

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ODNR-Division of Wildlife

Regulation/Package Title: Ginseng harvest season, reseeding, collection records

Rule Number(s): 1501:31-40-01

Date: 5-25-2018

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☐ Rescinded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 harvest season for wild ginseng; establishes restrictions specific to the size of plants that may be harvested; requires diggers to plant ginseng seeds at the harvest location; requires diggers to maintain accurate records; and requires written landowner permission prior to harvesting on public or private property.

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

O.R.C. 1533.88

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

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.

Not applicable.

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)?

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 (USFWS) and the Ohio Department of Natural Resources. 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.

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 not 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 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?**

These rules changes are consistent with the requirements of O.R.C 1533.88 for the purpose of administering the Ohio ginseng management program as provided for in O.R.C. 1533.87.

- 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?**

There were no alternative regulations considered due to the requirements of the Ohio ginseng management program as provided for in O.R.C. 1533.87 as well as the requirement to compile data collected during the harvest season for reporting to the USFWS.

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

Not applicable. It was felt that performance-based regulations would not achieve the goals of the Ohio ginseng management program.

- 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.**

As provided for in O.R.C 1533.88, the ODNR Division of Wildlife has developed educational materials about ginseng, ginseng regulation, and the Ohio ginseng management program. These publications are widely distributed to dealers or buyers of ginseng, and are available on the ODNR Division of Wildlife website. Law Enforcement staff will be provided training regarding the proposed changes to the rule and will be given clear enforcement direction for enforcement action.

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

Ginseng diggers will be required to carry and exhibit written permission from the landowner while engaging in the harvest of ginseng. Ginseng diggers will be required to maintain records of all ginseng harvested until sold or consumed, record information about the ginseng harvested daily, provide accurate information to ginseng dealers when selling ginseng, and make their records available to enforcement officers at all reasonable times

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

Diggers will need to allow time to record the information and maintain the records for two years from the date of harvest.

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

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 (USFWS) and the Ohio Department of Natural Resources. 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.

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 not continue to offer a harvest season.

Regulatory Flexibility

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

There are no exemptions or alternatives for small businesses.

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.

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

Businesses, diggers, dealers, and growers 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.