



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name:

Ohio Department of Natural Resources, Division of Natural Areas & Preserves

Rule Contact Name and Contact Information:

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

Package 196367: No Change – Endangered Plants

Package 197431: No Change – Endangered Plants; Commercial Use

Package 197346: Technical Amendments to Commercial Use of Endangered Plants

Rule Number(s): 1501:17-5-06, 1501:18-1-01, 1501:18-2-01, 1501:18-2-04, 1501:18-2-05

Date of Submission for CSI Review: 6/12/2022

Public Comment Period End Date: 6/26/2023

Rule Type/Number of Rules:

New/ rules

No Change/ 3 rules (FYR? Y)

Amended/ 2 rules (FYR? Y)

Rescinded/ rules (FYR?)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.

Package 196367 (No Change):

- Rule 1501:18-1-01 sets forth definitions for OAC 1501:18-1-02 through 1501:18-2-05;
- Rule 1501:18-2-04 requires any person in possession of a plant listed as endangered or threatened to provide proof that the plants were legally obtained;

Package 197431 (No Change):

- Rule 1501:17-5-06 prohibits commercial activities on nature preserves without prior written permission from the chief of the division;

Package 197346:

- Rule 1501:18-2-01 prohibits taking or possessing any threatened or endangered plant for commercial purposes; The amendment removes one occurrence of the word “shall” from the first paragraph.
- Rule 1501:18-2-05 describes legal and appropriate possession of threatened or endangered plants by commercial operations licensed under ORC Chapter 927; The

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amendments remove two occurrences of the word “shall” and one occurrence of the word “prohibit”.

1. **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 1518.03

2. **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 to both questions.

3. **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.**

N/A.

4. **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)?**

Regulation is necessary to protect rare plants from exploitation and possible eventual extirpation.

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

It will be measured by monitoring populations and reviewing native plant nursery inventories.

6. **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.

N/A

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 list of stakeholders were e-mailed a letter on May 8, 2023, requesting review and comment to be sent to the Division by May 22, 2023 regarding the two rules with proposed amendments as well as the three no-change rules:

- Acorn Farms
- Avonlea Gardens & Inn

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- Bean Native Nursery & Consulting
- Beck's Greenhouse
- Bowyer Farm- Cincinnati Zoo & Botanical Garden
- Brotzman's Nursery, Inc
- Camel Creek Natives
- Genius Loci, Inc
- Nightcrawler Gardens
- Puritas Nursery & Garden Center
- Deeply Rooted Landscapes
- Deeter Nurseries, Inc
- Down Nature's Path LLC
- Riverside Native Trees and Shrubs
- Suncrest Gardens
- Five Springs Farm Nursery
- Scioto Gardens Nursery
- Natives in Harmony
- North Branch Nursery, Inc.
- Meadow City Native Plant Nursery
- Holden Arboretum
- Indigenous Landscapes
- City Folks Farm Shop
- Envirotech Consultants, Inc
- Growing Solutions Garden Center
- OPN Seeds
- Stanley M. Rowe Arboretum
- The Common Milkweed Wildflower Farm
- Plant it Native
- Alta Florist and Greenhouse
- Klyn Nurseries, Inc
- Lagergren Nursery
- Siebenthaler's
- Leaves for Wildlife
- Graf's Growers
- Lake County Nursery
- Meadow Environments LLC
- Native Landscaping and Consulting, LLC
- Native Ohio Plants
- Keystone Flora
- Nodding Onion Gardens, LLC
- Native Roots Sustainable Landscape + Tree Care
- United Plant Savers
- Darby Creek Fields and Flowers

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- Integration Acres Ltd.
- Holscher Hackman Landscaping
- Poppin Up Natives
- Porterbrook Native Plants
- Powell's Native Wildflowers
- Pollinator Plants and Design
- Pike County Farm
- Toledo Zoo
- Companion Plants, Inc.
- Millcreek Gardens
- Walnut Creek Seeds
- Willoway Nurseries, Inc.
- Bluestone Perennials
- Biodiversity Landscape Design & Nursery Sales, Inc.
- Native Roots, Inc.
- Star Farms Native Plants
- Sunny Glen Garden
- Tadmor Greenes
- Quail Ridge Specimen Trees
- The Milkweed Patch LLC
- Lily of the Valley Herb Farm
- Wild Birds Unlimited Riverside
- Working Gardens

Additionally, the following list of stakeholders were sent a letter on via U.S. Mail on May 8, 2023, requesting review and comment to be sent to the Division by May 22, 2023 regarding the two rules with proposed amendments as well as the three no-change rules:

- Aullwood Audubon
- Baker's Acres Greenhouse
- Bensell Greenhouse
- Bostdorff Greenhouse
- Bremec Garden Center
- Cahoon Nursery
- Cincinnati Nature Center
- Civic Garden Center
- Dayton Nurseries
- Dolders Nursery
- Friendly Gardens
- Frostville Farmer's Market
- Glenwood Gardens
- Grandma's Garden
- Greenfield Plant Farm
- Herman Losely & Son, Inc

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- Land Reformers
- Maple Ridge Nursery
- Natorp's Nursery Outlet & Landscaping
- Oakland Nurseries
- Perennials Preferred
- Pipkin's
- Scarff's Nursery, Inc
- Shaker Trace Seed Nursery
- Strader's Garden Center
- Wild Hare Prairie Native Nursery
- Wilderness Center
- Wooten's Nursery, Landscaping and Design

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

A question on rule 1501:18-2-01 was received from one stakeholder asking for clarification that the proposed revision would not impact current business operations where seeds from threatened or endangered plants are collected from plants grown on the property of the business. Because there was no impact to the business, no revisions were made to the proposal.

No comments were received on the “no-change” rules.

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 status of rare plants is based on vetted data from reliable sources stored in the Ohio Natural Heritage Database administered by the Ohio Department of Natural Resources.

These rules were developed in the 1970s and have not been revised since their inception.

The rare plant list is revised every biennial and there is a meeting for public comment on the proposed changes to the list.

Because the proposed amendments do not impact the operation of the rules, no specific research was conducted in preparation for these rule packages.

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? *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.*

Permits can be acquired from the Division for the collecting and handling of state listed plants. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

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11. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

We have reviewed all state and federal regulations to confirm no duplication.

No other state agency has the authority to adopt regulations addressing permit application / issuance process for the collection or use of endangered or threatened plants.

12. 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 division will inform interested parties of the rules regulating state listed plants through public conferences, website, and stakeholder meetings.

Adverse Impact to Business

13. 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
- 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.

(a) These rules can impact the nursery industry, specifically native plant nurseries, by restricting the collection of wild native plants. The native plant market is a very small market with only a handful of growers. ODNR stays connected with all known native plant growers that may have an interest in growing state listed plants.

(b) There can be a fine for illegally collecting and handling of state listed plant material from the wild in Ohio.

14. 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

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

Regulation is necessary to protect rare plants from exploitation and possible eventual extirpation. Permits can be acquired from the Division for the collecting and handling of

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state listed plants from the wild. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

Regulatory Flexibility

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

Permits can be acquired from the Division for the collecting and handling of state listed plants. Also, 1501:18-2-05 provides exceptions to the regulatory rules.

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?

ODNR would evaluate such a violation on a case-by-case basis with the assistance of counsel.

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

The ODNR website has information on the rare plants program, compliance guidelines, and lists contact information for dedicated staff around the state who can provide regional assistance to businesses.