

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

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2015 APR 20 A 10:54

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

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: \_\_\_\_\_

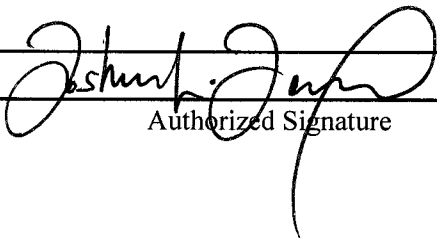
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 170

SECTION 64-10-4, PASSED ON March 14, 2015

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: April 20 2015

  
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.**

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

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

1.3. Filing Date. -- ~~September 18, 2014~~ April 20, 2015

1.4. Effective Date. -- April 20, 2015.

**§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 of legally harvested ginseng from West Virginia;

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

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;

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

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

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

2.7. "Division" means the Division of Forestry;

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

2.9. "Ginseng" means 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;

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;

2.11. "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;

2.12. "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;

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

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

2.15. "Rootlets" means cultivated, woods grown or wild simulated one- to two-year-old ginseng roots commonly sold as transplants to 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 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 on the first day of September and ends 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 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. 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 weigh station.

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

4.3. Permits - It is unlawful 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 permitting that activity. If a person is acting in

both capacities, then a permit for each activity is required. A person may not rescue wild ginseng without first receiving a permit from the Division to rescue wild ginseng plants that are threatened by ground-disturbing activities if 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 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 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 ginseng upon the enclosed or posted lands of another shall first obtain permission in writing from the landowner, tenant or agent of the lands and shall carry the written permission on his or her person when collecting ginseng on those lands.

5.2. Replanting - Any person collecting wild 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 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, who buys wild, wild simulated, woods grown or cultivated ginseng in West Virginia shall first obtain a Ginseng Dealer's Permit from the Division. Any person, that grows wild simulated, woods grown, or cultivated ginseng and directly exports the ginseng from the State shall also obtain a Ginseng Dealer's Permit.

6.2. The Division may not certify any ginseng between the first day of January through the 31st day of March unless the person requesting the certification shows a valid dealer permit.

6.3. Reporting - Authorized ginseng dealers in West Virginia shall report their ginseng commerce to the Division 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 certifying the statements on the 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 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, mailing address, physical address, and phone number of the seller or buyer of record of the ginseng maintained by the dealer on his or her commerce record forms supplied by the states of licensing, and made available to the State ginseng program managers 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 All reports are due within fifteen (15) days after the close of the reporting period.

6.5 Certifying - Ginseng dealers shall include a West Virginia Export Certificate, numbered by the Division, with each shipment of ginseng they export from the State. This certificate shall remain with the ginseng.

6.6 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) 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, that intentionally plants wild simulated, woods grown or cultivated ginseng in West Virginia shall first

obtain a Ginseng Grower's Permit from the Division.

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 Certification - Obtain a written determination from the Director certifying that the planting site is free from wild ginseng. 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 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 - Shall 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 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.**

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 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 \$100.00 annually.

12.3. The fee for the late renewal of a grower's permit is \$20.00 or dealer's permit is \$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 \$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).