



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON
25305

Gus R. Douglass
Commissioner

FILED
1986 JUL -1 AM 10:05
OFFICE OF THE CLERK
SECRETARY OF STATE

NOTICE OF EMERGENCY REGULATIONS

RULE TITLE: Ginseng Regulations

RULE TYPE: Legislative

The attached regulations are filed as an Emergency Regulations. The facts and circumstances constituting the emergency are as follows:

The ginseng certification program was transferred from the Department of Natural Resources to the Department of Agriculture on July 1, 1986. Since the ginseng season will be with us before the Legislature can approve the regulations, it becomes imperative to file them as soon as legally possible, otherwise there could be no legal export of ginseng from the state.

FILED
1986 JUN 27 AM 10:02
OFFICE OF THE CLERK
SECRETARY OF STATE

Gus R. Douglass

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Ginseng Regulations

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture Address Capitol Building

Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 00	\$ 00	\$ 00	\$ 00	\$ 00
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: Regulations currently in effect and proposed regulations will require no changes or expenses.

3. Objectives of these rules: To regulate collecting, selling and purchasing of wild, native ginseng.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

none

C. Economic Impact on Citizens/Public at Large.

none

Date: July 1, 1986

Signature of Agency Head or Authorized Representative

Gen. G. Douglas

DATE: July 1, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

EMERGENCY RULE TITLE: Ginseng Regulations

1. Date of filing: July 1, 1986

2. Statutory authority for promulgating the emergency rule: W. Va. Code 19-1A-3; 19-1A-4(d)

3. Date of filing of proposed legislative rule: July 1, 1986

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

This is a new regulation for the Department of Agriculture

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The ginseng certification program was transferred from the Department of Natural Resources to the Department of Agriculture on July 1, 1986. Since the ginseng season will be with us before the Legislature can approve the regulations, it becomes imperative to file them as soon as legally possible, otherwise there could be no legal export of ginseng from the state.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The ginseng certification program was transferred from the Department of Natural Resources to the Department of Agriculture on July 1, 1988. Since the ginseng season will be with us before the Legislature can approve the regulations, it becomes imperative to file them as soon as legally possible, otherwise there could be no legal export of ginseng from the state.



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BRIEF SUMMARY OF CONTENT OF RULE

These regulations regulate the collecting, selling and purchasing of
wild, native ginseng.

EMERGENCY

Amend

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-1A
SERIES XIX

FILED

1987 JAN -5 PM 3:34

OFFICE OF THE CLERK
WEST VIRGINIA STATE

TITLE: Ginseng Regulations.

Section 1. General

1.1 Scope - Legislative regulations relating to the digging, possession, and sale of wild, native or cultivated ginseng.

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

1.3 Filing Date - July 1, 1986, as Emergency Regulations

1.4 Effective Date - August 1, 1986

Section 2. Season

2.1 Dates - The season for digging wild, native or cultivated ginseng, in any part of West Virginia, shall begin on the 15th day of August and end on the 30th day of November of each calendar year.

Section 3. Unlawful Acts

3.1 Possession - It shall be illegal for any person to have uncertified ginseng (whether green or dry) in his or her possession between April 1 and August 14 of each calendar year and any uncertified ginseng unsold by March 31 of the year after harvest must be weighed and receipted at an official weigh station.

3.2 Certificates - It shall be illegal to alter West Virginia Ginseng Export Certificates and Ginseng Weight Receipts.

Section 4. Collector's Responsibilities

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

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

Section 5. Dealer's Responsibilities

5.1 Permit - Any person, firm or corporation who buys wild, native or cultivated ginseng in West Virginia shall first obtain a Ginseng Dealer's Permit from the West Virginia Department of Agriculture.

5.2 Reporting - Authorized ginseng dealers in West Virginia shall report their ginseng commerce to the Forestry Division of the West Virginia Department of Agriculture each 30 days and submit a final report prior to April 15 of each calendar year on forms prescribed by the Department. This form shall include

EMERGENCY
Dept. of Agri.
Leg. Regs., 19-1A
SERIES XIX, Sec. 5

the following:

- (1) An original dealer's signature is required to legally certify the statements on the form; however, the address is not necessary because such information is on the State's dealer application form.
- (2) Date of transaction.
- (3) Whether roots were wild or artificially propagated.
- (4) Whether roots were dried or green (fresh) at time of transaction.
- (5) Weight of roots.
- (6) State of origin of roots.
- (7) Identification numbers of the State certificates used to ship ginseng from the State.
- (8) The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested.
- (9) Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State.

All reports are due within 15 days after the close of the reporting period.

5.3 Certifying - Ginseng dealers shall be responsible for including a West Virginia Ginseng Export Certificate, numbered by the West Virginia Department of Agriculture, with each shipment of ginseng they move from the State. This certificate shall remain with the ginseng.

5.4 Length of Time for Record Retention - Dealers shall maintain the commerce records for a period of three years.

Section 6. Uncertified Ginseng

6.1 Uncertified ginseng supplied to State-registered dealers must be returned to the State of origin within 30 calendar days for certification or the roots may not be exported from the country.

Section 7. Revocation of Permit

7.1 Any dealer convicted of violating any provision of these ginseng regulations is subject to having his or her Ginseng Dealer's Permit revoked.



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Secretary of State

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(Plus all the volunteer
help we can get!)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

August 12, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

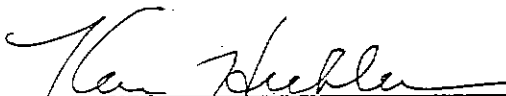
AGENCY: Department of Agriculture

RULE: Series 19 Ginseng Regulations; amendment to existing rule.

DATE FILED AS AN EMERGENCY RULE: July 1, 1986

DECISION NO. 15-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

FILED
1986 AUG 12 PM 4:35
OFFICE OF THE
SECRETARY OF STATE



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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 15-86)

AGENCY: Department of Agriculture
RULE: Series 19 Ginseng Regulations; amendment to existing rule.

DATE FILED AS AN EMERGENCY RULE: July 1, 1986

- par. 1 The Department of Agriculture has filed as emergency rule an amendment to Series 19 Ginseng Regulations. This rule was transferred from DNR to Agriculture along with the regulatory authority and program by the WV Legislature in SB 202.
- par. 2 The rule regulates the ginseng season, collector's responsibility, reporting requirements, dealer responsibility and permitting or certification requirements. The amendment involves minor changes which include changing DNR reference to Agriculture, making possession out of season unlawful for both green and dry ginseng (previously only green) and establishing deadlines for reporting.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

- par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 7 The Department of Agriculture has filed this emergency rule with supporting documents with the Secretary of State on July 1, 1986.
- par. 8 It is the determination of the Secretary of State that the Department of Agriculture has complied with the procedural requirements of WV Code §29A-3-15.
- par. 9 (B) Statutory Authority -- WV Code §19-1A-3 reads in part:
The division of forestry of the department of agriculture shall have jurisdiction to regulate the digging, possession and sale of native, wild or cultivated ginseng.
- par. 10 WV Code §19-1A-4(d) reads:
§ 19-1A-4. Additional rules and regulations, subject to the provisions of chapter twenty-nine-a (§29A-1-1 et seq.) of this code, for the management of state forests and to implement the programs and policies of this article.
- par. 11 It is the determination of the Secretary of State that the Department of Agriculture has not exceeded its statutory authority by amending this rule.
- par. 12 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 14 The Department of Agriculture claims this rule is to prevent substantial harm to the public interest.

- par. 15 As stated in ERD 10-86 par 16, the dates established for a "hunting" season does establish a deadline and the Department of Agriculture seeks amendments to be in place prior to the 1986 season.
- par. 16 The Secretary of State determines that the Department of Agriculture has demonstrated the need to make effective this proposal.
- par. 17 It is the decision of the Secretary of State that this proposal by the Department of Agriculture is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Agriculture; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 18 This decision shall be cited as Emergency Rule Decision 15-86 or ERD 15-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

Entered _____