

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODNR-Division of Wildlife

Regulation/Package Title: Ginseng registration permit; dealer record requirements

Rule Number(s): 1501:31-40-02

Date: May 20, 2016

Rule Type:

- New
 Amended

- 5 -Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

This rule establishes a registration permit for dealers and buyers, establishes a certification process for harvested ginseng, identifies the difference between cultivated and wild ginseng, requires accurate record keeping for ginseng harvest and sales, requires distribution of education materials and establishes penalties for failure to comply with the rules.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 1533.88

3. **Does the regulation implement a federal requirement?** *Yes*

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

American ginseng is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In order for Ohio to participate in the ginseng export program, regulations must exist and be enforced.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This rule meets but does not exceed federal requirements.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Ginseng is a slow growing perennial herb that is highly valued in the U.S. and worldwide for its alleged medicinal traits. Because of its value and significant harvest pressure, regulations on both harvest and export are necessary to ensure survival of the species. The export of ginseng from the State of Ohio is regulated under the Convention on International Trade in Endangered Species (CITES) administered by the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Record keeping is a requirement for ginseng harvesters and dealers. The Division compiles data collected during the harvest season to report to the USFWS who then evaluates the information to determine if the current harvest rate can be maintained without depleting the population. If the USFWS provides a “non-detriment” finding, Ohio may continue to offer a harvest season. The overall harvest number and total number of roots per pound provide valuable insight into the health of the population.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

The Division invited stakeholders to meetings on 10/28/2014 and 3/7/2015. Stakeholders included ginseng growers, diggers and buyers

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Input provided by stakeholders focused on ORC changes that are not proposed at this time.

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- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No additional scientific data were used, as no changes are proposed.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Not applicable (no changes proposed).

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

Not applicable (no changes proposed).

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The ODNR Division of Wildlife is the sole agency with authority under the ORC to regulate the Ohio ginseng management program. The other laws and rules under the authority of the ODNR Division of Wildlife were reviewed to avoid conflict.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

No new or changed implementation plan is needed as the rule has been in place since 2008.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**

There are approximately 3000-5000 ginseng diggers and 70-80 ginseng dealers. The number of ginseng growers is unknown. These numbers fluctuate with the market.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

This rule establishes a registration permit for dealers and buyers, establishes a certification process for harvested ginseng, identifies the difference between cultivated and wild ginseng, requires accurate record keeping for ginseng harvest and sales, requires distribution of education materials and establishes penalties for failure to comply with the rules. The Division of Wildlife provides all required education materials for distribution. There are no new adverse impacts on the industry as there are no proposed changes to this rule.

- c. Quantify the expected adverse impact from the regulation.**

There is no fee associated with the registration permit however, there is a nominal cost associated with record keeping. The Division provides all educational materials

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as required. There are no new adverse impacts on the industry as there are no proposed changes to this rule.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The regulatory intent justifies the adverse impact to the regulated business community so that Ohio has a sustainable ginseng population for future use.

There are no adverse impacts on the industry as there are no proposed changes to this rule.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions for the existing rules. No changes are proposed.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Enforcement action by law enforcement is reserved for egregious violation and only after consultation with the prosecuting attorney. First time offenders of record keeping requirements will be provided guidance on proper record keeping requirements and warned of the violations.

18. What resources are available to assist small businesses with compliance of the regulation?

Businesses may consult the ODNR Division of Wildlife for guidance by personal contact with the Wildlife Officer assigned to their county of operation, may personally visit or call any one of five district offices, the Lake Erie office or the headquarters. Information is also available on the internet and through email.