



Common Sense Initiative

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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- Spotted Lanternfly

Rule Number(s): 901:5-56-01 to 06

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

Public Comment Period End Date: 7/2/204

Rule Type/Number of Rules:

New/ rules

No Change/ 3 rules (FYR? yes)

Amended/ 3 rules (FYR? yes)

Rescinded/ rules (FYR?)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 department is statutorily tasked with preventing the spread of harmful pests in the state of Ohio. The spotted lanternfly has been identified as a harmful pest. By establishing a quarantine and restrictions on movement, the department is preventing the artificial spread of the spotted lanternfly and therefore, helping to maintain a vital industry in Ohio.

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.

Rule 901:5-56-01 provides the notice of the quarantine and determination that the spotted lanternfly is a destructive and dangerously harmful pest. This rule is being proposed with no changes made.

Rule 901:5-56-02 provides the definitions used in chapter 901:5-56 of the Administrative Code. This rule is being amended to revise the definition of “Person.”

Rule 901:5-56-03 sets forth the regulated articles subject to the quarantine. This rule is being proposed with no changes made.

Rule 901:5-56-04 sets forth the regulated areas of the quarantine. This rule is being amended to add additional states which are infested with spotted lanternfly; Illinois, Indiana, Kentucky, Tennessee, North Carolina, Massachusetts, Michigan and Rhode Island.

Rule 901:5-56-05 sets forth the conditions that must be met in order to move regulated articles. This rule is being proposed with no changes made.

Rule 901:5-56-06 sets forth the inspection and disposition of shipments. This rule is being amended to clarify how the department may conduct inspections.

- 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.

No

- 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)?**

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

The Ohio Department of Agriculture along with our cooperators (Industry groups, OSU Extension, ODNr Division of Forestry, USDA -APHIS, and neighboring states) will continue to monitor for the presence and absence of spotted lanternfly throughout Ohio and the region. This data will be collected and stored in a national database accessible to all states and the public. The goal is to slow the spread of the spotted lanternfly and to quickly respond to early outbreaks that are small enough to contain, thereby minimizing the negative effects, and increased costs of managing the spotted lanternfly once it is established.

- 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 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 destructive nature of invasive insects, including spotted lanternfly, has been widely studied. Penn State University, Cornell, and USDA have all published papers and reports documenting environmental and crop damage from spotted lanternfly.

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 927.71 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. 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 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 § 901:5-56-03.

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 rule 901:5-56-03 of the Administrative Code from a regulated area into a non-regulated area unless they are accompanied by a certificate approved by the director. However, this quarantine has been in place since 2021 and the marketplace has adjusted accordingly.

The adverse impact to business is potentially the cost of inspection (Phytosanitary certification) and/or the mandatory implementation of best management practices

(Compliance Agreements) to reduce the risk of spread of the spotted lanternfly. It is expected that these costs will be minimal.

Pursuant to ORC 927.69, compliance Agreement fees are \$40.00 annually, phytosanitary certificates are \$25.00 for nursery stock, or \$100.00 for shipments of other commodities. These costs are offset with the savings to the protected areas that have their farms/businesses protected from the increase costs of controlling spotted lanternfly.

- 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?**

By establishing a quarantine and restrictions on movement, the department is preventing the artificial spread of the spotted lanternfly and therefore, helping to maintain a vital industry for Ohio.

Regulatory Flexibility

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

The provision for Compliance Agreements allows for affected businesses to follow a set of approved conditions or to adopt new techniques/technology as it becomes available to mitigate the risk of spread of the spotted lanternfly while moving regulated articles. These sets of conditions, which are best management practices, will be practical and include training of employees and self-inspection for businesses that wish to participate. Ohio Department of Agriculture inspectors will provide compliance assistance and inspections as needed to small businesses who are moving regulated articles through Ohio, to other states, or exporting to other countries.

- 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.