

**Department of State  
Division of Publications**

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Effective Date: 3/13/13

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Division of Natural Areas
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0400-06-01	Ginseng Dealer Registration
Rule Number	Rule Title
0400-06-01-.01	Purpose
0400-06-01-.02	Authority
0400-06-01-.03	Definition
0400-06-01-.04	Registration, Permit and Fee
0400-06-01-.05	Reporting
0400-06-01-.06	Record Keeping
0400-06-01-.07	Inspection and Export Certification
0400-06-01-.08	Inspection at End of Buying Season Receipt and Weight
0400-06-01-.09	Registration and Reporting Form and Content
0400-06-01-.10	Violation

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendment

### Chapter 0400-06-01 Ginseng Dealer Registration

Chapter 0400-06-01 Ginseng Dealer Registration is amended by deleting it in its entirety and replacing it the following so that as amended chapter 0400-06-01 shall read as follows:

### Chapter 0400-06-01 Ginseng Dealer Registration

#### Table of Contents

0400-06-01-.01 Purpose  
0400-06-01-.02 Authority  
0400-06-01-.03 Definitions  
0400-06-01-.04 Registration, Permit and Fee  
0400-06-01-.05 Reporting  
0400-06-01-.06 Record Keeping  
0400-06-01-.07 Inspection and Export Certificate  
0400-06-01-.08 Inspection at End of Buying Season Receipt and Weight  
0400-06-01-.09 Registration and Reporting Form and Content  
0400-06-01-.10 Violation

#### 0400-06-01-.01 Purpose

The purpose of these regulations is to provide for the implementation of the ginseng dealers act requiring the registration of ginseng dealers and to permit the same, the submitting of an annual report and to require certain inspections of shipments of ginseng and further requiring the payment of a registration fee all of which is relative to the purchase, sale and/or export of wild or cultivated ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.02 Authority

The regulations are issued under the authority granted to the Commissioner of the Tennessee Department of Environment and Conservation by T.C.A. § 62-28-104.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.03 Definitions

As used in these regulations, the term:

- (1) "Buying Season" shall mean that period from September 1st for green roots and September 15th for dry roots through March 31st when it is legal for ginseng dealers to purchase ginseng from ginseng collectors.
- (2) "Cultivated" shall mean grown under natural or artificial shade and according to varying standards of cultivation procedures.
- (3) "Department" shall mean the Tennessee Department of Environment and Conservation.
- (4) "Export" shall mean to transport, ship, carry, haul, take or otherwise move wild or cultivated ginseng (said ginseng being previously collected or cultivated inside the State of Tennessee) to destination(s) outside the State of Tennessee and/or the United States.

- (5) "Ginseng" shall mean the plant or any part of the plant, *Panax quinquefolius* L., of the Araliaceae family cultivated and/or collected within the State of Tennessee.
- (6) "Ginseng collector" shall mean any person who collects, digs, picks, pulls up, cuts, uproots, harvests or otherwise removes any part of the ginseng plant, either wild or cultivated, from its habitat for any purpose.
- (7) "Ginseng dealer" shall mean any person who purchases ginseng for the purpose of resale or any person who exports ginseng to a destination outside the State of Tennessee. This definition specifically excludes retail businesses that sell ginseng to the general public for consumption within the United States.
- (8) "Permit" shall mean the ginseng dealer permit as issued by the Tennessee Department of Environment and Conservation under the authority of T.C.A. § 62-28-101.
- (9) "Person" shall mean any individual, partnership, firm, organization, corporation, association, club or other entity.
- (10) "Purchase" shall mean to acquire, obtain, or receive or attempt to acquire, obtain or receive by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (11) "Sell", "Sale", or "Sold" shall mean to dispose of, transfer or convey or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (12) "State" shall mean the State of Tennessee.
- (13) "Wild" shall mean grown under natural conditions without the use of any cultivation procedures.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.04 Registration, Permit and Fee

- (1) No person shall be a ginseng dealer without first registering and obtaining a ginseng dealer permit as issued by the Department.
- (2) The permit shall be issued and become effective on September 1st of each year and will be good and valid through August 31st of the next year.
- (3) Completed applications for registering and obtaining the permit shall be submitted to the Department prior to September 1st of each year along with a registration fee; the fee amount for registration shall be two hundred and fifty (\$250) dollars per year. Registration shall not be deemed complete and a permit shall not be issued until the registration fee has been paid in full to the Department. Blank application forms shall be provided by the Department upon request.
- (4) Upon registration and issuance of a permit, the ginseng dealer is authorized to sell, purchase, and/or export wild and/or cultivated ginseng pursuant to the following conditions:
  - (a) wild and/or cultivated ginseng that has been inspected and issued an export certificate pursuant to Rule 0400-06-01-.07 may be exported throughout the entire permit period, and
  - (b) ginseng may only be purchased from ginseng collectors during the period from September 1st for green roots and September 15th for dry roots through March 31st of each permit period, and
  - (c) wild ginseng may be sold to other registered and permitted ginseng dealers throughout the entire permit period if the ginseng was purchased from ginseng collectors during the period from September 1st for green roots and September 15th for dry roots through March 31st of each permit period.
- (5) The permit does not renew automatically and a new permit must be obtained annually pursuant to paragraphs (2) and (3) of this rule.

- (6) If a permit application is received on or after September 1st, the permit issued pursuant to such application shall be effective only from the date of issuance.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.05 Reporting

- (1) All ginseng dealers shall file with the department during the period from September 1st through March 31st monthly reports (purchase records) of all purchases of ginseng. The reports shall be submitted on forms which are provided by the Department. The reports shall include but shall not be limited to, the amount of ginseng purchased, whether it was wild or cultivated, whether it was green (fresh) or dry, the county or counties from which the ginseng was collected, and the dates on which it was collected and purchased. Reports will cover from the 1st day of the previous month to the last day of the previous month for the entire period from September 1st through March 31st. The reports shall be due no later than the last day of the month following the report period, the first report being due October 31st.
- (2) All ginseng dealers shall file with the Department an annual report on or before April 30th of each year, and it shall be submitted on forms provided by the Department. The annual report shall include, but shall not be limited to the amount, by weight, of all ginseng purchased and sold from April 1st of the previous year through March 31st of the current year, the county or counties from which the ginseng was collected, whether the ginseng was wild or cultivated, and the average price per pound paid for the ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.06 Record Keeping

- (1) All ginseng dealers shall keep records of all purchases and/or sales of ginseng. These records shall include but shall not be limited to the purchase or sale date, date of collection, county of collection or cultivation and the weight of the ginseng purchased or sold.
- (2) All ginseng dealers shall retain the records required by paragraph (1) of this rule for a period of 3 years from the date of the purchase or sale of ginseng.
- (3) Upon reasonable notice to the ginseng dealer, all records required by this rule shall be made available to the Department at the dealer's place of business and during normal dealer working hours.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.07 Inspection and Export Certification

- (1) All ginseng dealers who export ginseng to destination(s) outside the state shall have each sale (hereinafter referred to as shipment) of ginseng inspected by and obtain an export certificate from a designated representative of the Department before any such shipment of ginseng is exported from this state.
- (2) The export certificate shall identify:
  - (a) the weight of the shipment of ginseng,
  - (b) whether the ginseng is wild or cultivated,
  - (c) the year the ginseng was collected,
  - (d) the ginseng dealer permit number,
  - (e) a shipment number, and
  - (f) date of shipment of ginseng.
- (3) The export certificate shall be verified and signed by the inspecting representative of the Department.

- (4) A copy of the export certificate shall be enclosed or attached to the shipment of the subject ginseng. A copy of the certificate shall be retained for a minimum of 3 years by the ginseng dealer and the export certificate original shall be retained by the ginseng dealer and submitted to the department in accordance with internal procedures of the Department within a reasonable time after the export of the said ginseng. These internal procedures are subject to change from time to time.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.08 Inspection at End of Buying Season and Weight Receipt

- (1) Any ginseng dealer possessing ginseng roots at the end of the buying season (i.e. after March 31st) shall obtain a receipt for that ginseng from a designated representative of the Department.
- (2) The receipt shall identify:
  - (a) the weight of the ginseng,
  - (b) whether the ginseng is wild or cultivated,
  - (c) the year the ginseng was collected, and
  - (d) the ginseng dealer's name and permit number.
- (3) Upon verifying the weight of the ginseng, the designated representative of the Department shall sign and issue a receipt.
- (4) The receipt shall be retained by the dealer and presented at the time of and in exchange for any future certification of the ginseng for export.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.09 Registration and Reporting Form and Content

The Department is authorized to prescribe the form and content of the ginseng dealer permit, inspection certificate, sale and purchase records, monthly report form, and annual report form required by the regulations. The form and content of the forms are subject to change from time to time as deemed necessary by the Department.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.10 Violation

- (1) Any person violating the provisions of these regulations shall be guilty of a misdemeanor and punishable under the general laws relating to misdemeanors.
- (2) The Commissioner of the Tennessee Department of Environment and Conservation may suspend, revoke and/or deny the issuance of a permit to any ginseng dealer who violates the act or these regulations. The ginseng dealer shall have the right to contest and appeal any suspension, revocation and/or denial of his/her permit and the provisions of the Uniform Administrative Procedures Act, compiled in Chapter 5 of Title 4 of the T.C.A., and the Rules of the Secretary of State, Chapter 1360-01-07, shall apply to any such contest and appeal.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

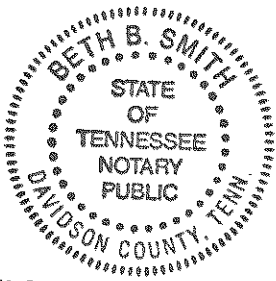
\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 11/5/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/25/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/12 and 08/30/12



My Commission Expires JULY 6, 2015

Date: 11-5-12

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: November 5, 2012

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 6, 2015

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
12-11-12  
Date

**Department of State Use Only**

Filed with the Department of State on: 12/13/12

Effective on: 3/13/13

[Handwritten Signature]  
Tre Hargett  
Secretary of State

RECEIVED  
2012 DEC 13 PM 3:50  
SECRETARY OF STATE  
REGISTRARS

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comments: A commenter was of the opinion that the change in the harvest season will make the root quality better for the size, weight and value.

Response: The Department concurs with this comment.

Comments: A commenter agreed that it is a good law to move our season back two weeks. It's good for the Ginseng and probably should have been done a long time ago. We need to enforce the law, we're making new laws, that's great but we need to get the laws enforced.

Response: TWRA has been active is giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter identified the need to find a way to enforce these laws about Ginseng as far as hunting is concerned and understands that it just takes a lot more money to enforce laws. Any time you try to enforce, it requires more money. In Illinois you have to purchase a digging permit, which is great and that is a good place to start.

Response: TWRA has been active is giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter suggested that the date for buying dry ginseng to be September 7. Most ginseng can be dried in one week after harvest. A person can dry green ginseng in a dehydrator in 2 days. If the September 15 date passes then one should not be able to buy any dry ginseng, including ginseng harvested during the previous year, until September 15.

Response: The Department's intention with the law changes is too match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter suggested that the date for buying or selling ginseng to be one week ahead (September 7), two weeks is too long.

Response: The Department's intention with the law changes is too match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter pointed out that the dealers buying time is two weeks less. These are the two weeks, August 15- August 31 that a dealer is able to buy the most ginseng available. The diggers are losing two weeks of hard worked income for themselves. I wish the Feds would enforce the laws.

Response: It is not the Department's intent for diggers or dealers to lose income. Diggers can still sell the green ginseng roots starting September 1. Theoretically a later harvest should aid in the

harvesting of higher quality roots which should also confer a higher value. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.



### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

This rule applies to ginseng diggers and dealers. There are likely hundreds of diggers and approximately 50 dealers in Tennessee. Only a few dealers operate as ginseng exporters.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

No change in report preparation or record keeping is anticipated.

- (3) A statement of the probable effect on impacted small businesses and consumers.

No significant impacts are anticipated.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

No alternatives were recommended by the U.S. Fish and Wildlife Service.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Most other states that export ginseng have gone through the legislative process to change the harvest season so that surrounding states have the same harvest dates. The U.S. Fish and Wildlife Service requested the changes for the purpose of protecting the viability and sustainability of the species.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exempting small businesses from these amendments was not possible. T.C.A § 70-8-203 was amended, effective July 1, 2012, to change the harvest season dates and these amendments are consistent with that statutory change. Additionally, T.C.A. § 62-28-102 was amended to require all ginseng dealers to file records for purchases of ginseng made between September 1<sup>st</sup> and March 31<sup>st</sup> and to file an annual report of all purchases and sales of ginseng.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate an impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The ginseng harvest law changed in 2012. Effective July 1, 2012, T.C.A § 70-8-203 has been amended to limit the harvest season for wild ginseng to be from September 1 through December 31, inclusive, of each year. Also, effective July 1, 2012, T.C.A. § 62-28-102 has been amended to require each registered ginseng dealer to submit monthly purchase records for the period of September 1 through March 31 of each year and an annual report of purchases and sales of ginseng. The previous harvest date written in the original law was based on the time of the year that the fruit (berries) ripen. The dealer is required by law to replant the fruits when the plant (root) is harvested for long-term sustainability. Over the years it has been proven that August 15<sup>th</sup> is too early for the fruits to be fully ripened and that this may be detrimental to the survival of the ginseng species. Therefore, the U.S. Fish and Wildlife Service, Division of Management Authority, is requesting that all of the 19 states that are approved to export wild American ginseng change the harvest season to September 1st at the earliest. The Department has received a letter from the U.S. Fish and Wildlife Service dated September 3, 2010, "strongly encouraging" revision of Tennessee's harvest season date. The Division received a second letter from U.S. Fish and Wildlife Service dated April 1, 2011, supporting these proposed changes and "encouraging" the revisions prior to the 2011 Harvest Season, "if possible."

This rulemaking is primarily intended to update the regulations to reflect the statutory changes in ginseng harvest dates from August 15<sup>th</sup> to September 1<sup>st</sup>.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being amended under the authority of T.C.A. §§ 62-28-101 et seq. and 70-8-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Ginseng dealers will be affected by these rules. No persons, organizations, corporations or government entities rejected the proposed rule, they all supported adoption.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department does not anticipate a fiscal impact from the proposed rule changes.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Lincicome  
7<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, Tennessee  
37243-0447

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson  
Legal Services Director  
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Tennessee Department of Environment and Conservation  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1548  
(615) 532-0131  
[Alan.Leiserson@tn.gov](mailto:Alan.Leiserson@tn.gov)

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.

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Division of Publications**

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<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Division of Natural Areas
<b>Contact Person:</b>	David Lincicome
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**Revision Type (check all that apply):**

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**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

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## Amendment

### Chapter 0400-06-01 Ginseng Dealer Registration

Chapter 0400-06-01 Ginseng Dealer Registration is amended by deleting it in its entirety and replacing it the following so that as amended chapter 0400-06-01 shall read as follows:

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#### 0400-06-01-.01 Purpose

The purpose of these regulations is to provide for the implementation of the ginseng dealers act requiring the registration of ginseng dealers and to permit the same, the submitting of an annual report and to require certain inspections of shipments of ginseng and further requiring the payment of a registration fee all of which is relative to the purchase, sale and/or export of wild or cultivated ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.02 Authority

The regulations are issued under the authority granted to the Commissioner of the Tennessee Department of Environment and Conservation under the ginseng dealer act, Chapter 445, Public Acts of 1983 by T.C.A. § 62-28-104.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.03 ~~Definitions~~ Definitions

As used in these regulations, the term:

- (1) "Buying Season" shall mean that period from ~~August 15th~~ September 1st for green roots and September 15th for dry roots through March 31st when it is legal for ginseng dealers to purchase ginseng from ginseng collectors.
- (2) "Cultivated" shall mean grown under natural or artificial shade and according to varying standards of cultivation procedures.
- (3) "Department" shall mean the Tennessee Department of Environment and Conservation.
- (4) "Export" shall mean to transport, ship, carry, haul, take or otherwise move wild or cultivated ginseng (said ginseng being previously collected or cultivated inside the State of Tennessee) to destination(s) outside the State of Tennessee and/or the United States.

- (5) "Ginseng" shall mean the plant or any part of the plant, *Panax quinquefolius* L., of the Araliaceae family cultivated and/or collected within the State of Tennessee.
- (6) "Ginseng collector" shall mean any person who collects, digs, picks, pulls up, cuts, uproots, harvests or otherwise removes any part of the ginseng plant, either wild or cultivated, from its habitat for any purpose.
- (7) "Ginseng dealer" shall mean any person who purchases ginseng for the purpose of resale or any person who exports ginseng to a destination outside the State of Tennessee. ~~The above~~ This definition specifically excludes retail businesses that sell ginseng to the general public for consumption within the United States.
- (8) "Permit" shall mean the ginseng dealer permit as issued by the Tennessee Department of Environment and Conservation under the authority of ~~the Ginseng Dealer Act, Chapter 445, Public Acts of 1983 T.C.A. § 62-28-101.~~
- (9) "Person" shall mean any individual, partnership, firm, organization, corporation, association, club or other entity.
- (10) "Purchase" shall mean to acquire, obtain, or receive or attempt to acquire, obtain or receive by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (11) "Sell", "Sale", or "Sold" shall mean to dispose of, transfer or convey or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration and shall specifically include barter or exchange.
- (12) "State" shall mean the State of Tennessee.
- (13) "Wild" shall mean grown under natural conditions without the use of any cultivation procedures.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.04 Registration, Permit and Fee

- (1) No person shall be a ginseng dealer without first registering and obtaining a ginseng dealer permit as issued by the Department.
- (2) The permit shall be issued and become effective on ~~August 15th~~ September 1st of each year and will be good and valid through ~~August 44th~~ 31st of the next year.
- (3) Completed applications for registering and obtaining the permit shall be submitted to the ~~d~~Department prior to ~~August 15th~~ September 1st of each year along with a registration fee; the fee amount for registration shall be two hundred and fifty (~~\$250.00~~) dollars per year. Registration shall not be deemed complete and a permit shall not be issued until the registration fee has been paid in full to the Department. Blank application forms shall be provided by the Department upon request.
- (4) Upon registration and issuance of a permit, the ginseng dealer is authorized to sell, purchase, and/or export wild and/or cultivated ginseng pursuant to the following conditions:
  - (a) wild and/or cultivated ginseng that has been inspected and issued an export certificate pursuant to ~~rule 1400-6-1-.07~~ below Rule 0400-06-01-.07 may be exported throughout the entire permit period, and
  - (b) ginseng may only be purchased from ginseng collectors during the period from ~~August 15th~~ September 1st for green roots and September 15th for dry roots through March 31st of each permit period, and
  - (c) wild ginseng may be sold to other registered and permitted ginseng dealers throughout the entire permit period if the ginseng was purchased from ginseng collectors during the period from ~~August~~

15th September 1st for green roots and September 15th for dry roots through March 31st of each permit period.

- (5) The permit does not renew automatically and a new permit must be obtained annually pursuant to ~~rule 0400-6-1-.04~~ paragraphs (2) and (3) above of this rule.
- (6) If a permit application is received on or after ~~August 15th~~ September 1st, the permit issued pursuant to such application shall be effective only from the date of issuance.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.05 Reporting

- (1) All ginseng dealers shall file with the department during the period from ~~August 15th~~ September 1st through March 31st monthly reports (purchase records) of all purchases of ginseng. The reports shall be ~~submitted~~ submitted on forms which are provided by the Department. The reports shall include but not be limited to, the amount of ginseng purchased, whether it was wild or cultivated, whether it was green (fresh) or dry, the county or counties from which the ginseng was collected, and the dates on which it was collected and purchased. Reports will cover from the ~~15th of the previous month to the 14th of the current month~~ 1st day of the previous month to the last day of the previous month for the entire period from August 15th September 1st through March 31st. ~~The reports shall be due no later than the last day of the month in which the report period ends, except in the case of the report for the period from March 15th through March 31st, which shall be due no later than April 30th. The reports shall be due no later than the last day of the month following the report period, the first report being due October 31st.~~
- (2) All ginseng dealers shall file with the Department an annual report on or before April 30th of each year, and it shall be submitted on forms provided by the Department. The annual report shall include, but shall not be limited to the amount, by weight, of all ginseng purchased and sold from April 1st of the previous year through March 31st of the current year, the county or counties from which the ginseng was collected, whether the ginseng was wild or cultivated, and the average price per pound paid for the ginseng.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.06 Record Keeping

- (1) All ginseng dealers shall keep records of all purchases and/or sales of ginseng. These records shall include but shall not be limited to the purchase or sale date, date of collection, county of collection or cultivation and the weight of the ginseng purchased or sold.
- (2) All ginseng dealers shall retain the ~~above~~ records required by paragraph (1) of this rule for a period of ~~three (3)~~ years from the date of the purchase or sale of ginseng.
- (3) Upon reasonable notice to the ginseng dealer, all records required ~~under~~ by this section rule shall be made available to the Department at the dealer's place of business and during normal dealer working hours.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.07 Inspection and Export Certification

- (1) All ginseng dealers who export ginseng to destination(s) outside the state: ~~(a) must~~ shall have each sale (hereinafter referred to as shipment) of ginseng inspected by and obtain an export certificate from a designated representative of the Department before any such shipment of ginseng is exported from this state.  
~~(b)(2)~~ The export certificate shall identify:
  - ~~(1)(a)~~ the weight of the shipment of ginseng,
  - ~~(2)(b)~~ whether the ginseng is wild or cultivated,



- ~~(3)~~(c) the year the ginseng was collected,
  - ~~(4)~~(d) the ginseng dealer permit number,
  - ~~(5)~~(e) a shipment number, and
  - ~~(6)~~(f) date of shipment of ginseng.
- (3) The export certificate ~~must~~ shall be verified and signed by the inspecting representative of the Department.
- ~~(c)~~(4) A copy of the export certificate ~~must~~ shall be enclosed or attached to the shipment of the subject ginseng. A copy of the certificate shall be retained for a minimum of ~~three~~ (3) years by the ginseng dealer and the export certificate original shall be retained by the ginseng dealer and submitted to the department in accordance with internal procedures of the Department within a reasonable time after the export of the said ginseng. These internal procedures are subject to change from time to time.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.08 Inspection at End of Buying Season and Weight Receipt

- (1) Any ginseng dealer possessing ginseng roots at the end of the buying season (i.e. after March 31st) shall obtain a receipt for that ginseng from a designated representative of the Department.
- (2) The receipt shall identify:
- ~~(1)~~(a) the weight of the ginseng,
  - ~~(2)~~(b) whether the ginseng is wild or cultivated,
  - ~~(3)~~(c) the year the ginseng was collected, and
  - ~~(4)~~(d) the ginseng dealer's name and permit number.
- (3) Upon verifying the weight of the ginseng, the designated representative of the Department ~~will~~ shall sign and issue a receipt.
- (4) The receipt shall be retained by the dealer and presented at the time of and in exchange for any future certification of the ginseng for export.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.09 Registration and Reporting Form and Content

The Department is authorized to prescribe the form and content of the ginseng dealer permit, inspection certificate, sale and purchase records, monthly report form, and annual report form required by the regulations. The form and content of the ~~above~~ forms are subject to change from time to time as deemed necessary by the Department.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

#### 0400-06-01-.10 Violation

- (1) Any person violating the provisions of these regulations shall be guilty of a misdemeanor and punishable under the general laws relating to misdemeanors.
- (2) The Commissioner of the Tennessee Department of Environment and Conservation may suspend, revoke and/or deny the issuance of a permit to any ginseng dealer who violates the act or these regulations. The ginseng dealer shall have the right to contest and appeal any suspension, revocation and/or denial of

his/her permit and the provisions of the Uniform Administrative Procedures Act, compiled in Chapter 5 of Title 4 of the T.C.A., and the Rules of the Secretary of State, Chapter 1360-01-07, shall apply to any such contest and appeal.

Authority: T.C.A. §§ 62-28-101 et seq., 70-8-201 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 11/05/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/25/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/12 and 08/30/12

Date: November 5, 2012

Signature: \_\_\_\_\_

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comments: A commenter was of the opinion that the change in the harvest season will make the root quality better for the size, weight and value.

Response: The Department concurs with this comment.

Comments: A commenter agreed that it is a good law to move our season back two weeks. It's good for the Ginseng and probably should have been done a long time ago. We need to enforce the law, we're making new laws, that's great but we need to get the laws enforced.

Response: TWRA has been active in giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter identified the need to find a way to enforce these laws about Ginseng as far as hunting is concerned and understands that it just takes a lot more money to enforce laws. Any time you try to enforce, it requires more money. In Illinois you have to purchase a digging permit, which is great and that is a good place to start.

Response: TWRA has been active in giving citations to persons digging outside the harvest season and on state lands where harvesting is not allowed. Several state park rangers have given citations to people for illegal digging on state lands. Local city and county governments have the authority to enforce the laws if they have direct proof that someone is illegally buying, selling or harvesting. Most of the illegal activity occurs on private land in rural areas of the state where the laws are more difficult to enforce. This rule change does not address digging permits.

Comments: A commenter suggested that the date for buying dry ginseng to be September 7. Most ginseng can be dried in one week after harvest. A person can dry green ginseng in a dehydrator in 2 days. If the September 15 date passes then one should not be able to buy any dry ginseng, including ginseng harvested during the previous year, until September 15.

Response: The Department's intention with the law changes is to match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter suggested that the date for buying or selling ginseng to be one week ahead (September 7), two weeks is too long.

Response: The Department's intention with the law changes is to match the harvest season and buying season with the laws of surrounding states. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

Comments: A commenter pointed out that the dealers buying time is two weeks less. These are the two weeks, August 15- August 31 that a dealer is able to buy the most ginseng available. The diggers are losing two weeks of hard worked income for themselves. I wish the Feds would enforce the laws.

Response: It is not the Department's intent for diggers or dealers to lose income. Diggers can still sell the green ginseng roots starting September 1. Theoretically a later harvest should aid in the

harvesting of higher quality roots which should also confer a higher value. These changes were requested by the U.S. Fish and Wildlife Service for the purpose of protecting the viability and sustainability of the species.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

This rule applies to ginseng diggers and dealers. There are likely hundreds of diggers and approximately 50 dealers in Tennessee. Only a few dealers operate as ginseng exporters.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

No change in report preparation or record keeping is anticipated.

- (3) A statement of the probable effect on impacted small businesses and consumers.

No significant impacts are anticipated.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

No alternatives were recommended by the U.S. Fish and Wildlife Service.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Most other states that export ginseng have gone through the legislative process to change the harvest season so that surrounding states have the same harvest dates. The U.S. Fish and Wildlife Service requested the changes for the purpose of protecting the viability and sustainability of the species.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exempting small businesses from these amendments was not possible. T.C.A § 70-8-203 was amended, effective July 1, 2012, to change the harvest season dates and these amendments are consistent with that statutory change. Additionally, T.C.A. § 62-28-102 was amended to require all ginseng dealers to file records for purchases of ginseng made between September 1<sup>st</sup> and March 31<sup>st</sup> and to file an annual report of all purchases and sales of ginseng.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The ginseng harvest law changed in 2012. Effective July 1, 2012, T.C.A § 70-8-203 has been amended to limit the harvest season for wild ginseng to be from September 1 through December 31, inclusive, of each year. Also, effective July 1, 2012, T.C.A. § 62-28-102 has been amended to require each registered ginseng dealer to submit monthly purchase records for the period of September 1 through March 31 of each year and an annual report of purchases and sales of ginseng. The previous harvest date written in the original law was based on the time of the year that the fruit (berries) ripen. The dealer is required by law to replant the fruits when the plant (root) is harvested for long-term sustainability. Over the years it has been proven that August 15<sup>th</sup> is too early for the fruits to be fully ripened and that this may be detrimental to the survival of the ginseng species. Therefore, the U.S. Fish and Wildlife Service, Division of Management Authority, is requesting that all of the 19 states that are approved to export wild American ginseng change the harvest season to September 1st at the earliest. The Department has received a letter from the U.S. Fish and Wildlife Service dated September 3, 2010, "strongly encouraging" revision of Tennessee's harvest season date. The Division received a second letter from U.S. Fish and Wildlife Service dated April 1, 2011, supporting these proposed changes and "encouraging" the revisions prior to the 2011 Harvest Season, "if possible."

This rulemaking is primarily intended to update the regulations to reflect the statutory changes in ginseng harvest dates from August 15<sup>th</sup> to September 1<sup>st</sup>.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being amended under the authority of T.C.A. §§ 62-28-101 et seq. and 70-8-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Ginseng dealers will be affected by these rules. No persons, organizations, corporations or government entities rejected the proposed rule, they all supported adoption.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department does not anticipate a fiscal impact from the proposed rule changes.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Lincicome  
7<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, Tennessee  
37243-0447

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson  
Legal Services Director  
Office of General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Tennessee Department of Environment and Conservation  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1548  
(615) 532-0131  
Alan.Leiserson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.