

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: White pine blister rust disease

Rule Number(s): 901:5-43-01

Date: December 18, 2014

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☐ Rescinded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.

Rule 901:5-43-01 of the Ohio Administrative Code declares white pine blister rust disease as a plant pest pursuant to Ohio Revised Code § 927.52. The rule prohibits the ownership, sale, or transport of the plant variety known as European black currant in or into this state to prevent its artificial spread in order to protect Ohio's forest, timber and wildlife resources from this destructive disease. However, the rule does allow for the ownership, sale, or transport of varieties of European black currant which are known to be immune or highly resistant to white pine blister rust disease. The rule is being amended to make stylistic changes to the rule that will help in comprehension and understanding.

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.

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. White pine blister rust disease has the potential to completely destroy Ohio's Pine population. This would irreparably harm Ohio's forestry industry. By prohibiting the plant variety known commonly as European black currant (scientifically *Ribes nigrum*) into the state, the Department is preventing the artificial spread of white pine blister rust disease 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 white pine blister rust disease as well as, evidence of European blackcurrant. The rules will be judged as being successful when inspections and investigations find few observations of white pine blister rust disease.

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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:

Dan Balser, Ohio Department of Natural Resources
Linda Borton – Ohio Farmers Union
Bob Boyles, Ohio Department of Natural Resources
John Dorka, Ohio Forestry Association
Chris Endsley – Ohio Farm Bureau
Chris Henney – Ohio Agribusiness Association
Daniel Herms, Ohio State University
Mike Hirsch – Ohio Produce Growers Marketing Association
Jack Irvin – Ohio Corn and Wheat Association
Melinda Jones – Ohio Nursery and Landscaping Association and Ohio Pesticide Applicators for Responsible Regulation
Jennifer Kennedy – Ohio Produce Growers Marketing Association
Joe Logan – Ohio Farmers Union
Thomas Macy, Ohio Department of Natural Resources
Kirk Merritt – Ohio Soybean Council
Tadd Nicholson – Ohio Corn and Wheat Association
Cotton Randall, Ohio Department of Natural Resources
Tony Seegers- Ohio Farm Bureau
Jack Shaner – Ohio Environmental Council
Adam Sharp – Ohio Farm Bureau
David Shetlar, Ohio State University
Kathy Smith, Ohio State University
Tyler Stevenson, Ohio Department of Natural Resources
Amy K. Stone, Ohio State University
Kevin Thompson, Ohio Nursery and Landscaping Association
Adam Ward – Ohio Soybean Council
Dallas Williamson – Ohio Produce Growers Marketing Association

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

The stakeholders had no comments on the amendments to the rule. The stakeholders were supportive of maintaining the prohibition as the best way to protect the state's forests from white pine blister rust disease.

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 white pine blister rust disease throughout the forests of the United States. USFS's research and data show that this prohibition is one of the best ways to prevent the artificial spread of white pine blister rust disease into 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.

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 927.52 and 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. The Department works with all stakeholders to educate and inform them on the regulations. 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 is available during normal business hours to answer any questions that constituents may have about these new regulations. Further, the Department’s website www.agri.ohio.gov has educational information available regarding the disease.

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 possesses, produces, transports, sells or plans to sell European black currant plants, roots, scions, seeds or cuttings.

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

Individuals are prohibited from possessing, producing, transporting, selling or offering to sell varieties of European black currant plants which are not immune nor highly resistant to white pine blister rust disease. Individuals who possess such varieties which are immune or highly resistant to white pine blister rust disease are not subject to the prohibition.

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.

Some individuals may be subject to lost potential profits due to the prohibition. However, the prohibition has been in place since 1974 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?

White pine blister rust disease has the potential to completely destroy Ohio's Pine population. This would irreparably harm Ohio's forestry industry. By establishing a state wide prohibition, the Department is preventing the artificial spread of white pine blister rust disease and therefore, helping to maintain a vital industry in Ohio. Further, the Department has created an exception to the general prohibition by allowing the industry to possess, transport, plant, propagate, or sell recognized varieties of *Ribes nigrum* which are known to be immune or highly immune to the disease. 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 white pine blister rust disease could have on the state's forests, the Department did not create any exemptions for small businesses. However, as indicated above, businesses of any size may utilize varieties of *Ribes nigrum* which are known to be immune or highly immune to the disease.

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?

Due to the potential spread of the disease, the Department upon finding a prohibited variety of European Black Currant would either destroy it or ask that it be moved out of the state.

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

The Department has field staff available to answer questions regarding white pine blister rust and other plant pests. Additionally, the Department's website www.agri.ohio.gov has many resources that will help educate small businesses as to the rules and regulations regarding this disease.