

## **CHAPTER 4-39 CULTIVATED GINSENG**

### **4-39-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Cultivated ginseng" means ginseng dry root, live root, tissue culture, or seed propagated in this state.
3. "Dealer" means a person who buys cultivated ginseng for the purpose of resale. The term does not include a person who buys cultivated ginseng dry root, solely for the purpose of final retail sale to consumers in the United States.
4. "Ginseng" means *Panax quinquefolius* L.
5. "Grower" means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.
6. "Out-of-state cultivated ginseng" means cultivated ginseng grown or nurtured outside this state.

### **4-39-02. Growers and dealers - Registration - Fees.**

A person who desires to act as a grower or a dealer shall register with the commissioner on a form provided by the commissioner. A person who acts as a dealer and a grower shall register as both. Each dealer shall pay a registration fee of twenty-five dollars. Each grower shall pay a registration fee of ten dollars. The fee must be submitted with the registration form. The commissioner shall assign a registration number to each person registered. Each dealer's registration is valid for one year from the date of issuance. Each grower's registration is valid for two years from the date of issuance.

### **4-39-03. Sale or shipment of cultivated ginseng.**

1. Upon request, the commissioner shall provide each registered grower and dealer with shipment certificates and report forms. The commissioner shall stamp each shipment certificate and report form with the registration number of the grower or dealer who requests the form. A shipment certificate and report form is valid only if used during the registration period for which the stamped registration number of the grower or dealer is issued. The commissioner may charge a fee not exceeding five dollars to recover the costs related to providing shipment certificates and report forms.
2. Except as provided in subsection 6, no person may sell or ship cultivated ginseng to a dealer or ship cultivated ginseng out of this state unless the cultivated ginseng is accompanied by a completed shipment certificate provided by the commissioner. The shipment certificate must specify the year in which the cultivated ginseng was harvested. The person selling or shipping the cultivated ginseng shall submit a report form describing to the commissioner the source of all cultivated ginseng included in the sale or shipment. The report must be within thirty days after the sale or shipment. Each person who completes a shipment certificate or report form must retain a duplicate copy for three years from the date of the sale or shipment.
3. No dealer may purchase or receive cultivated ginseng unless it is accompanied by a completed shipment certificate. A dealer shall retain a copy of each shipment certificate received for a period of three years from the date of receipt.
4. No dealer may purchase or receive out-of-state cultivated ginseng unless it is accompanied by a valid certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate must include the source, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. The dealer must retain a copy of each certificate received for a period of three years from the date of receipt.
5. No person may import out-of-state cultivated ginseng into this state unless the imported shipment is accompanied by a valid certificate issued by the state of origin.

No person may ship out-of-state cultivated ginseng using a shipment certificate issued by this state.

6. Subsection 2 does not apply to a person who sells or ships cultivated ginseng dry root to a person outside this state who is buying or receiving the cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record of the sale or shipment which includes the following:
  - a. The name and address of the purchaser or recipient.
  - b. The dry weight of the cultivated ginseng dry root included in the sale or shipment.
  - c. The date of the sale or shipment.
  - d. The source of all of the cultivated ginseng dry root included in the sale or shipment.
  - e. The year in which the cultivated ginseng dry root was harvested.

**4-39-04. Inspection or submission of records.**

Each dealer or grower shall make all records, including records that are located outside of this state, required to be kept under this chapter available for inspection or copying by the commissioner upon the commissioner's request.

**4-39-05. Certain records not public information.**

Documents and records relating to transactions in cultivated ginseng dry root submitted to the commissioner pursuant to this chapter by a grower or dealer are not public information.

**4-39-06. Enforcement actions.**

The commissioner may deny, suspend, or revoke the registration of any dealer or grower and may invalidate shipment certificates completed by the dealer or grower, if the commissioner finds that the dealer or grower has violated this chapter. The commissioner may, without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the commissioner finds that there is a need for immediate action to prevent a violation of this chapter. Any action of the commissioner pursuant to this section must be in writing. Any person who receives a notice under this section is entitled to a hearing before the commissioner if requested within ten days after receipt of the notice. Hearings must be conducted within ten days after receipt of a request for the hearing. Enforcement of any action may not be stayed pending the hearing.

**4-39-07. Penalties.**

1. A person who violates this chapter, or rules adopted to implement this chapter, is guilty of an infraction.
2. A person who violates this chapter, or rules adopted to implement this chapter, is subject to a civil penalty not to exceed five hundred dollars. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted to implement this chapter.