

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Livestock Care Standards -

Rule Number(s): 901:12-1-(01-06); 901:12-2-01; 901:3-(01-08); 901:12-4-(01-04);

901:12-5-(01-03); 901:12-6-(01-03); 901:12-7-(01-02); 901:12-8-(01-03); 901:12-9-(01-04);

901:12-10-(01-04); 901:12-11-(01-04); 901:12-12-(01-02); 901:12-13-(01-02);

901:12-14-(01-04); 901:12-15-(01-04);

Date: March 20, 2017

Rule Type:

New

5-Year Review

Amended

Rescinded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.

The comprehensive livestock care standards housed in division 901:12 of the Ohio Administrative Code are meant to be practical for livestock producers of all sizes, scales and production methods and assure better livestock care. In addition, the rules support state's overarching goals of promoting safe and affordable food, and helping to prevent the outbreak of both animal and human diseases.

The rules in division 901:12 of the Administrative Code are up for five year rule review. The rules have been reviewed by the Ohio Department of Agriculture ("Department"), the Ohio Livestock Care Standards Board ("OLCSB"), and the regulated community. The rules are being submitted as requiring no changes.

Chapter 901:12-1 of the Administrative Code outlines the humane euthanasia standards for livestock in the state of Ohio. Euthanasia must be performed when the likelihood for recovery of the animal is poor and the condition of the animal cannot be effectively relieved by the best species management and medically appropriate procedures. The rules more specifically are outlined below:

OAC 901:12-1-01 sets forth the definitions and general considerations that are used in the Chapter.

OAC 901:12-1-02 outlines the acceptable inhalant euthanasia agents.

OAC 901:12-1-03 states that all injectable euthanasia agents must be used by or under the direct supervision of a licensed veterinarian.

OAC 901:12-1-04 sets out the physical methods of euthanasia permitted under the chapter.

OAC 901:12-1-05 outlines specific euthanasia methods for specific species.

OAC 901:12-1-06 states that persons responsible for the violation of this chapter are subject to the civil penalties outlined in OAC 901:12-2-01.

Chapter 901:12-2 of the Administrative Code outlines the civil penalties for violations to Division 901:12 of the Administrative Code.

Chapter 901:12-3 of the Administrative Code – General Requirements

OAC 901:12-3-01 sets forth the definitions that are used in Division 901:12.

OAC 901:12-3-02 states that all livestock must receive feed and water of sufficient quantity and quality to help ensure maintenance of normal body condition and/or growth.

OAC 901:12-3-03 outlines the general management practices for the handling of livestock.

OAC 901:12-3-04 states that the euthanasia of livestock must be performed pursuant to Chapter 901:12-1 of the Administrative Code.

OAC 901:12-3-05 outlines requirements as they relate to the health of all livestock. This includes obtaining medication from a licensed veterinarian for which the livestock owner has a veterinary-client-patient relationship.

OAC 901:12-3-06 outlines the requirements for the transportation of livestock.

OAC 901:12-3-07 states that nothing in Division 901:12 of the Administrative Code shall be construed to prevent a licensed veterinarian from meeting the standards found in Chapter 4741 of the Revised Code.

OAC 901:12-3-08 states that persons responsible for the violation of this chapter are subject to the civil penalties outlined in OAC 901:12-2-01.

Chapter 901:12-4 of the Administrative Code - Ambulatory Disabled, Non-ambulatory, and Distressed Livestock.

OAC 901:12-4-01 states that all ambulatory disabled, non-ambulatory, and distressed livestock must have access to water and if maintained for longer than 24 hours, feed.

OAC 901:12-4-02 outlines the management requirements for ambulatory disabled, non-ambulatory, and distressed livestock. Specifically, the responsible party must protect these animals from other livestock, predators, and weather conditions.

OAC 901:12-4-03 states that ambulatory disabled, non-ambulatory, and distressed livestock must have their health closely monitored.

OAC 901:12-4-04 prohibits non-ambulatory disabled livestock from being loaded to transport to a non-terminal market or a collection facility.

Chapter 901:12-5 of the Administrative Code – Veal Calves

OAC 901:12-5-01 outlines specific definitions used in Chapter 901:12-5 of the Administrative Code and includes definitions of “special fed veal,” “grain fed veal,” and “bob veal.”

OAC 901:12-5-02 states that all veal calves must receive feed and water. If unable to feed or drink on its own, the responsible party must provide assistance.

OAC 901:12-5-03 outlines the management of veal calves. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule outlines the housing structures utilized for veal calves.

Chapter 901:12-6 of the Administrative Code – Dairy Cattle

OAC 901:12-6-01 states that all dairy cattle must receive feed and water. In addition, all newborn calves must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-6-02 outlines the livestock management practices of dairy cattle. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule outlines the housing structures utilized for dairy cattle.

OAC 901:12-6-03 prohibits the transportation of calves with navels that have not dried after birth.

Chapter 901:12-7 of the Administrative Code – Beef Cattle

OAC 901:12-7-01 states that all beef cattle must receive feed and water. In addition, all newborn calves must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-7-02 outlines the livestock management practices of beef cattle. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule outlines the housing structures utilized for beef cattle.

Chapter 901:12-8 of the Administrative Code – Swine

OAC 901:12-8-01 outlines specific definitions used in Chapter 901:12-8 of the Administrative Code and includes definitions of “existing facility” “and “breeding/gestation stall.”

OAC 901:12-8-02 outlines the livestock management practices of swine animals. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule outlines the housing system standards utilized for swine animals.

OAC 901:12-8-03 states that if transportation of a sow with her suckling litter is necessary, the sow must be segregated from all other animals during transport and the litter must be protected appropriately.

Chapter 901:12-9 of the Administrative Code – Poultry Layers

OAC 901:12-9-01 outlines specific definitions used in Chapter 901:12-9 of the Administrative Code and includes definitions of “cage housing systems,” “cage-free housing systems,” and “existing farm.”

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

OAC 901:12-9-02 states that all poultry layers must receive feed and water. The rule does allow for water to be withheld based on the instructions of a veterinarian or specific management practices according to the farm's operating procedures.

OAC 901:12-9-03 outlines the livestock management practices of poultry layers. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule requires that responsible parties must catch, lift, and move poultry humanely. Further, the rule requires the housing systems be designed for environmental conditions, maximum stocking density, and light intensity. Finally, the rule sets out the different requirements for conventional battery cage systems, enriched cage systems, and cage free housing systems.

OAC 901:12-9-04 states that while transporting poultry layers the animals must be allowed to rest without being forced to rest on top of each other.

Chapter 901:12-10 of the Administrative Code – Poultry Broilers

OAC 901:12-10-01 outlines specific definitions used in Chapter 901:12-10 of the Administrative Code and includes definitions of “conditioning.”

OAC 901:12-10-02 states that all poultry broilers must receive feed and water. The rule does allow for water to be withheld based on the instructions of a veterinarian or specific management practices according to the farm's operating procedures.

OAC 901:12-10-03 outlines the livestock management practices of poultry broilers. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule requires that responsible parties must catch, lift, and move poultry humanely. Further, the rule requires the housing systems be designed for environmental conditions, maximum stocking density, and light intensity. Finally, the rule sets out the different requirements for conventional battery cage systems, enriched cage systems, and cage free housing systems.

OAC 901:12-10-04 states that while transporting poultry broilers the animals must be allowed to rest without being forced to rest on top of each other.

Chapter 901:12-11 of the Administrative Code - Turkeys

OAC 901:12-11-01 outlines specific definitions used in Chapter 901:12-11 of the Administrative Code and includes definitions of “conditioning.”

OAC 901:12-11-02 states that all turkeys must receive feed and water. The rule does allow for water to be withheld based on the instructions of a veterinarian or specific management practices according to the farm's operating procedures.

OAC 901:12-11-03 outlines the livestock management practices of turkeys. The rule includes requirements that the animals be housed in a clean and safe environment. In addition, the rule requires that responsible parties must catch, lift, and move poultry humanely. Further, the rule requires the housing systems be designed for environmental conditions, maximum stocking density, and light intensity.

OAC 901:12-11-04 states that while transporting turkeys the animals must be allowed to rest without being forced to rest on top of each other.

Chapter 901:12-12 of the Administrative Code - Sheep

OAC 901:12-12-01 states that all sheep must receive feed and water. In addition, all newborn lambs must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-12-02 outlines the livestock management practices for sheep. The rule includes requirements that the animals be housed in a clean and safe environment.

Chapter 901:12-13 of the Administrative Code - Goats

OAC 901:12-13-01 states that all goats must receive feed and water. In addition, all newborn kits must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-13-02 outlines the livestock management practices for goats. The rule includes requirements that the animals be housed in a clean and safe environment.

Chapter 901:12-14 of the Administrative Code – Alpacas and Llamas

OAC 901:12-14-01 outlines specific definitions used in Chapter 901:12-14 of the Administrative Code and includes definitions of “conditioning.”

OAC 901:12-14-02 states that all newborn crias must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-14-03 outlines the livestock management practices for alpacas and llamas. The rule includes requirements that the animals be housed in a clean and safe environment.

OAC 901:12-14-04 requires that the animals must be able to stand so that their backs do not touch the top of the vehicle and that the density of the animals transported must allow them to lay down.

Chapter 901:12-15 of the Administrative Code

OAC 901:12-15-01 specifically defines equines as including horses, ponies, mules, and donkeys.

OAC 901:12-15-02 states that all newborn foals must be fed colostrum, or a colostrum replacement, within the first twenty-four hours of life.

OAC 901:12-15-03 outlines the livestock management practices for equine animals. The rule includes requirements that the animals be housed in a clean and safe environment.

OAC 901:12-15-04 requires that all suckling foals be transported separately from other animals and must be transported with their dams. Additional transportation requirements and restrictions are listed in the rule.

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

R.C. 904.03

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)?

In November 2009, Ohio voters passed State Issue 2 approving the creation of the Ohio Livestock Care Standards Board. This vote demonstrated Ohioans' support for keeping the state's number one industry – food and agriculture – vibrant and strong. The board was charged with creating state standards for the care and well-being of livestock in Ohio.

The enabling language required the board to take the following into consideration when developing the standards: Best management practices for the care and well-being of livestock; Biosecurity; Disease prevention; Animal Morbidity and mortality data; Food safety practices, Protection of local, affordable food supplies for consumers; Generally accepted veterinary medical practices, livestock practice standards and ethical standards established by the American Veterinary Medical Association, and; any other factors that the board considers necessary for the proper care and well-being of livestock in this state.

The comprehensive livestock care standards developed by the OLCSB are meant to be practical for livestock producers of all sizes, scales and production methods and will not only

assure better livestock care, but also supports the state’s overarching goals of promoting safe and affordable food, and helping to prevent the outbreak of both animal and human diseases.

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

The Department considers the rules successful when there is no increase in violations of the rules annually.

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 Ohio Livestock Care Standards Board (“OLCSB”) was statutorily created to adopt rules governing the care and well-being of livestock in this state. The board is composed of thirteen members from farming, veterinary, academic, food safety, animal care and consumer interest backgrounds. Since the rules became effective in 2011, the OLCSB has reviewed three to four chapters of division 901:12 at every meeting. The OLCSB statutorily meets at least three times annually. In addition, the OLCSB has created sub-committees to more closely review portions of the rules and advancements in livestock care and management.

On December 7, 2016, the OLCSB approved that the rules in division 901:12 of the Administrative Code be submitted as no-change rules for the purposes of the five year rule review process. The current composition of the OLCSB is as follows:

Director David Daniels	Chairperson
Dr. Tony Forshey	State Veterinarian
Bryan Black	Consumers
Lisa Hamler-Fugitt	Consumers
William Knapke	Senate Appointee
Dr. Jerry Lahmers	State Farm Organization
Dr. Dr. David LeBourveau	County Humane Society
Dr. Jeff LeJeune	Food Safety Expert
Cy Prettyman	State Farm Organization
Terrence Stammen	Family Farms

John Surber

House Appointee

Ryan Zimmerman

Veterinarian

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

On December 17, 2015, the American Society for the Prevention of Cruelty to Animals (“ASPCA”) submitted comments to Dr. Tony Forshey, DVM, State Veterinarian regarding proposed changes to the rules. ASPCA’s proposed changes sought to define terms already used in the rules to more specifically outline the activities that are allowed or not allowed by the rules. Several of these options would move the rules away from a performance-based regulation and closer to a regulation which defines the way the regulated community must conduct its business. In addition, the comments requested changes which would move away from generally accepted agricultural standards.

ASPCA’s comments were submitted to the OLCSB on August 16, 2016. At that time, the members of the OLCSB were asked to read and review the proposed changes with the intention to discuss the comments at the next meeting which was scheduled to be held on December 16, 2016.

On December 16, 2016, the members of the OLCSB were asked if they wished to discuss the comments proposed by ASPCA. The members voted to not incorporate any of the changes requested. Further, the members voted to approve the rules as requiring no changes for the purposes of five year rule review. For those reasons, there have been no changes submitted to these rules.

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?

In 2011, the Department, members of the industry, and the public worked to develop these rules from a variety of sources and the end-product reflects the industry's current best-practices for livestock care. The department began by looking at existing regulations in other states, and countries. The draft rules were then reviewed and modified by academic veterinary experts, species specific committee comprised of dairy cattle farmers and veterinarians, and the OLCSB itself. Throughout the committee process, feedback was received during the public comment periods at meetings, and at public hearings, and incorporated into the rules. The resulting rules are focused solely on livestock care and are in line with established industry best practices.

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?

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CSIOhio@governor.ohio.gov

The Department and the OLCSB considered the comments made by the ASPCA however, it was determined that the rules as they currently exist are well established in the agriculture community and achieve the statutory goal of protecting and promoting the welfare of all livestock in the state of Ohio. For those reasons, no regulatory alternatives were incorporated.

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 majority of these rules are performance based as they define the required outcome but do not dictate the process. For example, there are several rules which state "Housing must provide a clean and safe environment that promotes the health, welfare, and performance of [animal] at all stages of their lives." This rule is performance based as it defines the outcome (clean and safe environment) without dictating the process for obtaining the outcome.

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

The Department is given sole regulatory authority to regulate and adopt these standards under Chapter 904 of the Revised Code.

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 already implemented within the industry and the Department works with all stakeholders in order to educate and inform them of the regulations.

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 owners and individuals responsible for the care of livestock in the state of Ohio.

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

There are no license, registration, or permit fees associated with these rules. The rules outline general standards which require responsible parties to provide access to feed and water, provide for a clean and safe environment that promotes the health, welfare, and performance of animals, and to perform management practices in a humane manner. This generally requires the use of antibiotics, pain medication, and other

accepted management practices in consideration of the animal's age, weight, environmental conditions, and safety. Further, the rules outline species specific standards which take into account each species' biologic needs to meet those 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.

The cost of compliance to the industry is expected to be minimal at most, and few farmers are expected to see increased costs due to these rules. In 2011, the Department, members of the industry, and the public worked to develop these rules from a variety of sources and the end-product reflects the industry's current best-practices for livestock care. It was discovered that the majority of farmers in Ohio already met these best practices, and as a result, most farmers did not need to change their current practices. Where changes were needed to comply with the rules, the changes were in management practices and did not require changes to existing infrastructure. This rule did not and continues to not have a cost of compliance for the majority of Ohio's livestock farmers.

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

As stated above, in November 2009, Ohio voters passed State Issue 2 approving the creation of the Ohio Livestock Care Standards Board. This vote demonstrated Ohioans' support for keeping the state's number one industry – food and agriculture – vibrant and strong. The board was charged with creating state standards for the care and well-being of livestock in Ohio. For these reasons, the Department believes the regulatory intent justifies the minimal adverse business impact.

Regulatory Flexibility

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

As the primary purpose of these rules is the promotion of the health, welfare, and safety of livestock in the state of Ohio, there are no exemptions or alternative means of compliance for small businesses.

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?

There are no paperwork violations associated with these rules.

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.