

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Animal Health – Pet Stores

Rule Number(s): 901:1-8-(01-05)

Date: January 17, 2018

Rule Type:

☒ New

☐ Amended

☐ 5-Year Review

☐ Rescinded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.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

The proposed rules in Chapter 901:1-8 of the Ohio Administrative Code set out regulations for the sale of dogs from pet stores in Ohio. These rules are being promulgated pursuant to Senate Bill 331 of the 131st General Assembly. This bill generally regulates all transactions involving the sales of dogs at a pet store, from the dog breeder to the future dog owner. Additionally, the bill requires that the Ohio Department of Agriculture establish rules and procedures governing pet stores, including requirements and procedures governing the licensing of pet stores. The rules established pursuant to this bill are outlined below:

OAC 901:1-8-01 outlines the definitions as used in the chapter. These definitions mirror the definitions found in Chapter 956 of the Ohio Revised Code.

OAC 901:1-8-02 sets forth the licensing procedures for pet stores in the state of Ohio. Applicants must submit a completed application along with a license fee of \$500 in order to be considered a complete application. The \$500 license fee is established in ORC 956.20. Further, licenses shall expire one year from issuance and must be renewed prior to expiration.

OAC 901:1-8-03 outlines the microchip requirements for all dogs displayed, offered for sale, delivered, bartered, auctioned, brokered, given away, transferred, or sold by a pet store. Specifically, the rule allows for microchips using 125 kHz, 129 kHz, or 134.2 kHz frequencies. These frequencies are the most common types of microchips used today.

OAC 901:1-8-04 outlines the recordkeeping requirements of pet stores. These requirements mirror those requirements found in ORC 956.20. Specifically, the rule requires that pet stores document the following information within twenty-four hours of obtaining a dog: The name and address of the source which supplied the dogs; the date the pet store took possession of the dog; the breed, gender, color, and any identifying marks of the dogs; the dog's date of birth; the permanent implanted microchip number for the dog; and the certificate of veterinary inspection that accompanied the dog. Further, if the dog was acquired by a qualified breeder or dog retailer the pet store shall document additional information. This documented information does not need to be submitted to the Department rather the information needs to be made available to the Department upon request.

OAC 901:1-8-05 outlines the recordkeeping requirements of dog retailers. These requirements mirror those requirements found in ORC 956.051. Specifically, the rule requires that dog retailers document the following information within twenty-four hours of

obtaining a dog: The name and address of the source which supplied the dogs; the date the dog retailer took possession of the dog; the breed, gender, color, and any identifying marks of the dogs; the dog's date of birth; the permanent implanted microchip number for the dog; and the certificate of veterinary inspection that accompanied the dog. Further, if the dog was acquired from a qualified breeder the dog retailer shall document additional information. This documented information does not need to be submitted to the Department rather the information needs to be made available to the Department upon request.

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

R.C. 956.03, 956.21

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?

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?

ORC 956.23 states that the regulation of pet stores is a matter of general statewide interest that requires statewide regulation. Chapter 956 of the Revised Code directs the Department to establish a licensing and recordkeeping program for pet stores and dog retailers in the state of Ohio.

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

The Department will measure success by compliance with the licensing and recordkeeping requirements of the statute and the rules, and through adherence to the record keeping requirements as measured by both annual inspections and complaint driven inspections. The Department will monitor the number and nature of complaints received and will adjust the administrative rules as necessary.

Development of the Regulation

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

On November 9, 2017, the proposed rules were sent to the following stakeholders:

ASPCA	Vicki Deisner
Capitol Advocates	Rob Eshenbaugh
Capitol Consulting	Belinda Jones
Environmental Defense Fund	Katie Champan
Environmental Law & Policy Center	Madeline Fleisher
Former State Veterinarian	David Glauer
Humane Society of the United States	Corey Roscoe
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Belgian Breeders Association	Carolyn Piergallini
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosh
Ohio Farm Bureau	Tony Seegers
Ohio Farm Bureau	Yvonne Lesicko
Ohio Farm Bureau	Leah Curtis
Ohio Farmers Union	Joe Logan
Ohio Farmers Union	Linda Borton
Ohio Haflinger Association	Lucy Workman
Ohio Harness Horsemen's Association	Jerry Knappenberger
Ohio Percheron Breeders Association	Darlana Chettle
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Professional Dog Breeders Association	Abe Miller
Ohio Quarter Horse Association	Scott Myers
Ohio State University	Adam Ward
Ohio Veterinarian Medical Association	Jack Advent
Ohio Veterinarian Medical Association	Michelle Holdgreve
Ohio Welsh Pony Association	Paul Hurd
Petland, Inc.	Brian Wilson
Sierra Club, Ohio Chapter	Jennifer Miller
The Nature Conservancy	Anthony Sasson

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The Ohio State University
USDA – APHIS
USDA – APHIS

Dr. Jeanette O'Quinn
Dr. Roger Krogwold
Dr. Susan Skorupski

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

The stakeholders provided limited comment. On November 29, 2017, Petland, Inc., submitted questions to the Department concerning the proposed rules. Petland's questions were answered on January 17, 2017. These comments were the only formal comments received. As there were no substantive changes proposed the Department elected to not make changes to the proposed 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?

The rules are administrative in nature. Therefore, the rules do not rely on scientific data.

10. What alternative regulations 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?

Senate Bill 331 was very specific in the Department's rule making authority. Therefore, no regulatory alternatives were considered.

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

The rules in the Chapter are administrative and describe the process in which individuals are to apply for a license and maintain records. However, the rules are flexible in that it allows pet stores and dog retailers to maintain records according to their particular systems.

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

The Department is given the sole regulatory authority of pet stores in 956.03 and 956.21.

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.

The Department will begin by mailing businesses it believes to be operating under the definition of a pet store informational packets alerting them to their requirements as a pet store. Further, the Department will host informational meetings where interested parties can ask the Department questions about the process and begin their licensure requirements.

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Finally, those entities which do not respond to the informational packets or the informational meetings, the Department will conduct on-site visits to determine if they are required to be regulated under the rules. The Department will throughout the process be available to discuss and answer questions regarding the licensure and inspection process.

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 pet stores which sell dogs and dog retailers operating in the state of Ohio.

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

All pet stores must submit a completed application along with the appropriate license fee in order to be considered a complete application. The license application will take time for employer compliance.

Further, the rules require specific pieces of information and documents to be recorded and maintained. The rules do not require that the records be submitted to the Department however, the license holders must make the records available upon request.

Failure to comply with the rules could subject individuals to fines.

c. Quantify the expected adverse impact from the regulation.

ORC 956.21 establishes the statutory license fee of \$500. The time for compliance with completing the application should be minimal as the information required on the application should be readily available to the applicant.

The quantified adverse impact for the recordkeeping requirements should be minimal. The record keeping data should be easily obtained if not already obtained by the pet stores. There will be an adverse impact for storage of these records however, the rules do not specify the format for how these records must be maintained.

Finally, all fines are established in ORC 956.22 which states that the fines shall not be more than \$500 for the first violation, not more than \$2,000 for the second violation, and not more than \$10,000 for the third violation.

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

ORC 956.23 states that the regulation of pet stores is a matter of general statewide interest that requires statewide regulation. Further, all of the requirements found in these proposed rules match or mirror the requirements as outlined in ORC Chapter 956. For those reasons, the adverse impacts are considered justified.

Regulatory Flexibility

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

ORC Chapter 956 does not grant an exemption 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?

The Department works with the violators to educate them to correct any potential future violations.

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

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