital industry in Ohio. Due to the danger to apiary health these rules are deemed necessary. The Department has worked closely with members of the regulated business community and at this time the rules as set forth represent the best balance of apiary health and adverse business impact.

Regulatory Flexibility

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

Due to the potential environmental and industry impact serious bee diseases could have on the state’s bee population, the Department did not create any exemptions or alternative means

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of compliance. However, as indicated above, regulated articles may be shipped with a certificate or a compliance agreement from quarantined states.

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 all offenders to educate them on their requirements and their violations to ensure voluntary compliance. First-time offenders are routinely offered settlements that are appropriate to the circumstances of the violation.

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

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