



**RULE-MAKING ORDER
(RCW 34.05.360)**

Im Order 6014

CR-103 (4/25/96)

Agency: Washington State Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: January 28, 1997

(2) Purpose: To prevent economic loss to the ginseng industry by continuing the ginseng management program established by emergency rule and recognized by the U.S. Fish and Wildlife Service which has federal oversight through the Endangered Species Act. This allows the 1996 crop of cultivated ginseng to be marketed and exported from Washington State while the provisions of a permanent rule are discussed with the ginseng industry and the U.S. Fish and Wildlife Service.

(3) Citation of existing rules affected by this order:

- Repealed:
- Amended:
- Suspended:

(4) Statutory authority for adoption: Chapter 15.17 RCW

Other Authority:

PERMANENT RULE ONLY

Adopted under notice filed as WSR _____ on _____ (date).
Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: This rule must be in place and approved by the U.S. Fish and Wildlife Service in order for the ginseng industry in the state of Washington to continue to export product from the 1996 harvest. If the ginseng industry is unable to export, they will suffer significant economic loss. Due to the potential economic losses that could occur without this rule in place, the Department of Agriculture is instituting this emergency rule, so the public welfare is served and will not be harmed.

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

**Permanent Rules
or Expedited Repeal**

Emergency Rules

- 31 days after filing
- Other (specify) _____*
- Immediately
- Later (specify) _____

**(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)*

Name (Type or Print)
James M. Jesernig

Signature

Title
Director

Date
January 28, 1997

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JAN 28 1997

TIME 1:57 AM/PM AM

WSN 97-04-020

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Rules Relating to Ginseng Management

NEW SECTION

WAC 16-695-005 Purpose. These rules are promulgated under Chapter 34.05 RCW to establish standards and administer a ginseng management program. This program will promote the production and export of cultivated ginseng and prohibit acts detrimental to the survival of the indigenous wild ginseng population. These rules shall regulate the sale and export of ginseng, establish a registration program for dealers and growers, and provide for the certification of cultivated American ginseng by the Washington State Department of Agriculture. These rules are recognized by the United States Fish and Wildlife Service.

NEW SECTION

WAC 16-695-010 Definitions. The following definitions shall apply:

(1) "Cultivated ginseng" means any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng.

(2) "Dealer" means anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States.

(3) "Dealer registration" means an annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng roots for resale or export from this state.

(4) "Department" means the Washington state department of agriculture.

(5) "Director" means the director of the department or his duly appointed representative.

(6) "Dry weight" means the weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable.

(7) "Export" means export outside the boundaries of the United States.

(8) "Out-of-state ginseng" means ginseng that is grown or originated outside the state of Washington.

(9) "Ginseng" means any and all parts of the plant known as American ginseng (*Panax quinquefolius* L.) including but not limited to: plants, whole roots, essentially intact roots, root chunks, slices, seeds, and tissue. This definition does not apply to processed products, seed, tissue cultures obtained in vitro, or live seedlings (within one year of germination) of ginseng not intended for export. This definition includes live seedlings intended for export.

(10) "Green ginseng" means a ginseng root from which the moisture has not been removed by drying.

(11) "Green weight" means the weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable.

(12) "Grower" means a person who grows "cultivated," "wild simulated" and or "woodsgrown" ginseng, and sells it to a dealer.

(13) "Grower registration" means an annual registration issued by the department which enables a grower to sell cultivated ginseng that the grower has produced.

(14) "Person" means any individual, firm, partnership, corporation, company, society, association or other business entity, and every officer, agent or employee thereof, agency or organized group of persons whether or not incorporated

(15) "Wild ginseng" means ginseng growing naturally within its native range.

(16) "Wild simulated ginseng" means cultivated ginseng grown in a wooded site where wild ginseng is not established.

(17) "Woodsgrown ginseng" means ginseng grown in managed beds under natural shade.

NEW SECTION

WAC 16-695-015 Collection of wild ginseng. No grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng for the purpose of sale or distribution.

NEW SECTION

WAC 16-695-020 Dealers and Growers--Annual Registration with the Department -- Requirements. Dealer and growers must register with the Washington State Department of Agriculture, and the following requirements apply. (1) No person may act as a dealer without first registering with the department. Registration shall be made annually on a form provided by the department and will expire on December 31

of each year. The department will assign a registration number to each person registered under this subsection.

(2) No person shall act as a grower without first registering with the department. Registration shall be made annually on a form provided by the department and will expire on December 31 of each year. The department will assign a registration number to each person registered under this subsection.

(3) Any person who acts as a dealer and a grower must register as both.

NEW SECTION

WAC 16-695-025 Grower records. A grower selling cultivated ginseng shall do all of the following when selling to a dealer:

(a) Provide a record of sale containing all of the following information to a dealer:

- (i) Grower's name and address;
- (ii) Grower's registration number;
- (iii) Ginseng certificate number;
- (iv) Dry weight;
- (v) Year harvested;
- (vi) Date of transaction;

(b) Certify that the ginseng was grown in Washington State. The certification shall be in the form prescribed by the director;

(c) Maintain records of all ginseng production and sales;

(d) Maintain records of the location and dimensions of and all management activities applied to any woodsgrown ginseng beds;

NEW SECTION

WAC 16-695-030 Dealer records. Dealers shall keep true and accurate records of transactions, including both sales and purchase records, in a format prescribed by the director herein. (1) Purchase records shall include:

- (a) Dealer's Name;
- (b) Dealer's registration number;
- (c) Dealer's address;
- (d) Grower/seller name;
- (e) Grower/seller registration number;
- (f) Ginseng weight in pounds and ounces;
- (g) Designation of green or dry ginseng;
- (h) Designation of wild or cultivated ginseng;
- (i) Harvest year of ginseng;
- (j) Date of transaction;

(2) Sales records shall include the following information:

- (a) Dealer's name;
- (b) Dealer's registration number;
- (c) Dealer's address;
- (d) Buyer's name;

- (e) Buyer's registration number;
- (f) Ginseng weight in pounds and ounces;
- (g) Designation of green or dry ginseng;
- (h) Designation of wild or cultivated ginseng;
- (l) Harvest year;
- (j) Date of transaction.

NEW SECTION

WAC 16-695-035 Out-of-state ginseng. (1) No dealer may purchase, receive or import out-of-state ginseng unless it is accompanied by a valid certificate of origin issued by the state or country of origin. The certificate must include the state or country of origin, the source (wild or cultivated), year of harvest, and dry weight of the out-of-state ginseng.

(2) The dealer shall retain for a period of three years a copy of each written certificate of origin received.

(3) If a dealer receives ginseng not accompanied by a valid certificate of origin, the uncertified ginseng must be returned within 30 days to the state or country of origin. Failure to do so shall render the ginseng illegal for commerce.

NEW SECTION

WAC 16-695-040 Selling and/or shipping of ginseng - certificates. (1)

Except as described in subsection (6) of this section, no person shall sell or ship ginseng out-of-state or export Washington grown ginseng unless it is accompanied by a valid certificate of origin issued by the Washington State Department of Agriculture, which contains the following information:

- (a) State of origin;
- (b) Serial number of certificate;
- (c) Dealer's and grower's state registration number;
- (d) Dealer's and grower's shipment number for that harvest season;
- (e) Year of harvest of ginseng being certified;
- (f) Designation as wild or artificially propagated roots or plants;
- (g) Designation as dried or fresh (green) roots, or live plants;
- (h) Weight of roots or plants (or number of plants) separately expressed both numerically and in writing;
- (i) Verified statement by Washington State Department of Agriculture ginseng official that the ginseng was obtained in that state in accordance with the state law of that harvest year;
- (j) Name and title of the Washington State Department of Agriculture certifying official;
- (k) Date of certification;
- (l) Signature of dealer and Washington State Department of Agriculture official making certification;

(2) Certificates are issued by the Washington State Department of Agriculture in triplicate. The original is designated for the dealer's use in commerce; the first copy is for the dealer's records; and the second copy is retained by the Washington State Department of Agriculture for reference.

(3) No person shall export ginseng grown in Washington using an out-of-state issued certificate.

(4) A certificate is valid for ginseng harvested within the same registration year that the certificate was issued (also see WAC 16-695-050) .

(5) Certificates of origin shall not be issued for wild ginseng.

(6) Subsection (1) of this section shall not apply to a person who sells or ships cultivated ginseng out-of-state to a person who is buying or receiving it solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record which includes:

- (a) Name and address of the buyer or receiver;
- (b) Weight of the ginseng in pounds and ounces;
- (c) Date of the sale or shipment;
- (d) Location of harvest of the ginseng;
- (e) Year of harvest of the ginseng

NEW SECTION

WAC 16-695-045 Maintaining separate lots of ginseng. Dealers shall maintain separation between lots of out-of-state ginseng and that harvested in

Washington until a certificate of origin has been issued for the ginseng harvested in the state.

NEW SECTION

WAC 16-695-050 Dealer and/or grower holding ginseng after March 31 of the year. Any grower or dealer holding ginseng after March 31 of the year after harvest must notify the Department. The Department will inspect the ginseng and provide an official receipt of the weight of the remaining ginseng. Any future certification of this ginseng will be issued referencing this weight receipt.

NEW SECTION

WAC 16-695-055 Inspection or submission of records. (1) All records required to be kept under this chapter must be made available to the Washington State Department of Agriculture upon request for audit, inspection, and/or copying.

(2) Pursuant to the authority provided in chapter 15.17 RCW, the department shall not disclose information obtained regarding purchases, sales, or production of an individual American ginseng dealer, except for providing reports to the United States Fish and Wildlife Service. This information is exempt from public disclosure required by chapter 42.17 RCW.

NEW SECTION

WAC 16-695-060 Export procedures. Valid Federal CITES documents are necessary to export ginseng.

NEW SECTION

WAC 16-695-065 Fees--Hourly, Overtime. Fees shall be charged sufficient to cover the department's cost of implementing this chapter. (1) Ginseng certification activities shall be provided at an hourly and overtime rate. The overtime rate shall apply for service provided subsequent to a regularly scheduled eight-hour week day shift or on Saturdays, Sundays, and state legal holidays. No service will be performed on Thanksgiving Day, Christmas Day or New Years Day, beginning at 5:00 p.m., on the previous day.

(2) Charges shall be for a minimum of one hour. Additional time shall be charged in one-half hour increments.

NEW SECTION

WAC 16-695-070 Schedule of fees and charges. The following schedule for ginseng certification activities shall apply:

- (1) Certificate, each \$25.00
- (2) Hourly rate \$28.00
- (3) Overtime rate..... \$42.00
- (4) Travel time at the appropriate hourly or overtime rate shall be assessed.

(5) Mileage and per diem shall be charged at the rate established by the state office of financial management.

(6) Postage and other miscellaneous costs shall be charged back at actual cost.

(7) Certification activities shall include auditing dealers records of the production, sales and storage of ginseng, and issuing certificates.

NEW SECTION

WAC 16-695-075 Unlawful activities. A person shall not do any of the following:

(1) Fail to maintain all required records.

(2) Buy, otherwise acquire, or possess uncertified ginseng, which is required by this chapter to be certified.

(3) Export uncertified ginseng from this state.

(4) Possess ginseng originating from another state without authorization from the state of origin.

(5) Violate Chapter 15.17 RCW or any rule promulgated thereunder, or any lawful order of the director.

(6) Knowingly provide incorrect or false information on a registration application, report, certificate of origin, or other document required under this act.

(7) Provide a purchaser with a record of sale for more ginseng than is actually sold or otherwise exchanged.

NEW SECTION

WAC 16-695-080 Enforcement actions. (1) The director may take any enforcement action authorized by Chapter 15.17 RCW.

(2) Upon determination that an applicant or registered ginseng dealer or grower has violated this chapter, and after following the notice and hearing requirements and provisions of chapter 34.05 RCW concerning adjudicative proceedings, the director of the department may deny, suspend, or revoke any registration or application for registration.