

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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~~OFFICE WEST VIRGINIA
SECRETARY OF STATE~~

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

CITE AUTHORITY: 19-1A-3a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 22-01

TITLE OF RULE BEING AMENDED: Ginseng

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

TITLE 22
LEGISLATIVE RULE
DIVISION OF FORESTRY

SERIES 1
GINSENG RULE

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§22-1-1. General.

Forestry;

1.1. Scope. -- Legislative rule relating to the digging, possession, and sale of wild ginseng, wild simulated ginseng, woods grown ginseng, or cultivated ginseng.

2.8. "Export" means the movement of ginseng from state to state as well as sending it abroad;

1.2. Authority. -- W. Va. Code §§19-1A-3, 19-1A-4(d).

2.9. "Ginseng" means cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng; whole, sliced or parts of roots of cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas and confectionary;

1.3. Filing Date. -- ~~April 6, 2007.~~

1.4. Effective Date. -- ~~May 1, 2007.~~

§22-1-2. Definitions.

2.1. "Certified" means the ginseng that carries a certificate of origin issued by the Director which allows for the export from West Virginia of legally harvested ginseng legally harvested in this State; from West Virginia;

2.10. "Ginseng bed" means any area of forest that is cultivated, plowed, rototilled, or otherwise has a seedbed prepared for the planting of ginseng seed, roots, or plants;

2.2. "Commercial use" means to sell or to use ginseng for financial gain;

2.11. "Green ginseng" means a fresh wild, wild simulated, or woods grown ginseng root that has not been intentionally subjected to a drying process and from which most natural moisture has not been removed by drying;

2.3. "Cultivated ginseng" means ginseng that is purposefully planted in beds under artificial shade using standard horticultural practices, such as mechanical tillage, fertilization, weed control, irrigation and/or pesticides;

2.12. "Grower" means a person who purposefully plants and grows cultivated ginseng, woods grown ginseng or wild simulated ginseng for purposes of commercial use: Provided, that a grower does not include a digger who plants wild ginseng seed from the wild ginseng plants he or she digs, collects or gathers;

2.4. "Dealer" means a person who purchases ginseng for purposes of commercial use;

2.13. "Harvest" means to dig, collect or gather ginseng;

2.5. "Digger" means a person who digs, collects or gathers wild wild ginseng by searching woodlands to find the plants;

2.14. "Person" means an individual, corporation, partnership, firm or association;

2.6. "Director" means the Director of the Division of Forestry;

2.15. "Rootlets" means cultivated, woods grown or wild simulated one- to two-year-old ginseng roots commonly sold as transplants to

2.7. "Division" means the Division of

growers;

2.16. "Wild ginseng" means *Panax quinquefolius* L. that is not grown or nurtured by a person regardless of the putative origin of the plants: Provided, that wild ginseng may originate from seeds planted by a digger at the same site from which the digger harvests the wild ginseng;

2.17. "Wild simulated ginseng" means ginseng that is purposefully planted in the woods without a bed being prepared and without the use of any chemical weed, disease or pest control agents;

2.18. "Woods grown ginseng" means ginseng that is purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and ~~which~~ that may be grown with the use of chemical or mechanical weed, disease or pest control agents.

§22-1-3. Season.

Dates - The season for harvesting wild, wild simulated or woods grown ginseng in any part of West Virginia ~~begins shall begin~~ on the first day of September and ~~ends end~~ on the 30th day of November of each calendar year. A grower may harvest cultivated ginseng throughout the year.

§22-1-4. Unlawful Acts.

4.1. Possession - It ~~is unlawful shall be illegal~~ for any person to have uncertified wild, woods grown, or wild simulated ginseng (whether green or dry) in his or her possession between April 1 and August 31 of each calendar year. ~~and any~~ Any uncertified wild, wild simulated, or woods grown ginseng unsold by March 31 of the year after harvest must be weighed and have a weight certificate issued at an official Division of Forestry weigh station.

4.2. Certificates - It ~~is unlawful shall be illegal~~ to alter West Virginia Ginseng Export Certificates and Ginseng Weight Receipts.

4.3. Permits - It ~~shall be~~ is unlawful ~~illegal~~

for a person to act as a grower or act as a dealer unless he or she has received a valid permit from the Division of Forestry permitting that ~~sueh~~ activity. If a person is acting in both capacities ~~doing both activities~~, then a permit for each activity is required. ~~Also,~~ A person may shall not rescue wild ginseng without first receiving a permit from the Division of Forestry to rescue wild ginseng plants that are threatened by ground-disturbing activities if ~~sueh~~ the rescue is to be done between April 1 and August 31 each year.

4.4. It is unlawful to harvest wild, wild simulated or woods grown ginseng less than five years of age. A ginseng plant containing three or more prongs ~~is shall be~~ considered to be five years of age.

4.5. It is unlawful to remove wild ginseng seeds from the site of collection, and all seed collected from wild ginseng plants at the time of harvest shall be planted at the site from which the ginseng is harvested.

4.6. It is unlawful to plant ginseng or ginseng seed and to harvest ginseng on West Virginia public lands except for land grant university researchers performing research or demonstration projects regarding the growing, cultivating or harvesting of ginseng. It ~~remains~~ is unlawful for anyone to plant ginseng or ginseng seed and to dig, collect, or gather ginseng on state wildlife management areas or on state parks.

4.7. It is unlawful to harvest wild ginseng from the property of another person without the written permission of the landowner.

§22-1-5. Collector's Responsibilities.

5.1. Permission - Any person collecting wild, ~~native~~ ginseng upon the enclosed or posted lands of another shall first obtain permission in writing from the landowner, tenant or agent of the ~~sueh~~ lands and shall carry the ~~sueh~~ written permission on his or her person when collecting ginseng on those said lands.

5.2. Replanting - Any person collecting wild, ~~native~~ ginseng shall plant the seeds from the plants being collected at the site of the digging.

5.3. Weight receipt - Any person who has wild ginseng which was harvested during the previous harvesting season and not sold before April 1 ~~shall~~ must have the ginseng weight receipted. Weight-receipted ginseng may be kept and sold during ensuing seasons.

§22-1-6. Dealer's Responsibilities.

6.1. Permit - Any person, ~~firm or corporation~~ who buys wild, wild simulated, woods grown or cultivated ginseng in West Virginia shall first obtain a Ginseng Dealer's Permit from the ~~West Virginia Division of Forestry~~. Any person, ~~firm, or corporation~~ that who grows wild simulated, woods grown, or cultivated ginseng and directly exports the such ginseng from the State shall also obtain a Ginseng Dealer's Permit.

6.2. The Division may not certify any ginseng ~~No ginseng will be certified~~ between the first day of January through the 31st day of March unless the person requesting the such certification shows a valid dealer permit.

6.3. Reporting - Authorized ginseng dealers in West Virginia shall report their ginseng commerce to the ~~West Virginia Division of Forestry~~ each every thirty (30) days between September 1 and March 31 and submit a final report prior to April 15 of each calendar year on forms prescribed by the Division. This form shall include the following:

6.3.1. An original dealer's signature is ~~required to legally certify~~ certifying the statements on the form; ~~however, the address is not necessary because such information is on the State's dealer application form.~~

6.3.2. The date of the transaction;

6.3.3. Whether the roots were wild, cultivated, woods grown, or wild simulated;

6.3.4. Whether the roots were dried or green (fresh) at time of transaction;

6.3.5. The weight of the roots;

6.3.6. The county State of origin of the roots;

6.3.7. Identification numbers of the State certificates used to ship ginseng from the State;

6.3.8. The name, ~~and mailing address,~~ physical address, and phone number of the seller or buyer of record of the ginseng ~~of record~~ shall be maintained by the dealer on his or her ~~own~~ copy of commerce record forms supplied by the ~~states~~ state(s) of licensing, and shall be made available to the State ginseng program ~~managers~~ manager(s) if requested; and

6.3.9. Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild, wild simulated, woods grown or cultivated sources within the State.

~~6.4~~ 6.3.10. All reports are due within fifteen (15) days after the close of the reporting period.

~~6.5~~ 6.4. Certifying - Ginseng dealers shall include ~~be~~ are responsible for ~~including~~ a West Virginia Export Certificate, numbered by the ~~West Virginia Division of Forestry~~, with each shipment of ginseng they ~~export~~ move from the State. This certificate shall remain with the ginseng.

~~6.6~~ 6.5. Length of time for record retention - Dealers shall maintain the commerce records for a period of ten (10) years.

§22-1-7. Uncertified Ginseng.

Uncertified ginseng supplied to State-registered dealers from other states must be returned to the state of origin within fifteen(15) ~~thirty (30)~~ calendar days for certification or the

roots may not be exported from the country.

§22-1-8. Revocation of Permit.

The Division may, by order entered in accordance with the provisions of chapter twenty-nine-a of the code, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the Division finds that a grower or dealer has violated any provision of this rule.

§22-1-9. Grower's Responsibilities.

9.1. Permit - Any person, ~~firm, or corporation, or other business entity that~~ who intentionally plants wild simulated, woods grown or cultivated ginseng in West Virginia shall first obtain a Ginseng Grower's Permit from the ~~West Virginia Division of Forestry.~~

9.2. Prior to planting cultivated, woods grown, or wild simulated ginseng, a grower shall:

9.2.1. Plat - have a plat of the planting site prepared by a licensed surveyor or a forester registered by the State Board of Registration for Foresters. The plat prepared by a registered forester shall be prepared by locating the boundaries of the planting site using Global Positioning Satellite (GPS) technology. The equipment must be capable of reading four or more satellites and be locked in to at least four satellites while traversing the planting site; and

9.2.2. Division of Forestry Certification - Obtain a written determination from the Director certifying that the planting site is free from wild ginseng. ~~Such~~ The determination shall be made by an on-the-ground inspection of the intended planting site after April 15 and before June 15 of each year by a Division of ~~Forestry~~ employee. For plantings in existence prior to July 1, 2005, a grower shall certify to the Director that no wild ginseng plants existed on the site prior to planting and provide copies of receipts of purchase of seed or rootlets or certifications from sellers of seed or rootlets if receipts are not available.

9.3. Records - ~~a grower~~ Sshall keep accurate and complete records on each ginseng planting.

9.3.1. These records shall be available for inspection by a Division employee.

9.3.2. These records shall be maintained for a period of ten years.

9.3.3. A copy of the records shall be submitted to the Division by within 30 days after the close of the harvesting season in any year when ginseng was planted on the site and/or any year ginseng was harvested from the site. The information required to be kept shall include:

9.3.3.1. The origin of the ginseng seed, rootlets or plants;

9.3.3.2. The location of purposefully planted cultivated, wild simulated and woods grown ginseng and a site plat of the planting;

9.3.3.3. The original copy of the certificate of the Director's determination that the site was free from wild ginseng at the time of planting or the Director's acceptance of the grower's certification that the site was free of wild ginseng for plantings in existence prior to July 1, 2005;

9.3.3.4. The date each site was planted;

9.3.3.5. The number of pounds of seeds planted, or the number and age of rootlets, or both; and

9.3.3.6. Any other information required by the Division.

§22-1-10. Ginseng Rescue.

A ~~No~~ person may rescue wild ginseng plants endangered by ground-disturbing activities unless he or she has first obtained a moving permit from the Division. The person shall

provide the reason for moving the plants, the original location, the proposed new location and any other information as ~~may be~~ required by the Division.

§22-1-11. Penalties.

The Division may assess a civil penalty against a person who violates any provision of this rule. The Division may assess a monetary penalty of not less than one hundred dollars nor more than five hundred dollars.

§22-1-12. Fees.

12.1. The fee for obtaining a ginseng grower's permit is \$10.00 annually.

12.2. The fee for obtaining a ginseng dealer's permit is ~~\$10.00~~ \$100.00 annually.

12.3. The fee for the late renewal of either a grower's fee is \$20.00 or dealer's fee is ~~\$20.00~~ \$120.00. For growers' applications received after February 1 and for dealers' applications received after November 1, the late renewal fee will apply.

12.4. The fee for certifying dry ginseng roots is ~~\$0.50~~ \$2.00 per pound. Any fraction over an even pound will be charged at the next highest pound.

§22-1-13. Exemptions.

13.1. Rootlets are exempt from certification.

13.2. All information provided to the Division by growers or ginseng rescuers as to the specific location of ginseng plants is exempt from the requirements of the West Virginia Freedom of Information Act as having a significant commercial value to the extent permitted by W. Va. Code §29B-1-4(1).