

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Livestock Care Standards – Veterinary Feed Directive

Rule Number(s): 901:12-3-05

Date: August 23, 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☐ Rescinded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 comprehensive livestock care standards housed in division 901:12 of the Ohio Administrative Code are meant to be practical for livestock producers of all sizes, scales and production methods and assure better livestock care. In addition, the rules support state's overarching goals of promoting safe and affordable food, and helping to prevent the outbreak of both animal and human diseases.

OAC 901:12-3-05 outlines requirements as they relate to the health of all livestock. This includes obtaining medication from a licensed veterinarian for which the livestock owner has a veterinary-client-patient relationship. The rule is being amended to clarify that all producers must comply with the Veterinary Feed Directive (VFD). The VFD outlines the process for authorizing use of animal drugs intended for use in or on animal feed that require the supervision of a licensed veterinarian and provides veterinarians in all states with a framework for authorizing the use of medically important antimicrobials in feed when needed for specific animal health purposes.

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

R.C. 904.03

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?

If yes, please briefly explain the source and substance of the federal requirement.

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

In November 2009, Ohio voters passed State Issue 2 approving the creation of the Ohio Livestock Care Standards Board. This vote demonstrated Ohioans' support for keeping the state's number one industry – food and agriculture – vibrant and strong. The board was charged with creating state standards for the care and well-being of livestock in Ohio.

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The enabling language required the board to take the following into consideration when developing the standards: Best management practices for the care and well-being of livestock; Biosecurity; Disease prevention; Animal Morbidity and mortality data; Food safety practices, Protection of local, affordable food supplies for consumers; Generally accepted veterinary medical practices, livestock practice standards and ethical standards established by the American Veterinary Medical Association, and; any other factors that the board considers necessary for the proper care and well-being of livestock in this state.

The comprehensive livestock care standards developed by the OLCSB are meant to be practical for livestock producers of all sizes, scales and production methods and will not only assure better livestock care, but also supports the state's overarching goals of promoting safe and affordable food, and helping to prevent the outbreak of both animal and human diseases.

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

The Department will measure success in this rule through veterinary feedback and whether there are any violations to this particular rule.

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 Ohio Livestock Care Standards Board ("OLCSB") was statutorily created to adopt rules governing the care and well-being of livestock in this state. The board is composed of thirteen members from farming, veterinary, academic, food safety, animal care and consumer interest backgrounds. Since the rules became effective in 2011, the OLCSB has reviewed three to four chapters of division 901:12 at every meeting. The OLCSB statutorily meets at least three times annually. In addition, the OLCSB has created sub-committees to more closely review portions of the rules and advancements in livestock care and management.

On August 15, 2016, the OLCSB approved that the rules in division 901:12 of the Administrative Code be submitted as no-change rules for the purposes of the five year rule review process. The current composition of the OLCSB is as follows:

Director David Daniels	Chairperson
Dr. Tony Forshey	State Veterinarian
Bryan Black	Consumers
William Knapke	Senate Appointee

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Dr. Cathann Kress	Ohio State University
Dr. Jerry Lahmers	State Farm Organization
Dr. Dr. David LeBourveau	County Humane Society
Dr. Jeff LeJeune	Food Safety Expert
Kimberly McConville	Consumers
Cy Prettyman	State Farm Organization
Terrence Stammen	Family Farms
John Surber	House Appointee
Ryan Zimmerman	Veterinarian

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

On August 15, 2017, OLCSB Cy Prettyman brought up the fact that the Veterinary Feed Directive is not mentioned in the Livestock Care Standards rules. In order to rectify this, he proposed that it be included in OAC 901:12-3-05. Specific language was proposed and the OLCSB considered that language. After a discussion, the OLCSB voted to approve the language.

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?

In 2011, the Department, members of the industry, and the public worked to develop these rules from a variety of sources and the end-product reflects the industry's current best-practices for livestock care. The department began by looking at existing regulations in other states, and countries. The draft rules were then reviewed and modified by academic veterinary experts, species specific committee comprised of dairy cattle farmers and veterinarians, and the OLCSB itself. Throughout the committee process, feedback was received during the public comment periods at meetings, and at public hearings, and incorporated into the rules. The resulting rules are focused solely on livestock care and are in line with established industry best practices.

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?

The Department and the OLCSB determined that the rules as they currently exist are well established in the agriculture community and achieve the statutory goal of protecting and

promoting the welfare of all livestock in the state of Ohio. For those reasons, no regulatory alternatives were incorporated.

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.

This rule is performance based as it defines the outcome without dictating the process for obtaining the outcome.

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

The Department is given sole regulatory authority to regulate and adopt these standards under Chapter 904 of the Revised Code.

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 VFD has been effective on the federal level since October 1, 2015. As such, the rule is already implemented within the industry. The Department works with all stakeholders in order to educate and inform them of the regulations.

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 owners and individuals responsible for the care of livestock in the state of Ohio.

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

Pursuant to federal law, a producer may only feed animal feed bearing or containing a VFD drug or combination VFD drug to animals based on a directive issued by a licensed veterinarian.

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.

The producer will be subject to additional veterinary costs for diagnosis, prescription, and treatment. These costs will vary on the location and the individual veterinarian providing these services.

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

As stated above, in November 2009, Ohio voters passed State Issue 2 approving the creation of the Ohio Livestock Care Standards Board. This vote demonstrated Ohioans' support for keeping the state's number one industry – food and agriculture – vibrant and strong. The board was charged with creating state standards for the care and well-being of livestock in Ohio. For these reasons, the Department believes the regulatory intent justifies the minimal adverse business impact.

Regulatory Flexibility

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

As the primary purpose of these rules is the promotion of the health, welfare, and safety of livestock in the state of Ohio, there are no exemptions or alternative means of compliance for small businesses.

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?

There are no paperwork violations associated with these rules.

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

These rules are already implemented within the industry and the Department works with all stakeholders in order to educate and inform them on the regulations.