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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 x NO ____

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

TITLE OF RULE BEING AMENDED: Ginseng Regulations

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

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TITLE 22
LEGISLATIVE RULE
DIVISION OF FORESTRY

SERIES 1
GINSENG RULE

§22-1-1. General.

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

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

1.3. Filing Date. –April 14, 2006.

1.4. Effective Date. –

§22-1-2. Definitions.

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

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 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 cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng;

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 which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

§22-1-3. Season.

3.1. Dates - The season for harvesting wild, wild simulated or woods grown ginseng in any part of West Virginia shall begin on the first day of September and 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 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 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 shall be illegal to alter West Virginia Ginseng Export Certificates and Ginseng Weight Receipts.

4.3. Permits - It shall be 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 such activity. If a person is doing both activities, then a permit for each activity is required. Also, a person 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 such 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 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 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 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 owner, tenant or agent of such lands and shall carry such written permission on his or her person when collecting ginseng on 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 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 who grows wild simulated, woods grown, or cultivated ginseng and directly exports such ginseng from the State shall also obtain a Ginseng Dealer's Permit.

6.1.1. No ginseng will be certified between the first day of January through the 31st day of March unless the person requesting such certification shows a valid dealer permit.

6.2. Reporting - Authorized ginseng dealers in West Virginia shall report their ginseng commerce to the West Virginia Division of Forestry each 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:

6.2.1. 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.

6.2.2. Date of transaction.

6.2.3. Whether roots were wild, cultivated, woods grown, or wild simulated.

6.2.4. Whether roots were dried or green (fresh) at time of transaction.

6.2.5. Weight of roots.

6.2.6. State of origin of roots.

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

6.2.8. 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.

6.2.9. 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.

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

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

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

§22-1-7. Uncertified Ginseng.

7.1. Uncertified ginseng supplied to State-registered dealers from other states must be returned to the state of origin within thirty (30) calendar days for certification or the roots may not be exported from the country.

§22-1-8. Revocation of Permit.

8.1. The Division may, by order entered in accordance with the provisions of ~~article five,~~ chapter twenty-nine-a, 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 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.

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 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.

9.2.2.1 For plantings in existence prior to July 1, 2005, 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 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 by 30 days after the close of the harvesting season 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 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. Other information required by the Division.

§22-1-10. Ginseng Rescue.

10.1 - 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, original location, proposed new location and other information as may be required by the Division.

§22-1-11. Penalties.

11.1. - 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 annually.

12.3. The fee for the late renewal of either a grower's fee or dealer's fee is $20.00. 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 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 specfic location of ginseng plants is exempt from the requirements ~~of article one, chapter twenty-nine-b, section 3a~~ the West Virginia Freedom of Information Act pursuant to W.Va. Code 29B-1-4(1), since such disclosure would be information having a significant commercial value.

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