



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### 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):

Commercial Dog Breeding

Rule Number(s): 901:1-5-12, 901:1-6-01, 901:1-6-02, 901:1-6-03, 901:1-6-04, 901:1-6-05, 901:1-6-06, 901:1-6-07, 901:1-6-08, 901:1-6-09, 901:1-6-10, 901:1-8-01, 901:1-8-02, 901:1-8-03, 901:1-8-04, and 901:1-8-05.

Date of Submission for CSI Review: May 11, 2021

Public Comment Period End Date: June 2, 2021

Rule Type/Number of Rules:

New/ 1 rules

No Change/ 0 rules (FYR? 0)

Amended/ 14 rules (FYR? 14)

Rescinded/ 2 rules (FYR? 2)

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.***

The department has drafted the amendments proposed in this rule package to assist with consistency between Administrative Code and Revised Code. Since the last revision of the rules, the Revised Code has been amended by House Bill 506 in 2018 and House Bill 166 in 2019. House Bill 506 revised multiple sections of Chapter 956 of the Revised Code to revise the law governing high volume dog breeders and other dog-related professionals and facilities. House Bill 166, commonly known as the FY 2020-2021 Operating Budget, amended sections 956.01, 956.031, 956.051, and 956.20 of the Revised Code. Both House Bills initiated the large number of changes necessary in this proposed rule package.

Rule 901:1-5-12 outlines testing standards of *Brucella canis* and acceptable types of tests as well as the entities which may perform the tests. Further, the rule outlines three types of *Brucella canis* classification. The rule is being amended to allow for the card test to be used, change requirements for identification and reporting, and LSC required changes.

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Rule 901:1-6-01 establishes the definitions and general considerations for this chapter of the Administrative Code. The rule is being amended to add new definitions and amend existing definitions.

Rule 901:1-6-02 establishes housing standards for dogs kept by high volume breeders. The rule is being amended in the primary enclosure paragraphs, add new requirements for the primary enclosure size and flooring paragraphs, and remove no longer necessary paragraphs.

Rule 901:1-6-03 establishes socialization standards for dogs kept by high volume breeders. The rule is being amended to add daily exercise requirements and add requirements for safely accessing the outdoors.

Rule 901:1-6-04 establishes food and water standards for dogs kept by high volume breeders. The rule is being amended to further clarify requirements for food and water.

Rule 901:1-6-05 establishes health standards for dogs kept by high volume breeders. The rule is being amended further clarify the requirements for the health of adult dogs and puppies kept by high volume breeders. The rule is also amended to remove paragraphs that are no longer necessary.

Rule 901:1-6-06 establishes transportation standards for dogs kept by high volume breeders. The rule is being proposed as rescinded.

Rule 901:1-6-07 establishes recordkeeping standards for all dogs regulated under Chapter 956 of the Revised Code. The rule is being amended in the paragraphs pertaining to identification of the dogs and in the paragraphs requiring recordkeeping. The rule is amended to remove paragraphs that are no longer necessary.

Rule 901:1-6-08 sets forth the licensing application form and procedure for high volume breeders and dog brokers, and the registration requirements for animal rescues for dogs. The rule is being amended to establish licensing requirements as based on the facility type.

Rule 901:1-6-09 establishes the procedures for inspections conducted under section 956.10 of the Revised Code. The rule is being amended to remove an unnecessary word.

Rule 901:1-6-10 establishes civil penalties for operating as a high volume breeder or dog broker without a license. The rule is being proposed as rescinded and then new due to the high amount of change.

Rule 901:1-8-01 outlines the definitions used in Chapter 901:1-8. The rule is being amended to provide additional clarification to existing definitions.

Rule 901:1-8-02 sets forth the licensing procedures for pet stores in the state of Ohio. The rule is being amended to remove the licensing fee which is located in Revised Code and a LSC stylistic change.

Rule 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. The rule is being amended to include dog brokers in the requirement for identification.

Rule 901:1-8-04 outlines the recordkeeping requirements of pet stores. The rule is being amended to require the length of time and location of records to be kept by pet stores.

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Rule 901:1-8-05 outlines the recordkeeping requirements of dog brokers. The rule is being amended to require the address of the physical location of the supplier of the dog to be kept by dog brokers.

- 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.**

956.03 of the Revised Code.

- 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.*

No.

- 5. If the regulation 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 Department is required to adopt the rules in accordance with Chapter 956 of the Revised Code to promote appropriate animal care. The Department is required to maintain standards of care for dogs kept by high volume dog breeders, as well as licensing requirements and procedures for high volume dog breeders, pet stores, and dog brokers. The Department is directed to adopt rules regarding inspections, records, and requirements regarding the payments of sales tax by high volume breeders and dog broker. Animal rescues are required by statute to register with the Department in accordance with the rules.

- 7. 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 license and registration requirements, and through adherence to the care standards as measured by both annual inspections and complaint driven inspections.

- 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?**

*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**

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**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 first stakeholder comment period was held from October 9, 2020 to November 9, 2020. The second stakeholder comment period was held from January 14, 2021 to January 28, 2021. The following stakeholders were provided notice via email for both comment periods.

- Anderholm Veterinary Clinic – Constance Anderholm
- Animals Unlimited Veterinary Hospital – Valerie Anderson
- Barnesville-Woodsfield Veterinary Service LLC
- The Batchelder Company – Troy Judy
- Burroughs Veterinary Services – Mark Steven Burroughs
- Byland Animal Hospital
- Capitol Advocates – Rob Eshenbaugh
- Capitol Consulting – Belinda Jones
- Celina Animal Hospital Inc. – Craig Miesse
- Claremont Vet Clinic – Donald Kaeser
- Columbiana County Dog Warden
- Commercial Dog Breeder Advisory Board – Dr. Tony Forshey, Matt Granito, Linda Stickney, Lisa Zimmerman, Lori Carlson, Dr. Michael Frederick, and Dr. Patricia Haynes
- Country Roads Veterinary Services – David Brennan
- Crank and Kirkpatrick Animal Hospital
- Danville Veterinary Clinic – Teresa Hoxworth
- Delaware Equine LLC – James Chase
- Diamond M Veterinary Clinic – Earnest Kearns
- East Holmes Vet Clinic
- Fayette Veterinary Hospital
- Green Camp Vet Clinic – Melissa Forshey
- Greenfield Vet – Michael Sims
- Healthy Pets of Wedgewood
- Heritage Veterinary Care

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- Hillsboro Veterinary Hospital
- Hocking Hills Animal Clinic – Shannon Moore
- Holmes County Dog Warden
- Human Society of the United States – Corey Roscoe
- Karr Veterinary Clinic – Paul Karr
- Knox County Dog Warden
- Kolehmainen Veterinary Clinic – William Kolehmainen
- Lisbon Vet Clinic Inc. – Gordon Schmucker
- Little Puppies Online LLC – Nathan Bazler
- Masterson Veterinary Clinic – Rhonda Masterson
- MedVet Columbus
- Mogador Vet Hospital – David Whittington
- Mt. Hope Vet Services / Walnut Creek Veterinary Hospital – Joseph Varga
- Napoleon Veterinary Clinic
- Northgate Animal Hospital – Douglas Gibson
- Ohio Animal Welfare Federation – Colleen Evans
- 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, Jack Irvin, Larry Antosh, Leah Curtis, Roger High, and Tony Seegers
- Ohio Farmers Union – Joe Logan
- Ohio Forum for Companion Animals
- Ohio Haflinger Association – Lucy Workman
- Ohio Harness Horsemen’s Association – Renee Mancino
- Ohio Percheron Breeder’s Association – Darlena Chettle
- Ohio Pork Producers Council – Bryan Humphreys
- Ohio Poultry Association – Jim Chakeres
- Ohio Quarter Horse Association – Scott Myers

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- Ohio State University – Adam Ward, Dr. Jeanette O’Quinn, Peggy Hall
- Ohio Veterinarian Medical Association – Jack Advent and R. David Frash
- Ohio Welsh Pony Association – Paul Hurd
- Paw Patch Veterinary Services – Laurie Hirt
- Petco – Mike Gonidakis
- Pondview Veterinary Clinic
- Premier Pups LLC – Michael Schoeff
- Shawnee Animal Clinic – Angela Sherman
- Shelby Animal Clinic – John Knox
- Sierra Club, Ohio Chapter – Adam Rissien
- Sugarcreek Veterinary Clinic – Rick Daugherty, Shane Donley, and James Honigford
- The Plains Veterinary Hospital LLC – Ericka Ryan
- Tuscarawas County Dog Warden
- Twin Valley Animal Hospital LLC
- Twinsburg Vet Hospital – Stacy Lozanoff
- USDA – APHIS VS– Dr. Roger Krogwold and Dr. Susan Skorupski
- Walnut Hills Vet – Mark Parker
- Wayne County Dog Warden
- Whellersburg Animal Hospital Inc.
- Willard Veterinary Clinic
- Holmes Wayne Veterinary Services – Dr. Dennis Trautwein

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

During the first stakeholder outreach comment period, the Department received comments regarding the changes made to the removal of dewclaws and tail docking, fly mitigation program, the definition of access the outdoors, and the *Brucella canis* approved testing methods. In response to received comments, the Department amended the rules to require tail docking to be performed by a licensed veterinarian and all suggested rule language regarding a fly mitigation program was incorporated. The Department amended the definition of access the outdoors to achieve consistency with the Ohio Revised Code. The *Brucella canis* card test

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was added to the list of approved testing methods to increase surveillance and reporting of this zoonotic disease.

**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?**

The United States Department of Agriculture regulations regarding the housing of dogs served as the starting point in drafting the original regulations. The proposed amended rules include input from veterinarians, members of the public, humane agents, animal rescue workers, dog breeders, and other interested parties.

**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?**

Alternative regulations for this industry were not considered due to the prescriptive nature of the Ohio Revised Code. Furthermore, standards for the care of animals and equal opportunity for individuals entering the industry prohibit the use of alternative regulations.

**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.***

These rules are not performance based due to the nature of the regulated industry. This rule package is primarily the standards of care for high volume breeders and by necessity these rules provide minimum standards of how breeders are to conduct their business.

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

The Department has sole regulatory authority over this area of industry.

**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.**

The Department intends to provide educational outreach programs to educate the industry regarding the changes to the regulations. The Department also provides copies of the Ohio Revised Code and Ohio Administrative Code, as it pertains to the industry, with all new and renewal license applications. The administrative and field staff within the Animal Health division are also available for guidance to all industry members. The Animal Health division meets on a weekly basis to ensure consistency and predictability throughout the state for the regulated community.

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### **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 pet stores which sell dogs, dog brokers, and high volume dog breeders operating in the state of Ohio.

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

All pet stores, dog brokers, and high volume dog breeders must submit a completed application along with the appropriate license fee to be considered a complete application in compliance with section 956.07 or 956.21 of the Revised Code. The rules require specific information and documents to be recorded and maintained. These records must be made available upon request.

**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.*

For tail docking to be performed by a licensed veterinarian, a regulated business will incur an increase in veterinary expenses. This increase in expenses will be dependent on the breed of the puppy, each veterinary clinic’s pricing, and the number of puppies per year.

Regarding primary housing changes, industry will potentially need to reconstruct cage layout. This expense will directly relate to the size of the high volume breeder operation and current facility layout. Construction costs will be dependent on the contractor, building materials, and industry time involved will vary by facility.

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

The intentions of the proposed regulations are to provide regulatory framework for the standards of care for dogs and equal opportunities to those engaged in the regulated community. The adverse impacts are considered justified based on consistent regulation throughout the state of Ohio for this industry.

### **Regulatory Flexibility**

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

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Chapter 956 of the Revised Code does not grant an exemption or alternative means of compliance 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?**

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

**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.