

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: **Dangerous Wild Animal and Restricted Snake Administrative Rules**

Rule Number(s): 901:1-4-01 through 18.

Date: 4/4/2013

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☐ Rescinded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.

In general, the chapter sets forth a structure to protect the public from the dangers posed by the possession of dangerous wild animals and restricted snakes, as well as to ensure the care for these animals. The protection includes mandating the use of safe housing, ensuring owners have the requisite knowledge to care for the animals, appropriate recordkeeping, and adequate sanitary conditions to prevent the spread of disease and infection. The rules in this chapter have been written to ensure they are easy to read and follow, with the hope that the results will be cost-effective for small businesses and individuals while protecting the general public in the process.

901:1-4-01 is primarily definitions as used throughout the Chapter, but it also contains some general provisions of care that are applicable to all animals regulated under this Chapter.

901:1-4-01.1 establishes the standards for the enclosures for dangerous wild animals (DWA) in general. Separate rules set species specific standards.

901:1-4-01.2 establishes the standards for food and water for DWA.

901:1-4-01.3 establishes health standards for DWA, and includes a requirement for a veterinary relationship and scheduled visits.

901:1-4-02 through 09 establishes species specific standards for enclosure size and type, along with species specific health and safety considerations.

901:1-4-10 establishes recordkeeping requirements.

901:1-4-11 establishes standards of care and safety for use during the transport of DWA.

901:1-4-12 sets standards for signs as required by statute.

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 are the subject of the permit application.

901:1-4-14 establishes the requirements for species survival programs to be used by wildlife propagation permit holders.

901:1-4-15 sets forth the information to be included on rescue facility permits, as well as the criteria for the issuance and denial of such permits.

901:1-4-16 sets forth the additional information to be required with wildlife shelter and wildlife propagation permit applications.

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901:1-4-17 sets forth the civil penalties for violating this chapter and section 935 of the Revised Code.

901:1-4-18 provides for the compensation of facilities that are listed by the Director as being eligible to accept dangerous wild animals and restricted snakes.

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

R.C. 935.17. The Ohio Department of Agriculture (“Department”) is required to establish standards for housing and care for dangerous wild animals and restricted snakes in a manner that ensures the health and safety of the public as well as the animals which are being regulated. That someone cannot possess a dangerous wild animal or restricted snake without the appropriate permit, or the appropriate exemption from registration, is set forth in R.C. §§ 935.01, 935.05 and 935.07.

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 mandated to adopt these rules by statute in order to protect public safety and to promote animal welfare for registered dangerous wild animals. R.C. § 935.17. In R.C. § 935.17(B), the General Assembly set forth requirements that the rules “shall govern at least sanitation for, provision of health care for, and feeding, caging, housing, and fencing of dangerous wild animals. [In developing such rules] the Director [of the Department] shall consider [. . .] (2) Public health and safety; [. . .] (7) Standards adopted by the association of zoos and aquariums; (8) Standards adopted by the zoological association of America; (9) Standards established in the federal animal welfare act; and (10) Ethical standards established by the American veterinary medical association.” The Department has been further required to establish permits for possession of dangerous wild animals and restricted snakes and effective means of maintaining facilities for possession of such animals, including informing local law enforcement of their presence and emergency plans in the event of their escape. Without regulations, an entity or individual may not provide the proper housing and care of

the dangerous wild animal or restricted snake which can lead to escape and cause duress to the animal, and put local law enforcement in a compromised position without information if such an escape were to occur.

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 through escape by regulating the appropriate housing and care for these animals, as well as provide needed information to those in the community of their presence.

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.

These rules were developed by a broad group of stakeholders including the Dangerous and Restricted Animals Advisory Board (“Board”), interested members of the public, and various other professionals. The Board formed four subcommittees to meet publicly and gather input on these rules. Professionals who served on the Board include Carolyn McKinnie, Supervisory Veterinary Medical Officer with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service; Dr. Barbara Wolfe, Director of Wildlife and Conservation Medicine at The Wilds with a PhD in reproductive physiology and member of the American College of Zoo Medicine; Dr. James Vanzant, DVM, former Highland County Health Commissioner; Harold Dates, President of Society for Prevention of Cruelty to Animals, Cincinnati chapter; Ellen Whitehouse, Noah’s Lost Ark Exotic Animal Sanctuary; Pamela White, Founder, American Primate Education Sanctuary (A.P.E.S.); Doug Wynn, Herpetologist, Doug Wynn Consulting; Dr. Randall Junge, Vice President, Animal Health at Columbus Zoo and The Wilds and Association of Zoos and Aquariums member; Dr. Albert Lewandowski, Zoo Veterinarian, Cleveland Metroparks Zoo; Alan Sironen, Zoo Association of America member; Dr. Tony Forshey, State Veterinarian; and Dr. Gary Riggs, DVM, Owner, Bird and Exotic Specialty Hospital and founding member of Wild4Ever non-profit local and worldwide wildlife conservation foundation. In addition, representatives of following organizations were consulted and attended rule meetings: the Association of Zoos and Aquariums, the Zoological Association of America, the Ohio Society to Prevent Cruelty to Animals, the Humane Society of the United States, the United States Department of Agriculture, the Ohio Farm Bureau, the Ohio Department of Natural Resources, the Ohio

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Department of Health, the Ohio Association of Animal Owners, all of Ohio's accredited zoos, and the Ohio Veterinary Medical Association.

Finally, several private dangerous wild animal owners, restricted snake owners, and other concerned citizens attended meetings as well. These members included Polly Britton of the Ohio Association of Animal Owners (OAAO); Terry Wilkins, Captive Born Reptiles; Keith Gissor, Herps Alive!; Gary Campbell, private owner of capuchin and black-handed spider monkeys; Kevin Bandy, private owner of monkeys; John and Tessa Moore, private owners of exotic animals and exotic animal caretaker; John Chuha, private owner of bobcats; Mike Stapleton, Paws & Claws Animal Sanctuary; Michelle Iddings, Idle-Hour Ranch; Robert Sawmiller, Wildlife on Wheels; Best Exotics; Robert Siders, American Venom Registry; Leah Dorman, DVM, Ohio Farm Bureau; and Deron Detwiler, Detwiler's Quality Constrictors.

The four subcommittees met ten times between November 28, 2012 and February 14, 2013. The Board also met as a whole an additional three times, beginning in January 2013, and ending with final approval of these rules on March 25, 2013. Meetings were announced on the Department's website; and notice was provided by email directly to the OAAO and other interested parties who requested notification. When possible email updates were provided containing drafts of the rules, notices, and other important information. After meetings were held with input from these individuals, additional revisions were suggested and many suggestions were adopted. Drafts of the rules went out multiple times in March and were posted on the Department's web page.

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

Stakeholders provided input on rule revisions together with Board and Department staff during a series of meetings in 2012 and into 2013. Dozens of provisions were changed in the rules as a direct result of feedback received at the meetings. The Board members voted to approve the revisions of the rules.

As an example of revisions made due to input provided by stakeholders, the section on dig barriers in 901:1-4-01.1 was simplified and became a defined term that provided more flexibility to the permit holder in the materials and depth used, which also allows the permit owner to control costs. The felids in 901:1-4-05 went from two size categories to three to allow for more refined standards based on species needs and to prevent unneeded expenses. Similarly, 901:1-5-08, pertaining to crocodiles and alligators, was altered to allow for small animals to be kept in plexiglass or similar containers instead of the stricter, and potentially more costly, housing requirements for the larger animals. The enclosure requirements for primates in 901:1-4-09 were altered to lower minimum height requirements to accommodate

those that are kept in standard residential homes by current owners. The cantilever and secondary enclosure requirements in 901:1-4-01.1 were rewritten to provide clearer direction on construction and material standards, and the secondary enclosure size was reduced by half from the original proposed size. Due to this input by Stakeholders, the regulations were made significantly more cost-effective and easier to implement. The Stakeholders appeared appreciative of these changes.

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 best available data from veterinarians and experts in the care of dangerous wild animals. Standards from third-party organizations, when applicable, were used as a starting point for developing these rules.

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?

As noted in question 8, the rules were changed as input was received from the various stakeholder groups. Alternatives proposed at the meetings, such as reducing by half the distance of secondary enclosure fencing from the primary enclosure, adding significant flexibility to dig barrier standards in terms of materials used and depth required, and accommodating the rules to animal needs based on size were analyzed and accepted. Further, animal care and housing standards as provided by the Association of Zoos and Aquariums, the Zoological Association of America, the United States Department of Agriculture, and the Global Federation of Animal Sanctuaries were consulted and reviewed as alternatives. These alternatives were considered and parts adopted through interaction with the stakeholder community on what was appropriate and needed, and why some of these alternatives were not necessary and were too expensive to implement. The current rules were proposed as a result of consideration of these alternatives, and will ensure public safety and appropriate animal care.

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.*

To the fullest degree possible, the rules are performance-based. The rules set a desired outcome, and leave the specifics to the permit holder. Even when certain materials are specified, as in the building of primary enclosures, permit holders are given the option of using equivalent material so long as the material is as strong as or stronger than the recommended materials.

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

The regulation of most animals listed as dangerous wild animals is a new area of regulation in Ohio. The Department is the sole regulator for those possessing or propagating dangerous wild animals except for a few specific permits issued by the Ohio Department of Natural Resources that apply only to indigenous species.

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.

These rules will apply to holders of wildlife shelter permits, wildlife propagation permits, rescue facility permits, restricted snake possession permits, and restricted snake propagation permits. Permit holders and applicants will have educational materials made available to them, and Department staff will assist with identifying infrastructure and operational needs of permit holders. The new rules will be available on the Department's website. The Department's inspectors and investigators will be trained on how to enforce the rules. The staff members of the Board and the Division of Animal Health overseeing the violation program will watch to make certain that all permit holders in Ohio 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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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.

 - a. These rules will impact any person wishing to obtain a permit for the possession or propagation of a dangerous wild animal or restricted snake.
 - b. These rules focus on the housing and care of dangerous wild animals; requirements which permit holders must comply with or be refused the proper permits. Permit holders will need 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 making certain that feeding and care standards are met, and time ensuring that local law enforcement officials are aware of the animals in their possession and that they have a plan in the event of escape or emergency. The possession or propagation of a dangerous wild animal or restricted snake without the proper permit can result in civil or criminal penalties. Violators of the rules pay fines and may have permits suspended or revoked. As specified by the statute, one must provide proof of current insurance coverage or bond to cover any injuries or damages due to the escape or other actions of the animals.

c. The exact adverse impact cannot be quantified for each permit holder or applicant due to the diverse nature of the animals regulated by these rules and the varying individual circumstances of each permit holder. When possible, the rules were written to be outcome based and allow the permit holder a great deal of flexibility and personal choice in determining how to meet the standards. The cost of permits is low, especially when compared to the cost to feed and house the given number of dangerous wild animals and restricted snakes that may be in a permit holder's possession. The hours a permit holder would spend cleaning housing and ensuring the housing and current care is to specifications in the rules would depend on how many animals the permit holder possesses.

Attempting to provide a one size fits all estimate for the costs of primary enclosures can be misleading due to the high variability in the amount of linear feet of fencing and differing materials that could be used in enclosing a given square footage requirement. Further, the cost of building materials may fluctuate depending on the area. However, using bears as an example, these animals require a minimum four hundred square foot primary enclosure. The minimum linear length of fencing required at the appropriate gauge would be eighty feet and cost approximately \$499 for a fifty foot section that is eight feet high, or \$749 for a fifty foot section that is twelve feet high. If you also include the cost of chain link used in a roof or cantilever, as well as costs for poles, fasteners and installation, the total cost could reach \$2200 if a current owner has no existing enclosure.

However, the cost could be significantly less if an owner enclosed the same four hundred square feet using wooden poles or some other material that is equivalent in strength to six gauge chain link, does their own labor, or has a site that lends itself to installing this type of enclosure.

Additional expenses, assuming certain safety features are not already present or currently used by the permit holder, would include shift cages, a safety entrance, and a shelter for the animal within the primary enclosure. The permit holder must also

build a secondary enclosure around each primary enclosure or all primary enclosures as a whole. The secondary enclosure must be eight feet high and eight feet from the primary enclosure. Presuming a secondary enclosure made from the same material used for the primary enclosure in the bear example, an enclosure would require one hundred forty-four linear feet of fencing at a cost of approximately \$1440. It is expected that each permit holder will provide adequate care in the manner which best suits their individual circumstances and each permit holder is already providing for these costs in the care and possession of the animal.

A total cost for a brand new bear enclosure, if a current owner has no existing enclosure that can be modified to meet these rules, may run as high as \$5000. It is anticipated that the majority, if not all, of the current owners of dangerous wild animals or restricted snakes already have some type of primary enclosure. Accordingly, the price can be significantly decreased if a current enclosure is present that can be modified, and if a current enclosure already meets or exceeds these standards, the cost would be minimal.

To further control costs, not all species regulated by this chapter require all enclosure features. Dig barriers, shift cages, and safety entrances are not required for certain species where appropriate, and this further reduces the burden on the animal owner. With input from the stakeholders, the Department significantly revised the rules to make them much more cost efficient and attainable by permit holders. While the Department does acknowledge there will be costs imposed by these standards, the Department is statutorily required to adopt these rules by the General Assembly in R.C. § 935.17 which protect public safety and the health and safety of the regulated animals.

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

As mentioned above, the General Assembly mandated that the Department develop rules to protect the safety of the general public and welfare of the regulated animals. The Department has worked with the public to minimize, where possible, the economic impacts of these rules. While the protections offered by the rules to the public, the regulated community, and animals are significant, the adverse impact caused by the rules has been limited when possible.

Regulatory Flexibility

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

The law expressly prohibits many of the business activities associated with these animals by making it illegal to buy, sell, or transfer many dangerous wild animals. The Department has made many changes to enclosure sizes to accommodate animals that are housed indoors by private owners and businesses. The proposed rules also provide a separate housing standard for small alligators and crocodiles.

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, the Department 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 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?

The Department is always available to assist small businesses with compliance. The Department currently has a website devoted to dangerous wild animals and restricted snakes that contains helpful information about this statute, including the rules. The Department will also be in direct communication with all permit holders and applicants, and will work to provide them with all available information and resources, whether by phone, email, or letter.