



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Plant Health – Invasive Species

Rule Number(s): 901:5-30-01

Date of Submission for CSI Review: December 21, 2021

Public Comment Period End Date: January 14, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_1_ rules (FYR? _1_)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Rule 901:5-30-01 establishes a list of invasive plants in the state of Ohio. Invasive plants are plant species that are not native to Ohio whose introduction causes or is likely to cause economic or environmental harm or harm to human health as determined by scientific studies. Invasive plants do not include cultivated plants grown as food or livestock feed in accordance with generally accepted agricultural practices, including all plants authorized by the Animal and Plant Health Inspection Service in the U.S. Department of Agriculture. This rule has been amended to update the list of invasive plants.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Revised Code 901.50

4. 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.

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No.

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

Not Applicable.

- 6. 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 public purpose for the regulation is to help protect Ohio's native plant life and biodiversity.

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

The Department inspects nurseries for the sale of the prohibited plants. The rule is successful when inspections and investigations find few violations of the prohibition.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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 were contacted via email on March 22, 2021 for a comment period open until April 5, 2021.

Holly Scoggins – American Hort

Patrick Jacomet – Ohio Aggregates & Industrial Minerals Association

Chris Henney – Ohio AgriBusiness Association

Valerie Graham – Ohio Christmas Tree

Tadd Nicholson – Ohio Corn and Wheat

Luke Crumly – Ohio Corn and Wheat

Robin Chambers-Dersoon – Ohio Department of Transportation

Pamela Vest Boratyn – Ohio Department of Transportation

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Amalie Lipstreu – Ohio Ecological Food and Farm Association

Pete Bucher – Ohio Environmental Council

Chris Tavenor – Ohio Environmental Council

Adam Sharp – Ohio Farm Bureau

Jack Irvin – Ohio Farm Bureau

Larry Antosh – Ohio Farm Bureau

Joe Logan – Ohio Farmers Union

Brad Perkins – Ohio Forest

Mark Bennett – Bennett Management

Ken Fisher – Ohio Nursery and Landscape Association

Roni Peterson – Ohio Nursery and Landscape Association

Melinda Howells – Ohio Pest Management Association

Moly Mash – Patton Pest

Valerie Graham – AgriStar

John Armstrong – Ohio Seed Improvement Association

Kirk Merritt – Ohio Soybean Association

Emilie Regula – Ohio Soybean Association

Peggy Garnes – Ohio State Beekeepers

Belinda Jones – Capitol Consulting Group

Mike Grace – TNT Exterminating

Tom Demaline – Willoway Nurseries

Kyle Natorp – Natorp Inc.

Tory Judy – The Batch Co.

Ann Aquillo – Scotts

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

The amendments to the list of invasive species were developed through multiple meeting of the Invasive Species Advisory Committee. The committee further voted on December 15, 2021 to include water invasive species during this rule revision.

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11. 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?

During the December 15, 2021 Invasive Species Advisory Committee Meeting, Dr. Earl Chilton provided risk analysis data pertaining to the water invasive species added to this rule.

12. 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?

The Department has determined that regulating the invasive plants by listing in this rule is the best regulatory mechanism at this time.

13. 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 rule in this rule package is performance-based as it defines the required outcome.

14. 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 901:50 to establish the list of invasive plants in the state of Ohio.

15. 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 will work to educate the regulated community through continued outreach.

Adverse Impact to Business

16. 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; and

Any person who produces, sells, offers to sell, transports, or plans to transport any of the prohibited plants listed in rule 901:5-30-01 of the Administrative Code.

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

No person shall sell, offer for sale, propagate, distribute, import, or intentionally cause the dissemination of any invasive plant as defined in rule 901:5-30-01 of the Administrative Code.

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

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“representative business.” Please include the source for your information/estimated impact.

The prohibition will not allow the sale of certain plant varieties in the state of Ohio. For some nurseries, revenue from the sale of prohibited plants may be lost. The adverse impact cannot be quantified in terms of dollars due to the variety of business models and levels of stock available at each nursery.

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

The Department has justified the adverse impact due to the intent of the regulation protecting Ohio’s environment and native species along with the native biodiversity of Ohio.

Regulatory Flexibility

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

Due to the potential environmental and industry impact invasive plants can have on Ohio’s biodiversity, the Department did not create any exemptions or alternative means of compliance for small businesses.

19. 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 as to requirements and identifying violations to ensure voluntary compliance.

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

The Department has online resources and field staff available to provide assistance.