



## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-321
<b>Regulation title</b>	Regulation of the Harvest and Purchase of Wild Ginseng
<b>Action title</b>	Proposal to establish regulations for the harvest and purchase of wild American ginseng plants and parts
<b>Date this document prepared</b>	May 23, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The proposed regulation (i) allows only the harvest of wild ginseng that is five years of age or older, (ii) establishes an annual harvest season from September 1 to December 31, (iii) requires harvesters to plant wild ginseng fruit at the harvest site, and (iv) establishes a purchase season of September 1 to January 14 for uncertified green wild ginseng root, and a purchase season of September 15 to March 31 for uncertified dry wild ginseng root.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On May 23, 2013, the Board of Agriculture and Consumer Services (Board) adopted as final 2 VAC 5-321 *et seq.*, *Regulation of the Harvest and Purchase of Wild Ginseng*.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Section 3.2-109 of the Code of Virginia (Code) authorizes the Board to adopt regulations in accordance with Title 3.2 of the Code regarding agriculture, animal care, and food.

The Virginia Department of Agriculture and Consumer Services (VDACS) administers the provisions of the Endangered Plant and Insect Species Act (Act) (Va Code § 3.2-1000 et seq.). Section 3.2-1002(A) of the Code authorizes the 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.

Section 3.2-1007 of the Code declares that *Panax quinquefoliosus* L., commonly referred to as ginseng, is a threatened plant species when it occurs in the wild.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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In September 2010, the United States 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 assist in ensuring the survival of the species in the wild. If USFWS is unable to determine that the harvest of wild ginseng root in Virginia is not detrimental to the survival of the species, USFWS may not continue to allow the export of ginseng from Virginia. Ginseng revenue is often supplemental income for those individuals who harvest wild ginseng.

VDACS believes that the science-based requirements in the regulations will assist in ensuring the long-term survival of wild ginseng in the Commonwealth, while at the same time facilitating the continued commercial trade of this valuable plant export. As these regulations will facilitate the continued commercial trade of wild ginseng, they will, thereby, assist in protecting the welfare of those citizens who rely on ginseng revenue for supplemental income.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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This regulation (i) allows only the harvest of wild ginseng that is five years of age or older, (ii) establishes an annual harvest season from September 1 through December 31 of each year for wild ginseng, (iii) requires harvesters to

plant ginseng fruit at the harvest site, and (iv) establishes, for licensed dealers, a wild ginseng buying season of September 1 through January 14 for uncertified green wild ginseng root and September 15 through March 31 for uncertified dry wild ginseng root.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of the regulation to both the public and the Commonwealth is the long-term survival of wild ginseng.

Additionally, those involved in the harvest and export of wild ginseng will benefit from the continued finding by USFWS that the export of wild ginseng from the Commonwealth is not detrimental to the survival of the species. USFWS has expressed concern that without this regulation, it may not be able to continue to issue a non-detriment finding for the export of ginseng from Virginia, which would result in a prohibition on the export of ginseng from Virginia, and effectively stop the harvest of this plant for commercial purposes. A conservative estimate of the annual value of ginseng exported from Virginia is approximately \$1.5 million.

One of USFWS’s concerns is that year-round harvest is permissible on private property in Virginia. The Endangered Plant and Insect Species Act does not give the Board authority to regulate the activities of a property owner as they relate to endangered plant and insect species on the property owner’s land. In an effort to address USFWS’s concerns, the regulation establishes conditions governing a licensed dealer’s purchase of uncertified wild ginseng. The restriction on the purchase of uncertified wild ginseng will encourage private landowners to delay harvesting ginseng from their land until September, when the ginseng fruit has ripened. This, in turn, will assist in ensuring the survival of the species on private property.

VDACS’s ginseng harvest data from 2000 to 2009 indicates that only approximately 1% of ginseng was sold by property owners prior to the start of the current harvest season (August 15). The change in the harvest season and the implementation of a buying season for licensed dealers will have little effect on landowners or other individuals involved in commercial trade of ginseng.

This regulatory action poses no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
10	Definition of “cultivated” includes a list of examples of	The reference to “pesticides” in the list of examples of standard horticultural	This change does not alter the substance of the

	standard horticultural practices which includes "pesticides".	practices was replaced with "pesticide application".	definition of "cultivated". The change is intended to clarify this definition.
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**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Michael McGuffin, President, American Herbal Products Association	Expressed support for the regulation in its entirety.	The agency appreciates the American Herbal Products Association's support for this regulation.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
N/A	10	N/A	Definitions. This section contains definitions of terms used throughout the regulation. This section is intended to clarify the meaning of terms used throughout the regulation.
N/A	20	N/A	Regulated articles. This section establishes that the plant and plant parts of wild ginseng in any life stage are regulated under this chapter, 2VAC5-321. This section is intended to identify the articles to which the provisions of the regulation apply.
N/A	30	N/A	Conditions governing the harvest of wild ginseng. Subsection A establishes a harvest season of September 1 through December 31 for wild ginseng. Subsection B prohibits the harvest of wild ginseng from January 1 through August 31. Subsection C prohibits the harvest of wild ginseng that has not attained a certain age or

			<p>developmental stage.</p> <p>Subsection D requires a person who harvests ginseng to plant the seed of the harvested plant at the harvest site and the time of harvest.</p> <p>This section is intended to assist in ensuring the long-term survival of wild ginseng in Virginia. Subsections A and B are intended to address USFWS’s concern regarding the harvest of wild ginseng too early to allow the ginseng fruit to ripen.</p> <p>Subsection C is intended to address USFWS’s concern regarding the harvest of non-reproductive juvenile wild ginseng.</p> <p>Subsection D is intended to address USFWS’s concern regarding the lack of a requirement to plant the seeds of harvested wild ginseng.</p>
N/A	40	N/A	<p>Conditions governing the purchase of wild ginseng.</p> <p>This section establishes the dates during which a licensed dealer may purchase uncertified green wild ginseng root and uncertified dry wild ginseng root.</p> <p>This section is intended to assist in ensuring the long-term survival of ginseng in Virginia and to address USFWS’s concern that year-round harvest of ginseng is permissible by a landowner on his own property. The Endangered Plant and Insect Species Act does not give the Board authority to regulate the activities of a property owner as they relate to endangered plant and insect species on the property owner’s land.</p> <p>The restriction on the purchase of uncertified wild ginseng will encourage private landowners to delay harvesting ginseng from their land until September, when the ginseng fruit has ripened and licensed dealers are allowed to purchase uncertified wild ginseng root.</p>
N/A	50	N/A	<p>Exceptions.</p> <p>This section acknowledges specific harvesters that are exempt from the provisions of the regulation.</p> <p>This section is intended to alert harvesters to the exceptions provided for in the Endangered Plant and Insect Species Act.</p>