302 KAR 45:010. Ginseng.

RELATES TO: KRS 246.030, 246.650, 246.660, 246.990(9), 260.020, 260.030, 363.610, 50 C.F.R. Part 23

STATUTORY AUTHORITY: KRS 246.660, 260.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to administer a program for ginseng in Kentucky. This administrative regulation establishes the ginseng program including licensing and record keeping requirements for dealers, a limited harvesting season, certification procedures, administrative violations and civil penalties, and procedures for the suspension or revocation of a dealer's license.

Section 1. Definitions.

(1) "Artificially propagated" means ginseng grown from seeds or rootlets that:

(a)

1. Are exempt from the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as implemented by 50 C.F.R. Part 23; or

2. Were derived from cultivated parental stock; and

(b) Were woodsgrown or cultivated.

(2) "Certified ginseng" means ginseng that has been issued an American Ginseng Export Certificate by the department or other governmental certifying organization.

(3) "Cultivated" means ginseng grown under artificial shade and in tilled soil.

(4) "Dealer" means any person or agent of an entity buying ginseng for resale or export.

(5) "Department" means the Kentucky Department of Agriculture.

(6) "Dry ginseng" means ginseng roots that have been dried to remove moisture.

(7) "Export" means to transport, ship, carry, haul, take, or otherwise move ginseng collected in Kentucky outside of Kentucky.

(8) "Ginseng" is defined by KRS 246.650(2).

(9) "Green ginseng" means ginseng roots retaining moisture, not dried.

(10) "Harvest" is defined by KRS 246.650(1).

(11) "Purchase" means to take possession of ginseng in exchange for cash, cash equivalents, or barter.

(12) "Sell" means to transfer possession of ginseng to another person or entity in exchange for cash, cash equivalents, or barter.

(13) "Uncertified ginseng" means ginseng that has been harvested, but has not been issued a certificate for export.

(14) "Wild" means:

(a) Ginseng grown with minimal interference by humans and under natural canopy in forest or woodlands; or

(b) Mature ginseng plants if they are derived from seeds of wild ginseng that were planted as required by Section 4(3) of this administrative regulation.

(15) "Wild Simulated" means ginseng grown:

(a) From seed that was not planted as required by Section 4(3) of this administrative regulation;

(b) With minimal interference by humans; and

(c) Under natural canopy.

(16) "Woodsgrown" means ginseng:

(a) Grown under natural canopy; and

(b) Purposefully managed.

Section 2. Dealer License Requirements. A person shall not purchase uncertified ginseng for resale or export unless he or she possesses a Kentucky ginseng dealer's license.

(1) Annual application. All persons or agents of entities purchasing uncertified ginseng in any amount at any time shall file a complete Ginseng Dealer Application for a ginseng dealer's license.

(2) Fee. An annual fee of seventy-five (75) dollars for Kentucky residents or one hundred fifty (150) dollars for non-residents shall be submitted to the department prior to issuance of a ginseng dealer's license. Residency shall be determined by the state of issuance of a driver's license or other government issued photo identification.

(3) Licensing period. A ginseng dealer's license shall be valid from September 1 until August 31 of the following calendar year. The department shall not issue a license if an applicant has outstanding penalties due under Section 9 of this administrative regulation.

(4) A dealer may only be an agent for an entity that is duly authorized to do business in the Commonwealth.

(5) All dealer purchases shall be made using a certified scale as required in KRS 363.610.

Section 3. Record Keeping.

(1) Purchase of ginseng. Ginseng dealers shall document all purchases of ginseng on a Ginseng Purchase Form. The KDA shall issue twenty-five (25) forms to each dealer. For additional forms, the dealer shall execute a Ginseng Purchase Form Log and submit to the KDA prior to additional form issuance. The form shall be legible, shall be completed in its entirety by the dealer, other than the seller's signature or mark, in the presence of the seller, and shall include:

(a) Printed name, signature, or mark and address of the seller;

(b) Month purchased;

(c) Month harvested;

(d) County where harvested;

(e) Weight of purchase or sale;

(f) Designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

(g) The seller's government issued photo identification number (drivers license number etc).

(2) Records of sales between dealers.

(a) A ginseng dealer purchasing uncertified ginseng from another dealer shall:

1. Complete a Dealer to Dealer Transaction Form to document the purchase; and

2. Obtain from the other dealer Ginseng Purchase Forms completed by the dealer of origin.

(b) The Dealer to Dealer Transaction Form shall include:

1. The month of purchase from a dealer;

2. The weight of the ginseng purchased at the time of the transaction;

3. The signature and registration number of the dealer from whom the purchase is made;

4. The designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

5. The form identification numbers from the Ginseng Purchase Forms.

(3) Retention. A person required to maintain records under this section shall retain the forms for a period of at least five (5) years from the end of that year's growing season.

(4) Availability. Records required to be maintained under this section shall be made available to the department upon request.

Section 4. Harvest.

(1) Ginseng shall only be harvested between September 1 and December 1 of each year.

(2) Ginseng shall not be harvested that is less than five (5) years old or has less than three

(3) five (5) leafed prongs.

(3) Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 5. Sale of Ginseng.

(1) Uncertified green ginseng may only be sold from September 1 of each year until March 31 of the following year.

(2) Uncertified dry ginseng may only be sold from September 15 of each year until March 31 of the following year.

(3) Ginseng dealers may obtain American Ginseng Export Certificates from the department during the ginseng selling season.

(4) A ginseng dealer may sell certified ginseng at any time.

Section 6. Unsold Ginseng.

(1) Uncertified ginseng not sold by March 31 of the year after harvest shall be documented by the dealer. It shall be:

(a) Weighed and issued a weight receipt by the department; or

(b) Certified in accordance with Section 7 of this administrative regulation.

(2) A ginseng dealer shall not possess:

(a) Undocumented green ginseng from April 1 through August 31; or

(b) Undocumented dry ginseng from April 1 through September 14.

(3) Uncertified weighed ginseng shall not be sold until the following season's selling period.

Section 7. Certification of Ginseng.

(1) Before ginseng harvested in Kentucky can be exported, it shall be certified by the department on an American Ginseng Export Certificate.

(2) Ginseng may only be certified by a dealer holding a Kentucky dealer's license.

(3) To obtain certification, a dealer shall:

(a) File with the department an American Ginseng Export Certificate form;

(b) File with the department associated purchase forms covering the amount of ginseng to be certified in accordance with subsection (5) of this section;

(c) Undergo a random sample inspection of ginseng roots by a department official; and

(d) Pay the certification fee in accordance with subsection (7) of this section.

(4) Export Certificate. The certificate shall include the:

(a) State of origin;

(b) Serial number of certificate;

(c) Dealer's state license number;

(d) Dealer's shipment number for the harvest season;

(e) Year of harvest;

(f) Designation as dried or green ginseng;

(g) Designation as cultivated, woodsgrown, wild, or wild simulated;

(h) Weight of ginseng;

(i) Statement of state or tribal certifying official that the ginseng was obtained in that state or on those tribal lands in accordance with all relevant laws for that harvest year; and

(j) Name and title of state or tribal certifying official.

(5) Associated purchase forms.

(a) For ginseng purchased from harvesters, the dealer shall file Ginseng Purchase Forms covering the amount of ginseng to be certified.

(b) For ginseng purchased from other dealers, the dealer shall file Dealer to Dealer Transaction Forms and Ginseng Purchase Forms obtained from the dealers of origin covering the amount of ginseng to be certified.

(c) Ginseng Purchase Forms shall be submitted to the department by April 15 of the year after harvest.

(6) The department may obtain samples of roots in order to obtain a root count.

(7) Certification fee. The fee for certification and processing by the department shall be two (2) dollars per pound. Payment shall be made prior to the release of the certification of the ginseng to the dealer, and shall be tendered by check or money orders only. Cash shall not be accepted.

(8) A copy of the certificate shall be:

(a) Enclosed with the shipment that is the subject of the certification;

(b) Retained for a minimum of five (5) years by the licensed ginseng dealer; and

(c) Retained by the certifying agent of the department for seven (7) years.

Section 8. Prohibition on Uncertified Non-Kentucky Grown Ginseng. Ginseng that is harvested outside the border of Kentucky and not certified in its state of origin shall not enter Kentucky.

Section 9. Violations and Penalties.

(1) The following acts shall be considered a violation of this administrative regulation, and each violation shall carry a civil penalty of $100 to $1,000 dollars:

(a) Harvesting ginseng out of season;

(b) Selling uncertified ginseng out of season;

(c) Possessing underage ginseng;

(d) Seed collection, not relocating within fifty (50) feet of parent;

(e) Purchasing uncertified ginseng out of season;

(f) Falsification of a Ginseng Dealer Application, a Ginseng Purchase Form, a Dealer to Dealer Transaction Form, or an American Ginseng Export Certificate;

(g) A dealer purchasing ginseng from a harvester without accurately documenting the purchase on a Ginseng Purchase Form in accordance with Section 3(1) of this administrative regulation;

(h) A dealer purchasing uncertified ginseng from another dealer without:

1. Accurately documenting the purchase on a Dealer to Dealer Transaction Form in accordance with Section 3(2) of this administrative regulation; or

2. Obtaining from the other dealer Ginseng Purchase Forms completed by the dealer of origin;

(i) Reselling or exporting ginseng without a dealer's license;

(j) A dealer failing to certify or obtain weight receipt of ginseng at the end of the uncertified ginseng selling season;

(k) Transporting or exporting of uncertified ginseng in or out of Kentucky;

(l) Possession of undocumented ginseng by a ginseng dealer out of season;

(m) Acting as a dealer or agent of a dealer without a license; and

(n) Purchasing uncertified ginseng out of season.

(2) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty accessed in Section 9(1) of this administrative regulation, not to exceed $1,000.

(3) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty accessed in Section 9(1) of this administrative regulation, not to exceed $1,000.

(4) This section shall not prohibit the department from suspending or revoking a license or certificate at any time in accordance with Section 10 of this administrative regulation.

(5) A person cited with a violation may contest the violation by requesting a hearing in writing within ten (10) days of receiving the notice of violation. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 10. Ginseng Dealer License Suspension or Revocation.

(1) A ginseng dealer may contest a proposed license suspension or revocation by requesting a hearing in writing within ten (10) days of receiving the notice of suspension or revocation. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke the license once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a license for up to one calendar year, or revoke a license after the provisions of subsections (1) and (2) of this section have been satisfied.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Ginseng Dealer Application", 12/2019];

(b) "American Ginseng Export Certificate", 8/2016;

(c) "Dealer to Dealer Transaction Form", 12/2019;

(d) "Ginseng Purchase Form", 12/2019;

(e) "Ginseng Purchase Form Log", 12/2019; and

(f) "Weight Receipt"", 08/2015.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Plant Marketing, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(9 Ky.R. 292; Am. 572; 917; eff. 1-6-83; 13 Ky.R. 1713; 14 Ky.R. 431; eff. 8-5-87; 18 Ky.R. 743; 1840; eff. 11-26-91; 27 Ky.R. 1061; 1774; eff. 1-15-2001; 38 Ky.R. 659; 903; eff. 11-3-11; Crt eff. 2-18-2020; 46 Ky.R. 2315, 2917; eff. 7-9-2020.)