



# Common Sense Initiative

Mike DeWine, Governor  
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## Business Impact Analysis

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

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

Notice of Quarantine- Spongy Moth

Rule Number(s): 901:5-52-01 to 08

Date of Submission for CSI Review: 6/11/2024

Public Comment Period End Date: 7/2/2024

**Rule Type/Number of Rules:**

New/      rules

No Change/ 1 rules (FYR? 1)

Amended/ 7 rules (FYR? 7)

Rescinded/      rules (FYR?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.***

The rules contained in this chapter establish a quarantine against the highly destructive insect *Lymantria dispar*, more commonly known as the spongy moth (formerly known as the gypsy moth). In March 2022, Entomological Societies of Canada and America adopted the name spongy moth as the new common name for the moth species *Lymantria dispar*. This chapter of rules has been amended to reflect this change.

The Ohio Department of Agriculture (Department) established this quarantine to prevent the spongy moth's artificial spread in the state of Ohio in order to protect Ohio's forest, timber and wildlife resources from this destructive pest.

The spongy moth is a non-native, invasive species that has been advancing into Ohio from Pennsylvania and Michigan over the past decade. In its caterpillar stage, it feeds on the leaves of over 300 different tree and shrub species and is especially fond of oak. A healthy tree can usually withstand only two years of defoliation before it is permanently damaged or begins to die.

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 silviculture industry.

**901:5-52-01** 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. This rule is being amended to change gypsy moth to spongy moth.

**901:5-52-02** outlines the definitions that are used in the chapter. This rule is being amended to change gypsy moth to spongy moth, revise the definition of “Person” and to add a definition of 7 CFR 301.45 which includes the effective date.

**901:5-52-03** sets forth the regulated articles for the quarantine. This rule is being amended to change gypsy moth to spongy moth.

**901:5-52-04** outlines the regulated areas in the state. This rule is being amended to change gypsy moth to spongy moth and to strike the effective date of 7 CFR because it is now defined in the definition section.

**901:5-52-05** outlines the exceptions to the general rule found in 901:5-52-01. This rule is being amended to change gypsy moth to spongy moth and to revise the rule to clarify how the department may conduct inspections.

**901:5-52-06** sets out the authority and procedure for the inspection and disposal of any regulated articles which are believed to be or have been found to be carrying the plant pest. This rule is being amended to change gypsy moth to spongy moth.

**901:5-52-07** states that when feasible articles and areas found to be infested with the plant pest may be treated rather than destroyed. This rule is being proposed with no changes.

**901:5-52-08** outlines the Gypsy moth suppression program. This rule is being amended to change gypsy moth to spongy moth, makes stylistic changes according to the Legislative Service Commission (LSC) Rule Drafting Manual, delete the reference to volume II, appendix D of the final environmental impact statement, issued by USDA dated August 2012, and delete the reference to appendix A of this rule.

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.**

ORC 927.52, 927.70 and 927.71

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.*

Yes, the regulation mirrors the federal quarantine for the pest. By maintaining this regulation Ohio limits the effect of the federal quarantine to only the counties impacted by the pest.

5. **If the regulation implements a federal requirement, but 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 Department is statutorily tasked with preventing the spread of harmful pests in the state of Ohio. The spongy moth has the potential to completely destroy many of Ohio’s tree species.

This would irreparably harm Ohio's forestry industry. By establishing a quarantine and restrictions on movement, the Department is preventing the artificial spread of the spongy moth and therefore, helping to maintain a vital industry in Ohio.

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

The Department will continue to survey, inspect, and investigate concerns regarding the spongy moth. The rules will be judged as being successful when inspections and investigations find few observations of the spongy moth and when there is no increase in the number of the spongy moth infested counties in the state.

**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 comprise a list of the leaders of several agricultural organizations found within the state of Ohio. The following stakeholders were contacted via email on March 8, 2024, for a public comment period open until March 22, 2024.

AmericanHort	Meagan Nace
AmericanHort	Craig Regelbrugge
Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Ice Miller	Samuel Porter
Nation Farmers Organization	Alva Heiss
NPMA SPAR	Kurt Scherzinger
Ohio Ag Council	Janice Welsheimer
Ohio Aggregates & Industrial Minerals	Patrick Jacomet
Ohio Agribusiness Assoc.	Aaron Heilers
Ohio Agribusiness Assoc.	Janice Welsheimer
Ohio Association of Meat Processors	Valerie Parks Graham
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Christmas Tree Association	Valerie Graham
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	Kimberly Shriver
Ohio Corn & Wheat Growers Assoc.	Luke Crumley

Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Environmental Council	Trent Dougherty
Ohio Environmental Council (OEC)	Pete Bucher
Ohio Environmental Council (OEC)	Chris Tavenor
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau Federation (OFBF)	Adam Sharp
Ohio Farm Bureau Federation (OFBF)	Jack Irvin
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Jenna Reese
Ohio Green Industry Association	Tracy Schiefferle
Ohio Green Industry Association	Roni Peterson
Ohio Invasive Plants Council	Jennifer Windus
Ohio Invasive Plants Council	Gary Conley
Ohio Lawn Care Association	Mark Bennett
Ohio P.L.A.N.T.	Tony Seegars
Ohio Pest Management Association	Melinda Howells
Ohio Pest Mgmt Assoc. (OPMA)	Molly Mash
Ohio Pest Mgmt.Assoc. (OPMA)	Sheri Maskow
Ohio Pork Producers Council	Cheryl Day
Ohio Poultry Association	Jim Chakeres
Ohio Produce Growers & Marketers	Valerie Graham
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Association	Brandon Kern
Ohio Soybean Council	Kirk Merritt
Ohio State Beekeepers Assoc. (OSBA)	Jamie Walters
Ohio State Beekeepers Assoc. (OSBA)	Peggy Garnes
Ohio State Grange	Mike Russell
Ohio State University	Adam Ward
Ohio Turfgrass Foundation	Mark Bennett
Ohio Turfgrass Foundation	Troy Judy
Ohio Turfgrass Foundation	Mark Bennett
Pesticide Applicator for Responsible Reg	Mike Grace
The Nature Conservancy	Jessica D'Ambrosio
The Nature Conservancy	Bill Stanley
The Ohio State University	Peggy Hall
Plant Health- Invasive Plant Advisory Board	Dr. Theresa Culley
Plant Health- Invasive Plant Advisory Board	Thomas Macy

Plant Health- Invasive Plant Advisory Board	Kyle Natorp
Plant Health- Invasive Plant Advisory Board	Matthew Lamoreaux

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

No comments were received during the stakeholder outreach comment period.

**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?**

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 nonfederal forest and associated range and watershed lands. USFS has devoted years of research into the spread and prevention of spongy moth 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 spongy moth into non-infested areas of Ohio.

**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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The lack of 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.

**13. 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.

**14. 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 the early 1990's 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**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

Any person who produces, transports, or plans to transport any of the regulated articles in OAC § 901:5-52-03.

Any person who owns land, occupies land or is a resident in a regulated area who wishes to participate in the spongy moth suppression program.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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 are prohibited from moving any regulated article listed in OAC § 901:52-03 from a regulated area into a non-regulated area unless they are accompanied with a certificate approved by the director which may cause lost profits. However, this quarantine has been in place since early 1990's and the marketplace has adjusted accordingly.

Pursuant to ORC 927.69, the cost of a certificate is \$25 for nursery stock; for all other commodities the cost of a certificate is \$100. The cost of a compliance agreement is \$40.

Landowners may apply to be a part of the spongy moth suppression program. This takes time to complete the application requirements. Additionally, participating landowners are responsible for fifty percent of the Department's cost of the treatment of the property.

The cost of the suppression program depends on a variety of factors including, number of acres and the type of insecticide selected by the landowners.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No



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

The spongy moth has the potential to defoliate and, in some cases, kill many of Ohio's tree 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 spongy moth 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 spongy moth. Therefore, due to the considerations above, the adverse impact is considered justified.

**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 the spongy moth 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 states.

**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 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.

**20. 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 United States Department of Agriculture.