



Animal Welfare Institute

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June 13, 2022

Testimony Before Ohio's Joint Commission on Agency Rule Review (JCARR)
Vicki Deisner, Esq.
State Government Affairs Advisor
Animal Welfare Institute

RE: Animal Welfare Institute's Comments on OAC Rule 901:1-6-08 (A)

Animal Welfare Institute (AWI) comes before the Joint Commission on Agency Rule Review (JCARR) to comment on the Ohio Department of Agriculture's (ODA) revised proposed rule 901:1-6-08 (A), which complies with JCARR standards. We appreciate ODA's being responsive to concerns that were raised during the April hearings.

ORC Section 956.03 mandates that the agency perform criminal background checks of high-volume commercial dog breeders, stating "(A) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code establishing all of the following:

Requirements and procedures for conducting background investigations of each applicant for a license issued under section 956.04 of the Revised Code in order to determine if the applicant has been convicted of or pleaded guilty to an offense the director determines is a disqualifying offense under section 9.79 of the Revised Code."

The new requirements that applicants provide both out-of-state addresses for five years prior to licensing as well as proof of a local background check performed by law enforcement and submitted to Ohio BCI meets the requirement that the agency establish a process to determine if the applicant has been convicted of or pleaded guilty to an offense the director determines is a disqualifying offense.

However, AWI would note that the requirement for a background check has been changed from an annual requirement with license renewal to a requirement for initial applicants only. We believe the intent of the legislation would require the background checks be done yearly with the renewal.

New language that ODA added to the rule also requires applicants to "sign an agreement under which the applicant agrees to notify ODA within 14 calendar days if the applicant has plead guilty to or been convicted of any criminal offense other than minor traffic offenses." This is an important tool for ensuring that licensees are complying with applicable laws. However, beyond the initial application process, this entrusts licensees with reporting on themselves rather than placing that responsibility, more reliably, with the agency that is monitoring the applicant.

AWI would strongly recommend that JCARR request ODA require yearly background checks with license renewal as they do in regard to proof of insurance/surety bond and other annual renewal requirements.

In addition, AWI also recommends that ODA include in its background check a review of USDA records in regard to what commercial dog breeding violations they have for the applicant. In the case of Daniel Gingrich, an Iowa commercial dog breeder that has recently moved to Hillsboro, Ohio, it was years before authorities in Wayne County, Iowa, indicted this man, even though his inspection reports documented over 120 violations of the Animal Welfare Act. USDA investigators found dead and malnourished dogs on his property. Such records of failing to comply with the federal Animal Welfare Act should be considered disqualifying offenses.

AWI believes that ODA's proposed rule 901:1-6-08 (A) complies with JCARR's standards. However, requiring background checks of breeders every year during their renewal process, the same as the other yearly requirements, would honor the intent of the law, as would a requirement to review the USDA records both at the time of initial application as well as during the annual renewal process.

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PHANTOM FIREWORKS

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June 9, 2022

Joint Committee on Agency Rule Review
SFM Consumer Fireworks Discharge Rules Proposal
1301:7-7-56

Chairwoman Gavarone, Vice-Chair Callender, and members of the committee, my name is Danial Peart, Director of Government Affairs for Youngstown, Ohio-based Phantom Fireworks, the leading retailer of consumer fireworks in the country. Thank you for the opportunity to present our comments on consumer fireworks discharge rules proposal, 1301:7-7-56.

In the interest of brevity, Phantom Fireworks is happy to support the current proposal, and we hope to see it enacted by the long overdue July 1 effective date of legal consumer fireworks use in Ohio.

Phantom has provided comments during both the CSI and SFM public hearing portions of the rules process, and the Marshal and his staff have been both transparent and fair in their response and in the creation of the document before you today. In the interest of Ohio citizens, as well as the fireworks industry, we encourage the committee to formally adopt this proposed rule.

Sincerely,

Danial Peart

Lill Farms Inc.
754 Owens Road West
Marion, Ohio 43302
Preserve Farmland Forever

Joint Committee On Agency Rule Review Committee (JCARR)

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Ohio State Fire Marshal
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Matt Bayles, Marion County Sheriff
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Pleasant Township Trustees
1035 Owens Rd. West
Marion, OH 43302

Clint Canterbury, Pleasant Twp. Fire Chief
1035 Owens Rd West
Marion, OH 43302

Re: House Bill 172 Fireworks Law

May 31, 2022

Most of you know that since 2017 my horses have endured potentially deadly and dangerous stress and anxiety from 30–45-minute fireworks explosions during the July 4th holiday from the property of neighbor, David Strine, 653 Owens Rd. West, Marion Ohio. The fireworks exploded at that location pose a danger to my horses that are pastured and stalled approximately 1300 feet away from the middle of his property. The sound of each discharge for which I have many audio and video recordings bounces in and around our grain bin system located next to the horse barn which intensifies the sound making it a dangerous situation for my horses and me trying to keep them safe. We also have 30+ head of cattle that are housed in a rented barn about the same

distance from his property that also poses a potentially dangerous situation should the cattle ever stampede.

I have advocated for fireworks restrictions with legislators, Ohio State Fire Marshal, Marion County Sheriff, Marion County Prosecuting Attorney, Pleasant Township Fire Chief and Pleasant Township Trustees through in-person meetings, letters, and public testimony. My efforts have resulted in little change except the State Fire Marshal rules committee did add language about livestock and a 150-foot separation from point of discharge to a property line housing livestock. The Prosecutor told me it is not their role to set policy, the Trustees have told me they will not ban or establish restrictions that they cannot enforce, the Sheriff has minimal resources because officers are at the county fair during the July 4th holiday, and they cannot respond to all the increased calls they receive on July 4th. The State Fire Marshal's office has told me that the 150-foot separation distance is to prevent injury to bystanders and fire hazard from fireworks fallout. I have been told that the sound that carries is not a fire hazard therefore not something that falls under the responsibility of the fire department. Yet it is precisely the sound and flashing lights from aerial fireworks that travel great distances and may dangerously affect humans, companion and livestock animals, horses, other large animals, as well as wildlife.

I gave public testimony to the State Fire Marshal on May 19, 2022 and asked several questions during the Q&A that followed. To the question of restrictions, I was told local officials are given authority in HB 172 to ban or restrict fireworks in their municipality and they can always impose greater restrictions than the rules imposed by the state. I was told it is up to local officials to define what is hazardous or endangering to a person or animal as stated in the following rule: ***(f) 5626.5.6 Prohibited conduct. (x) The discharge of 1.4G fireworks in a manner that would be deemed hazardous to property or endanger a person or animal.*** I will say with certainty that the fireworks exploded 1300 feet from my horse barn, grain bins, and pasture endangers my horses. When that sound travels in and around our grain bin system it is greatly intensified. Unfortunately, since officials have not included sufficient restrictions that would protect nearby agriculture activity, I would have to bear not only the loss or injury of my horse but also the cost of proving endangerment. Apparently, I am not the only person concerned about fireworks since the Sheriff reported that his office is swamped with calls during the July 4th holiday.

This letter serves as another notice to all that the dangers and possibly deadly consequences of fireworks imposed on me, my horses, and my property by fireworks on nearby private citizen's property during the time in which they were illegal, will most likely continue now that fireworks are made legal with few restrictions. To Pleasant Township Fire Chief, I question the size of the fireworks being discharged at David Strine's property – they may be 1.4G but they might also be 1.3G given the vertical height they travel and the loud explosion they make. I do not believe that 1.3G are permitted to be discharged on private property without a permit and a licensed person. To Marion County Sheriff, this is also a notice to you that the discharge of fireworks at 653 Owens Rd. West will most likely take place July 2nd or 3rd and possibly the 4th. The size of the fireworks is in question, alcohol being consumed by the handler may also be

possible, children and bystanders must be at least 150 feet from the point of discharge, and there should be evidence that Mr. Strine provided 5-day advance written notice of his intent of time and day he will discharge fireworks to the owner that his property touches and the renter of the barn on that property that houses the livestock which happens to be Robert Lill at 754 Owens Rd. West. A written notice will serve as a warning to us of upcoming plans to discharge fireworks, but it will not change the dangerous results. I will be relieved if this event does not happen this year but if it does, I will contact the Sheriff's office.

I have had Dr. Welker of Welker Veterinary Service evaluate my horse monthly and he absolutely has told me that sedation is not a safe option for my horse due to her age and condition. He has told me that she is alert and content at this stage of her life even though she has acute arthritis, she is not yet ready to be humanely euthanized as a Township Trustee suggested I do as a solution to the fireworks danger near our farm. My horses were competition cutting horses, accustomed to traveling around the country and around noise and distractions so they are not sheltered horses but retired to our farm in their senior years to live out their lives. The other horse owners on my road do not have grain bin systems at their homes and barns and for that reason may not have the same experience with exploding fireworks. Some horses do not respond in a fearful manner when exposed to loud noises, but some respond in an instinctual manner to flee or bolt from what they view as danger.

As I understand there is one more step before the Fire Marshal makes public the rules which they are working hard to do before July 1, 2022. The rules review is in the hands of JCARR and will most likely not change at that level, but I remain hopeful someone will listen. I hope that you all are familiar with the 69-page fireworks law and rules, and particularly **page 65** that gives authority to local officials:

((a) 5626.3.1 Local regulation. The provisions of this paragraph are not to be construed in any way to limit the authority of a local governing body to restrict or ban the use of fireworks within their territorial jurisdiction pursuant to division (D) of section 3743.45 of the Revised Code and paragraph (Z)(3)(a)(i)(5626.3.1.1) of this rule. Any such duly enacted law, rule or regulation supersedes any less restrictive provision set forth herein and controls within the territorial boundaries of that jurisdiction.)

and **page 67** that outlines prohibited conduct including :

((x) The discharge of 1.4G fireworks in a manner that would be deemed hazardous to property or endanger a person or animal; (xi) The discharge of 1.4G fireworks within 150 feet of property that houses livestock, measured from the point of discharge to the nearest point of the property line, unless the person who intends to discharge the fireworks provides at least five days written notice to the owner of the property where the livestock is housed which states the date, time, and location where the fireworks will be discharged;).

At the public hearing, the State Fire Marshal stated that he hoped local officials were reading and knowledgeable about the rules which are posted on the State Fire Marshal website and likely to be made public soon:

<https://com.ohio.gov/static/documents/1301-7-7-56-Explosives-and-Fireworks-Discharge-Rules-F-with-WM.pdf>

The public is told when we “see something say something” and encouraged to participate in the governmental process. I have surely done this and communicated with many people in official capacities for several years that serve and protect the public. This problem can continue to be passed along from agency to agency, but I am asking you to intervene so that people understand the danger of fireworks in certain agriculture conditions such as where there are grain bin systems and animals. **JCARR** should incorporate a more restrictive separation distance than 150 feet particularly where there are grain bin systems that are quite common in agricultural areas, to provide protection of farm livestock and large animals and to the grain bins as well. Agriculture is the economic base of our state, Marion County and Pleasant Township and deserves more consideration when it comes to sufficient restrictions from the danger of fireworks.

Thank you very much.

Sincerely,



Betty Jo Lill
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CC: Horse Owners:
Tracy Rector
Mikayla Welch
Lisa Thompson
Joseph & Delores Wilson