

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Health – Walnut Twig Beetle Quarantine

Rule Number(s): 901:5-58-(01-05)

Date: January 29, 2018

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☒ Rescinded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 *Pityophthorus juglandis*, more commonly known as the Walnut twig beetle (hereinafter “WTB” or “plant pest”) and the associated disease known as thousand cankers disease. The Ohio Department of Agriculture (Department) established this quarantine to prevent the plant pest’s artificial spread in the state of Ohio in order to protect Ohio’s forest, timber and wildlife resources from this destructive pest.

WTB poses a threat to Ohio’s hardwood forests. Estimates by the US Forest Service rank Ohio as high as 2nd in the nation for eastern black walnut timber inventory. It is one of the most valued timber species in Ohio. Ohio’s forest products industry contributed an estimated \$22.05 billion to Ohio’s economy in 2010. Total employment was 118,000 full-time and part-time jobs, with wages and benefits amounting to \$5.69 billion. To protect against new introductions of this plant pest into Ohio, the Department, in 2012, enacted an exterior state quarantine regulating the transportation of walnut products from areas of the affected states. In August 2013 scientists from the Ohio Plant Diagnostic Network, a cooperative partnership between the Department and The Ohio State University, isolated the disease from walnut branch samples from the Butler County area, marking the first time the disease was confirmed in Ohio.

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 forest economy.

OAC § 901:5-58-01 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 § 901:5-58-01 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 § 901:5-58-02 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 terms “Certificate” and “Department” were added.

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OAC § 901:5-58-03 sets forth the regulated articles for the quarantine. 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. Secondly, the rule has been formatted which should allow for easier comprehension of the regulated articles.

OAC § 901:5-58-04 outlines the regulated areas in the state. The rule was amended to comply due to expansion of the plant pest. Specifically, Maryland was added to the list of regulated areas.

OAC § 901:5-58-05 outlines the conditions of movement as exceptions to the general rule found in OAC § 901:5-58-01. The current OAC § 901:5-58-05 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.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.
Revised Code 927.58 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.
No, however, failure to adopt the mirroring federal quarantine areas could subject the state of Ohio to a full-state quarantine, rather than the current regulated areas.

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. WTB and TCD are pests that are of quarantine significance to 17 other states in the eastern United States. By establishing and maintaining a similar quarantine and restrictions on movement, the Department is preventing the artificial spread of the plant pest and therefore, protecting the walnut resources in the 87 other counties of Ohio where TCD is not known to occur at this time. This regulation helps to limit the impact of other states and countries regulations to only those areas where TCD is present.

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

The Department will continue to inspect and conduct insect trapping surveys throughout the state and in the infested area, as well as investigate concerns from the public regarding the plant pest. The rules will be judged as being successful when inspections and investigations find few observations of the plant pest and when there is no increase in the number of the plant pest infested counties in the state.

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:

AmericanHort	Gina Zirkle
Ohio Aggregates & Industrial Minerals Assoc.	Patrick Jacomet
Ohio Agribusiness Assoc.	Chris Henney
Ohio Agribusiness Assoc.	Margo Long
Ohio Agribusiness Assoc.	Andrew Allman
Ohio Christmas Tree Assoc.	
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	John Torres
ODOT	Scott Lucas
ODOT	Terri Barnhart
Ohio Environmental Council	Adam Rissien
Ohio Environmental Council	Jack Shaner
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosch
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Michael Geary
Ohio Forestry Association	John Dorka
Ohio Lawn Care Association	Mark Bennett
Ohio Nursery Landscape Association	Roni Peterson
Ohio Nursery Landscape Association	Belinda Jones
Ohio Seed Improvement Assoc	John Armstrong

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Ohio Soybean Council	Kirk Merritt
Ohio Pesticide Applicators for Responsible Regulation	Lonnie Alonso
Ohio Produce Growers Association	Valerie Graham
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Brian Alonso
Ohio State Bee Keepers	Tim Arbeit
Ohio Turf Association	Brian Laurent
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Environmental Law & Policy Center	Madeline Fleisher
M. Bohlke Veneer	Manfred Bohlke
United States Department of Agriculture, APHIS PPQ	
Ohio State University, Extension Offices	
Ohio Department of Natural Resources, Division of Forestry	

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

The stakeholders who made comments were 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 plant pest.

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 plant pest 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 plant pest 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 2012 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.

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

Individuals are prohibited from moving any regulated article from a regulated area into a non-regulated area unless they meet the conditions of movement in OAC 901:5-58-05.

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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 2012 and the marketplace has adjusted accordingly.

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

The plant pest has the potential to weaken and kill many of Ohio’s walnut trees 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 plant pest 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 plant pest. 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.

Due to the potential environmental and industry impact the plant pest 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 areas and 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 Department and the United States Department of Agriculture.