

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Chronic Wasting Disease (2018 Five-Year Review)

Rule Number(s): 901:1-1-(01-06)

Date: June 29, 2018

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☒ Rescinded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 Chapter 901:1-1 of the Ohio Administrative Code have been reviewed by the Department pursuant to the Five-Year Rule Review. OAC 901:1-1 regulates the disease known as Chronic Wasting Disease which is designated under OAC 901:1-21-02 as a dangerously contagious or infectious disease. Pursuant to authority in section 941.02 of the Ohio Revised Code, 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.

Chronic Wasting Disease (“CWD”) is a fatal, extremely dangerous contagious disease that afflicts white-tailed deer and other members of the cervidae family. The director of agriculture is required to take all actions, including the adoption of rules, that he determines are necessary to mitigate or eliminate the presence of chronic wasting disease. See ORC 943.22 and 943.24.

Pursuant to the Legislative Service Commission’s guide on administrative rule drafting, the Department has proposed to rescind the existing rules found in Chapter 901:1-1 and replace the Chapter with newly drafted rules. The majority of the proposed rules remain the same however several significant amendments have been proposed. The new rules are outlined below:

OAC 901:1-1-01 sets out the definitions as used in the Chapter. These definitions match either terms defined in ORC Chapter 943 or the CWD federal program standards.

OAC 901:1-1-02 outlines the licensing and registration procedures for owners of captive whitetail deer. ORC 943.20 requires that all owners of captive whitetail deer either license or register with the Department. Further, the law requires that these owners also obtain a permit from the Ohio Department of Natural Resources. Further, the rule requires that all facilities must be inspected upon the initial registration. Thereafter, the facilities must have a physical inspection every year and a physical inventory of the facility must be completed once every three years.

OAC 901:1-1-03 outlines rules regarding fencing, escapes, and movement. The rule now requires that all owners of captive whitetail deer must inspect their perimeter fences on a weekly basis and document these inspections. Additionally, all escapes must be reported immediately to the Department and any escaped animal which is not returned to the premise within twenty-four hours may not be returned to the facility.

OAC 901:1-1-04 outlines the identification requirements for all animals inside the facility. Specifically, all animals over twelve months of age must bear two types of identification: official identification and another form of unique visible identification. Official identification is limited to an official USDA metal eartag bearing an alphanumeric identification number, approved visual or electronic radio frequency identification, or a microchip using described frequencies.

OAC 901:1-1-05 outlines the requirements for death and testing. Substantively, all animals which are over one-year of age which die for any reason must be tested for chronic wasting disease. Previously, hunting preserves were required to test a lower percentage of deaths. In addition, the rule sets out a phase-out period where owners of captive whitetail deer that die may submit non-ear tissue with the official identification devices until December 31, 2020. Additionally, the rules outline new quarantine conditions for facilities which submit poor quality, missing, or untimely samples.

OAC 901:1-1-06 sets out the recordkeeping requirements for captive whitetail deer owners. Owners must maintain a complete current herd inventory with specific information on each deer present for a period of five years. Further, the fencing inspection conducted as required in OAC 901:1-1-03 must be maintained pursuant to this rule.

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

R.C. 941.03, 941.09, 943.24

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.

United Department of Agriculture, Animal and Plant Health Inspection Service establishes a Chronic Wasting Disease Program with which the Department participates in. The Department's participation in this program allows Ohioans to ship their cervid animals across the country.

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

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animal health. Chronic Wasting Disease (“CWD”) is a fatal, extremely dangerous contagious disease that afflicts white-tailed deer and other members of the cervidae family for which there is no known treatment. The director of agriculture is required to take all actions, including the adoption of rules, that he determines are necessary to mitigate or eliminate the presence of chronic wasting disease. See ORC 943.22 and 943.24.

Last surveyed in 2010, the Ohio captive deer industry ranked third in the nation in terms of commercial deer farms. According to the Whitetail Deer Farmers of Ohio, Ohio’s captive deer industry contributes \$59.2 million into the economy. This does not account for the economic impact of the wild cervid hunting industry has on the state of Ohio. The presence of CWD in the state’s captive and wild populations would dramatically impact both industries.

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 chronic wasting disease 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.

On June 8, 2018, the stakeholders below were notified via email of the rules up for review.

Whitetail Deer Farmers of Ohio	Sam Holley
Whitetail Deer Farmers of Ohio	Terry Klick
Whitetail Deer Farmers of Ohio	Mark Mast
Capitol Advocates	Rob Eshenbaugh
Capitol Consulting	Belinda Jones
Environmental Defense Fund	Katie Champan
Environmental Law & Policy Center	Madeline Fleisher
Former State Veterinarian	David Glauer
Humane Society of the United States	Corey Roscoe
Ohio Beef Council/Ohio Cattlemen’s Association	Elizabeth Harsh
Ohio Belgian Breeders Association	Carolyn Piergallini
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Farm Bureau	Adam Sharp

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Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosh
Ohio Farm Bureau	Tony Seegers
Ohio Farm Bureau	Yvonne Lesicko
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farmers Union	Joe Logan
Ohio Farmers Union	Linda Borton
Ohio Haflinger Association	Lucy Workman
Ohio Harness Horsemen's Association	Renee Mancino
Ohio Percheron Breeders Association	Darlana Chettle
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Quarter Horse Association	Scott Myers
Ohio State University	Adam Ward
Ohio Veterinarian Medical Association	Jack Advent
Ohio Veterinarian Medical Association	Michelle Holdgreve
Ohio Welsh Pony Association	Paul Hurd
Sierra Club, Ohio Chapter	Jennifer Miller
The Nature Conservancy	Anthony Sasson
The Ohio State University	Dr. Jeanette O'Quinn
USDA – APHIS	Dr. Roger Krogwold
USDA – APHIS	Dr. Susan Skorupski

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 intimately worked with its stakeholders to draft these regulations. Specifically, the Department has had numerous conversations with the Whitetail Deer Farmers of Ohio to make sure that the rules balance the regulatory mission of the Department and the needs of the captive cervid industry. The Whitetail Deer Farmers of Ohio have expressed their support for these rules.

The Ohio Department of Natural Resources submitted comments and questions to the Department regarding these rules. Specifically, ODNR requested that OAC 901:1-1-03 be amended to ensure that in cases of escape or breaches in perimeter fencing that the prevention of all cervid species be prevented rather than just whitetail deer.

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?

As stated above, the United States Department of Agriculture, Animal and Plant Health Inspection Service establishes a Chronic Wasting Disease Program with which the Department participates in. This program is based off years of scientific research and study.

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 is statutorily tasked with the control and eradication of contagious and infectious diseases to protect the animals of the state under Chapter 941. The status of these diseases identified on this list as dangerously contagious and infectious are based on scientific research supporting this designation. In addition, the identification of these diseases as dangerously contagious and infectious diseases is generally nationally accepted. 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.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules in this chapter are not performance based due to the nature of what is being regulated, which is providing the framework for those diseases which are designated dangerously contagious or infectious. Upon diagnosis of chronic wasting disease in an animal or that an animal has been exposed to chronic wasting disease, Chapter 941 of the Revised Code provides the authority to immediately quarantine the animal and a requirement that the disease is reported to Department

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 protect the livestock, poultry, and other animal interests of the state, prevent the spread of dangerously contagious or infectious disease, and to provide for the control and eradication of such disease.

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 continue to work with the industry to educate and inform them on the new regulations. Additional education and outreach will be performed with the affected communities of the changes by the Animal Health Division. The staff members of the Animal Health Division ensure that all captive deer owners 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;

All captive deer owners and producers.

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

ORC 943.20 requires that all owners of captive whitetail deer either license or register with the Department. Further, the law requires that these owners also obtain a permit from the Ohio Department of Natural Resources. Further, the rule requires that all facilities must be inspected upon the initial registration. Thereafter, the facilities must have a physical inspection every year and a physical inventory of the facility must be completed once every three years.

All owners of captive whitetail deer must inspect their perimeter fences on a weekly basis and document these inspections. Additionally, all escapes must be reported immediately to the Department and any escaped animal which is not returned to the premise within twenty-four hours may not be returned to the facility.

All animals over twelve months of age must bear two types of identification: official identification and another form of unique visible identification. Official identification is limited to an official USDA metal eartag bearing an alphanumeric identification number, approved visual or electronic radio frequency identification, or a microchip using described frequencies.

All animals which are over one-year of age which die for any reason must be tested for chronic wasting disease. The rules outline new quarantine conditions for facilities which submit poor quality, missing, or untimely samples.

Owners must maintain a complete current herd inventory with specific information on each deer present for a period of five years. Further, the fencing inspection conducted as required in OAC 901:1-1-03 must be maintained pursuant to this rule.

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 license or registration required pursuant to ORC 943.20 is \$25.00. The physical inspection required by these rules must be completed by an accredited veterinarian. The cost of which will depend on the size of the facility, the number of animals, and the individual veterinarian. The cost for the perimeter fence inspection as well as recordkeeping is minimal.

The Department provides the USDA metal eartags at no cost. Visual or electronic radio frequency identification and microchips are more expensive however they do not cost more than \$10 per device.

CWD testing performed at the Department costs \$30 per test. The Department trains individuals to remove the necessary tissues from the animal, however, all samples must be visually inspected and submitted by a veterinarian. The cost for these services depends again on the number of animals and the individual veterinarian. Facilities that submit poor quality, missing, or untimely samples, must replace the sample with another animal. The cost of this depends dramatically on the original animal.

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

The Department acknowledges that there will be an adverse impact on the business community. However, the Department is also directed by statute to protect the health and safety of Ohio’s animals and Ohio’s consumers. As an outbreak of the disease could significantly impact the livestock industry, the adverse impact is considered justified.

Regulatory Flexibility

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

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 potential to cause serious harm to public and animal health, the Department does not waive penalties or fines for first time violators.

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

The Department works with all stakeholders in order to educate and inform them on the regulations.