



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-321
<b>Regulation title</b>	Regulation of the Harvest of Ginseng
<b>Action title</b>	Proposal to establish regulations for the harvest and sale of American ginseng plants and parts
<b>Date this document prepared</b>	April 15, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The proposed action seeks to establish regulations for the harvest and sale of American ginseng plants and parts by (i) allowing only the harvest of wild ginseng that is five years of age or older; (ii) establishing an annual harvest season from September 1 to December 31; (iii) requiring harvesters to plant ginseng fruit near the harvested plant; and (iv) establishing a ginseng selling season of September 1 to March 31 for green ginseng, and September 15 to March 31 for dry ginseng. This action is necessary to ensure the long-term survival of American ginseng in the Commonwealth and its continued viability as a profitable export.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The Virginia Department of Agriculture and Consumer Services (VDACS) administers the provisions of the Endangered Plant and Insect Species Act (Act), § 3.2-1000 et seq., Code of Virginia (Code). § 3.2-1002(A) of the Code authorizes the Board of Agriculture and Consumer Services (Board) to adopt regulations including the listing of threatened or endangered plant and insect species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, or protecting. This authority is discretionary.

§ 3.2-1007 of the Code provides that (i) the indigenous plant *Panax quinquefolius* L., commonly referred to as ginseng, is declared a threatened plant species when it occurs in the wild; (ii) persons buying or accepting wild ginseng or parts thereof for resale are required to be licensed by the Commissioner of VDACS and to acquire wild ginseng or parts thereof only in accordance with the provisions of the Act and related regulations; (iii) the wild ginseng harvest season shall be set by the Board of Agriculture and Consumer Services; and (iv) the taking of wild ginseng by any person, other than from his own land, outside of the harvest season, constitutes a violation of the Act.

§ 3.2-1008 of the Code requires persons wishing to export any quantity of ginseng out of the Commonwealth, whether wild or artificially propagated, to obtain an export certificate from VDACS. To obtain the export certificate, individuals must keep accurate records of the year of harvest and county of origin of the ginseng. In the case of dealers, they must keep accurate records of purchases, quantity purchased, whether the ginseng was wild or cultivated, county of origin, and the name of the seller. The records must be made available to the Commissioner of VDACS for inspection.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

In September 2010, the U.S. Fish and Wildlife Service (USFWS) notified VDACS that current practices governing the harvest and sale of ginseng in Virginia were inadequate to ensure the continued survival of the species. USFWS encouraged VDACS to pursue regulatory changes that would allow USFWS to continue to find that exports of wild American ginseng roots from Virginia are not detrimental to the survival of the species in the wild. If USFWS is unable to continue to make such finding, it may not allow the export of ginseng.

VDACS believes that the establishment of the science-based requirements contemplated in the proposed action will effectively address USFWS concerns regarding the long-term survival of American ginseng in the Commonwealth, while at the same time facilitating the continued commercial trade of this valuable plant export. VDACS is not aware of any potential issues that may need to be addressed as the regulation is developed.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The proposed action seeks to:

- 1) Allow only the harvest of wild ginseng which is five years of age or older.
- 2) Establish an annual harvest season from September 1 - December 31 of each year for wild ginseng.
- 3) Require harvesters to plant ginseng fruit and seeds near the harvested plant from which it was produced.
- 4) Establish a ginseng buying season of September 1 – January 14 for green ginseng and September 15 – March 31 for dry ginseng.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The proposed action is the most practical, science-based approach that will effectively address USFWS concerns regarding the long-term survival of American ginseng in the Commonwealth while at the same time providing for its continued viability as a profitable export. No other viable alternative exists that will accomplish these objectives in a cost-effective manner.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation. Anyone wishing to submit written comments may do so by mail, fax or e-mail to:

Erin Williams, Policy and Planning Coordinator  
Division of Consumer Protection  
Virginia Department of Agriculture and Consumer Services  
P.O. Box 1163  
Richmond, VA, 23218  
Telephone: (804) 786-1308  
Fax: (804) 371-7479

E-mail: Erin.Williams@vdacs.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. No public hearing will be held on this notice.

**Participatory approach**

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency will use the participatory approach in the development of proposed regulations and will seek comments on the intended regulatory action. Proposed requirements for the harvest of ginseng will be developed in consultation with stakeholders.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed action will have a positive impact on the institution of family and family instability by ensuring that the harvest of ginseng continues to be a commercially viable activity for Virginians engaged in this activity. Harvesters dig wild ginseng roots from natural forested habitat. The roots are normally dried and sold to licensed ginseng dealers. Dealers pay harvesters anywhere from \$250 to \$900 per pound for ginseng roots, depending on market conditions. This supplemental cash inflow is particularly beneficial to the residents of the areas where ginseng is harvested, many of whom refer to it as "Christmas money" because of the time of the year when the sales occur. During Fiscal Year 2010, VDACS staff inspected and certified 4,072 pounds of wild ginseng and 116 pounds of artificially propagated ginseng harvested from 39 Virginia counties with an estimated value of \$1,427,500.