

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Thousand Cankers of Walnut Quarantine

Rule Number(s): 901:5-58-01 to 04

Date: 5/22/2012

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☐ Rescinded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.

Regulatory Intent

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

The regulation is a plant quarantine that is aimed at protecting Ohio Walnut tree resources against a newly discovered tree killing disease called Thousand Cankers. This regulation would place restrictions on the importation of walnut materials into Ohio such as logs, lumber, nursery stock and wood chips from areas know to be infested with the insect-fungus complex that causes thousand cankers disease of walnut (TCD). TCD is known to kill walnut

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trees and is a threat to the standing walnut timber in Ohio. The disease is present throughout the west and was recently discovered in eastern locations of Richmond, VA; Knoxville, TN and Bucks county, PA. This regulation is closely modeled after those of 14 other states: AK, IL, IN, MI, MN, MO, NC, NE, OK, PA, KS, TN, VA and WI.

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

R.C. 927.52 and 927.71

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?

There are no federal regulations for TCD.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

No federal requirements are in place to protect against the spread of this disease.

5. 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)?

To protect Ohio's walnut tree resources for risk of infection with TCD

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

ODA along with Ohio Department of Natural resources will continue to monitor the health of *Ohio's forest including Walnut trees. Surveys for TCD will be conducted on an annual basis* to measure the presence or absence of the pest-pathogen complex.

Development of the Regulation

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

Ohio Forestry Association, Ohio Department of Natural Resources, American Walnut Manufacturers Association, Inc. – Conference calls: 9/16/2010, 1/19/11, 2/2/2012

Ohio Nursery and Landscape Association – Meeting at ODA on 11/17/2011; conference call on 3/27/2012.

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

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Industry stakeholders provided input on the processes of cutting logs into lumber and the importance of the definition of bark. The requirement for square edges was removed because of the amount of waste it would create in the processing.

Additionally the regulated areas were set at the infested county levels instead of state level to decrease the affected areas in order to focus the quarantine down to those positive counties, minimizing the impact on stakeholders.

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?

Data on the pest life cycle and effects on walnut trees was used. The U.S. Forest Service, Colorado State University and University of California publications have been used. Additionally survey data collected by State departments of agriculture on the presence or absence of TCD was used to define the regulated areas. The absence of the pests in Ohio and *presence in other states supports the action to try to protect Ohio's walnut resources from TCD*. The research conducted by the organizations named above supports the threat that *TCD is to Ohio's walnut resources* which ranks as high as 2nd in the nation in standing timber inventory.

10. 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?

No action: Under this alternative *Ohio's walnut resource would be at much greater risk of TCD introduction* which constitutes a threat to the resource and the marketability of Ohio Walnut products.

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

The provision for compliance agreements allows for affected businesses follow a set of approved conditions or to adopt new techniques/technology as it becomes available to mitigate the risk of spread of TCD while moving regulated articles.

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

ODA is the only state agency with plant pest quarantine authority.

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.

This will be accomplished through continued regular communications with the Ohio Forestry Association, ODNR Division of Forestry and other stakeholders. Also, inspectors that are

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responsible for certification and compliance monitoring will continue to receive annual training on the pest and quarantine.

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;

There are estimated to be less than 10 businesses in Ohio that import walnut materials into Ohio. Ohio ranks as high as 3rd in standing walnut inventory, so all landowners that have, or will have marketable walnut tree resources would benefit from the regulation to the extent that it works to slow or stop the introduction into Ohio or their particular areas.

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

The draft quarantine would stop the movement of walnut logs from the infested areas unless an effective treatment is found. Since the extent of the TCD infestation in the eastern U.S. may not be entirely known, further discoveries would continue to limit the areas from which logs can be harvested and brought into Ohio.

c. Quantify the expected adverse impact from the regulation.

The adverse impact to business would be the reduction in the areas from which timber can be harvested and imported into Ohio. At this time that area represents 21 counties in the native range of eastern black walnut. All other areas are unrestricted at this time. It is estimated that the regulation would have almost no impact on the price of walnut timber harvesting.

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

In 2012 survey will be conducted using a new trap and lure system that will likely lead to new TCD detections. The quarantine has provisions for compliance agreements to allow shipments of any regulated articles to occur if the risk of TCD can be mitigated. Some processes already used in the industry such as kiln drying and steaming of green lumber will mitigate the risk. Additionally, with regard to the eastern states where TCD has been found, the Ohio quarantine would simply mimic the positive states interior quarantine. This means that the only additional regulatory burden should be for western walnut imports.

In the event that Ohio is found to have TCD, a quarantine would become necessary for our ability to contain TCD within the state, and to keep exports of walnut to other states moving. Taking regulatory action now puts us in a better position to respond quickly to a detection of TCD in Ohio thereby protecting markets and the walnut resource. Also, to the degree that the regulation can slow

the introduction of TCD into Ohio, there is a corresponding economic benefit to land owners with healthy walnut timber stands.

Regulatory Flexibility

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

The provision for compliance agreements allows for affected businesses follow a set of approved conditions or to adopt new techniques/technology as it becomes available to mitigate the risk of spread of TCD while moving regulated articles.

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?

Not applicable.

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

ODA Division of Plant Health can provide individualized education assistance to any business that it needs when dealing with the quarantine and its impact.