

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Department of Conservation & Natural Resources

2013 MAY 17 PM 12 56

(2) Agency Number: 7B-6
Identification Number:

IRRC Number: 2991

(3) PA Code Cite: 17 Pa. Code Chapter 45

(4) Short Title: Conservation of Pennsylvania Native Wild Plants

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Rebecca H. Bowen, Chief, Ecological Services, Bureau of Forestry, Department of Conservation and Natural Resources, P. O. Box 8552, Harrisburg, PA 17105-8552; 717-787-3444; FAX 717-772-0271; rebbowen@pa.gov

Secondary Contact: Wendy Carson, Assistant Counsel, Office of Chief Counsel, DCNR, P.O. Box 8767, Harrisburg, PA, 17105; 717-772-4171; FAX 717-705-2830; wecarson@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final rulemaking applies to only one section in Title 17 Pa. Code Chapter 45, namely § 45.69 (relating to vulnerable plant harvest seasons and conditions). In this section, it moves the beginning of the ginseng harvest season from August 1 to September 1. In addition, in describing mature ginseng plants, it corrects the reference to "seeds" by replacing this term with "berries".

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 7 of the Wild Resource Conservation Act, 32 P.S. § 5307, and sections 305 and 313 of the Conservation and Natural Resources Act, 71 P.S. §§ 1340.305 and 1340.313.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there

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any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

There is no federal law, regulation, or court order, but DCNR has been advised by the U.S. Department of Interior's Fish and Wildlife Service (USFWS) that if Pennsylvania's beginning date for the ginseng harvest season is not moved forward soon, the USFWS may be unable to make a finding that export of ginseng from Pennsylvania is "not detrimental" to the survival of the species. The result of an absence of such a finding is that the export of ginseng from Pennsylvania will be banned by the USFWS pursuant to its authority under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Attached is correspondence to this effect from the USFWS (letters of 4/1/11 and 1/26/12).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Moving the beginning date of the ginseng harvest season from August 1 to September 1 is important in order to sustain the populations of ginseng in Pennsylvania by ensuring that the plant is mature before harvesting. It would also bring Pennsylvania in line with the other ginseng exporting states, thereby discouraging poaching across state borders. The most immediate reason for the regulation is to comply with the USFWS's advice and thereby avoid a ban of ginseng exports from Pennsylvania (see #9).

Replacing the term "seeds" with "berries" in the ginseng harvest provisions is needed to correct the description of mature ginseng plants. When the berries of mature ginseng plants are red, the seeds inside the berries are mature and thus ready for planting. This correction is important to ensure ginseng harvesters understand the harvest requirements. The number of harvesters in Pennsylvania varies each year and could range from 100 to 1,000.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no such provisions.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This rulemaking will align Pennsylvania's ginseng harvest season with that of other ginseng-exporting states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This rulemaking will not affect any other regulations of DCNR or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Note concerning small businesses: The ginseng industry in Pennsylvania consists of harvesters and dealers. The vast majority of the businesses are one-person operations. A few may have as many as five workers. Therefore, the ginseng industry consists solely of small businesses as defined in the Regulatory Review Act, as amended.

DCNR advised its Ecosystem Management Advisory Council (EMAC) at EMAC's October 14, 2009 meeting of its intent to promulgate this rulemaking. The Council expressed no comments or concerns.

DCNR held five meetings (March and October 2005, April and July 2006, and July 2011) with ginseng growers, dealers, and law enforcement officers to discuss ginseng management in general as well as this rulemaking to change the beginning of harvest season to September. No concerns were expressed concerning this change.

DCNR has sent ginseng harvesters and dealers letters apprising them of the proposed changes to Chapter 45.

DCNR has met with representatives of the USFWS several times to discuss DCNR regulations and USFWS requirements under CITES.

DCNR has solicited feedback on the proposed changes to Chapter 45 from: The Pennsylvania Biological Survey's Vascular Plant Technical Committee (which includes representatives of the Allegheny National Forest, Western Pennsylvania Conservancy, universities, conservancies, and consultants) and the Pennsylvania Game Commission.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Note concerning small businesses: The ginseng industry in Pennsylvania consists of harvesters and dealers. The vast majority of the businesses are one-person operations. A few may have as many as five workers. Therefore, the ginseng industry consists solely of small businesses as defined in the Regulatory Review Act, as amended.

This final rulemaking changes the beginning of the harvest period for ginseng from August 1 to September 1 and, accordingly, extends the prohibition against the possession of harvested, green ginseng from August 1 to September 1. Persons who are required to comply with this provision are ginseng harvesters and dealers. The number of harvesters in Pennsylvania varies each year and could range from 100 to 500 (DCNR does not have exact statistics because it does not deal directly with harvesters). In

2011, there were 26 dealers in Pennsylvania who were licensed to export ginseng.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Note concerning small businesses: The ginseng industry in Pennsylvania consists of harvesters and dealers. The vast majority of the businesses are one-person operations. A few may have as many as five workers. Therefore, the ginseng industry consists solely of small businesses as defined in the Regulatory Review Act, as amended.

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(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Note concerning small businesses: The ginseng industry in Pennsylvania consists of harvesters and dealers. The vast majority of the businesses are one-person operations. A few may have as many as five workers. Therefore, the ginseng industry consists solely of small businesses as defined in the Regulatory Review Act, as amended.

DCNR does not anticipate that anyone will be adversely affected. Because a later harvest season will promote the sustainability of the ginseng population, it will benefit the ginseng industry.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Not applicable (no costs or adverse effects).

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No anticipated costs and/or savings to the regulated community associated with this rulemaking.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No anticipated costs and/or savings to local governments associated with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may

be required. Explain how the dollar estimates were derived.

No anticipated costs and/or savings to state government associated with this rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There will be no additional procedures, forms, or reports.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Not applicable.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Note concerning small businesses: The ginseng industry in Pennsylvania consists of harvesters and dealers. The vast majority of the businesses are one-person operations. A few may have as many as five workers. Therefore, the ginseng industry consists solely of small businesses as defined in the Regulatory Review Act, as amended.

No adverse impact.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Not applicable.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Not applicable.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No adverse impact.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

United States Fish and Wildlife Service memorandum, 9/7/12, entitled, “Advice for the export of roots of wild and wild-simulated American ginseng (*Panax quinquefolius*) lawfully harvested during the 2012 harvest season in 19 States.”

http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_20026618.pdf

This memorandum explains the significance of and basis for ginseng harvest season dates and refers to its efforts to work with Pennsylvania to move its ginseng harvest date from August 1st to September 1st (see item #27 in the memorandum).

Attached are United States Fish and Wildlife Service letters to DCNR, dated 4/1/11 and 1/26/12, supporting the harvest date change to September 1

“Berry Ripening and Harvest Season in Wild American Ginseng,” by James B. McGraw, et al.

Discusses berry ripening and harvest seasons for ginseng. This study concludes that an August 1st harvest date is too early and suggests that a later harvest date of September 1 would be beneficial to the conservation of this species. None of the other ginseng-exporting states has a harvest date as early as August 1 and almost all of them have harvest seasons beginning September 1st.

<http://www.wildginsengconservation.com/Ginseng%20Pubs/McGraw2005.BerryRipening.pdf>

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: July 2013.
- D. The expected effective date of the final-form regulation: July 2013.
- E. The date by which compliance with the final-form regulation will be required: July 2013.
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Chapter 45 will be reviewed annually.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



APR 1 2011

Daniel A. Delvin
State Forester, Bureau of Forestry
Department of Conservation and
Natural Resources
400 Market Street
Harrisburg, Pennsylvania 17105-8552

Dear Mr. Delvin:

We appreciate your Department keeping us informed regarding the proposed changes to Pennsylvania's regulations for American ginseng (*Panax quinquefolius*). As you know, the U.S. Fish and Wildlife Service (Service) Division of Scientific Authority must be able to find that exports of American ginseng will not be detrimental to the survival of the species in the wild for export permits to be issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Therefore, we have a strong interest in activities that benefit the conservation of the species.

We support the proposed change to the harvest season start date from August 1 to September 1, and the requirement that fruits of harvested plants must be mature and completely red in color. These changes are important to the long-term conservation and sustainability of ginseng populations in Pennsylvania and as such, they are important to our continuing ability to find that the export of American ginseng roots harvested in Pennsylvania is not detrimental to the survival of the species. We encourage Pennsylvania to implement these changes in time for the 2011 harvest season, if possible.

We thank you for working in partnership with us on a conservation issue of mutual interest. Please keep us apprised of your progress to revise the regulations for American ginseng. If we can be of assistance, please do not hesitate to contact Pat Ford, Division of Scientific Authority (telephone: 703-358-2494; patricia_ford@fws.gov).

Sincerely,

Rosemarie S. Gnam, Ph.D.
Chief, Division of Scientific Authority

cc: Chris Firestone, DCNR
Roy Brubaker, DCNR



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



JAN 26 2012

Daniel A. Delvin
State Forester, Bureau of Forestry
Department of Conservation and
Natural Resources
P.O. Box 8552
Harrisburg, Pennsylvania 17105-8552

Dear Mr. Delvin:

We are contacting you in response to the proposed revisions to Pennsylvania's regulations for American ginseng (*Panax quinquefolius*). As you know, I met with you and your staff in May of 2010 to discuss the proposed harvest regulations, and in April 2011, I sent you a letter in support of the work in progress on revising the harvest regulations. However, my understanding is that these regulations still have not been finalized. If this is the case, it is of concern to us.

As a reminder, the U.S. Fish and Wildlife Service Division of Scientific Authority must be able to find that the exports of American ginseng will not be detrimental to the survival of the species in the wild for export permits issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). For the 2011 harvest season, we made our finding specific for roots harvested during that harvest season with future findings dependent on certain States, including Pennsylvania, amending their harvest season start date from August to September, and requiring harvesters to plant red fruits of harvested plants. Without implementation of these management measures, the conservation of the species in Pennsylvania and neighboring States is being undermined. Therefore, we are uncertain if we will be able to find non-detriment for the export of American ginseng harvested during the 2012 harvest season in Pennsylvania. Given our mutual interest in the long-term conservation and sustainability of American ginseng populations in Pennsylvania, we strongly encourage the Department of Conservation and Natural Resources to implement the amended harvest regulations before the 2012 harvest season.

We thank you for working in partnership with us on this important conservation issue. Please keep us apprised of your progress to revise the regulations for American ginseng. If we can be of assistance, please do not hesitate to contact Pat Ford, Division of Scientific Authority (telephone: 703-358-2494; patricia_ford@fws.gov).

Sincerely,

Rosemarie S. Gnam, Ph.D.
Chief, Division of Scientific Authority

cc: Division of Management Authority
Chris Firestone, DCNR
Roy Brubaker, DCNR

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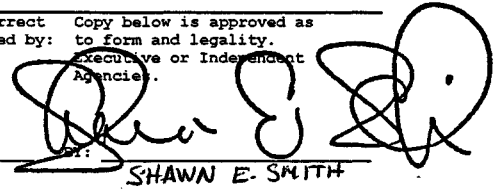
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BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of Conservation and Natural Resources
(AGENCY)


SHAWN E. SMITH

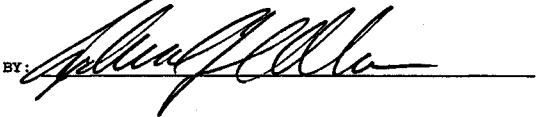
DOCUMENT/FISCAL NOTE NO. 7B-6

MAY 16 2013

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 

Deputy General Counsel
(Chief Counsel,
Independent Agency)
(Strike inapplicable title)

TITLE: Richard J. Allan, Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable.
No Attorney General approval
or objection within 30 days
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA

17 PA. CODE CH. 45
Conservation of Pennsylvania Native Wild Plants

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 45]

Conservation of Pennsylvania Native Wild Plants

The Department of Conservation and Natural Resources (Department) adopts amendments to Chapter 45 (relating to conservation of Pennsylvania Native Wild Plants). The amendments move the beginning of the ginseng harvest season from August 1 to September 1. In addition, in describing mature ginseng plants, the amendments correct the reference to “seeds” by replacing this term with “berries”.

A. *Effective Date*

These amendments will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Rebecca H. Bowen, Chief, Ecological Services Section, Bureau of Forestry, DCNR, P. O. Box 8552, Harrisburg, PA 17105-8552, 717-787-3444.

Persons with a disability may use 1-800-654-5984 (TTY).

This final-form rulemaking is posted on the Department’s website at:
<http://www.dcnr.state.pa.us/forestry/plants/vulnerableplants/ginseng/index.htm>.

C. *Statutory Authority*

This final-form rulemaking is made under the authority of section 7 of the Wild Resource Conservation Act, 32 P.S. § 5307, and sections 305 and 313 of the Conservation and Natural Resources Act, 71 P.S. §§ 1340.305 and 1340.313.

It should be noted that the Wild Resource Conservation Act assigned the Department of Environmental Resources to administer the Act. Subsequently, section 305 (a)(9) of the Conservation and Natural Resources Act, 71 P.S. § 1340.305 (a)(9), transferred this authority to DCNR.

D. *Background and Purpose*

Statutory and regulatory framework

The Wild Resource Conservation Act, the act of June 23, 1982, P.L. 597, No. 170 (32 P.S. §§ 5301-5314) (“Act”) was enacted in 1982 to enhance the protection of native wild

plants and non-game animals in Pennsylvania. Pursuant to the Act, DCNR established a classification system for native wild plants in 17 Pa. Code Chapter 45 (conservation of Pennsylvania native wild plants). The classifications, such as extirpated, endangered, rare, threatened, and vulnerable, are defined in section 45.2 of Chapter 45. The lists of species within each classification are contained in sections 45.11 through 45.21.

Vulnerable plants are defined in section 45.2 of Chapter 45 as plant species “which are in danger of population decline within this Commonwealth because of their beauty, economic value, use as cultivar or other factors which indicate that persons may seek to remove these species from their native habitats.” Ginseng (*Panax quinquefolius*) is one of the three species listed in section 45.15 as vulnerable plants. Ginseng is a forest plant that is native to the eastern half of the United States and Canada. Parts of the ginseng plant, particularly its root, are valued for their therapeutic qualities and have been traded commercially, both domestically and internationally, for centuries.

The Act assigns to DCNR responsibilities relating to the protection and management of native wild plants. With respect to vulnerable plants, section 9 of the Act (32 P.S. § 5309) provides as follows:

§ 5309. Vulnerable species

(a) Species classified as vulnerable shall be subject to the following restrictions:

(1) [DCNR] upon designation of vulnerable species shall establish regulations over the digging, harvesting, sale and exploitation of said species.

(2) The regulations shall:

(i) consider the distribution, abundance, economic value, growing and reproduction cycle;

(ii) establish seasons for the digging and harvesting of plants or plant parts; and

(iii) provide for the commercial licensing of persons who buy with the intent to sell vulnerable plants within the Commonwealth or export said plants therefrom and to require the licensees to maintain records of their transactions.

(3) [DCNR] shall establish the license fee.

Pursuant to its mandate in subsection (a)(1) of 32 P.S. § 5309, DCNR has promulgated regulations “over the digging, harvesting, sale and exploitation” of vulnerable plants. These regulations, at 17 Pa. Code §§ 45.61 through 45.72, require persons who buy, trade,

or barter vulnerable plants with the intent to sell them in, or export them from, Pennsylvania to obtain a commercial license from DCNR. The regulations require licensees to submit to DCNR records of transactions including information about the licensee's purchase of the plants, sale of the plants, county of origin of the plants, form of plants (e.g., whole plant, root, seeds), year of harvest, weight of the plants, destination and date of export, and whether the plants are wild or cultivated.

In addition to covering vulnerable plants in general, DCNR's regulations establish special requirements for ginseng plants. These are a result of an international trade agreement known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (CITES) signed by the United States and many other countries, <http://www.cites.org/> and <http://www.fws.gov/international/plants/american-ginseng.html>, and administered in the United States by the United States Fish and Wildlife Service (USFWS). The relationship between DCNR's ginseng harvesting regulation and CITES is discussed below.

Purposes of this rulemaking

This final-form rulemaking involves only one section of 17 Pa. Code Chapter 45. This section, 45.69 (relating to vulnerable plant harvest seasons and conditions), addresses certain activities relating to the harvest of vulnerable plants in general and ginseng in particular. This section establishes a harvest season for ginseng that runs from August 1 to November 30 and prohibits the possession of harvested green ginseng roots between April 1 and the start of harvest season. The amendments move the start of harvest season forward by one month, to September 1, and, consistent with this change, prohibits possessing harvested green roots between April 1 and September 1. The amendments also correct the terminology in § 45.69 (a)(2) for the ginseng berry, as explained below.

Harvest date

The intent of section 45.69 (a) of Title 17 Pa. Code is to ensure the sustainability of ginseng. It takes a ginseng plant at least five years to mature. Ginseng seeds have the best chance of producing new plants if they come from a mature plant and are planted near the site of the harvested plant. Section 45.69 (a), therefore, allows only mature plants to be harvested and requires that the seeds of these plants be planted in the immediate vicinity of the collection site. To ensure that only mature plants are harvested, section 45.69 (a) puts collectors on notice of the physical characteristics of a mature ginseng plant: it has 1) at least three leaves of five leaflets each and 2) red "seeds" (although, as explained below, the correct term is "berries"). In addition, this section prohibits collection of the plant before the start of the harvest season as defined in the section. Therefore, in order to comply with DCNR's ginseng harvesting requirements, a collector may harvest ginseng plants only if: 1) they have at least three leaves of five leaflets each; 2) they have red seeds (berries); 3) they are collected during harvest season; and 4) their seeds are planted in the immediate vicinity of the collection site.

The purpose of this rulemaking is to move the start date of the ginseng harvest season from August 1 to September 1. There is general agreement within both the scientific community and the ginseng industry that an August 1 start date is too early to ensure that ginseng plants that meet the description of mature plants in terms of their leaves and berries are fully mature and can safely be harvested without threatening the survival of the ginseng population.

The harvesting of ginseng plants in ginseng-exporting states, such as Pennsylvania, is subject to special restrictions imposed by the USFWS. The USFWS's involvement is due to the regulation of the export of ginseng from the United States by CITES. The purpose of CITES is to monitor and regulate the international trade of certain plant and animal species to prevent detrimental impacts to their populations so as to ensure the continued existence of the species in their native habitat. The CITES authority in the United States is the USFWS.

CITES requirements, as administered by the USFWS, for permitting the export of species subject to CITES are codified at 50 CFR Part 23. Section 23.68 contains the specific requirements for the export of ginseng. The USFWS has established an export program for states that export ginseng. Under this program, on an annual basis, before the USFWS will allow export from a state, it must determine that ginseng harvested in that state is legally acquired and that export will not be detrimental to the survival of the species in that state. 50 CFR § 23.68. The USFWS will make a "non-detriment" finding for export of ginseng plants from a state only if it is satisfied that the state has taken measures to ensure the plants were mature when harvested.

<http://www.fws.gov/international/pdf/archive/workshop-american-ginseng-cites-non-detriment-findings.pdf>. The USFWS has determined that the survival of ginseng plant populations could be detrimentally affected if a state allows harvesting to begin as early as August 1. Therefore, the USFWS is urging Pennsylvania (DCNR) to adopt a later harvest season and it is specifically recommending September 1 as the start date. The USFWS has made it clear to DCNR that unless the change in harvest season is adopted soon, the USFWS will be unable to make a "non-detriment" finding under CITES with regard to the harvesting of ginseng in Pennsylvania. (Copies of correspondence from the USFWS are available from the Bureau of Forestry—see section B, above, for contact information.) The absence of a non-detriment finding would mean that the USFWS would cease issuing export permits for ginseng harvested in Pennsylvania. See USFWS 2012 findings report on ginseng here:

http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_20026618.pdf

Adopting the USFWS's recommendation of a September 1 harvest date would bring Pennsylvania in line with nearly all of the ginseng-exporting states surrounding Pennsylvania.

Pennsylvania is the only ginseng-exporting state with a harvest season date as early as August 1. Variations in the yearly growing seasons and growing conditions in different parts of the state could cause ginseng berries to turn red slightly before or slightly after September 1. However, as is recognized by Pennsylvania harvesters, dealers, and

botanical researchers, the clear trend in Pennsylvania and surrounding states is for berries to be red by September 1.

It should be noted that the export of another species of plant classified in 17 Pa. Code Chapter 45 as vulnerable, Golden-Seal (*Hydrastis Canadensis*), is also subject to regulation by CITES as administered by the USFWS. However, unlike ginseng, specific harvest season dates are not required for this species.

Correction of terminology

Section 45.69 (a)(2) of Title 17 Pa. Code states as follows regarding the harvesting of ginseng plants: “Only mature ginseng plants with at least three leaves of five leaflets each may be harvested and only when the *seeds* are red.” Emphasis added.

This rulemaking replaces the word “seeds” in this subsection with the correct term, “berries”. The reason for this amendment is to distinguish between seeds and berries. When a ginseng plant is mature, it has red berries. The red berries contain seeds that are ready to plant.

E. *Summary of Comments and Responses and Changes Made in the Final-Form Rulemaking*

The proposed rulemaking was published in the *Pennsylvania Bulletin* on March 16, 2013, at 43 *Pa.B.* 1419, with a 30-day public comment period. The Department did not make any changes to the proposed regulations, and the one comment received from the public is discussed below.

Comment

“The proposed rulemaking is reasonable and is necessary for this Pennsylvania Vulnerable species to remain part of Pennsylvania’s flora. WPC supports DCNR’s effort to update the ginseng management program with this change.”

Response

DCNR acknowledges the comment and appreciated the support for this rulemaking.

F. *Benefits, Costs and Compliance*

Benefits

The benefit of moving the beginning date of the ginseng harvest season from August 1 to September 1 is to help sustain the populations of ginseng in Pennsylvania by allowing the plants to mature so that when their seeds are planted, new plants will grow and the ginseng population will continue to survive. In addition, it would bring Pennsylvania’s harvest season in line with those of the other ginseng-exporting states, thereby

discouraging poaching across state borders. Finally, and most immediately, it will allow the USFWS, pursuant to CITES, to continue to find that the export of ginseng harvested in Pennsylvania will not be detrimental to the survival of the species and thus avoid a ban on the export of ginseng from Pennsylvania.

The correction of terminology to distinguish between “seed” and “berry” will remove any confusion caused by the current language in the harvesting provisions of § 45.69 and thus support compliance with its provisions.

Compliance Costs

The amendments to Chapter 45 will not impose additional compliance costs on the regulated community.

Compliance Assistance Plan

Not applicable.

Paperwork Requirements

The amendments to Chapter 45 impose no increase in the amount of required paperwork.

G. *Sunset review*

Chapter 45 will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 5, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 *Pa.B.* 1419, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and the Committees were provided with a copy of the only comment received during the public comment period. In preparing these final-form regulations, the Department has considered the one comment received from the public. No comments were received from IRRC or the legislative committees.

Under section 5a(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5a(e) of the Regulatory Review Act (71 P.S. §

745.5a(e)), IRRC met on _____ and approved the final-form regulations.

H. *Order of the Secretary*

Acting under the authorizing statutes, I hereby order that:

- (1) The regulations of the Department of Conservation and Natural Resources, 17 Pa. Code, are amended by amending Chapter 45 to read as set forth in Annex A.
- (2) The Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.
- (3) The Department shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.
- (4) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (5) This order shall take effect immediately.

BY:

Richard J. Allan
Secretary
Department of Conservation and
Natural Resources

**DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES**

[17 PA. CODE CH. 45]

Annex A

TITLE 17. CONSERVATION AND NATURAL RESOURCES

**PART I. DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES**

Subpart D. RESOURCE CONSERVATION

**Chapter 45. CONSERVATION OF PENNSYLVANIA
NATIVE WILD PLANTS**

* * *

Subchapter E. VULNERABLE PLANTS

* * *

§ 45.69. Vulnerable plant harvest seasons and conditions.

(a) A person may not harvest ginseng except in compliance with applicable law, this chapter and the following restrictions:

(1) A person may harvest ginseng plants only from [August] September 1 through November 30.

(2) Only mature ginseng plants with at least three leaves of five leaflets each may be harvested and only when the [seeds] berries are red.

(3) Persons harvesting ginseng plants shall plant the seeds from the plants in the immediate vicinity of the collection site.

(b) A person may not possess harvested, green ginseng roots between April 1 and [August] September 1 of a calendar year.

(c) A person may not harvest Pennsylvania Vulnerable plants other than ginseng except in compliance with applicable law, this chapter and the following restrictions:

(1) A person may harvest the plants only if they are mature and the current year's seeds have matured.

(2) A person harvesting the plants shall plant the seeds from the plants in the immediate vicinity of the collection site.

(3) A person may not harvest the plants in a way that will harm the species' ability to perpetuate itself successfully.

(d) The permitted harvesting of Pennsylvania Vulnerable plants includes picking, taking, digging, disturbing and possessing the plants if the activities are necessary to legally harvest the plants. Possession of legally taken Pennsylvania Vulnerable plants is permitted.

* * *

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
17 Pa. Code Chapter 45 (Conservation of Native Wild Plants)
Final Rulemaking – 7B-6

Names and Addresses of Commenters

During the 30-day public comment period, the Department received one comment on the proposed rulemaking, and the commenter is identified below.

ID	Name/Address	Submitted 1-Page Summary	Provided Testimony	Requested Final Rulemaking
01	Charles W. Bier Senior Director, Conservation Science Western PA Conservancy 800 Waterfront Drive Pittsburgh, PA 15222			

Comment and Response Document

1. *Comment*

“The proposed rulemaking is reasonable and is necessary for this Pennsylvania Vulnerable species to remain part of Pennsylvania’s flora. WPC supports DCNR’s effort to update the ginseng management program with this change.”

Response

DCNR acknowledges the comment and appreciates the support for this rulemaking.



pennsylvania

DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES

May 17, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final-form Regulation
Department of Conservation and Natural Resources
7B-6

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the Department of Conservation and Natural Resources ("DCNR") pertaining to Ginseng harvesting.

DCNR will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

Wendy Carson
Assistant Counsel

Enclosures: Face Sheet
Final Rulemaking, 17 Pa. Code Chapter 45
Conservation of Pennsylvania Native Wild Plants
Regulatory Analysis Form

conserve sustain enjoy



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7B-6
SUBJECT: CONSERVATION OF PENNSYLVANIA NATIVE WILD PLANTS
AGENCY: DEPARTMENT OF CONSERVATION & NATURAL RESOURCES

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2013 MAY 17 PM 12: 56

RECEIVED
HRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
5/17	<u>Dein Airoh</u>	MAJORITY CHAIR <u>Ron Miller</u>
5/17	<u>Jim Koller</u>	MINORITY CHAIR <u>Greg Vitali</u>
		<i>SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
	<u>Patti Cooney</u>	MAJORITY CHAIR <u>Gene Yaw</u>
5/17	<u>Megan Berke</u>	MINORITY CHAIR <u>John Gudichak</u>
5/17/13	<u>K Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>