

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Health - Gypsy Moth Quarantine

Rule Number(s): 901:5-52-(01-08)

Date: March 18, 2016

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☒ Rescinded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 rules contained in this chapter establish a quarantine against the highly destructive insect *Lymantria dispar*, more commonly known as the gypsy moth. The Ohio Department of Agriculture (Department) established this quarantine to prevent the gypsy moth's artificial spread in the state of Ohio in order to protect Ohio's forest, timber and wildlife resources from this destructive pest.

The gypsy moth is a non-native, invasive species that has been advancing into Ohio from Pennsylvania and Michigan over the past decade. In its caterpillar stage, it feeds on the leaves of over 300 different tree and shrub species and is especially fond of oak. A healthy tree can usually withstand only two years of defoliation before it is permanently damaged or die

The rules contained in this package focus on science-based practices which support responsible agriculture practices while allowing Ohio to continue to grow its vital silviculture industry.

OAC § 901:5-52-01 sets out the notice of quarantine and the general rule that no person shall transport any regulated article from a regulated area to a non-regulated area in the state. The current OAC § 901:5-52-01 is being rescinded and replaced by the proposed new version. The rescission is due to changing more than 50% of the original rule in accordance with the Legislative Services Commissions' administrative rule drafting manual. While a new rule is being proposed, there are no substantive changes to this rule. The rule has been amended to make a stylistic change that places the rule in line with the other plant pest quarantine rules administered by the Department.

OAC § 901:5-52-02 outlines the definitions that are used in the chapter. The rule has been amended to ensure that the defined terms match the actual terms used in the chapter. Further, a definition of the term "Department" was added. Unused terms were deleted from this rule. Finally, a minor change was made to ensure compliance with the incorporation by reference standards.

OAC § 901:5-52-03 sets forth the regulated articles for the quarantine. Unless specified elsewhere, a regulated article cannot move from a regulated area into a non-regulated area. The rule was amended to remove two articles from the list. However, even with the removal of those articles, the articles may be subject to quarantine if it is determined by an inspector that the article is carrying the plant pest.

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OAC § 901:5-52-04 outlines the regulated areas in the state. The rule was amended to comply with the incorporation by reference standards, as well as, to make stylistic changes to the rule. Further, due to expansion of the plant pest, the following counties were added as a regulated area: Seneca, Franklin, Delaware, Morrow, Marion, Crawford, Athens, and Vinton. At the time of filing, 51 of Ohio's 88's counties are now under quarantine.

OAC § 901:5-52-05 outlines the exceptions to the general rule found in OAC § 901:5-52-01. The rule is being amended to make stylistic changes which do not impact the substance of the rule.

OAC § 901:5-52-06 sets out the authority and procedure for the inspection and disposal of any regulated articles which are believed to be or have been found to be carrying the plant pest. The rule has been amended to make stylistic changes which do not impact the substance of the rule.

OAC § 901:5-52-07 states that when feasible articles and areas found to be infested with the plant pest may be treated rather than destroyed. The rule has been amended to make stylistic changes which do not impact the substance of the rule.

OAC § 901:5-52-08 outlines the Gypsy moth suppression program. The gypsy moth suppression program is a landowner/community requested program in counties and locations where the pest is already established. Landowners in coordination with the Department request that their lands be treated with a variety of products which have been proven to slow the growth of the pest. The rule outlines the process in which the landowners are accepted into the program. The rule has been amended to make stylistic changes which do not impact the substance of the rule.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
Revised Code 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?**
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.

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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 Department is statutorily tasked with preventing the spread of harmful pests in the state of Ohio. The gypsy moth has the potential to completely destroy many of Ohio's tree species. This would irreparably harm Ohio's forestry industry. By establishing a quarantine and restrictions on movement, the Department is preventing the artificial spread of the gypsy moth and therefore, helping to maintain a vital industry in Ohio.

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

The Department will continue to inspect infested counties and investigate concerns regarding the gypsy moth. The rules will be judged as being successful when inspections and investigations find few observations of the gypsy moth and when there is no increase in the number of the gypsy moth infested counties in the state.

AmericanHort	Steve Carver
Ohio Agribusiness Assoc.	Chris Henney
Ohio Agribusiness Assoc.	Margo Long
Ohio Agribusiness Assoc.	Andrew allman
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	Jack Irvin
ODOT	Scott Lucas
ODOT	Terri Barnhart
Ohio Environmental Council	Adam Rissien
Ohio Environmental Council	Jack Shaner
Ohio Farm Bureau	Jack Fisher
Ohio Farm Bureau	Steve Hirsch
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Michael Geary
Ohio Forestry Association	Michael Geary
Ohio Forestry Association	John Dorka
Ohio Lawn Care Association	Mark Bennett
Ohio Nursery Landscape Association	Dick Posey
Ohio Nursery Landscape Association	Belinda Jones
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Council	Kirk Merritt
Ohio Soybean Council	Adam Ward
Ohio Pesticide Applicators for Responsible Regulation	Lonnie Alonso

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Ohio Produce Growers Association	Jennifer Kennedy
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Gerald Moore
OSBA - John Grafton	John Grafton
Ohio Turf Association	Brian Laurent
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Environmental Law & Policy Center	Madeline Fleisher

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.

The following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department. The stakeholders contacted are as follows:

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

The stakeholders were very supportive of the amendments made to these rules. The stakeholders are supportive of maintaining the regulated areas on a county basis rather than a statewide ban. This minimizes the impact on stakeholders and allows them to conduct business in a greater area while still protecting the state's forests from the gypsy moth.

- 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 United States Forest Service (USFS) provides technical and financial help to state and local government agencies, businesses, private landowners to help protect and manage non-federal forest and associated range and watershed lands. USFS has devoted years of research into the spread and prevention of gypsy moth throughout the forests of the United States. USFS's research and data show that a quarantine of these infested states is one of the best ways to prevent the artificial spread of gypsy moth into non-infested areas of Ohio.

- 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?**

Stakeholder participation in reviewing the rules in this package has indicated to the Department that this is the best regulatory scheme at this time. For that reason, no other regulatory alternatives were considered.

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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.

The rules contained in this package are performance based as they define the required outcome. It is up to the individual to determine how and when they will fulfill these requirements.

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 through Revised Code 927.70 to quarantine any state or portion of a state to prevent the spread of a pest into, within, or from the state of Ohio.

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 has maintained a constant line of communication with the Ohio Forestry Association, the Ohio Department of Natural Resources Division of Forestry, and other key stakeholder groups regarding the implementation of this program. This quarantine has been in place since the early 1990's and the Department works with all stakeholders to educate and inform them on the regulations. Additional education and outreach will be performed with the affected communities of the changes by the Plant Health Division. The staff members of the Plant Health Division ensure that all individuals in Ohio are treated in a similar manner. Additionally, the Department and its Division of Plant Health has a toll-free hotline to answer any questions that constituents may have about these new regulations.

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;

Any person who produces, transports, or plans to transport any of the regulated articles in OAC § 901:5-52-03.

Any person who owns land or is a resident in a regulated area who wishes to participate in the gypsy moth suppression program.

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

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Individuals are prohibited from moving any regulated article listed in OAC § 901:5-52-03 from a regulated area into a non-regulated area unless they are accompanied with a certificate approved by the director.

Landowners may apply to be a part of the gypsy moth suppression program. This takes time to complete the application requirements. Additionally, participating landowners are responsible for fifty percent of the Department's cost of the treatment of the property.

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.

Individuals may be prohibited to ship to and from certain regulated areas which may cause lost potential profits. However, this quarantine has been in place since early 1990's and the marketplace has adjusted accordingly.

The cost of a certificate is \$25 for nursery stock; for all other commodities the cost of a certificate is \$100. The cost of a compliance agreement is \$40.

The cost of the suppression program depends on a variety of factors including, number of acres and the type of insecticide selected the by the landowners.

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

The gypsy moth has the potential to defoliate and in some cases kill many of Ohio's tree species. This would irreparably harm Ohio's forestry industry and increases the costs of production of nursery stock. By establishing a quarantine and restrictions on movement, the Department is preventing the artificial spread of the gypsy moth and therefore, helping to maintain a vital industry in Ohio. Further, the Department has created exceptions to the general prohibition by allowing the industry to ship from quarantined areas so long as they meet certain requirements which show the Department that the shipment is free of gypsy moth. Therefore, due to the considerations above, the adverse impact is considered justified.

Regulatory Flexibility

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

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Due to the potential environmental and industry impact the gypsy moth could have on the state's forests, the Department did not create any exemptions or alternative means of compliance. However, as indicated above, regulated articles may be shipped with a certificate or a compliance agreement from quarantined states.

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 all offenders to educate them on their requirements and their violations to ensure voluntary compliance. First-time offenders are routinely offered settlements that are appropriate to the circumstances of the violation.

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

The Department has online resources and has field staff available to provide assistance. Training and seminars are also available via the United States Department of Agriculture.