



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: November 18, 1997

(2) Purpose: To establish rules for the ginseng management program.

(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Repealed: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 (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 97-19-086 on 9/17/97 (date).
Describe any changes other than editing from proposed to adopted version: Removed subsection 16-695-040(2)(a) as originally proposed. It is not, as originally thought, a federal requirement.

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:

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: 12/19/97

Permanent Rules **Emergency Rules**
or Expedited Repeal

- 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
James M. Jesernig

Title **Date**
Director 11/17/97

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

NOV 18 1997

TIME 10:12 AM
WSP 97-23-059 PM

**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	<u>16</u>	Amended	-----	Repealed	-----
Federal rules or standards:	New	-----	Amended	-----	Repealed	-----
Recently enacted state statutes:	New	-----	Amended	-----	Repealed	-----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	<u>16</u>	Amended	-----	Repealed	-----
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	-----	Repealed	-----
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	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	<u>16</u>	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 of the United States. 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.

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 for resale or export.

(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.

(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. Dealers 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 March 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 March 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 the dealer:

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

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

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

Records must be maintained for a period of three years.

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. Records must be maintained for a period of three years.

(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) County in which the ginseng was harvested;
 - (k) 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;
 - (i) Harvest year;
 - (j) County in which the ginseng was harvested;
 - (k) 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 (7) 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, prenumbered certificate of origin on a form issued by the department. The department shall, upon request and payment of the required fee(s), provide each registered grower or dealer with forms for certificates of origin. The department shall identify each certificate of origin form with a serial number, the registration number of the grower or dealer, and the expiration date of the certificate. The expiration date shall be the following March 31. Registered growers or dealers may certify their own cultivated ginseng by filling out and signing a

certificate of origin form. The certificate of origin shall contain the following information:

- (a) State of origin;
- (b) Serial number of certificate;
- (c) Dealer's and/or grower's state registration number;
- (d) Year of harvest of ginseng being certified;
- (e) Designation as cultivated roots or plants;
- (f) Designation as dried or fresh (green) roots, or live plants;

- (g) Weight of roots or plants (or number of plants)

separately expressed both numerically and in writing;

- (h) Date of certification;
- (i) Signature of grower or dealer making certification.

- (2) All of the following conditions must be met in order for

a Washington certificate of origin to be valid:

- (a) the certificate of origin form must be used on or prior to its expiration date,

(b) the certificate must be signed by the grower or dealer whose registration number was entered on it by the department, and

- (c) the ginseng must be cultivated ginseng grown in

Washington state.

- (3) Forms for certificates of origin are issued by the department 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 shall be sent within two weeks of issuance by the grower or dealer to the Washington State Department of Agriculture, Laboratory Services Division, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504-2560.

(4) Unused forms for certificates of origin shall become void on the March 31 following issuance by WSDA. All voided certificates of origin and forms for certificates of origin shall be sent within two weeks to the Washington State Department of Agriculture, Laboratory Services Division, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504-2560.

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

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

(7) 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 for a period of three years 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) County 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 16-095-050 Dealer and/or grower holding ginseng after

March 31 of the year. Any grower or dealer holding ginseng on or after March 31 must report all carryover stocks on a form provided by the department, which shall list name and address of the grower or dealer, location of the lot, lot identification, county of harvest, dry or green weight in pounds and ounces, and year of harvest.

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 of origin form, 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 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) Fail to submit information to the department as required in WAC 16-695-050.
- (3) Fail to submit voided certificates of origin or forms

for certificates of origin to the department.

- (4) Buy, otherwise acquire, or possess uncertified ginseng, which is required by this chapter to be certified.
- (5) Export uncertified ginseng from this state.
- (6) Possess ginseng originating from another state without authorization from the state of origin.
- (7) Violate Chapter 15.17 RCW or any rule promulgated thereunder, or any lawful order of the director.
- (8) Knowingly provide incorrect or false information on a registration application, report, certificate of origin, or other document required under this act.
- (9) 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.