



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Fish Importation Requirements

Rule Number(s): 901:1-17-13

Date of Submission for CSI Review: **June 25, 2020**

Public Comment Period End Date: **July 21, 2020**

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/1 rule (FYR? 1)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. Requires specific expenditures or the report of information as a condition of compliance.**
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Pursuant to Chapter 941 of the Revised Code, the Ohio Department of Agriculture (ODA) is responsible for governing the importation and movement of animals into the state of Ohio. Specifically, according to section 941.03 of the Revised Code, the Department shall promote and protect the livestock, poultry, and other animal interests of the state, prevent the spread of dangerously contagious or infectious disease, provide for the control and eradication of such disease, and cooperate with the United States Department of Agriculture in such work.

Rule 901:1-17-13 is being amended to amend the species listed in appendix A which are susceptible to Viral Hemorrhagic Septicemia (VHS). VHS is a deadly infectious fish disease which is a major concern in the Great Lakes. It is very contagious amongst several species of fish and has the potential to seriously affect the aquaculture industry in the state. Additional changes to rule 901:1-17-13 include stylistic amendments.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Revised Code 941.03

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4. 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.

Rule 901:1-17-13 implements some of the United States Department of Agriculture animal disease traceability requirements. Generally, animal disease traceability allows the agency to know where diseased and at-risk animals are and where they have been. This allow the agency to effectively pinpoint where the disease originated and reduces the time needed to respond to the emergency. By doing so it reduces the number of animals and animal owners affected by the disease and the economic costs associated with it.

United States Department of Agriculture requires Great Lakes states to maintain a VHS testing requirement in lieu of the United States Department of Agriculture program.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The proposed regulation does not exceed the federal requirements.

6. 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 Director of Agriculture has the authority to use all proper means in the prevention and eradication of infectious and contagious diseases amongst domestic animals. 901:1-17-13 provides a means to control and prevent VHS.

VHS is a deadly infectious fish disease which is a major concern in the Great Lakes. It is very contagious amongst several species of fish and has the potential to seriously affect the aquaculture industry in the state. VHS is a United States Department of Agriculture reportable disease and has been designated in rule 901:1-21-02 of the Administrative Code as a dangerously contagious or infectious disease. By prohibiting the importation of VHS positive fish, live eggs, and sperm the Department is protecting the Great Lakes and Ohio's aquaculture industry.

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

Success of the amendments to rule 901:1-17-13 will be measured by the report of little or no outbreaks of VHS in the state of Ohio and when inspections and investigations find few observations of VHS. Success is also measured by the amount of negative test results reported for the importation of fish.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

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If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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 stakeholders listed below, were contacted via email on Monday June 1, 2020 for a stakeholder comment period.

Dan Longnecker – Chair of Ohio Department of Agriculture Aquaculture Advisory Committee

Bill Lynch – Ohio Aquaculture Association

Adam Hater – Jones Fish Hatcheries

Bob Calala – Calala’s Water Haven Inc.

Dr. Jennifer Kinney - Four County Veterinary Services

Dr. Mark Flint – Ohio State University

Dr. Raphael Malbrue – Ohio State University

Matthew Smith – Ohio State University

Andrew Jarrett – Ohio Department of Natural Resources

Kevin Kayle – Ohio Department of Natural Resources

Steven Wilden – United States Department of Agriculture

Susan Skorupski – United States Department of Agriculture

Cindy Bodie – Ohio Department of Agriculture

Robert Carey – Ohio Department of Agriculture

Dr. Yan Zhang – Ohio Department of Agriculture

Dr. Tony Forshey – Ohio Department of Agriculture

Dr. Dennis Summers – Ohio Department of Agriculture

Kelly McCloud – Ohio Department of Agriculture

Sean Brown – Ohio Department of Agriculture

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Denise Martin – Ohio Department of Agriculture
Fred Snyder – Retired OSU Aquaculture Extension
George Hood
rstcfish@gmail.com

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

During the stakeholder outreach comment period, no comments were received.

11. 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?

This rule is based on years of scientific research in the aquaculture industry. Further, this rule has been developed based on past outbreaks of the dangerous and contagious aquaculture diseases across the country. Additionally, the species listed in the rule's appendix was based on the United States Department of Agriculture's list of VHS susceptible species.

12. 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 Department is statutorily tasked with the control and eradication of contagious and infectious diseases to protect animal health interests of the state. The standards that are contained in the rule are based on scientific research. Stakeholder participation in the rule development, including both private interest groups and government organizations, have indicated to the Department that this is the best regulatory scheme at this time. For those reasons, no other regulatory alternatives were considered.

13. 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 in this chapter are for the most part procedural in nature, providing the framework for fish import requirements. These requirements include testing for and annotating the presence or non-presence of certain diseases on fish health certificates and potential quarantine upon arrival.

14. 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 over the importation of fish into the state through Revised Code 941.03.

15. 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.

This rule is already implemented within the industry and the Department works with all individuals to educate and inform them of the regulation. The staff members of the Animal Health Division ensure that the entire industry is treated in a similar manner.

Adverse Impact to Business

16. 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; and

All individuals who import fish into the state of Ohio.

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

Rule 901:1-17-13 requires testing of certain varieties of fish for dangerous and contagious diseases. Testing is accompanied by a certificate of veterinary inspection listing negative test results and an import permit number. Failure to meet import requirements as previously listed could result in the quarantine, return, or destruction of the imported shipment.

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 testing required in 901:1-17-13 costs approximately \$228 per lot. The lot consists of a minimum of 60 fish and a representative sample of each VHS susceptible species within the lot.

Should a lot contain a dangerous and contagious disease the cost of the quarantine, return, or destruction is very difficult to quantify. This is because the cost of each lot depends greatly on the species and size of the fish contained in it. Prices vary widely based on current market values.

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

Rule 901:1-17-13 complies with USDA’s animal disease traceability minimum requirements. The potential economic impact of VHS or other dangerous and contagious diseases to the aquaculture industry outweighs the cost of compliance associated with the rule. Further, the

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regulated business community has requested the regulation in order to maintain a healthy industry.

Regulatory Flexibility

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

As this rule is regarding health and safety regulations involving all fish in the state of Ohio, exemptions or alternative means of compliance for small businesses are not applicable.

19. 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?

Due to the serious impact an infected fish lot may have on Ohio's animal industry, individuals who bring animals into the state in violation of this rule must come into compliance or have it destroyed. The Department works with these individuals to provide them further education on the rule and requirements for the importation of fish.

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

The Department has online resources and field staff available to provide assistance. Training and seminars are also available.