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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-321
VAC Chapter title(s)	Regulation of the Harvest and Purchase of Wild Ginseng
Date this document prepared	October 3, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Threatened species" means any species determined by the Board to be likely to become an endangered species within the foreseeable future throughout all or a significant portion of its native range.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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.

Section 3.2-1002 of the Endangered Plant and Insect Species Act (Act) (Va. Code § 3.2-1000 et seq.) authorizes the Board to adopt regulations including the listing of threatened or endangered plant or insect species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, or protecting.

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

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

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

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. 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 August 15, 2022. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) 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.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The agency has determined that this regulation should remain in effect without change because it assists in ensuring the long-term survival of wild ginseng, thereby ensuring a source of income for harvesters.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will 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 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 70 entities licensed as ginseng dealers in Virginia. 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 can be variable based on the market value. The value of wild ginseng exported from Virginia in 2021 was approximately \$425,000.

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 the last periodic review in 2017 that necessitate amending the regulation.
