



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: ODNR Division of Wildlife

Rule Contact Name and Contact Information:

Brian Becker 614-265-6861

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

Wild animal importing, exporting, selling and possession regulations.

Rule Number(s): 1501:31-19-01

Date of Submission for CSI Review: April 27, 2021

Public Comment Period End Date: May 13, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___X___ rules (FYR? ___X___)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR?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.**

This rule lists those species of wild animals that are restricted from importing, exporting, sale and possession. These species are injurious to the natural resources and economy of the state. Additionally, this rule provides the distinct conditions that must be met in order to import or sell live triploid white amur.

- 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.**

Ohio Revised Code 1531.06, 1531.08, 1533.31

- 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?**

Not applicable.

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

Not applicable.

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- 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 invasive species listed within this regulation were identified because of their history of invasiveness in climates similar to Ohio and the high likelihood of establishment if they were to be introduced in Ohio. The requirement that species on the highly invasive aquatic species list to be possessed in a form other than being headless, preserved in ethanol or formaldehyde, or eviscerated, will make certain they are dead.

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

This regulation is a preventative measure that will prevent the importation of these invasive species and eliminate the threat in Ohio. Once an invasive species becomes established, it is very difficult and expensive to eliminate.

- 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?**

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

All permitted aquaculture facilities, licensed bait dealers and potentially impacted Ohio zoos and aquaria facilities were sent a letter by mail or email on April 2, 2021. They were provided a copy of the existing rule and notice that the agency was proposing no changes to the rule. The agency provided the opportunity to provide any comments on the proposal.

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

Four stakeholders provided feedback to the agency. Two expressed thanks for the opportunity to provide a comment and expressed support for the rule. One expressed strong support for regulations that prohibit non-native species introduction. One thanked the agency for proposing no changes as they believe that stable regulations will help the businesses succeed.

- 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?**

These species were identified because of their history of invasiveness in climates similar to Ohio and the high likelihood of establishment if they were to be introduced in Ohio.

- 12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not**

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appropriate? If none, why didn't the Agency consider regulatory alternatives?

There was no consideration of alternatives because these species are highly invasive and will likely become established if introduced.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

Not Applicable.

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

The ODNR Division of Wildlife is the sole agency with authority under the ORC to regulate wild animals. The other laws and rules under the authority of the ODNR Division of Wildlife were reviewed to avoid conflict.

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.

Regulation will be applied consistently across Ohio via the agencies' permit process. Officers will be provided with written direction, policy, and procedures on enforcement of these rules.

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;** *There are 158 permitted aquaculture facilities, 444 licensed bait dealers and 5 Ohio zoos and aquaria facilities.*
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,);** *There will be no new adverse impacts as there are no amendments proposed for this rule.*
- c. Quantify the expected adverse impact from the regulation.**
There is a nominal cost associated with record keeping. There will be no new adverse impacts as there are no new amendments proposed for this rule.

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

These species were identified because of their history of invasiveness in climates similar to Ohio and high likelihood of establishment if they were to be introduced in Ohio. There is no adverse impact to the industry, since the listed species are not known to be used in the live fish industry.

Regulatory Flexibility

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

There is an exemption that allows listed species to be used only for research, by zoos, public aquariums, and public displays after obtaining written authorization from the Chief. These determinations are made on a case-by-case basis after the risk is analyzed and mitigated.

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?

Enforcement action by law enforcement is reserved for egregious violation and only after consultation with the prosecuting attorney.

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

Businesses may consult the ODNR Division of Wildlife for guidance by personal contact with the Wildlife Officer assigned to their county of operation, may personally visit or call any one of five district offices, the Lake Erie office in Sandusky or the headquarters. Information is also available on the internet and through email.