

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Health – Prohibited Noxious Weeds

Rule Number(s): 901:5-37-01

Date: April 16, 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☐ Rescinded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.*

Ohio Administrative Code rule 901:5-37-01 establishes a list of prohibited noxious weed species. This list of noxious weeds established by the Ohio Department of Agriculture is used by the Ohio Department of Transportation, boards of county commissioners, township trustees, and street commissioners of a municipal corporation in order to control the growth of such species in their respective jurisdictions. Typically these entities utilize this authority to prevent these species from encroaching onto roadways and right-of-ways to ensure rider safety.

The rule has been reviewed by interested stakeholders and is being amended to remove Wild Carrot, Oxeye daisy, and Wild mustard from the list of plant species. Additionally, the following species are proposed to be added to the list:

Yellow Groove Bamboo (*Phyllostachys aureasculata*), when the plant has spread from its original premise of planting and is not being maintained.

Field bindweed (*Convolvulus arvensis*).

Heart-podded hoary cress (*Lepidium draba* sub. *draba*).

Hairy whitetop or ballcress (*Lepidium appelianum*).

Perennial sowthistle (*Sonchus arvensis*).

Russian knapweed (*Acroptilon repens*).

Leafy spurge (*Euphorbia esula*).

Hedge bindweed (*Calystegia sepium*).

Serrated tussock (*Nassella trichotoma*).

Columbus grass (*Sorghum x alnum*).

Musk thistle (*Carduus nutans*).

Forage Kochia (*Bassia prostrata*).

Water Hemp (*Amaranthus tuberculatus*).

### **2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Revised Code 901.10 and 5579.04

### **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.

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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 required to adopt a list of prohibited noxious weeds pursuant to Ohio Revised Code 5579.04.

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

The Department measures success of this regulation through the reports of the Ohio Department of Transportation, boards of county commissioners, etc. regarding the control of these plant species. The rule will be judged as being successful when reports indicate that these plant species are being successfully controlled.

#### **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. On February 2, 2018, 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

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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 Invasive Plants Council	Theresa Culley
Ohio Invasive Plants Council	Jennifer Windus
Ohio Nursery Landscape Association	Roni Peterson
Ohio Nursery Landscape Association	Belinda Jones
Ohio Seed Improvement Assoc	John Armstrong
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 Arheit
Ohio Turf Association	Brian Laurent
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Environmental Law & Policy Center	Madeline Fleisher
The Nature Conservancy	Anthony Sasson
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. Specifically, the Ohio Invasive Plants Council (OIPC) stated that they do not have any concerns regarding the removal of the three plant species and particularly agree with the addition of Yellow Grove Bamboo. The Nature Conservancy in Ohio agreed with the comments submitted by the OIPC.

**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 Department reviewed the invasive plant species list found in OAC 901:5-30-01 and the prohibited and restricted noxious weed seeds list in OAC 901:5-27-06 in determining species to be added to this list.

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**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.*

OAC 901:5-37-01 establishes a list that may be utilized by specific entities and does not dictate a process. Therefore, the rule is considered a performance-based regulation.

**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 5579.04 to establish such a list.

**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.**

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.

**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;**

The Ohio Department of Transportation, boards of county commissioners, boards of township trustees, street commissioners of Ohio municipal corporations, and land Ohio landowners whose land contains a prohibited noxious weed.

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

There are no license fees, fines, or time for employer compliance with this rule. The rule establishes a list of prohibited noxious weed species which may be utilized by the Ohio Department of Transportation, boards of county commissioners, boards of township trustees, and street commissioners of Ohio municipal corporations to

control the growth of these species. If utilized, landowners may be required to cut or destroy the plants on their property.

**c. Quantify the expected adverse impact from the regulation.**

The expected adverse impact of this regulation should be minimal as these practices are already well established in the state.

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

As stated above, ORC 5579.04 requires the Department to establish this list. Further, the rule allows the Ohio Department of Transportation, boards of county commissioners, boards of township trustees, and street commissioners of Ohio municipal corporations to utilize the list in order to keep their roadways and right-of-ways clear of these species. Therefore, the regulatory intent is deemed justified.

**Regulatory Flexibility**

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

The Department does not have the authority to provide for exemptions or alternative means of compliance for small businesses. If utilized the government entity taking action may utilize other means of compliance for small business.

**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?**

There are no fines associated with this rule.

**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.