

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:** ) **Administrative Cause**  
 ) **Number: 16-017N**  
**READOPTION OF 312 IAC 19:** )  
**RESEARCH, COLLECTION, QUOTAS,** ) **(LSA Document #16-152(F))**  
**AND SALES OF PLANTS** )

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE**

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 19 in its entirety, and without amendment. This article provides standards for the regulation of the harvest of American ginseng (*Panax quinquefolius*). 312 IAC 19 can be accessed through the Indiana General Assembly’s website at: <http://www.in.gov/legislative/iac/T03120/A00190.PDF>.

If rules are readopted in their current form without amendments under 312 IAC 2-2-4(b), the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on February 3, 2016. The standard practice is to readopt rules by article, and 312 IAC 19 is now submitted for consideration as to final action.

**B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5**

Cary Floyd, Projects Coordinator, Division of Nature Preserves, was appointed Small Business Regulatory Coordinator for this rule readoption. He provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 19:

Review under IC 4-22-2.5-3.1

**The continued need for the rule.**

312 IAC 19 records the harvest and regulates the export of American ginseng (*Panax quinquefolius*) from the State of Indiana. American ginseng is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under CITES, the Division of Scientific Authority (DSA) of the U. S. Fish and Wildlife Service must determine whether the export of American ginseng is detrimental to the survival of the species (CITES 1973). DSA uses data and recommendations from the various states to make science based determinations annually. This rule provides for the regulation of the harvest to gather data to supply to the DSA, allowing for the continued trade of ginseng harvested in Indiana.

**The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.**

Notice of Intent to Readopt 312 IAC 19 resulted in no written comments. As a division we receive 1-5 calls weekly regarding the topic of the ginseng trade. The vast majority are inquiries about becoming a licensed dealer or finding a licensed dealer.

We are very aware through comments from dealers and the general public that there has been a return to ginseng as a source of supplemental income for many harvesters. For the past three years inflated prices (vs. historical prices) have contributed to this interest. This income adds to the available money for these citizens who dig and the dealers, thus adding to our state's economy. Those comments serve as evidence of the program's importance.

**The complexity of the rule, including any difficulties encountered by: (A) the agency in administering the rule; or (B) small businesses in complying with the rule.**

As an agency we have no difficulty administering the rule, nor have we public comments indicating the rule is too complex for dealers to be in compliance.

**The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.**

The rule does not overlap, duplicate, or conflict with other federal, state or local laws, rules, regulations, or ordinances.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

These rules were readopted in 2010, and review under this section was not required. However, in the process of conducting its business, the DNR, Division of Nature Preserves is continually reviewing its effectiveness in providing standards and guidance to small businesses, private individuals, and professionals in complying with its rules. The Division of Nature Preserves in cooperation with other exporting States and the OSA, monitors technological developments, economic conditions, and other factors that would warrant a modification to 312 IAC 19.

Review under IC 4-22-2.1-5

**The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared**

A significant change in the factors considered since the previous review has come with Indiana's economic upturn, however, the anticipated reduction in interest in ginseng as a source of individual income has not occurred. The continued interest is primarily due to 3 consecutive years of inflated prices for American Ginseng root for export.

**Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)**

There is a suggestion that harvesters be required to be licensed. This suggestion has had support from the American Herbal Products Association, the majority of all Indiana Ginseng Dealers, USFWS and both affected DNR divisions. The proposed license fee would be equal to that for an annual

fishing license and the process would utilize the DNR's existing Hunting and Fishing License infrastructure. The fees would be used to cover associated costs of the Ginseng program.

This licensure would reduce the opportunity for fraudulent harvester reporting and reduce record keeping needs by the dealers. However, this would require a change in the law, which has been proposed in several legislative sessions, but not yet carried beyond initial consideration.

**Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements**

Not applicable.

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules”. The Director of the Office of Management and Budget determined the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.<sup>1</sup>

As specified by Executive Order 2-89 and Financial Management Circulars 2010-4 and 2015-1, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget and the Legislative Council on July 21, 2016. In a letter dated August 19, 2016, the Director of the State Budget Agency recommended the proposed rule readoption be approved.

**C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION**

On April 7, 2016, the “Notice of Intent to Readopt” 312 IAC 19 was posted to the *Indiana Register* at 20160413-IR-312160152RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 19 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

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<sup>1</sup> Indiana State Budget Agency email dated May 2, 2013, to state head of state agencies.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 19, without amendment, for subsequent filing with the Publisher.

Dated: August 24, 2016

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Jennifer M. Kane  
Hearing Officer