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## **PUBLIC NOTICE**

The Ohio Department of Agriculture will hold a public hearing for the purpose of accepting testimony on the proposed amendments made to the following Ohio Administrative Code (“OAC”) rules more fully described below.

**OAC §§ 901-2-(01-14) – Administration – Farmland Preservation**

**OAC §§ 901-19 – Administration – Livestock Exhibitions**

**OAC §§ 901:3-7-(01-11) – Food Safety – Fish and Fishery Products**

**OAC §§ 901:5-41-01 – Plant Health – Strawberry Plant Certification**

**OAC §§ 901:5-50-(01-05) – Plant Health – Beet Necrotic Yellow Vein Virus**

The hearing will be held on:

**February 8, 2016 at 9:00 A.M.**

**Ohio Department of Agriculture  
Bromfield Administration Building  
Hearing Room 133 (Seminar “B”)  
8995 East Main Street  
Reynoldsburg, Ohio 43068-3399.**

The hearing will be conducted in accordance with Chapter 119 of the Revised Code. Any person affected by the no change rule package may appear and be heard in person, by his attorney, or both, may present his position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that the no change rule package, if adopted or effectuated, will be unreasonable or unlawful.

To obtain copies of these rules, please visit the Register of Ohio at [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).

Any person who wishes to present his position, arguments, or contentions in writing, other than at the public hearing, may do so by either mailing his or her written comments to the Ohio Department of Agriculture, c/o Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068; by email at [ecomments@agri.ohio.gov](mailto:ecomments@agri.ohio.gov), or by transmitting by facsimile at (614) 995-4585. Written comments sent by mail shall be postmarked no later than the day of the hearing. Written comments transmitted by facsimile shall be received no later than 5:00 p.m. on the day of the hearing.



*Serving Farmers and Protecting Consumers Since 1846*

The public hearing will discuss the following rules:

### **OAC §§ 901-2-(01-14) – Administration – Farmland Preservation**

The rules in Chapter 901-2 of the Ohio Administrative Code outline the Clean Ohio Local Agricultural Easement Purchase Program (LAEPP) as operated by the Ohio Department of Agriculture, Office of Farmland Preservation. This program preserves farmland in the state of Ohio by working with landowners to place an agricultural easement on their property, guaranteeing that the land remains in agricultural use. In exchange for the agricultural easement, landowners are compensated through LAEPP funds.

OAC § 901-2-01 outlines the definitions as used in the chapter. The rule has been amended to alphabetize the terms defined, remove terms that are not used in the chapter, and to clarify certain definitions.

**OAC § 901-2-02** sets forth the eligibility requirements for farmland to be considered for an agricultural easement within the program. Requirements include having the property valued, requiring that the application landowner have fee simple title in the land, and that the property may not be subordinate to any other legal or equitable interest. The Department works with applicants to ensure that these requirements are met. The rule is being amended to be consistent with the defined terms as used in rule 901-2-01.

**OAC § 901-2-03** is being rescinded. This rule outlined the eligibility requirements for local sponsors. The substance of this rule has been moved to rule 901-2-07.

**OAC § 901-2-04** sets forth the landowner application procedure rules. The application requires basic information that the Department needs in order to evaluate all applicants. Additionally, the Department requires the identification of restrictive covenants and third party interests, as well as, maps or aerial photographs depicting the property. The rule is being amended to remove duplicative sections already found in the Chapter. Specifically, deleted paragraphs (F) and (G) have been incorporated into rule 901-2-07. Additionally, stylistic changes have been made to the rule to help with comprehension and understanding.

**OAC § 901-2-05** outlines the application ranking system used by the Department to determine which properties are best suited for an agricultural easement. The criteria includes the soil type and agricultural productivity, proximity to other protected areas, use of best management practices, proximity to development, and local comprehensive land use plans. The rule has been amended to make stylistic changes to help with comprehension and clarity.

**OAC § 901-2-06** outlines the process at which properties are selected for an agricultural easement. Many of the rules paragraphs have been broken apart into small paragraphs and enumerated to help with reading comprehension. Further, many of the provisions in deleted paragraph (G) have been incorporated into paragraph (C) to better reflect the actual easement process. The rule is being amended for clarification purposes so that landowners and local sponsors better understand the process.



**OAC § 901-2-07** sets forth the procedures for local sponsor certification. Only certified local sponsors may accept landowner applications for an agricultural easement. The rule has been amended to make this requirement clear. Additionally, the rule has been reorganized to help with understanding the requirements.

**OAC § 901-2-08** sets forth the requirements for the present condition report as required in rule 901-2-06. The rule is being amended to be consistent with the defined terms for the chapter.

**OAC § 901-2-09** outlines how property appraisals are conducted under this chapter. The rule is being amended to change the word “rule” to “chapter” as that was the original intention.

**OAC § 901-2-10** requires certain language to be present on the deeds of agricultural easement. The rule is being amended to make a formatting change.

**OAC § 901-2-11** outlines the supervision and enforcement requirements of certified local sponsors. This supervision and monitoring ensures that the land for which an agricultural easement is on is abiding by the terms of the purchase agreement. The rule is being amended to be consistent with the defined terms.

**OAC § 901-2-12** sets forth the procedure and requirements for the extinguishment of an agricultural easement. All agricultural easements obtained through this program are to be held in perpetuity. Should a situation arise that makes the easement impossible or impracticable to continue, the requirements of this rule must be followed. The rule is being amended to be consistent with the defined terms.

**OAC § 901-2-13** outlines the process for the recoupment of funds used to purchase an agricultural easement. The rule is being amended to make a small grammatical change.

## **OAC §§ 901-19 – Administration – Livestock Exhibitions**

The rules in Chapter 901-19 of the Ohio Administrative Code outline the regulations for the exhibition of livestock in the state of Ohio. Exhibition of livestock generally occurs at a livestock show held at the Ohio state fair or a fair under the control of a county or independent agricultural society. The rules in this chapter set forth the governance and administration of these exhibitions and standards related to food safety and the health, safety, and welfare of livestock including grooming, commercial, or medical practices that are generally accepted in the community. The rules have been reviewed by the advisory committee on livestock exhibitions which meet annually to discuss these rules as well as other issues that pertain to the exhibition of livestock.

Pursuant to Ohio Revised Code 901.72, the rules adopted under which apply to exhibition-related food safety and the health, safety, and welfare of livestock shall apply to every exhibition. However, exhibitions may choose to adopt rules which do not apply to those issues. The rules as drafted indicate which rules are mandatory and which rules are optional for adoption by the exhibition.



The rules have been reviewed in accordance with Chapter 119 of the Revised Code and have undergone their five year rule review. A brief description of the rules and their proposed amendments are as follows:

**OAC § 901-19-01** outlines the definitions as used in the Chapter. The rule is being amended to include a definition of the term “drenching.” The term was previously undefined in the rule and there was some confusion as to the exact definition. After review of the advisory committee the following definition was approved: “drenching” means the act of using an instrument, including a bottle, placed in an animal’s mouth to orally administer a liquid, food, or any other substance.

**OAC § 901-19-02** sets forth the requirement that all exhibitions must be designated as terminal, partial terminal or non-terminal show. Terminal shows are shows where all animals must be consigned to slaughter at the conclusion of the show. Partial terminal shows are shows where at least the grand champion and the reserve grand champion must be slaughtered. The rule is being amended to make a stylistic change which should allow for easier comprehension of the rule.

**OAC § 901-19-03** outlines the regulations regarding auction sales at terminal and partial terminal shows. The rule requires that entrants to a terminal or partial terminal consent to participating in the subsequent auction sale. The carcasses of the slaughtered animals are offered up for auctions with the proceeds eventually going to the exhibitor or the owner of the livestock. The rule is being amended to make a stylistic change which does not effect the rule substantively.

**OAC § 901-19-04** outline the prohibited practices in all exhibition shows. These include improper use of drugs and unlawful substances. The rule is being amended to make stylistic changes which do not affect the substance of the rule. The rule is also being amended to place a code reference in the rule which directly points to additional unacceptable practices.

**OAC § 901-19-05** outline the responsibilities of the exhibition sponsor. These include record keeping requirements and maintaining a premium book which outlines the rules of the exhibition. The rule is being amended to make stylistic changes to the rule which help with comprehension.

**OAC § 901-19-06** set forth the drug use notification rules used by the exhibitor and the owner of the animal when exhibition animals have been recently exposed to drugs, generally for veterinarian purposes. The rule is being amended to break a part a long sentence and place it in list form.

**OAC § 901-19-07** requires that all exhibitors at county and independent fairs as well as the Ohio state fair complete a quality assurance program prior to exhibition. The rule is being amended to enumerate the paragraphs for easier reading.

**OAC § 901-19-09** sets forth the exception to paragraph (E) of rule 901-19-04. This exception allows the presence of drug residue in animals shown in non-terminal shows when the conditions of the rule are met. The rule is being amended to make stylistic changes which help to clean up the rule.



**OAC § 901-19-10** set forth the guidelines for testing requirements and sampling. The rule is being amended to remain consistent with the defined terms of the chapter.

**OAC § 901-19-11** sets for the rule for the humane treatment of livestock. The rule is being amended to make a grammatical change.

**OAC § 901-19-12** outlines the acceptable practices which protect and promote the health, safety, and welfare of livestock at these exhibitions. The rule is being amended to allow the practice of drenching of all livestock, rather than just lambs, if there is a medical condition diagnosed by a licensed veterinarian.

**OAC § 901-19-13** sets forth the unacceptable practices that are detrimental which to the health, safety, and welfare of livestock at these exhibitions. The rule is being amended to prohibit the drenching of all livestock animals, except for where permitted in rule 901-19-12. Additionally, the rule is being amended to add using an electrical, mechanical, or other device which enhances or changes the appearance of livestock unless prescribed by the exhibition veterinarian. Further, the rule is being amended to correct a previous error found in new paragraph (D). The rule as it currently exists states that the plugging of “tests” is an unacceptable practice. The rule should read “teats” and not “tests.” The rule has been amended to make that correction.

**OAC § 901-19-19** states that both the exhibitor and the owner of the livestock are absolutely liable to any discipline for the presence of an unlawful substance in livestock and any unacceptable practices that have been done to their livestock. The rule as currently written requires the Director shall mitigate discipline when the presence certain mitigating factors. The rule has been amended to change the “shall” to a “may”, giving the Director the option to mitigate the discipline. This is how the rule was originally intended to be written however it was incorrectly drafted.

**OAC § 901-19-21** outlines the possible disciplinary actions of individuals who violate these rules. The rule is being amended to make stylistic changes and to remove a code section which was placed in the rule in error. The code section applied to the criminal cultivation of illegal drugs. This is a criminal matter and will be left to the applicable authorities.

**OAC § 901-19-31** outlines the responsibilities of and the assistance allowed to be received by junior fair exhibitors. The rule is being amended to make a stylistic change which does not impact the substance of the rule.

**OAC § 901-19-32** is an optional rule which allows the exhibition to allow acceptable grooming practices for a particular breed of livestock which would normally be prohibited under rule 901-19-33. The rule is being amended to make stylistic changes which allow for easier interpretation.

**OAC § 901-19-33** the rule outlines the prohibited grooming practices in exhibitions. These grooming practices attempt to deceive exhibition judges in an attempt to gain an advantage. The rule is being amended to be a mandatory rule of all exhibitions. Additionally, the rule is being amended to specifically apply to only junior market livestock shows.



**OAC § 901-19-34** allows an exhibition to provide for an outstanding market project. The rule is being amended to make a small grammatical change.

**OAC § 901-19-35** is an option rule which if adopted by the exhibition would give the exhibition the ability to adopt disciplinary actions of another exhibition. For example, if one exhibition prohibited an exhibitor from participating in any exhibition for one year, another exhibition could also prohibit that exhibitor. The rule is being amended to make stylistic changes and to remove a code section which was placed in the rule in error. The code section applied to the criminal cultivation of illegal drugs. This is a criminal matter and will be left to the applicable authorities.

**OAC § 901-19-38** outlines false, deceptive, and unacceptable practices. The rule is being amended to make this rule mandatory for all exhibitions. Additionally, the rule is being amended to make a spelling change as well as a small grammatical change.

**OAC § 901-19-39** sets forth the ownership requirements for livestock entered in an exhibition. The rule is being amended to allow exhibitions the flexibility to allow households and exhibitors to enter multiple animals into the exhibition. This flexibility would allow junior exhibitors to have a reserve animal should their primary animal decease prior to the exhibition.

**OAC § 901-19-40** sets forth the meeting and notice requirements for the advisory committee on livestock exhibitions. The rule is being amended to comply with the incorporation by reference standards by placing the Department's website into the rule.

### **OAC §§ OAC § 901:3-7-(01-11) – Food Safety – Fish and Fishery Products**

The rules in this package regulate the processing of fish and fishery products in the state of Ohio. Without proper safeguards, errors in the manufacturing process can result in the growth of highly dangerous pathogens such as *Clostridium botulinum*, *E. coli* 0157:H7, *Salmonella*, and *Listeria monocytogenes*. These bacteria can result in human illnesses including respiratory problems, pneumonia, diarrhea, vomiting, and in some cases can result in the death of the infected individual. Due to this high level of risk there is significant regulation to monitor the food production industry which is designed to prevent illness and protect consumers.

These rules contained in this package mirror federal regulations in order to allow Ohio's producers of fish and fishery products to be able to ship all across the country. The rules below have been reviewed in accordance with Chapter 119 of the Ohio Revised Code and are being proposed as with the following changes:

**OAC § 901:3-7-01** sets forth the food processing establishments that are subject to the rules of this chapter. Additionally, this rule sets out the terms that have been defined in the chapter. The rule is being amended to add a definition of "food processing establishment" as well as to make small grammatical changes to the rule.





**OAC § 901:3-7-02** sets forth the requirement that each processor shall have a written hazard analysis to determine at what steps in their food production are food hazards likely to occur and ways that processors can apply controls to these hazards to limit their likelihood. Further, the rule requires all fish and fishery product processors subject to the rules of this chapter to develop a written Hazard Analysis and Critical Control Point plan, otherwise known as a HACCP plan. This is required whenever the hazard analysis as set forth in Ohio Administrative Code rule 901:3-23-03 reveals one or more food hazards are likely to occur during production. This plan outlines critical control points where food hazards are likely to occur and critical limits which, when operating within these limits, allows the processor to decrease the likelihood of product contamination. Additionally, the HACCP plan outlines how processors will monitor these critical control points and requires the development and implementation of corrective action plans should a deviation from the critical limits occur. The rule is being amended to reorganize the rule in a manner which allows for easier comprehension. Additionally, the rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-03** outlines the process for taking corrective actions when a deviation from a critical limit occurs. The rule states that all corrective action plans shall ensure that no product which may be injurious to consumer health or otherwise adulterated enter the stream of commerce. The rule also requires that the cause of this deviation be corrected. The rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-04** requires all fish product processors to verify and validate that their HACCP plan is being implemented according to its design. A processor verifies and validates their HACCP plan by reviewing any consumer complaints, calibrating instruments, and recording any deviation that may occur. This validation must take place at least once every twelve months. The rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-05** requires that all fish product processors maintain records which document the processor's HACCP plan. In particular, the processor must maintain records documenting that the processor continues to monitor the critical control points and their critical limits. The rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-06** states that the original hazard analysis, the development, verification, and validation of the HACCP plan must be performed by an individual who has successfully completed training in the application of HACCP principals as they relate to fish and fishery product processing. The rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-07** states that all processors shall have and implement a sanitation standard operating procedure. This procedure addresses sanitation controls at all points in the production line including, water sanitation, cross contamination of other insanitary objects (i.e. utensils,



food packaging material, gloves, and clothing), and control of employee health conditions. The rule is being amended to add the word “sanitary” to clarify the rule.

**OAC § 901:3-7-08** outlines the requirement that processors of smoked and smoke-flavored fishery products must include in their HACCP plans how they are controlling the formulation of the *Clostridium botulinum* toxin in their product. The rule is being amended to comply with the style guidelines of the Legislative Services Commission. There are no substantive changes to the rule.

**OAC § 901:3-7-09** states that processors shall include in their HACCP plans how they are controlling the origin of molluscan shellfish. The rule is being amended to make stylistic changes which simplify the rule.

**OAC § 901:3-7-10** states that all shellstock shall bear a tag that discloses information about the harvest. The rule is being amended to make paragraph changes which help comprehension of the rule.

**OAC § 901:3-7-11** states that the failure of a processor to have and/or implement their HACCP plan shall render the fish or fishery product that the processor produces adulterated under section 3715.59 of the ORC. The rule is being amended to make a stylistic change.

### **OAC §§ 901:5-41-01 – Plant Health – Strawberry Plant Certification**

**OAC § 901:5-41-01** has been reviewed in accordance with Chapter 119 of the Revised Code and is being proposed as amended below. This rule regulates and establishes the process for the certification of strawberry plants. Certified strawberry plants are those that have been inspected to ensure that the plants are free from disease and are of a pure variety. The rule is being amended to clarify the certification process. The rule has been re-organized to make it clear when the request for inspection must be filed with the Department and when the inspections must take place. There have been no substantive changes made to this rule.

### **OAC §§ 901:5-50-(01-05) – Plant Health – Beet Necrotic Yellow Vein Virus**

Chapter 901:5-55 of the Ohio Administrative Code declares that the viral disease, Rhizomania, more commonly known as Beet Necrotic Yellow Vein Virus (hereinafter BNYVV) as a plant pest pursuant to Ohio Revised Code §§ 927.52 and 927.71. These rules establishes a quarantine which prohibits the movement and sale of certain regulated articles (Beets and Spinach) from California, Idaho, Nebraska, and Texas in Ohio unless certain conditions are met.

This Ohio Department of Agriculture (Department) is hereby proposing that the rules in Chapter 901:5-55 be rescinded. These rules were originally established in early 1993. At that time, BNYVV was a serious issue facing Ohio’s sugar beet production. Since then, sugar beet varieties resistant to BNYVV have been developed reducing the impact of this virus. Additionally, Ohio has had no reported sugar beet product since 2005 making this virus a non-factor for Ohio’s agriculture industry. Therefore, the rules are no longer necessary and are being proposed to be rescinded.





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