



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## MEMORANDUM

**TO:** Renee Schmauch, Ohio Department of Agriculture

**FROM:** Michael Bender, Business Advocate

**DATE:** December 20, 2023

**RE:** **CSI Review – Plant Health Chapter 58 Box Tree Moth (OAC 901:5-58-01, 901:5-58-02, 901:5-58-03, 901:5-58-04, and 901:5-58-05)**

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 five new rules proposed by the Ohio Department of Agriculture (Department). This rule package was submitted to the CSI Office on November 7, 2023, and the public comment period was held open through November 30, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 7, 2023.

Ohio Administrative Code (OAC) 901:5-58-01 establishes a notice of quarantine declaring the insect *Cydalima perspectalis*, also known as the box tree moth or the plant pest, to be destructive and dangerously harmful pest and prohibits regulated articles from being transported from a regulated area into a non-regulated area in the state of Ohio. OAC 901:5-58-02 lists definitions pertaining to box tree moth infestations. OAC 901:5-58-03 describes what qualifies as a regulated article that is reasonably believed to be infested or susceptible to infestation by the box tree moth. OAC 901:5-58-04 identifies regulated areas where a box tree moth infestation is known to exist at a level which poses a risk of spreading to non-infested areas of Ohio and other states. OAC 901:5-58-05 allows for

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the movement of regulated articles under certain conditions.

During early stakeholder outreach, the Department contacted stakeholders via email on September 13, 2023, to solicit comments on the proposed rules through September 27, 2023. One stakeholder requested clarification on the conditions of movement, specifically when a truck delivering products would be allowed to make stops in a regulated area and an area outside of the regulated area. The Department added language to the rules to clarify the specific conditions in which a truck delivering products would be allowed to make stops in and outside a regulated area. No comments were received during the CSI public comment period.

The business community impacted by the rules includes any person who produces, transports, or plans to transport any regulated articles, namely licensed nursery stock producers and dealers. The adverse impacts created by the rules include the potential loss of profits due to the prohibition and restriction on the movement of regulated articles from a regulated area into a non-regulated area. The Department notes that adopting rules that mirror federal quarantine areas will prevent the subjection of Ohio to a full-state quarantine, which would have a greater regulatory burden on the business community. The Department states that the adverse impacts to business are justified to prevent the artificial spread of the plant pest and maintain a vital industry in Ohio.

### **Recommendations**

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

### **Conclusion**

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