



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: ODNR Division of Wildlife

Rule Contact Name and Contact Information: Brian Becker 614-265-6861

Regulation/Package Title (a general description of the rules' substantive content):

Ginseng registration permit; dealer record requirements.

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

Date of Submission for CSI Review: January 7, 2025

Public Comment Period End Date: January 28, 2025

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ 1 rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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

CSIPublicComments@governor.ohio.gov

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

This rule 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.

It is proposed to rescind and replace this rule due to the number of changes. The intent is to update this rule to require identification when selling ginseng, modernize the record-keeping requirements, include gender-neutral language, and allow ginseng registration permit holders to refuse an inspection if the officer does not first obtain a warrant. The new rule would include the following changes:

- *Restructure the law to consolidate language and improve readability.*
- *Remove a redundant requirement to acquire a state dealer registration permit since that is already established in section 1533.881 of the Revised Code.*
- *Update the regulations with gender-neutral language.*
- *Remove the reference to the chief's agent.*
- *Allow for the buyer or dealer to refuse an inspection. If the buyer or dealer refuses to permit the inspection, a wildlife officer or other law enforcement officer may obtain a warrant and proceed with the inspection.*
- *Require a person who acquires ginseng to verify the seller's identity using the seller's state identification card or driver's license.*

- *Require a person who acquires ginseng to make and retain a record of the seller's state identification card or driver's license number.*
- *Require a person who sells ginseng to present their state identification card or driver's license at the time of sale so their information may be recorded.*
- *Specify that records must be true and accurate, legible, and in English.*
- *Require dealers and buyers to submit the required records in the manner and format prescribed by the chief of the Division of Wildlife.*
- *Require dealers and buyers to submit these records daily instead of monthly or quarterly since records reporting will be done online.*
- *Correct typographical errors in the current rule.*

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authorization: 1531.10, 1533.87, 1533.88

Amplifies: 1531.10, 1533.87, 1533.88, 1533.881, 1533.882

4. Does the regulation implement a federal requirement? 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?

Yes. American ginseng is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Ohio must have regulations and enforce them in order to participate in the ginseng export program.

5. If the regulation implements a federal requirement, but 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.

6. 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 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 the species' survival. 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 Division.

7. 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. 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.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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

Approximately 42 permitted ginseng dealers (registration permit holders) were sent a letter by email or by mail on December 6, 2024. The permit holders were provided with the current rule, a draft of the proposed rule, and a summary of the changes the agency was considering. They were asked to provide input by December 31, 2024.

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

The Division received no responses or input for this proposal. Notably, all the active ginseng dealers participated in a pilot program for online record-keeping during the 2024 season prior to proposing this rule change. In addition, they have had the opportunity to work with agency staff in developing the online record system.

- 11. 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 was used in developing this proposal.

- 12. 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?**

The only alternative considered was not to make any changes. It was determined that this was not in the best interest of the agency, the wildlife resource, the industry, or the public. The proposed changes will modernize the rule, require online record-keeping in the manner and format prescribed by the Division, and allow the permit holder to refuse an inspection unless the officer first obtains a warrant. The Division believes that this proposed change safeguards the rights of citizens by adjusting the rule in accordance with evolving case law and legal precedents. The proposal also includes provisions for identifying the seller of ginseng. Reporting accurate harvest information is essential to the regulation of ginseng, which allows Ohio to participate in the export program. Conversely, the illegal harvest and sale of ginseng could threaten Ohio's ginseng industry and export program.

A performance-based regulation is not applicable in this situation.

13. 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.

14. 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.

Division employees will be provided with direction on the rule's application and enforcement. The ginseng dealers participated in a pilot program for online record-keeping and are already familiar with the system.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

This rule impacts approximately 42 ginseng dealers.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

This rule establishes the record-keeping requirements for ginseng harvesters and dealers. Dealers and buyers of ginseng must submit the records to the Division daily through an online record-keeping system. There is a nominal cost associated with record-keeping.

A violation of this rule may result in a conviction of a misdemeanor of the first degree. In addition, the chief may suspend or refuse to issue a dealer permit to any person who fails to comply with ginseng regulations.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify.

The proposed changes will restructure the rule to make it easier to read and understand. The rule will provide for the online submission of records, which may reduce the burden on some ginseng dealers. The rule will also limit nonconsensual inspections of the ginseng and records of ginseng dealers.

17. 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 on the regulated business community so that Ohio can have a sustainable ginseng population for future use, continue to offer a harvest season, and participate in the ginseng export program.

Regulatory Flexibility

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

The proposed changes would allow ginseng dealers and buyers to refuse inspection without being subjected to enforcement action. If officers were to obtain a warrant, they could proceed with the inspection.

19. 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?

The proposed changes limit nonconsensual inspections of the ginseng and the required records of ginseng dealers. The records will now be submitted through an online system. For small businesses, first-time offenders of record-keeping requirements will be provided guidance on proper record-keeping requirements and warned of those violations.

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

Ginseng dealers and buyers may consult the ODNR Division of Wildlife for guidance by contacting the wildlife officer assigned to their county of operation. They may also personally visit or call any one of the five district offices, the Lake Erie office, or the headquarters. Information is also available online and through email.