

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Animal Health – Classical Swine Fever

Rule Number(s): 901:1-9-(01 and 02) and 901:1-7-05

Date: July 26, 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☒ Rescinded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 in this package regulate hog cholera, also known as classical swine fever, in the state of Ohio. After stakeholder outreach it was determined that these rules are no longer necessary. Specifically, this disease has been eradicated from the United States since 1978. Any outbreak of this disease would be controlled by the federal government. Therefore, these rules shall be rescinded.

Ohio Administrative Code 901:1-9-01 outlines the use of classical swine fever biologics. The rule states that any use of the biologics must be used by a licensed veterinarian and reported to the Department.

Ohio Administrative Code 901:1-9-02 controls the sale of these biologics. According to the rule, all sales must be permitted by the Department and can only be made to licensed veterinarians. As this disease has been eradicated these sales have ceased. Therefore, the rule is not necessary.

Ohio Administrative Code 901:1-7-05 states that all cars, trucks, vehicles, chutes, pens, sheds, and premises which have contained swine found affected with classical swine fever or suspected of being affected shall be cleaned and disinfected under the supervision of the department or its authorized personnel. This rule is both duplicative and unnecessary. As the disease has been eradicated this situation has not occurred. Further, classical swine fever is on the dangerously contagious and reportable disease list in OAC 901:1-21-02. As such, any instance of this disease must be cleaned in accordance with Chapter 941 of the Revised Code.

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

R.C. 941.03

### **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)?**

The Director of Agriculture has authority to use all proper means in the prevention and eradication of infectious and contagious diseases which pose a threat to public health or animal health.

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

Success of this program is measured by the report of little or no outbreaks of Hog Cholera in the state of Ohio, as well as immediate containment of any outbreaks which do occur.

**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.*

Ohio Ecological Food and Farm Association	Amalie Lipstreu
Environmental Law & Policy Center	Madeline Fleisher
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Humane Society of the United States	Corey Roscoe
Ohio Percheron Breeders Association	Darlana Chettle
Ohio Dairy Producers	Scott Higgins
The Ohio State University	Dr. Jeanette O'Quinn
USDA – APHIS	Dr. Roger Crogwold
USDA – APHIS	Dr. Susan Skorupski
Ohio Veterinarian Medical Association	Jack Advent
Ohio Farm Bureau	Jack Irvin
Ohio Harness Horsemen's Association	Jerry Knappenberger
Ohio Farm Bureau	Tony Seegers
Ohio Farm Bureau	Yvonne Lesicko
Ohio Farmers Union	Joe Logan
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Roger Wise
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Veterinarian Medical Association	Michelle Holdgreve
Ohio Welsh Pony Association	Paul Hurd

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

On January 22, 2016, these rules were sent to stakeholders with minor changes. At that time, the Department's intention was to maintain the rules. The Department received comments from the United States Department of Agriculture. Specifically, Dr. Roger Krogowld and Dr. Susan Skorupski stated that since 1978 the disease has been eradicated from the country. Due to this eradication, any use of the biologics contemplated in the rule would be made in a dire emergency and controlled by the USDA. Based on these comments, the Department went back and reviewed the rules. A decision was then made to rescind the rules.

The stakeholders were emailed the proposed rescinded rule on July 5, 2017, and were given until July 21, 2017, to make any comments they had. No comments were received by the stakeholders.

**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?**

According to the United States Department of Agriculture, the disease was eradicated from the country in 1978. As a result, and after conversations with the USDA, it was determined that any future outbreak of the disease would be managed by the federal government. Therefore, state rules would not be necessary for this disease.

**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 originally planned to maintain the rules however based on conversations with the United States Department of Agriculture, the Department decided to rescind 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.*

This rule is performance based.

**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 designate dangerously contagious or infectious diseases in R.C. 941.03.

**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 will work to ensure that the disease does not re-enter the state.

**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 swine owners operating in the state.

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

The current rules require that all swine biologics must be purchased, possessed by, and administered by a licensed veterinarian. This eliminates the opportunity for a swine producer to perform these practices on their own.

**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 cost of a veterinarian depends on the size, location, and type of operation. As such, there is no quantifiable cost.

**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 and safety of Ohio's animals and Ohio's consumers. The potential health implications of an hog cholera outbreak are far greater than the adverse impact on business in this situation. Therefore, the adverse business impact is considered justified.

**Regulatory Flexibility**

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

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Due to the health and safety nature of the rule, different standards based on the size of the business would be inappropriate.

**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?**

Due to the serious impact that hog cholera could have on both animal and human populations, waiver of penalties for first time violators is inappropriate.

**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 safety regulations.