

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** March 5, 2018

**RE:** **CSI Review – Plant Health: Walnut Twig Beetle Quarantine (OAC 901:5-58-01 through 901:5-58-05)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of five amended<sup>1</sup> rules proposed by the Ohio Department of Agriculture (ODA) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on January 29, 2018 and the public comment period was held open through February 16, 2018. No comments were received during this time.

The rules establish quarantine against the Walnut Twig Beetle (WTB) and the associated disease known as the thousand cankers disease. ODA established the quarantine to prevent the WTB from spreading in the state of Ohio in order to protect the state's forest, timber, and wildlife populations.

As part of the early stakeholder outreach process, ODA distributed a copy of the draft rules to its

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<sup>1</sup> OAC 901:5-58-01 and 901:5-58-05 are being amended to the extent that the Legislative Service Commission requires the Department to rescind the rules and replace them with new rules of the same rule numbers.

stakeholder list, which included the Ohio Environmental Council, Ohio Farm Bureau, and the Ohio Nursery Landscape Association. Some stakeholders made comments supporting the rules as written and were supportive of maintaining the regulated areas on a county basis rather than statewide. They further noted that doing so helps minimize the impact on stakeholders' ability to conduct business in a greater area while still protecting from the WTB.

No comments were received during the CSI public comment period.

The rules impact any person who produces, transports, or plans to transport walnut nursery stock, walnut logs, green walnut lumber, walnut limbs, roots and branches, and bark from walnut trees along with any firewood and woodchips. Specifically, the rules prohibit individuals from shipping the quarantined articles to and from certain regulated areas, which may cause potential lost profits. ODA contends that the regulatory intent of the rules outweighs any adverse impact because the WTB has the potential to weaken and kill many of Ohio's walnut trees species and could irreparably harm Ohio's forestry and nursery industries. In addition, ODA emphasizes that although minimal adverse impact exists, ODA has created exceptions to the general quarantine and restrictions to help alleviate the adverse impact, and allowed the industry to ship from quarantined areas so long as they meet certain requirements and show ODA that the shipment is free of any WTBs.

### **Recommendation**

For the reasons explained above, this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Agriculture should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.