



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Brian Becker, Ohio Department of Natural Resources, Division of Natural Areas and Preserves

FROM: Caleb White, Business Advocate

DATE: July 14, 2023

RE: **CSI Review – No Change - Endangered Plants, No Change - Endangered Plants; Commercial Use, and Technical Amendments to Commercial Use of Endangered Plants (OAC 1501:17-5-06, 1501:18-1-01, 1501:18-2-01, 1501:18-2-04, and 1501:18-2-05)**

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules and three no change rules proposed by the Ohio Department of Natural Resources, Division of Natural Areas and Preserves (Division) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 12, 2023, and the public comment period was held open through June 26, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 12, 2023.

Ohio Administrative Code (OAC) 1501:17-5-06 prohibits commercial activity on nature preserve or natural area without the written permission of the chief of the Division. OAC 1501:18-1-01 provides the definitions for OAC 1501:18-1-01 through 1501:18-2-05. OAC 1501:18-2-01 prohibits the taking of any endangered or threatened plant species from its native habitat for commercial purposes. This rule is amended to streamline language. OAC 1501:18-1-04 requires any person in legal possession of an endangered or threatened plant to provide proof upon demand that the plant was legally

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obtained. OAC 1501:18-1-05 provides exceptions to the prohibition on the possession or removal of endangered or threatened plant species and allows for endangered or threatened plant species to be used commercially or disposed of when the plants have either been grown by a licensed nursery or legally imported. This rule also allows for the disposal or removal of endangered or threatened plants when they are on the individual's property or if the individual has written permission from the owner of the property. This rule is amended to streamline its language.

During early stakeholder outreach, the Division sent the proposed rules to 67 industry stakeholders through email and an additional 28 industry stakeholders were sent the proposed rules through email and requested feedback from both groups. The Division received one comment asking for clarification that the proposed revision to OAC 1501:18-2-01 would not impact the businesses that grow endangered or threatened species of plants from seeds collected from plants grown on the property of the business. The Division clarified that the changes to this rule would not impact this practice. No comments were received during the CSI public comment period.

The business community impacted by the rules includes those in the nursery industry, specifically native plant nurseries. The adverse impact to business includes restricting the collection of wild native plants and the possibility of a fine for the illegal collection and handling of wild native plants. The Division also notes that the native plant market is a small market with only a handful of growers and that the Division stays connected with all known native plant growers that may have an interest in growing threatened or endangered plant species. The Division states that the adverse impacts created by the rules are necessary to protect rare plants from exploitation and expiration.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Division should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.