

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2005 JUL 29 P 1:53

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV 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 Regulations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*Brian Helmick*

Authorized Signature

## Summary of Proposed Rule: 22-01

This rule outlines the requirements of persons who want to harvest, grow, or deal in Ginseng roots for export. The rule includes definitions, procedures for obtaining permits, reporting requirements of persons who have permits, civil and criminal penalties and exemptions.

## Reason for Rule Amendment

House bill 2663 which passed the 2005 legislature and was signed by the governor greatly expanded the duties of the Division of Forestry and included several items that were not in the existing rules.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Forestry  
1900 Kanawha Blvd. E  
Charleston, WV 25305 Phone: 304-558-2788

LEGISLATIVE RULE TITLE: 22-1

1. Authorizing statute(s) citation 19-1A-3a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 27, 2005

b. What other notice, including advertising, did you give of the hearing?  
I have provided copies of the proposed rules to ginseng growers at a public training meeting that discussed ginseng at Crummies Creek Tree Farm.

I have also mailed copies of the proposed rules to ginseng dealers of record.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 27, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X     No comments received

b. Date of hearing or comment period:

Comment period ends July 27, 2005

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 22-1

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Division of Forestry

Address: 1900 Kanawha Blvd., East  
Charleston, WV 25305-0180

Phone Number: 304-558-2788 Email: emurrin@wvforestry.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Fees will bring in an additional \$5,120.00. Costs for the initial year will increase by \$35,000, and after that we expect that the costs would increase by \$17,000 / year.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	6,470.52	42,150.00	24,150.00
Personal Services	5,330.16	40,000.00	22,000.00
Current Expenses	1,064.55	2,000.00	2,000.00
Repairs & Alterations	75.81	150.00	150.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	5,120.00	5,500.00

Rule Title: \_\_\_\_\_

Rule Title: 22-1

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Estimates include fees for 37 Dealers, 200 Growers, and 5500 pound of Ginseng roots. The increase in cost will be for determining if the planting site is free of wild ginseng. Some time may also be spent in using a Global Positioning System (GPS) unit to determine the boundaries of the proposed planting area.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: July 29, 2005

Signature of Agency Head or Authorized Representative

Brian Helmick

FILED

TITLE 22  
LEGISLATIVE RULE  
DIVISION OF FORESTRY

2005 JUL 29 P 1:53

SERIES 1  
GINSENG REGULATIONS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§22-1-1. General.**

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

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

1.3. Filing Date. --

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.

**§22-1-2: §22-1-3. Season.**

~~2-1.~~ 3.1. Dates - The season for digging wild, ~~native or cultivated~~ ginseng in any part of West Virginia shall begin on the ~~15th day of August~~ first day of September and end on the 30th day of November of each calendar year. A grower may harvest wild simulated and woods grown ginseng from the first day of September until the 30th day of November. A grower may harvest cultivated ginseng throughout the year.

**§22-1-3: §22-1-4. Unlawful Acts.**

~~3-1:~~ 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 ~~14~~ 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 ~~received~~ at an official Division of Forestry weigh station.

~~3-2:~~ 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 dig 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 dig, collect or gather wild ginseng on West Virginia Public Lands.

4.7. It is unlawful to dig, collect or gather wild ginseng from the property of another without the written permission of the landowner.

**§22-1-4. §22-1-5. Collector's Responsibilities.**

4.1: 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.

4.2: 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.

**§22-1-5. §22-1-6. Dealer's Responsibilities.**

5.1: 6.1. Permit - Any person, firm or corporation who buys wild, ~~native;~~ 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 Dealers 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.

5.2: 6.2. Reporting - Authorized ginseng dealers in West Virginia shall report their ginseng commerce to the Forestry Division of 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:

~~5-2-1:~~ 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.

~~5-2-2:~~ 6.2.2. Date of transaction.

~~5-2-3:~~ 6.2.3. Whether roots were wild, cultivated, woods grown, or wild simulated ~~artificially propagated.~~

~~5-2-4:~~ 6.2.4. Whether roots were dried or green (fresh) at time of transaction.

~~5-2-5:~~ 6.2.5. Weight of roots.

~~5-2-6:~~ 6.2.6. State of origin of roots.

~~5-2-7:~~ 6.2.7. Identification numbers of the State certificates used to ship ginseng from the State.

~~5-2-8:~~ 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.

~~5-2-9:~~ 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.

~~5-2-10:~~ 6.2.10. All reports are due within fifteen (15) days after the close of the reporting period.

~~5-3-6.3.~~ 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.

~~5-4-6.4.~~ Length of time for record retention - Dealers shall maintain the commerce records for a period of ~~three (3)~~ ten (10) years.

**~~§22-1-6:~~ §22-1-7. Uncertified Ginseng.**

~~6-1:~~ 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.

**~~§22-1-7:~~ §22-1-8. Revocation of Permit.**

~~7-1:~~ 8.1. ~~Any dealer convicted of violating any provision of these ginseng regulations is subject to having his or her Ginseng Dealer's Permit revoked:~~ 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 section or a legislatively approved 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.

9.3. 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:

9.3.4. The origin of ginseng seed, rootlets or plants;

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

9.3.6. The original copy of the certificate of the Director's determination that the site was free from wild ginseng at the time of planting;

9.3.7. The date each site was planted;

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

9.3.9. 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 section or a provision of a legislatively approved rule. The Division may assess a monetary penalty of not less than one hundred dollars nor more than five hundred dollars.

11.2. - Any person violating a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars, or confined in jail not more than six months, or both. The court, in imposing the sentence of a person convicted of an offense under this section, shall order the person to forfeit all ginseng involved in the offense.

**§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.

12.4. The fee for certifying 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. Diggers of wild Ginseng will not be required to obtain a permit.

13.2. Rootlets are exempt from certification.

13.3. All information provided by growers or ginseng rescuers as to the specific locations of ginseng plants is exempt from the requirements of article one, chapter twenty-nine-b since such disclosure would be information having a significant commercial value.

## Comments on Ginseng regulations

**Buffer Zone:** 10 people commented that the buffer zone between wild plants and intentionally planted plants should not be any wider than 10 feet. The proposed regulations did not have a buffer zone in it and no change has been made to include a buffer zone.

**Site Certification:** 10 people commented that the site certification should be permanent and not be limited to 10 years. The site certification does not expire as long as the landowner wants to keep it. Record retention on the site is for ten years after the site is no longer used to grow ginseng. The rule was changed to reflect this.

**Seed harvesting.** 10 people requested that seed be allowed to be harvested from ginseng that was planted before the law was passed. There is nothing in the law that prohibits harvesting of ginseng seed on a landowners property as long as the plant is not harvested. If the plant is harvested the seed must be planted on the site of harvest.

**Permit Fees.** 5 people responded that the growers fee should be reduced from \$10 to \$5. One person wanted the dealers fee removed. Several people said that green ginseng should have a lower rate than dry ginseng when getting the ginseng certified for export from the state. We did not change the fees for the grower or the dealer permits. We did change the fee for green ginseng from \$0.50 to \$0.15 per pound.

**Grand fathering of Existing Plantings.** Several comments said that existing plantings should be able to be included in a plat as either woods grown or wild simulated ginseng.. The law prohibits grand fathering. The US fish and wildlife service insisted that the planted areas be free from wild ginseng, so no grand fathering is allowed. To permit grand fathering of plantings would be going beyond the law.

**Certification of sites by only state DOF employees.** One person said that the planting site should be certified by state employees so that site confidentially could be maintain. The bill requires this and the regulation does not change the law.

**Prosecution of ginseng thieves.** One grower said that the state needs to develop a plan for prosecuting ginseng thieves. The law does not address ginseng stealing.

**Digger or grower keeping a small portion of ginseng root during closed season for personal use.** One person wanted the digger or grower to be able to keep ginseng year around for personal use without getting it certified. The law states that a digger or grower must have the ginseng weight receipted to keep it between April 1 and August 31 of each year. This can not be changed by rule.

**Rule 9.3.3 to 9.3.9.** One big grower thinks these are too much. Suggests have the grower keep his own records and make them available to DOF for inspection when needed. DOF will consider this change.

**Public hearing.** One grower wants a public hearing on the rules. Although the DOF did not opt for a public hearing, there will be ample public hearings during the legislative process as these are legislative rules.

JUL 27 2005

7/21/05

Division of Forestry

1900 Kanawha Boulevard, East

Charleston WV 25305-0180

Dear Todd Groh assistant state Forester:

I am expressing several comments concerning the Legislature newly passed Laws. Licensing fees in MA are \$20.00, VA. \$10.00 + Pa. \$30.00 Seasonably. Pa. season opens Aug 1st, too early, Md season Aug 20th, VA season Aug 15th on private land.

Ginsengers find mature red berries on plants throughout the season due to terrain, shade etc. Falling leaves normally cover ginseng 1st + 2nd weeks of Oct. No other WV bordering state emphatically says growers need licensed surveys, GPS location, and licensing. A grower plants cultivated seeds usually from the Northern ginseng belt and should sell roots, rootlets at any age without wild simulated, woodsman or frivolous laws.

The longer <sup>growing</sup> older the planted ginseng the higher the price. WV has never required 50¢/lb to certify ginseng. CITES, USFS regulates the import and export of American ginseng according to states harvest records.

These expressed comments are factual and will  
hopefully help the final decision making process.

Sincerely yours,  
Ray Dayton Dove Jr  
110 South Main St.  
Petersburg WV 26807

JUL 13 2005

July 12, 2005

Dear sir,

Some comments on the proposed Ginseng production legislation:

1. Buffer zone - would seem to be detrimental rather than beneficial to existing wild ginseng.
2. Fees - What will this money be used for? Tariff - should be based on dry roots as they are sold.
3. Site Certification - should be no time limit on this as it might well be 10 years before the first roots are harvested.
4. Seed Harvesting - Since the ginseng has been purchased planted at the expense of the owner grower on his land to generate income, his income should not be hindered by an outside party. (over)

2,  
2003 4 1 2010

I am sure that all powers  
would like to see healthy  
stands of wild ginseng flourish.  
Without some changes to the  
current proposed legislation I  
feel that it is just more  
government interference in  
small business ventures

Sincerely yours,  
Steve Crossman

JUL 25 2005

Left Fork Farm LLC  
Emil and Eva Ristl  
925 Kettle Rd.  
Gandeeville, WV 25243  
(304) 577-9034

22 July 2005

WVDOF  
Ed Murriner  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0180

Ginseng Regulations 22-01

Dear Mr. Murriner:

The following are our comments for the proposed regulations:

1. Buffer Zones

There is no scientific reason for having buffer zones. Wild ginseng seeds drop where wild ginseng grows and not x-number of feet away. If buffer zones need to be established, a buffer zone of 10 feet is in order. Larger buffer zones impact growers rights to grow ginseng on their own property.

2. Fees

No more than \$5, as some operations are small size. The fee should be per pound of DRIED root.

3. Certification period

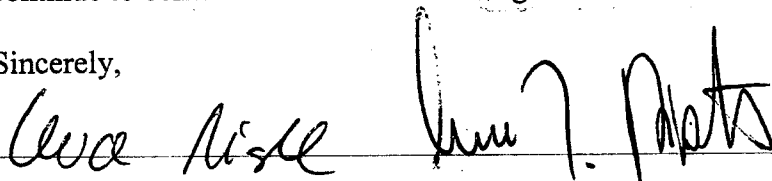
There should be absolutely no time limit. The site should remain certified as long as the grower continues to maintain the certification.

4. Grandfathering in existing sites

An exception to this rule needs to be made to include seed harvested from all intentionally grown ginseng since this is an important income for many.

Our ginseng operation on our 190-acres farm is fairly new. We are here on an investor visa which your government has granted to us. We understand West Virginia is seeking investors. It would be desirable that administrative obstacles be kept to a minimum, so that our investment may continue to benefit the State of West Virginia.

Sincerely,



JUL 18 2005  
Robert Snyder  
RR 5 Box 1100  
Salem, WV 26426

July 14, 2005

West Virginia Dept. Of Forestry  
Attention: Mr. Ed Murriner  
1900 Kanawha Blvd.  
Charleston, WV 25305-0180

Dear Mr. Murriner:

As a beginning ginseng grower, and member of the West Virginia Ginseng Growers Association, I am concerned about the direction of the new ginseng rules and wish to offer my comments.

1. Buffer zones – Based on my information, I recommend that the buffer zone be no more than 10 feet from existing ginseng plants as there appears to be no conclusive evidence to support the need for a buffer zone.
2. Fees – Because many ginseng growers are very small in the size of their operation, I recommend that the fee be set at no more than \$5 per year, and that the tariff be set at \$0.50 per pound of *dried* root.
3. Time limit for certified sites - There should be *no* time limit for site certification as many growers will leave their roots in the ground for well beyond the 10 year limit. And they may decide to add more plantings to the site over a period of time. The certification should remain in effect as long as the grower maintains certification.
4. Harvest of seeds from intentionally grown ginseng – While it is difficult to discern the difference between wild and intentionally grown (wild simulated) ginseng, many ginseng growers depend on the additional income from the sale of seeds from the plants they have intentionally grown. There needs to be an exception for the seeds from *these* plants.

Thank you for taking the time to give consideration to my comments regarding these important issues. And thank you for speaking at the CSR Field Day in June. Your attendance was appreciated.

I am certain we can work out the details on this matter with good dialogue between all parties.

Sincerely,



Robert A. Snyder

**Crummies Creek Tree Farm  
West Virginia Woods Grown Medicinal Herbs**

PO Box 207  
Arnoldsburg, WV 25234

Phone (304) 655-8919  
Fax (304) 655-8014  
E-mail [ForestRuss@aol.com](mailto:ForestRuss@aol.com)

Ed Murriner  
WV Division of Forestry  
1900 Kanawha Blvd. East  
Charleston, WV 25305

Dear Ed:

I would like to submit some comments on the proposed ginseng regulations and they are as follows:

Section 2.16 Wild ginseng is defined as ginseng that has not been grown or nurtured by a person regardless of the seed origin.

Section 2.17 Defines wild simulated ginseng as 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.

Section 2.18 Identifies woods grown ginseng as ginseng purposefully planted in prepared beds in the woods and which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

**COMMENT:**

In the face of the increasing threat to the natural forest understory from invasive understory plants such as Japanese stiltgrass and garlic mustard, would any ginseng plantings made in forest areas that become infested with alien invasive plants that require annual and ongoing treatment or control by physical and/or mechanical means could only be classified as being "woods grown"?

Crummies Creek Tree Farm is under invasion by Japanese stiltgrass and tree of heaven as you are well aware from a recent visit you made to Crummies Creek. We are actively trying to control or at least slow the spread of these noxious plants that can be found growing in nearly every acre of the property.

Does the premise cited above in both sections 2.16 and 2.17 that ginseng can not be classified as either wild or wild simulated if the grower has an implemented plan for treating alien and invasive plants on the land where ginseng is being grown?

What species or how large, expansive or aggressive an alien plant invasion is necessary to make an area ineligible for "wild simulated" ginseng production if control activity is underway?

How is the ginseng classified when an entire drainage or watershed is under active invasive plant control? Can a grower be prevented from protecting his land from invasive plants?

Although there is supposed to be no "grandfather" clause in this law, how will it work if, because of invasive plant control, wild ginseng cannot exist as stated under section 2.16 and the grower possesses planting and seed purchase records for ginseng that is presently growing on said site? Would such a planting automatically be classified as "woods grown"?

Under the definition of "woods grown" what is a prepared bed?

How large or small can a "prepared bed" be under the "woods grown" declaration?

Can a "woods grown" management area encompass an entire drainage or watershed and if not, why not?

Is ginseng planted in a wild simulated manner not eligible for wild simulated classification if the planting area is under active invasive control?

Will there be any option for organic or non organic classification for ginseng grown in West Virginia that is "woods grown" and how should organic certification be determined?

Is any chemical fertilizer or treatment required for "woods cultivated" certification and should "woods grown" and "woods cultivated" be two different classifications?

#### Section 4.6

COMMENT: Development of oil and gas wells, road construction and multiple other surface disturbances are a regular activity in nearly all of West Virginia. Considering the value of ginseng and the purpose of the WV ginseng law to protect the plant, there should be an option beyond summary destruction for ginseng that occurs on public lands under a use change.

A protocol for salvage or relocation or "rescue" of ginseng from WV public land should be developed.

If plants are to be relocated, should the salvaged plants go to other WV public lands where invasives are not out of control if the public land in question is under active invasion by known destructive plants?

#### Section 9.2.2

Under this section Division of Forestry personnel are to visit a property and determine whether there are any wild ginseng plants present. If the foresters witness that the grower can demonstrate that he/she has an active and ongoing invasive plant control program, wild ginseng plants cannot exist as defined in section 2.16.

COMMENT: Under definitions in sections 2.16 and 2.17 growing ginseng and physically controlling invasives makes only "woods grown" classification available to growers. If, because

invasive control treatments are ongoing, under the definition of wild ginseng in section 2.16, any ginseng present on a proposed planting site cannot be classified as wild and the grower can not have any wild ginseng present.

By the nature of the movement on invasive plants like *Microstegium* into the forest understory, could a property owner be required to wait until all evidence of native ginseng plants is gone and the *Microstegium* invasion is complete before ginseng planting can be attempted or legally commence?

Section 9.3.2 Records are good for ten years then???? Does all ginseng become wild after ten years or does it mean we cannot grow ginseng longer than ten years?

Section 9.3.5 Does a planting area have to be filled in one year or is there a time limit on how soon seed has to be planted once an area is approved for planting.

More comments will follow.

Sincerely,

Russ Richardson

Joe Manchin III  
Governor



Charles R. Dye  
Director/State Forester

**DIVISION OF FORESTRY**  
Post Office Box 38  
French Creek, WV 26218  
(304) 924-6266/FAX (304) 924-6142  
Web Address: [www.wvforestry.com](http://www.wvforestry.com)

## interoffice MEMORANDUM

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**To:** Ed Murriner, Assistant State Forester  
**From:** James R. Hays, District Forester  
**Date:** July 1, 2005  
**Subject:** Genseng Rules

The only comment I have with regard to the new rules and regulations is that I didn't notice any provision for a digger to keep a small amount of genseng for his own use. The law forbids possession of any uncertified genseng after a certain date, but it seems impractical for an individual to go through the certification process for a small amount (less than a pound). It may be too late to do anything about this scenario, but it is done by all diggers whether intentionally or not.

JUL 13 2005

*Robert B. Dorsey*  
2700 SMITH ROAD  
CHARLESTON, WEST VIRGINIA 25314  
OFFICE (304) 744-0678  
HOME (304) 342-5712

Ed Murriner  
West Virginia Division of Forestry  
1900 Kanawha Blvd. S.E.  
Charleston, West Virginia 25304

July 11, 2005

Re: Ginseng Rules

I wish to make the following comment as to Ginseng Rules:

1. Rules should not be made that are impossible to enforce such as a need For a Buffer Zone between planted and natural Ginseng. - *UNKNOW/1*
2. A one time fee should be assessed to cover administrative cost, renew every 10 years. - *LAW STAYS ANNUAL*
3. No time limit is needed, a report could be made by the grower every 10 years. *LAW STAYS SALES REPORT.*
4. Existing sites should be Grand-fathered so as not to interrupt seed production. *OUTSIDE THE LAW.*

Please take these points under consideration.

Sincerely,  
*Robert B. Dorsey*  
Robert B. Dorsey

cc: Fred Hays, Center for Sustainable Resources

JUL 20 2005  
JUL 20 2005

July 15, 2005

Ed Murriner  
WVDOF  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0180

RE: Comments on proposed rules for ginseng growers.

Mr. Murriner,

Due to the fact that there is no scientific reason that planted ginseng should not cross with naturally growing ginseng, I see no need for a buffer zone to be no more than 10 feet. I feel that the fee for growers and dealers should \$5.00 since many of us are very small in size of operation. The fee should be per pound of DRIED root not green.

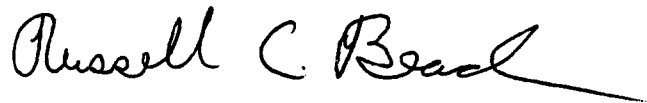
A site should remain certified as long as the grower continues to maintain the certificate. There should be NO time limit. This should be left to the grower since it will be up to them as to how long their site will remain viable. Many growers will not even harvest their ginseng until it is ten years old and may add seed to maximize their use of a site.

I believe an exception needs to be made to include seed harvest from all intentionally grown ginseng in regards to grandfathering grower sites that already exist. This is important income for many.

I hope you will consider mine and other opinions and input when you are developing the rules for ginseng growers within the state of West Virginia.

Sincerely,

Russell C. Beach



JUL 25 2005

This letter is in regard to the certifying of ginseng plots.

1. The buffer zone for a plot should be as small as possible because it limits a grower with very little property, not more than 10'

2. Fees should be set as low as possible. This is a poor mans way of making a little extra cash, and we shouldn't be asked for our efforts. \$5 per year for growers and no money on roots sold.

3. There should be no limit on the time a plot is certified as long as the per year fee is paid

4. Why the DCF refused to grandfather in plots already planted is on me. As a grower I have planted in different areas over a ten year period to limit the possibility of problems facing ginseng. This leaves little ground for me to certify.

My ginseng was started with bought seed and whether planted as cultivated, woods grown, or simulated wild, if there is a difference can never be considered wild so why should we be paying for our efforts.

5. Seed production is very important for future planting and to keep planted plots from becoming too thick from dropped seed.

Thanks Jim Wayne

-----Original Message-----

From: Center for Sustainable Resources <sustainableresources@hotmail.com>

To: emurriner@aol.com

Sent: Thu, 30 Jun 2005 05:56:15 -0800

Subject: (no subject)

Ed, Thanks for your presentation at the Field Day. It went well I thought. I ended up without a copy of what you handed out. Could you e-mail me that. We also need to figure out how to get you comments. You mentioned that you might be willing to mail questionnaires out. I think that would be best with specific questions since you will otherwise get lots of comments that have nothing to do with the rules. Here are some comments I have.

The buffer zone is not needed at all. There is no evidence that naturally growing ginseng would be impacted in any way negatively from plantings of ginseng. To the contrary there is evidence that ginseng populations are improved as a natural process of diversification through renewed genetics, aside from this, the ginseng present naturally on private property is private property of the land owner. ! ;

The life of the permit should be open ended. You can't put a time limit on it sense people will harvest at various times as ginseng develops. Ten years is not reasonable. People will be planting and filling in damaged spots each year and perhaps harvesting some each year. Since you also have a late season opening for harvest of personal plants, harvest will be impossible for a plant when the deer have browsed off the top in June. Once a site is certified the grower must have the flexibility to do what is needed.

Certification of sites should be done by state employed foresters only whereby as employees of the state they are bound by the law regarding provisions for the freedom of information rule associated with this new ginseng law. This will also insure fairness.

If there is no grandfather clause for existing growers the rules should state that existing plantings can be considered wild for the purpose of sales whereby dealers fear buying these roots ! as wild out of concern for suspicions that the ginseng was obtained by illegal means. The state should be actively persuing a remedy to this problem with the federal government since growers at present are being cheated and having their rights violated from not being able to certify these sites when evidence of personal planting is overwhelming. It is clear that in a court case the grower will have the upper hand. Why should a grower be required to go to court just to sell a product he produced?

The fee for growers to certify sites should be no more than \$5 per year considering that wild diggers pay nothing and that you intend to tariff ginseng at the point of sale also. It is also clear that small growers while needing the same protection can not afford more than this from a financial standpoint. Having to treat it as wild is not a fair option since they have spent money on seed and hours of labor to produce the plants. If this is permitted to stand it sets a precedent for all plants even trees. Why would we want to be in a situation where the government could simply claim a tree is wild and can not be harvested because it was not on a site certified by the

state for growing trees?

There needs to be a plan for prosecuting ginseng thieves with the new law. The DOF should train conservation officers to do their job and should be required to attend the same training that state foresters will go through to deal with the ginseng law. Ginseng thieves are no different than cattle rustlers and should be treated as such. Fred Hays

JUL 2 0 2005

Do Not Mark In This Box

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

**FILED**

2005 JUN 27 P 4:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #2

~~CONFIDENTIAL~~

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

RULE TYPE: Legislative CITE AUTHORITY: \_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES  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: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 27, 2005 AT 5:00pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Edward C. Murriner  
West Virginia Division of Forestry  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0180

Fax: 304-558-0143

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

*h. Hanna Bella*

Authorized Signature

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

**Legislative Rule Making**

JUN 27 2005

**Review Committee**

JUL 20 2005

July 12/05  
Rt 3 Box 186  
Bruneton, WVA 26524  
Bill Hoyle

Mr. Edward C. Muriner  
W. VA. Dept. of Forestry  
1900 Kanawha Blvd. E.  
Charleston, WVA. 25305.

Dear Sir:

I have studied the WVA. proposed rules for Ginseng and Enclose the following comments for your evaluation.

① We have been growing Ginseng in WVA for over 25 years - Ginseng is not an endangered species which we harvest from 500 lb to 1000 lb seed to replant each year. from the work we do here in this state.

② Rules have been changed by Law but were enacted to help the producer not prevent. Please read following sheet.

③ If you are a producer you must harvest root when the buyer wants root. we sell SALE lots of Green Root replanted to Oriental people here in USA. And to state we can't dig it when they want it prevents us from selling our crop

GREEN Root must be given different consideration - please.

Bill Stage

- ④ The way we grow roots we will need to be Certified as  
wild root  
wild simulated  
woods grown  
Cultivated. growers for

Due to the fact that roots must be sorted and sold in different classes, as the Certification is required.

- ⑤ Certificates for the producer need to list the above.

Certificates for the state to keep track of actual wild needs list the above other wise how can the state say lb wild root, because there are still wild diggers who do not do any thing but dig and sell.

- ⑥ Cost of Permits or Sale Commission or but needs adjusted as a 3 1/2 - 1 for Green root

~~7~~ The Buyer Should Not  
Have to get a permit to Buy or  
W.V.A. will not have any buyers

CONT

Page 3

Record Keeping according  
to this will be more  
work than growing the roots.

- ① To Get Certified to grow - ok <sup>permit</sup> ok
- ② To send in 30 day report - ok
- ③ To complete 9.3.3 to 9.3.9 will  
be more than any one person  
Condo - Besides who has time  
to go over all that at D OF.  
The grower will keep his own  
records to survive but  
these rules are a killer

Thank you for allowing these  
comments

I do think Public Hearing  
need to be set unless some  
of these considerations are made  
Bill Slagle

- #1: Are we interested in doing what is best for the producer.
- #2: Are we interested in protecting an endangered species
- #3: Are we interested in producing a crop for export to help ↓ the import-export ratio
- #4: Are we blind to the fact that by planting more seed more ginseng will be there

#1 - If we are interested in what is best for the producer we will.

- (1) Allow as much freedom as possible
- (2) Keep paper work and records at a minimum.
- (3) Have paper certifications written so the producer can get best price.
- (4) If you are a producer you are enhancing ginseng endangered species not taking from wild.