

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Dangerous Wild Animal and Restricted Snake 2018 Review

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

Date: June 11, 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☐ Rescinded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.

On September 5, 2012, Senate Bill 310 of the 129th General Assembly became effective. Senate Bill 310 was more commonly referred to as the Dangerous Wild Animal and Restricted Snake Act which regulated the possession of dangerous wild animals and restricted snakes in the state of Ohio. Chapter 901:1-4 of the Administrative Code was established pursuant to SB 310.

The rules in this chapter set forth regulatory requirements 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 have been reviewed pursuant to the five-year rule review requirements and are being proposed as follows:

901:1-4-01 sets out the definitions as used throughout the Chapter. The rule also contains some general provisions of care that are applicable to all animals regulated under this Chapter. This rule has been proposed as needing no changes.

901:1-4-01.1 establishes the standards for the enclosures for dangerous wild animals (DWA) in general. Separate rules set species specific standards. The rule has been amended to remove the requirement to “provide a quiet birthing area as necessary and appropriate to the species.” This language particularly applies to Wild Animal Propagation permits. This permit is the only type of permit which allows non-sterilized DWAs, and therefore, birth new animals. Anyone who wished to obtain a Wild Animal Propagation permit must have obtained the permit by January 1, 2014. There are no individuals which currently possess a Wild Animal Propagation permit. Therefore, all animals legally possessed in the state of Ohio are sterilized, eliminating the need for the birthing area rule.

Further, requirements for cantilever fencing has been clarified to require that if high tension cables are utilized in the enclosure there shall be at least two high-tension cables with a separate electrified top wire

901:1-4-01.2 establishes the standards for food and water for DWA. This rule has been proposed as needing no changes.

901:1-4-01.3 establishes health standards for DWA, and includes a requirement for a veterinary relationship and scheduled visits. The rule contains a proposed amendment which

eliminates the need to appoint a committee to evaluate the control of a dangerous wild animal or restricted snake under the control of the Department.

901:1-4-02 establishes species care standards for bears. This rule has been proposed as needing no changes.

901:1-4-03 establishes species care standards for the hyaenidae family. This rule has been proposed as needing no changes.

901:1-4-04 establishes species care standards for gray wolves and African wild dogs. This rule has been proposed as needing no changes.

901:1-4-05 establishes species care standards for the Felidae family. This rule has been amended to remove “bobcat” from the rule. Pursuant to a decision by the Tenth Appellate District, “bobcats” are not included in the definition of “dangerous wild animals.” Therefore, the animal has been removed from the rule.

901:1-4-06 establishes species care standards for hippopotamuses, elephants, rhinos, and cape buffalos. The rule has been amended to decrease the amount of time that an elephant may be tethered for.

901:1-4-07 establishes species care standards for komodo dragons. This rule has been proposed as needing no changes.

901:1-4-08 establishes species care standards for crocodiles and alligators. This rule has been proposed as needing no changes.

901:1-4-09 establishes species care standards for nonhuman primates. This rule has been amended to clarify that fencing may be on either side of the vertical posts for the following sub-family species: cercopithecinae, colobinae, hylobatidae, callitrichidae, aotidae, pitheciidae, pitheciinae, atelidae, and atelinae.

901:1-4-10 establishes recordkeeping requirements. The rule has been amended to require that individuals applying for a renewal of their existing permit identify animals not on their original permit. Further, the rule has been amended to require that all records required by 935.15(A) of the Revised Code be submitted to the Department within thirty days of creation.

901:1-4-11 establishes standards of care and safety for use during the transport of DWA. This rule has been proposed as needing no changes.

901:1-4-12 sets standards for signs as required by statute. This rule has been proposed as needing no changes.

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. This rule has been proposed as needing no changes.

901:1-4-14 establishes the requirements for species survival programs to be used by wildlife propagation permit holders. This rule has been proposed as needing no changes.

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. This rule has been proposed as needing no changes.

901:1-4-16 sets forth the additional information to be required with wildlife shelter and wildlife propagation permit applications. This rule has been proposed as needing no changes.

901:1-4-17 sets forth the civil penalties for violating this chapter and section 935 of the Revised Code. This rule has been proposed as needing no changes.

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. This rule has been proposed as needing no changes.

901:1-4-19 is a new rule which outlines the application process for restricted snake permits, as well as the criteria for the issuance and denial of such permits.

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 is statutorily responsible for establishing rules which 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 because 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.

On April 30, 2018, the department mailed a letter to all current permit holders informing them that the rules are up for review. The rules were placed on the Department’s website for permit holders to review and provide comments.

Further, on May 7, 2018, the rules were sent to the following animal health stakeholders:

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
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 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	
The Nature Conservancy	Anthony Sasson
The Ohio State University	Dr. Jeanette O'Quinn
USDA – APHIS	Dr. Roger Crogwold
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 did receive input from a few permit holders and other interested groups. Specifically, the permit holders suggested that the rules remain the same as they have spent time and resources ensuring that their premises are up to code.

The Humane Society of the United States also submitted comments regarding the proposed rules. A large number of the comments proposed by HSUS could already be found in other sections of the Chapter. However, the Department did amend OAC 901:1-4-06 based on the comments made by HSUS.

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?

Due to the success of the first five years of the program, the Department believes that the rules as currently installed meet the regulatory mission of protecting both public and animal safety in the state. Therefore, the Department did not consider alternative regulations.

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 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 are well understood by the regulated community and the Department works with all permit holders and those involved in animal industries to educate and inform them on the safety regulations. The staff members of the Animal Health Division ensure that all permit holders 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 dangerous wild animal and restricted snake permit holders.

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

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. 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 exact adverse impact varies widely 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.

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.

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?

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?

These rules are already implemented within the industry and the Department works with all stakeholders in order to educate and inform them on the regulations.