

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Walnut Twig Beetle Quarantine

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

Date: 7/30/2013

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☐ Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

The regulation is a revision of the quarantine aimed at preventing the spread of destructive pest of walnut trees to reflect recent detections in new areas. This revision also clear up some confusing language and reflects new research on heat treatments of wood.

Adding new locations:

To prevent the spread of the destructive pest walnut twig beetle and associated disease known as thousand cankers ~~into the state of Ohio~~, the states of Arizona, California, Colorado, Idaho, Nevada, North Carolina, New Mexico, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia and Washington are quarantined.

Defining Heat Treatment:

(D) “Heat Treated” means the product has been heated to a minimum core temperature of 60 degrees celcius and that temperature maintained for a minimum duration of 60 minutes.

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

R.C. 927.52 and R.C. 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?

If yes, please briefly explain the source and substance of the federal requirement.

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 (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The quarantine regulation allows Ohio to protect its valuable walnut resource from the pest (walnut twig beetle/thousand cankers disease) by not allowing infested or high risk materials into un-infested areas of the state. This protects a valuable timber species and preserves export markets for products that originate in un-infested areas.

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

The preservation of the ability to ship walnut materials from the 87 apparently un-infested counties of Ohio into other States and Countries and the prevention of new infestations are measures of the success of the regulation.

Development of the Regulation

7. 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.

Ohio Department of Natural Resources Division of Forestry

Ohio State University Department of Entomology and Plant Pathology

Indiana Department of Natural Resources

Central Plant Board

Ohio Forestry Association

Walnut Manufacturers Association of America

USDA Forest Service

USDA-APHIS

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

It was suggested that wood veneer be added to the list of exempted products in 901:5-58-03(B).

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?

Insect trapping data provided by ODA and US Forest Service supports the addition of Butler county Ohio based on the presence of the Walnut Twig beetle. New research on heat treatments was provided by USDA-APHIS.

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?

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The alternative to not add Butler County, Ohio to the regulated area was ruled out because it would subject the remaining 87 un-infested counties of Ohio at risk of receiving the pest via firewood or other infested regulated articles.

11. 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.*

At this time a performance-based regulation would not accomplish that goal of stopping the spread of this pest and protecting Ohio's 87 un-infested counties. The regulation exempts certain types of walnut within the quarantine area and provides for one proven treatment method to rid regulated articles of any potential pest. But as of this amendment, there is no other proven method to prevent the spread of this pest.

This regulation does allow for compliance agreements to be drafted allowing the movement of regulated articles if risk of spread of the beetle or fungus can be mitigated through new processes that are proven effective at a later date.

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

Ohio Department of Agriculture is the only agency that has quarantine authority for plant pests at the state level.

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.

ODA Plant Pest Control Specialist will be personally reaching out to effected businesses that are involved in shipping of wood products. Continued communication with ODNR (who works with landowners on timber sales and forest management), Ohio Forestry Association, local elected officials, new releases, conference calls and direct mailing will all be used to communicate the rule change. OSU educational programs will also feature information to the regulated community.

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;

Walnut log and lumber dealers, land owners with walnut timber, firewood dealers, nursery stock producers and dealers that sell walnut materials and are located in

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Butler County may be adversely affected. The regulation protects these businesses in the 87 other counties by reducing the risk of the infestation spreading to their lands or products.

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

The prohibition on movement of host materials or costs of mitigating the pest risk via compliance agreements may be the adverse impact to these stakeholders that are located in Butler County.

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.

It is estimated that the impact from the regulation will cause an increase in costs to shippers of logs from Butler County. Mitigation of the pest risk will need to be accomplished. This can require fumigation treatments of regulated articles that would cost an estimated \$30 per log to be exported out of Butler. This is based on the estimated cost of \$1200.00 for fumigation and rental of a container of 40 logs. This is based on figures from Fumigation Services, Inc. and M. Bohlke Veneer Corp.

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

Given the detection of the Walnut Twig beetle in Butler County this rule is necessary for our ability to contain the destructive pest within this state. This demonstrates our focus on containing the outbreak which contributes to keeping exports of walnut to other states moving from the 87 other un-infested counties. Taking regulatory action now puts us in a better position to respond quickly to a detection of the pests elsewhere in Ohio thereby protecting markets and the walnut resource. Also, to the degree that our 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.

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Alternative regulations for smaller businesses would not protect Ohio's timber industry. The Department will provide all possible assistance for those businesses in the quarantined county regardless of size.

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's primary concern is the prevention of the spread of this pest to other counties, and so long as a first-time violator is willing to work with the Department fines is waived as a matter of policy.

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

The Plant Pest Control Section employs 11 specialists throughout the state to assist with compliance of Ohio's and other states regulations on this pest.