

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture (ODA)

Regulation/Package Title: Possession of Dangerous Wild Animals and Restricted Snakes

Rule Number(s): 901:1-2-01 through 901:1-2-09

Date: 10/31/2012

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☐ Rescinded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.

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.

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The proposed rules in this package are the rules required by the newly enacted R.C. 935.17(A)(2). The Director of Agriculture is required to adopt rules within ninety days of the effective date of that section. The rules are to establish: “[s]tandards for the care and housing of registered dangerous wild animals, including standards for the proper care of each species of dangerous wild animal and caging and fencing of the animals.”

The Department of Agriculture has developed the proposed rules in cooperation with an ad-hoc committee on dangerous wild animals.

The rules describe general care standards that are applicable to all species categorized as dangerous wild animals (DWA) in 901:1-2-01. In the following rules each species of DWA is addressed and specific standards are given as needed. At this time, most of the species specific standards are focused on the cage and fencing needs of each type of DWA. The Director is required by R.C. 935.17(B) to expand on these standards in the near future, but that directive is not subject to the same deadline as R.C. 935.17(A)(2).

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

R.C. 935.17(A)

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 Department has been directed to develop these rules by statute in order to protect public safety and to promote animal welfare for registered dangerous wild animals.

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

The Department will measure success by the number of complaints received and the results of any inspections conducted as a result of received complaints. Further, successful implementation of these rules should help to greatly reduce any chance for an animal to threaten public safety

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 rules were developed in cooperation with an ad-hoc committee comprised of Ohio zoo representatives and members of the veterinarian community.

The committee members are:

Jack Advent Ohio VMA

Eric Albers Akron Zoo

Michael Barrie Columbus Zoo

Dan Beetem The Wilds

Harold Dates Cincinnati SPCA

Mike Dulaney Cincinnati Zoo

Lewis Greene Columbus Zoo

Michelle Holdgreve Ohio VMA

Erik Keyster Cincinnati Zoo

Andi Kornak, Cleveland Zoo

Albert Lewandowski Cleveland Zoo

Mark Mazzei Boonshoft Museum

Carolyn McKinnie USDA APHIS

Randi Meyerson Toledo Zoo

Pete Mohan Akron Zoo

Andy Montoney USDA APHIS

David Oehler Cincinnati Zoo

Tom Stalf Columbus Zoo

Michelle Studer Akron Zoo

Martin Tremmel Ohio Department of Health

Patricia Waickman Akron Zoo

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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?

The ad-hoc committee was instrumental in reviewing proposals developed by consulting veterinarian Dr. David Glauer. Through consultation with the committee, the proposed rules were developed using standards in use by the Zoological Association of America and Ohio Zoos.

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?

The rules were developed using the veterinary and practical experience provided by the ad-hoc committee and the standards developed by the ZAA. This data included the appropriate gauge of steel for fencing of different species, the appropriate wall height, generally accepted care standards including the amount of room for each type of DWA, etc.

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 agency, with input from experts in this field, adopted safety standards that were the minimum acceptable standards for each species to try limit any adverse impact.

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 define the required outcome for caging, fencing, and housing. Methods for achieving those standards are open to the owners.

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

The regulation of those animals listed as dangerous wild animals is a new area of regulation in Ohio and ODA is the sole regulator.

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.

Per R.C. 935.04, all registered DWA owners will have ninety days after the adoption of these rules to come into compliance with the rules. During that period, the Department will

communicate the rules to every registered DWA owner and work with those owners in understanding and implementing the standards. ODA will work directly with all registered DWA owners during the implementation of these rules, and as the DWA program progresses to the permitting phase, ODA will also update DWA owners on the expanded care standards directed by statute.

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;

These rules may impact a business that owns DWA if it does not qualify for one of the exemptions in R.C. 935.03. The registration period for DWA is open at the time this document is being prepared, and the number of businesses that may be impacted by these rules is currently unknown.

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

Owners of registered DWA will be required to meet the care, caging, and fencing standards in these rules within ninety days of their adoption. Owners may need to remodel their current enclosures and change their care procedures in order to meet the minimum state housing and care requirements.

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.

Quantifying the impact on businesses is difficult at this time.. It is not generally known how many businesses currently utilize DWA that will not meet one of the statute’s exemptions. Once the registration period is over, ODA should have a better estimation as to the number of businesses that will be impacted. However, the timing imposed by statute requires the Department to move forward with these rules before the end of the registration period.

Even after the registration period ends, quantifying the exact impact will remain difficult due to the variability in current enclosures and the amount of work that may be necessary to bring each one up to the required standards. Additionally, the number and type of animals owned will make estimates even more unreliable. The costs to minimally improve one large cat enclosure will vary greatly from the costs of building almost entirely new enclosures for multiple reptiles and mammals.

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

The Department is directed to adopt these rules by statute. Despite potential adverse impacts to the business community, the legislature has enacted the DWA statute to protect public safety and the Department is carrying out its statutory authority under the new law.

Regulatory Flexibility

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

As stated above, there are exemptions to this legislation for certain entities like sanctuaries, wildlife rehabilitation facilities and entities that are accredited by certain associations and licensed with the USDA. Any small business entity that can meet one of the exemptions, or who deals in animals that are not DWA, would be free from all of the new housing and care requirements established by these rules.

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?

The Department is primarily concerned with protecting public safety and animal health through compliance with these rules. Whenever possible, ODA will treat administrative violations that do not involve public safety or animal health as opportunities for improvement through warning notices and solicitation of corrective actions. Harsher enforcement options will likely be reserved for offenders who do not cooperate or those that have repeated violations.

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

ODA currently has a website devoted to dangerous wild animals that contains helpful information about this statute. The Department will also be in direct communication with all registered DWA owners, and will work to provide them with all available information and resources.