



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

Jacquie Keller-Potvin Jacquelyn.keller-potvin@agri.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Regulatory Reform Initiative

Rule Number(s): 901-5-05, 901:1-4-13, 901:1-5-02, 901:4-6-03, and 901:5-48-04.

Date of Submission for CSI Review: July 16, 2021

Public Comment Period End Date: August 2, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_5_ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Rule 901-5-05 sets the terms of office and procedures for elections of agricultural societies. The rule has been amended to allow for electronic submission by election clerks.

Rule 901:1-4-13 sets the contents, procedures, and requirements for the examinations for wildlife shelter permit, wildlife propagation permit and restricted snake permit applicants with less than two years of experience in the care of the species that were the subject of the permit application. The rule has been amended to include update methods of communication.

Rule 901:1-5-02 defines an official brucellosis vaccinate. The rule has been amended to no longer require notice by telephone for vaccinations.

Rule 901:4-6-03 sets forth the application and registration process for participating in the Ohio Proud Program. The rule has been amended to add a scanned electronic copy as an acceptable submission.

Rule 901:5-48-04 sets forth the conditions for movement of the regulated articles which originate from a quarantined state. The rule is being amended to no longer require a copy of

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the certificate to be faxed to the Department. The regulated community has the option to mail or email the certificate.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule 901-5-05: 901.06, 1711.07, 1711.08

Rule 901:1-4-13: 935.17

Rule 901:1-5-02: 941.03, 941.51, 941.27

Rule 901:1-4-6-03: 901.171

Rule 901:5-48-04: 927.52, 927.71

4. 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.

Rule 901-5-05: Not Applicable

Rule 901:1-4-13: Not Applicable

Rule 901:1-5-02 The United States Department of Agriculture establishes a Brucellosis Eradication Program which the department participates in and this allows Ohioans to ship cattle and swine across the country.

Rule 901:4-6-03: Not Applicable

Rule 901:5-48-04: Not Applicable

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Rule 901-5-05: Not Applicable

Rule 901:1-4-13: Not Applicable

Rule 901:1-5-02: No

Rule 901:4-6-03: Not Applicable

Rule 901:5-48-04: Not Applicable

6. 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)?

Rule 901-5-05 ensures consistency throughout agricultural societies across the state of Ohio.

Rule 901:1-4-13 is part of a larger chapter of rules which protect public safety and promote animal welfare for registered dangerous wild animals.

Rule 901:1-5-02 is necessary to assist with the prevention and eradication of Brucellosis which is an infectious and contagious disease.

Rule 901:4-6-03 provides prospective consumers with a quick and reliable way for consumers to identify Ohio-made and grown goods.

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Rule 901:5-48-04 prevents the spread of Hemlock Woolly Adelgid.

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

The Department will monitor the use of the additional methods of communication to ensure the regulated communities are interacting with the Department with ease of communication.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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.

Stakeholder Outreach was not required for this rule package.

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

Not applicable.

11. 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?

The rules are being amended to update forms of communication with the regulated communities. The only scientific data used to develop this rule package was the Reg Explorer artificial intelligence tool.

12. 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?

No alternative regulations were considered during this rulemaking. The Department did explore alternative communication mechanisms and the regulated communities impacted by the amendments to the rules.

13. 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.*

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In rule 901:1-5-02 of the Administrative Code, the Department removed the exact communication required and opened the opportunity for the regulated community to decide which communication method to use to comply. In the other regulations, the Department considered using a more inclusive list of communication methods.

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

The Department has used the Reg Explorer A.I. tool to ensure these regulations are not duplicating existing Ohio regulations.

15. 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 plans to communicate the changes to the rules, which are exclusively changes to the methods of communication, through notice on the Department's website.

Adverse Impact to Business

16. 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; and

Rule 901-5-05 affects agricultural societies in the state of Ohio.

Rule 901:1-4-13 affects all dangerous wild animals and restricted snake permit holders.

Rule 901:1-5-02 affects all cattle and swine owners and producers.

Rule 901:4-6-03 affects all manufacturers and producers of any agricultural commodity that is produced in Ohio and wishes to join the Ohio Proud Program.

Rule 901:5-48-04 affects any person who produces, transports, or plans to transport Hemlock seedlings, nursery stock, logs, lumber, and chips.

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

Rule 901-5-05 requires time by the election clerk for compliance.

Rule 901:1-4-13 requires permit holders to spend time ensuring their current housing of their dangerous wild animals or restricted snakes meet the requirements of the regulations, time and money checking and repairing housing, time feeding and meeting care standards, and time ensuring local law enforcement officials are aware of the animals in their possession.

Rule 901:1-5-02 would only have an adverse impact in the event that an animal is classified as suspect or positive for Brucellosis. This would lead to a quarantine of the animal and potentially the farm.

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Rule 901:4-6-03 would require producer time for compliance.

Rule 901:5-48-04 prohibits the transportation of regulated articles into or within Ohio which originated in a quarantined state.

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.

Rule 901-5-05 the exact time and cost of time needed for compliance is not able to be calculated due to the multiple factors involved.

Rule 901:1-4-13 could have a wide variety of adverse impacts due to the diverse nature of the animals regulated by the rule and the varying individual circumstances of each permit holder.

Rule 901:1-5-02 requires testing for Brucellosis which varies in expense and also veterinarian fees which vary from veterinarian to veterinarian.

Rule 901:4-6-03 costs \$50 annually for product registration.

Rule 901:5-48-04 costs \$25 for a certificate and \$40 for a compliance agreement.

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

Rule 901:1-5-02 protects the health and safety of Ohio’s animals and Ohio’s consumers which justifies the adverse impact to the regulated community.

Regulatory Flexibility

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

Rule 901-5-05 does not have any exemptions or alternative means for compliance.

Rule 901:1-4-13 does not have any exemptions or alternative means for compliance due to the health and safety nature of the rule.

Rule 901:1-5-02 does not have any exemptions due to the serious nature of Brucellosis.

Rule 901:4-6-03 is a voluntary program and no exemptions are provided.

Rule 901:5-48-04 does not have any exemptions or alternative means for compliance due to the potential environmental and industry impact of HWA on the state’s forests.

19. 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?

Rule 901-5-05: Not Applicable

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For rule 901:1-4-13, the Department would treat administrative violations that do not involve public safety or animal health as opportunities for improvement through warning notices and solicitation of corrective actions.

For rule 901:1-5-02, the Department does not waive penalties or fines for first time violators due to the serious harm to public and animal health.

Rule 901:4-6-03: Not Applicable

For rule 901:5-48-04, the Department works with all offenders to educate them on their requirements and their violations to ensure voluntary compliance.

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

The Department's website contains information to guide small businesses with compliance. In each division, the Department has subject matter experts to further assist with inquiries.