

Economic Impact Statement

LSA Document #16-221

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The Board of Animal Health (BOAH) is requesting approval to amend its rules governing cervid hunting preserves. The primary purpose of the changes is to conform BOAH's rules to Senate Enrolled Act (SEA) 109, which was passed in the 2016 Session of the Indiana General Assembly. SEA 109 establishes licensing and inspection requirements for hunting preserves. The preserves must pass an annual inspection to ensure they are meeting the specific requirements of the statute, which includes items such as minimum acreage, fencing, signage, reporting of escapes, authorized times of operation, and record keeping. SEA 109 authorizes the BOAH to adopt rules governing the use of a cervid for food after the animal has been sedated or treated with medication. The legislation also requires a person who takes or hunts a cervid on a hunting preserve to have a special hunting permit issued by the BOAH.

1. Description of Affected Industry

BOAH has regulated the captive cervid industry since the 1990s. BOAH first adopted rules governing tuberculosis control in 1998 and subsequently adopted rules governing chronic wasting disease (CWD) in cervids in 2001. Therefore, the BOAH currently conducts annual inspections at the state's seven hunting preserves to ensure compliance with these rules. The passage of SEA 109 makes no changes to these longstanding requirements, but rather expands the scope of what must be verified during an inspection.

BOAH has worked to involve these regulated entities, and other individuals who may be interested in opening a preserve, in the development of the rule. On May 17, 2016, the BOAH held an informational meeting so these individuals could provide input on the draft rule and other program materials. The BOAH has also met with other nonprofit organizations that have an interest in the captive cervid industry. BOAH has provided these individuals with information on how they can provide input into the rulemaking process. The affected industry includes small businesses under the definition at [IC 4-22-2.1-4](#).

2. Estimated Annual Reporting, Record Keeping, and Other Administrative Costs

The proposed rule does increase annual reporting, record keeping, or other administrative costs for regulated entities. However, these reporting and record keeping requirements do not go beyond what is required by SEA 109 and are critical to enforcing the statutory standards. For example, when submitting an initial or renewal application, the applicant must include a current site plan so the agency can verify compliance with the facility standards set forth in SEA 109. In order to ensure that the state is receiving the special hunting permit fees established by SEA 109, the rule also requires that a licensed owner remit fees on a monthly basis and submit reports as directed by the state veterinarian. Finally, the rule does have record keeping requirements for animals entering and leaving the preserve, but these align with current requirements of BOAH's chronic wasting disease program.

3. Estimated Total Annual Economic Impact on Small Businesses

It is important to emphasize that, except for the BOAH rules regarding the use of the animal for food after sedation, all of the requirements in the proposed rule have been clearly specified in the legislation. The proposed rule does not impose costs beyond those specifically required by SEA 109. There are costs associated with meeting some of the requirements of the legislation, such as the minimum acreage, signage and fencing requirements. However, most of the requirements in SEA 109 are operational standards that do not have a significant associated cost, such as record keeping requirements.

As required by SEA 109, the proposed rule further defines the expectations regarding the use of an animal for food after being sedated or treated with medication. However, the rule contains requirements such as following label instructions and notifying a hunter if an animal has been treated, which do not have an associated cost. With regard to the proposed rule, the BOAH estimates that the total estimated impact (cost) of the rule will be less than \$500,000. The total compliance cost is difficult to ascertain because it is dependent on the number of new hunting preserves that apply for a license.

4. Justification of Requirements**a. Compliance with State Law**

This proposed rule is necessary to comply with a state mandate. SEA 109 amends state law to mandate that the BOAH issue hunting preserve licenses and conduct annual inspections to ensure that these facilities are complying with certain operating standards. If the BOAH does not proceed with this rulemaking, the agency would not be in compliance with its duty to clearly establish the licensure and inspection process for regulated entities and other stakeholders. [IC 15-17-14.7](#).

It is also important to note that the stated purpose of SEA 109 is to establish state oversight and additional standards for these facilities following the Indiana Court of Appeals decision in *Indiana Department of Natural Resources v. Whitetail Bluff LLC* (Opinion 31A04-1310-PL-502, February 2, 2015). This case affirmed the lower court's ruling that Indiana statutory law did not give the DNR the authority to regulate legally owned captive cervids. With the passage of SEA 109, the Indiana General Assembly changed the prior "dual oversight" approach and placed regulation of legally owned captive cervids solely within one agency. The purpose of the proposed rule is to set forth the licensing and inspection process, and further define the operating standards for these facilities as required by state law.

Indiana has seven hunting preserves that currently participate in the BOAH's CWD program. As discussed above, the legal status of these facilities has been the subject of pending litigation and simultaneously debated in the legislature for several years. Due to the high level of uncertainty regarding their legal status, existing hunting preserve owners and other entrepreneurs interested in opening a new preserve have been reluctant to invest in these businesses. Now that the General Assembly has solidified the legal status of these entities and how they shall be regulated in Indiana, it is critical that BOAH proceed with this rulemaking. Indiana's current preserve owners, and individuals interested in opening a new preserve, now have the certainty to invest in their businesses. Increased investment in the hunting preserve industry will have a ripple effect of economic benefits in our rural communities, including, but not limited to, businesses such as deer farmers and veterinary services.

b. Justification of Requirements not Mandated by State Law

The proposed rule does not impose a requirement or cost beyond what is expressly required by state law.

5. Regulatory Flexibility Analysis

Because the proposed rule does not impose requirements beyond what is required by SEA 109, BOAH did not examine alternative methods with regard to the rule changes.

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