

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Health – Certification Standards for Strawberry Plants

Rule Number(s): 901:5-41-01

Date: October 27, 2015

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☐ Rescinded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.

Rule 901:5-41-01 has been reviewed in accordance with Chapter 119 of the Revised Code and is being proposed as amended below. This rule regulates and establishes the process for the certification of strawberry plants. Certified strawberry plants are those that have been inspected to ensure that the plants are free from disease and are of a pure variety. The rule is being amended to clarify the certification process. The rule has been re-organized to make it clear when the request for inspection must be filed with the Department and when the inspections must take place. There have been no substantive changes made to this rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.
R.C. 927.52, 927.61

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 strawberry certification standards are in place to provide quality assurance to purchasers that the plants are free from diseases and pests which could negatively impact the viability and yield of farm production. There are a small number of states which will reject non-certified plants from coming into the state. This regulation allows our growers to continue business operations in those states.

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

The agency measures success in the number of Ohio grown Strawberry plants which have been accepted by receiving states. Successful shipments of pest free Ohio grown product are positive indicators that the standards are successful.

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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.

Steve Carver – American Hort
Chris Henney – Ohio Agribusiness Association
Jack Irvin – Ohio Corn and Wheat
Tadd Nicholson – Ohio Corn and Wheat
Scott Lucas – Ohio Department of Transportation
Adam Risien – Ohio Environmental Council
Jack Shaner – Ohio Environmental Council
Jack Fisher- Ohio Farm Bureau
Steve Hirsch – Ohio Farm Bureau
Linda Borton – Ohio Farmers Union
Joe Logan – Ohio Farmers Union
John Dorka – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care
Dick Posey – Ohio Nursery and Landscaping Association
Belinda Jones – Capitol Consulting
Melinda Howells – Ohio Pest Management Association
J. Gerald More – Ohio Pest Management Association
Steve Carver – Ohio Produce Growers Marketing Association
Lisa Schatt – Ohio Produce Growers Marketing Association
Gerald Moore – Ohio Produce Growers Marketing Association
Dallas Williamson – Ohio Produce Growers Marketing Association
Jennifer Kennedy – Ohio Produce Growers Marketing Association
Mike Hirsch – Ohio Produce Growers Marketing Association
Lonnie Alonso – Ohio Professional Applicators for Responsible Regulation
John Armstrong – Ohio Seed Improvement Association
Kirk Merritt – Ohio Soybean Council
Adam Ward – Ohio Soybean Council
Tim Arbeit – Ohio State Beekeepers Association
Brian Laurent - Ohio Turfgrass Foundation

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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 recommended changes to the rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule?

The rule is based on historical scientific observations of strawberry plants in the state 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?

Due to current pest conditions, markets for strawberry nursery stock, and the fluctuation of the number and size of producers, other regulatory alternatives were not considered at this time.

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.

This rule is performance based. It requires that for certification certain standards be met. However, it does not specifically state how the standards should be reached.

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 R.C. 927.52 to adopt and amend all rules as they apply to nursery and plant stock.

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 rule is uniformly applied to Strawberry plant growers without regard to the type of operation.

Adverse Impact to Business

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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;

All individuals who sell, offer to sell, or distribute Strawberry plants within this state or who ship them to other states.

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

As required in 927.61 of the Ohio Revised Code, all nursery stock must be inspected and certified prior to sale. Individuals who meet the above description are subject to a licensing fee as stated in R.C. 927.53. Individuals must request for the inspection of their plantings with the department. There are no fines associated with this rule and further no record keeping obligations.

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.

The license fee required by R.C. 927.53 is \$100.00 and \$11.00 per acre of intensive production or \$7.00 per acre of field production and expires on December 31st of each year. Individuals must expend marginal time for compliance when requesting inspection by the department. Plants which have not been inspected and certified may not be offered for sale. This may result in loss of some product which contains pests and or viruses as listed in the rule.

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

Certification that the plants are virus and pest free is required by Ohio law prior to sale. Additionally, other states require certification prior to sale in their states. Therefore, certification increases the chances of market access of Ohio grown products. Further, certification reduces the risk of the spread of plant pests and pathogens which can damage the marketability and viability of plants and reduce yields. The Strawberry certification standards are in place to provide quality assurance to purchasers that the plants are free from diseases and pests which could negatively impact the viability and yield of farm production. Therefore, the Agency believes that the regulatory intent is justified by the adverse impact.

Regulatory Flexibility

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

Section 927.61 of the Revised Code requires that all nursery stock be officially inspected and a valid certificate be issued by the Director prior to sale. Therefore, exemptions or alternatives specific to small businesses would be in violation of the law.

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?

Not applicable. There are no fines for non-compliance with this rule.

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

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