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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

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
Date	December 5, 2017

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board and authorizes it to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

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

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The primary advantage of 2 VAC 5-321 to both the public and the Commonwealth is the long-term survival of wild ginseng. In 2010, the U.S. Fish and Wildlife Service (USFWS), a partner in the protection of ginseng and other endangered species, advised the agency that, if USFWS was 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. This regulation provides the most practical, science-based approach that effectively addresses the concerns of USFWS 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. The agency has determined that these requirements are not unnecessarily burdensome and provide an important means of protection for this threatened species.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received during the public comment period that followed the publication of the Notice of Periodic Review on October 2, 2017. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary to ensure that current practices governing the harvest and sale of ginseng in Virginia are adequate to protect the continued survival of the species with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. It is clearly written and easily understandable.

This regulation (i) establishes an annual harvest season from September 1 through December 31 of each year for wild ginseng, (ii) allows only the harvest of wild ginseng that is five years of age or older, (iii) requires harvesters to plant the seeds of the harvested plant at the harvest site at the time of harvest 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. Without this regulation, over harvesting could occur, which would greatly decrease the amount of ginseng available for harvest in Virginia each year. Ginseng provides a source of income for

ginseng harvesters, dealers, and exporters and, as such, this regulation assists in protecting the economic welfare of this industry in Virginia.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The primary advantage of 2 VAC 5-321 to both the public and the Commonwealth is the long-term survival of wild ginseng, thereby ensuring a source of income for harvesters. The agency recommends that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The provisions of this regulation ensure the long-term survival and sustainability of ginseng in the Commonwealth. The Endangered Plant and Insect Species Act requires that individuals or companies purchasing ginseng in Virginia for the purpose of reselling must first obtain a Ginseng License from VDACS. The cost of this license is \$10. Currently, there are 83 entities licensed as ginseng dealers. The requirements of this regulation have addressed USFWS concerns that export of ginseng to other countries may be detrimental to the continued survivability of ginseng, thus allowing for the continued export of wild ginseng from Virginia to other countries. The prohibition of this export activity would have a significant impact on ginseng dealers and exporters. It is estimated that the annual value of wild ginseng exported from Virginia is approximately \$1.5 million.

The agency has not received any complaints or comments from these licensees, the public, or small businesses concerning any negative economic impacts as a result of this regulation. This regulation does not duplicate or conflict with any federal or state law or regulation. The agency determined that no changes have occurred since this regulation became effective in August 2013 that necessitate amending the regulation.