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Sequence Number: 06-35-12  
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 File Date: 6/22/12

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Division of Natural Areas
<b>Contact Person:</b>	David Lincicome
<b>Address:</b>	7 <sup>th</sup> Floor, L & C Annex 401 Church Street Nashville, Tennessee 37243-0447
<b>Phone:</b>	(615) 532-0431
<b>Email:</b>	<a href="mailto:David.Lincicome@tn.gov">David.Lincicome@tn.gov</a>

*Any individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	12 <sup>th</sup> Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
<b>Phone:</b>	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
<b>Email:</b>	<a href="mailto:Beverly.Evans@tn.gov">Beverly.Evans@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Knoxville Environmental Field Office		
Address 2:	3711 Middlebrooke Pike		
City:	Knoxville, Tennessee		
Zip:	37921-5602		
Hearing Date :	08/28/12		
Hearing Time:	2:00 to 4:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Ed Jones Auditorium		
Address 2:	440 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date :	08/30/12		
Hearing Time:	2:00 to 4:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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>.

An initial set of draft rules has been prepared for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office  
8383 Wolfe Lake Drive  
Bartlett, TN 38133  
(901) 371-3000/ (901) 371-3170

Cookeville Environmental Field Office  
1221 South Willow Avenue  
Cookeville, TN 38506  
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office  
1625 Hollywood Drive  
Jackson, TN 38305  
(731) 512-1300/1-888-891-8332

Chattanooga Environmental Field Office  
Suite 550- State Office Building  
540 McCallie Avenue  
Chattanooga, TN 37402-2013  
(423) 634-5745/1-888-891-8332

Columbia Environmental Field Office  
1421 Hampshire Pike  
Columbia, TN 38401  
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921-5602  
(865) 594-6035/1-888-891-8332

Nashville Environmental Field Office  
711 R. S. Gass Blvd.  
Nashville, TN 37243-1550  
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office  
2305 Silverdale Road  
Johnson City, TN 37601-2162  
(423) 854-5400/1-888-891-8332

The "DRAFT" rules may also be accessed for review using <http://tn.gov/environment/na/ppo>.

Draft copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation  
Division of Natural Areas  
7<sup>th</sup> Floor, L&C Annex  
401 Church Street  
Nashville, Tennessee 37243-0447  
(615) 532-0431

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Natural Areas; Attention: David Lincicome, 7<sup>th</sup> Floor, L & C Annex; 401 Church Street; Nashville, Tennessee 37243-0447; telephone 615-532-0431 or fax 615-532-3019. However, such written comments must be received by 4:30 PM CST, September 14, 2012, in order to assure consideration. For further information, please contact David Lincicome at the above address or telephone number or by e-mail at [David.Lincicome@tn.gov](mailto:David.Lincicome@tn.gov).

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

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

<b>Chapter Number</b>	<b>Chapter Title</b>
0400-06-01	Ginseng Dealer Registration
<b>Rule Number</b>	<b>Rule Title</b>
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  
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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 the Commissioner of Environment and Conservation 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.

#### 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 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 22, 2012

Signature: Roger McCoy

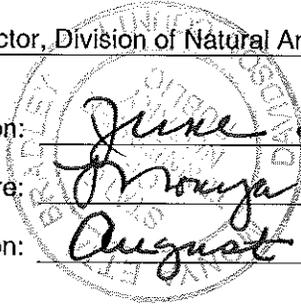
Name of Officer: Roger McCoy

Title of Officer: Director, Division of Natural Areas

Subscribed and sworn to before me on: June 22, 2012

Notary Public Signature: Tronya Etta Bradley

My commission expires on: August 17, 2015



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Filed with the Department of State on: 6/22/12

Tre Hargett  
Tre Hargett  
Secretary of State

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