



Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-321
Regulation title	Regulation of the Harvest and Purchase of Wild Ginseng
Action title	Proposal to establish regulations for the harvest and purchase of wild American ginseng plants and parts
Date this document prepared	June 13, 2012

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

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 September 15 to March 31 for uncertified dry wild ginseng root.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Board" means the Board of Agriculture and Consumer Services.

"Licensed dealer" means a person licensed by VDACS pursuant to § 3.2-1007 of the Code of Virginia to buy or otherwise accept wild ginseng or parts thereof for resale.

“Uncertified wild ginseng” means wild ginseng for which VDACS has not issued a Ginseng Inspection Certificate.

“USFWS” means the United States Fish and Wildlife Service.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

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.

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.

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 quinquefolius* L., commonly referred to as ginseng, is a threatened plant species when it occurs in the wild.

On May 24, 2012, the Board proposed 2 VAC 5-321, *Regulation of the Harvest and Purchase of Wild Ginseng*.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

In September 2010, 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 proposed regulation 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 briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of the proposed 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 proposed 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.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty designed to regulate international trade in certain animal and plant species to ensure that such trade does not threaten the species' survival. American ginseng is included in this treaty and its trade is permitted as long as the trade is biologically sustainable and legal. Under CITES, USFWS's Division of Scientific Authority determines whether export will be detrimental to the survival of the species.

The proposed regulations are not more restrictive than the Division of Scientific Authority's current requirements for the export of wild ginseng.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will bear a disproportionate material impact due to the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax 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 midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>No additional cost is anticipated for the enforcement of the proposed regulation. Cost for enforcement of the Endangered Plant and Insect Species Act and the proposed regulation is an on-going expenditure paid through General Fund appropriations.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Localities will not incur any costs related to the proposed regulation.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Ginseng harvesters and licensed dealers will be affected by the proposed regulation.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>VDACS does not have reliable data on the number of individuals who harvest ginseng because the agency does not currently regulate ginseng harvesters. Currently, approximately 50 entities are licensed as ginseng dealers for CY2012. All licensed ginseng dealers are believed to be small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The proposed regulation is not anticipated to increase costs to individuals or businesses. The proposed regulation does not impose new reporting or recordkeeping requirements. There are no anticipated costs to commercial or residential real estate development.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed regulation will assist in ensuring the long-term survival of wild ginseng in the Commonwealth. Additionally, the regulation will address USFWS’s concerns regarding the Commonwealth’s current ginseng program and will allow USFWS to continue</p>

	<p>finding that the export of wild ginseng from the Commonwealth is not detrimental to the survival of the species. USFWS has expressed concern that without these regulations, it may not be able to continue to issue a non-detriment finding for the export of wild ginseng from Virginia, which would result in a prohibition on the export of wild ginseng from Virginia, and effectively stop the harvest of this plant for commercial purposes. The annual export of wild ginseng in Virginia over the last 10 years is approximately 3,400 pounds at an average value of \$425 per pound. A conservative estimate of the annual value of wild ginseng exported from Virginia is approximately \$1.5 million.</p>
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The proposed action is the most practical, science-based approach that will effectively address USFWS’s concerns regarding the long-term survival of wild 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.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulation establishes the minimum harvesting requirements that will assist in ensuring the long-term survival of wild ginseng and will effectively address USFWS’s concerns with the current ginseng management program in Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

VDACS did not receive any comments during public comment period following the publication of the Notice of Intended Regulatory Action.

Family impact

Please assess the 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.

The proposed regulation will have a positive impact on the institution of family and family stability in that it will ensure that the harvest of ginseng continues to be a commercially viable activity for those Virginians who harvest and sell ginseng. Ginseng revenue is often supplemental income for those individuals who harvest wild ginseng.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Declaration of regulation. This section declares the purpose of the regulation.	N/A	This section is a declaration and does not contain any requirements.
20	Definitions. This section contains definitions of terms used throughout the regulation.	The definition for “dealer” references Va Code § 3.2-1007 which establishes the licensing requirements for ginseng dealers. The definition for “person” references Va Code § 1-230.	This section is intended to clarify the meaning of terms used throughout the regulation.
30	Regulated articles. This section establishes that the plant and plant parts of	N/A	This section is intended to identify the articles to which the provisions of the regulation apply.

	wild ginseng in any life stage are regulated under this chapter, 2VAC5-321.		
40	<p>Conditions governing the harvest of wild ginseng. Subsection A establishes a harvest season of September 1 through December 31 for wild ginseng.</p> <p>Subsection B prohibits the harvest of wild ginseng from January 1 through August 31.</p> <p>Subsection C prohibits the harvest of wild ginseng that has not attained a certain age or 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>	N/A	<p>This section is intended to assist in ensuring the long-term survival of wild ginseng in Virginia.</p> <p>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>
50	<p>Conditions governing the purchase of wild ginseng. This section establishes the dates during which a licensed dealer may purchase uncertified green wild ginseng root and uncertified dry wild ginseng root.</p>	N/A	<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.</p> <p>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>
60	<p>Exceptions. This section acknowledges specific harvesters that are exempt from the provisions of the regulation.</p>	<p>Pursuant to Va Code § 3.2-1003, the provisions of this chapter do not apply to a person harvesting wild ginseng from his own land.</p> <p>Pursuant to Va Code § 3.2-1007, the provisions of this chapter do not apply to a</p>	<p>This section is intended to alert harvesters to the exceptions provided for in the Endangered Plant and Insect Species Act.</p>

		<p>person harvesting wild ginseng from his own land. The provisions of this chapter do not apply to any person harvesting wild ginseng in accordance with a permit issued pursuant to Va Code § 3.2-1004.</p>	
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