



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Rehabilitators permit.

Rule Number(s): 1501:31-25-03

Date of Submission for CSI Review: June 30, 2023

Public Comment Period End Date: July 19, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___X___ rules (FYR? ___X___)

Rescinded/___ rules (FYR?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This rule will be rescinded and replaced due to the number of changes. The additional changes from the prior version of this rule include the following:

- *It is proposed to amend this rule to include language that wildlife rehabilitation permit holders can care for wild animals, including other wild animals designated by the chief.*
- *It is proposed to remove the reference to Wildlife Minimum Standards because following the standards is a condition of the permit.*
- *It is proposed to allow category 1 rehabilitation permit holders to care for and rehabilitate opossums because it has been determined these species are not a significant vector for rabies.*
- *It is proposed to remove the language referring to meeting cage specifications on the application. Caging specifications and requirements are included in the Wildlife Minimum Standards, which are a condition of the permit.*
- *It is proposed to remove the reference to permit revocation since this is already included in section 1533.09 of the Ohio Revised Code.*
- *It is proposed to clarify that a permit can be temporarily suspended while deficiencies are being corrected.*

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- *It is proposed to allow a permit holder to refuse an inspection of their facility or records unless the officer obtains a warrant.*
- *It is proposed to allow permits to be issued for up to three years.*
- *It is proposed to rename this rule as “1501:31-25-03 | Wild animal rehabilitation permit.”*
- *It is further proposed to amend this rule to consolidate and simplify language to make it easier to read and understand.*

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.

Statutory Authority: 1531.06, 1531.08, 1531.10

Rule Amplifies: 1531.06, 1531.08, 1531.10, 1533.08, 1533.09

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?

No / Not applicable.

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

Not applicable.

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 rule establishes procedures for the rehabilitation of wild animals. Wild animals cannot be held captive unless relevant permits are obtained. Per 1531.02 of the Revised Code, individual possession of wild animals is prohibited unless otherwise authorized, including for rehabilitation. Permits are issued in compliance with the Revised Code and are viewed as the best practice to ensure proper care and keeping.

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

The rule's success will be measured through communication with wildlife rehabilitation permit holders through the Ohio Wildlife Rehabilitators Association.

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

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

On May 12, 2023, the Division of Wildlife emailed the proposed changes to 84 wild animal rehabilitation permit holders with a summary of the changes and the draft language attached. Comments were accepted through May 31, 2023.

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

The agency received ten responses for stakeholders. The agency did not receive any responses that indicated the changes would have a negative or adverse impact. Most responses expressed support for or strong support for the changes.

One stakeholder asked the agency to add additional regulations for sub-permittees. Sub-permittees are the responsibility of the permit holder and are governed by the provisions of the permit.

Two stakeholders did not feel that permit holders should be able to refuse an inspection, requiring the officer to obtain a warrant before proceeding. However, the Division feels this addition to the rule safeguards permit holders and their constitutionally protected rights.

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?

No new scientific data was used to develop the rule. This rule amplifies 1533.08 and 1533.09 of the Revised Code.

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 only other alternative considered was to not change the current rule. However, the proposed changes will remove out-of-date language, simplifies the rule, expands the category I rehabilitation to include opossums, and provides additional protection for constitutional rights.

A performance-based regulation is not applicable.

13. 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 only agency with the authority to regulate wildlife rehabilitation. The laws and rules of the Division were reviewed for potential conflicts.

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14. 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.

Regulations will be applied consistently across Ohio via the agency's permitting process. Communication will continue with permit holders impacted by this change.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The ODNR Division of Wildlife contacted 84 wild animal rehabilitation permit holders to determine whether this proposal would adversely impact their business. The agency did not receive any feedback that this would have a negative business impact.

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

Regulations under this section are already in place, including penalties. This rule establishes regulations and record-keeping requirements for the rehabilitation of orphaned and injured wild animals. Failure to comply with the rule may result in revocation of the permit. There is a nominal cost associated with record-keeping and the permit is free. Since the proposed changes will simplify the rule, allow permits to be issued for up to three years, and allow for the refusal of an inspection, this should reduce the regulatory burden on impacted permit holders. These changes are not expected to have any new negative impacts on businesses.

Licensing of wild animal permit holders is established under 1533.08 of the Revised Code.

Violation of this rule is a misdemeanor of the fourth degree and is established in section 1531.99 of the Revised Code. Potential penalties include up to a 250-dollar fine and up to 30 days in jail.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The proposed changes will reduce the regulatory burden for impacted businesses by simplifying the rule, allowing permits to be issued for up to three years, allowing for the refusal of an inspection, and allowing opossums to be rehabilitated at the category 1 level.

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

The regulatory intent justifies the adverse impact on the regulated business community so that the rehabilitation of wild animals is conducted in a controlled and uniform manner for the protection of all animals in Ohio. The proposed changes are expected to reduce the regulatory burden on the impacted permit holders. There are no new adverse impacts.

Regulatory Flexibility

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

There are no exemptions or alternatives for small businesses.

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 violations. First-time offenders of record-keeping requirements will be provided guidance on proper record-keeping requirements and warned.

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

Permit holders 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, or the headquarters. Information about wildlife rehabilitation regulations is also available on the internet, in printed materials and through email.