

CHAPTER 78
GINSENG HARVESTING AND SALE

571—78.1(456A) Purpose. The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); to provide for the time and conditions for harvesting the plant; and to provide requirements for the registration of growers, dealers and exporters and the records kept by dealers and exporters. The goal of the department's program is to ensure that American Ginseng (*Panax quinquefolius*), a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.2(456A) Scope. These rules shall apply to all persons harvesting, cultivating and dealing in American Ginseng (*Panax quinquefolius*) in Iowa. However, these rules are not intended to apply to the trade or trafficking of lawfully obtained American Ginseng that has been processed, prepared, packaged and labeled in a manner intended for its final consumptive use.

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571—78.3(456A) Definitions. All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

"Controlled conditions" means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations, such as potting, bedding, or protection from weather and artificial or natural shade or light.

"Cultivated ginseng" means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, root, rhizome, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

"Cultivated parental stock" means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation.

"Cutting" or *"division"* means a plant grown from the root, rhizome, stem, or leaf of another plant and is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

"Dealer" means any person who deals in ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa, for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term "dealer" includes any person, including without limitation a harvester, who sells ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

"Dealer's permit" means a permit issued to a dealer by the department under these rules.

"Department" means the Iowa department of natural resources.

"Director" means the director of the Iowa department of natural resources or a designee.

"Ginseng" means all parts of the American Ginseng (*Panax quinquefolius*) plant, including without limitation roots, rhizomes, leaves and seeds, which may be cultivated or wild. "Ginseng," however, for purposes of these rules, does not mean those parts of the American Ginseng plant that have been processed.

"Green ginseng" means a root of ginseng from which the moisture has not been removed by drying. For the purposes of these rules, the amount of dried ginseng rhizome which can be derived from green ginseng rhizome shall be calculated using a ratio of three and three-tenths to one (3.3:1) by weight.

"Grower" means a person who grows cultivated ginseng for the purpose of selling the ginseng.

"Grower's permit" means a permit issued under these rules to a grower.

"Harvester" means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or uproots wild ginseng for the purpose of selling the ginseng or for personal use.

"Harvester's permit" means a permit issued under these rules to a harvester.

"Nonresident" means a person other than a resident as defined by Iowa Code section 483A.1A.

“*Permits*” means dealer’s permits, grower’s permits and harvester’s permits issued under these rules.

“*Resident*” means a resident as defined by Iowa Code section 483A.1A.

“*Root*” means the ginseng rhizome and its roots.

“*True leaves*” or “*prongs*” means compound leaves that include five leaflets consisting of three large leaflets and two small leaflets.

“*Wild ginseng*” means an unprocessed plant, dry or live green root, rhizome, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a seed that is planted in the wild, or which have been transplanted into native habitat. “Wild ginseng” is ginseng that has not been grown or nurtured by a person beyond planting of seeds or plants.

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571—78.4(456A) Season for legal harvest. The season for legally harvesting ginseng is September 1 to October 31.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.5(456A) General prohibitions.

78.5(1) Harvest. From November 1 through the following August 31, no person shall harvest, dig, cut, uproot, gather, intentionally disturb, or destroy ginseng, whether the ginseng is wild or cultivated ginseng. This prohibition shall not apply to the transplantation or intentional disturbance of cultivated ginseng when such activities are incidental to the cultivation and growing of cultivated ginseng in a nursery business.

78.5(2) Sale. A person, other than a dealer licensed pursuant to these rules, shall not sell ginseng from March 16 through August 31.

78.5(3) Sale and possession of green ginseng. A person shall not possess or transact business in green ginseng from November 21 through August 31, unless otherwise provided for by these rules.

78.5(4) State-owned and state-managed lands. In an effort to conserve and protect native stands of wild ginseng, the introduction of nonnative ginseng stock on state-owned or state-managed lands under the jurisdiction of the commission is prohibited, except in narrow circumstances as described in these rules. As such, a person shall not, at any time, possess, harvest, dig, cut, uproot, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned or state-managed lands under the jurisdiction of the commission. Nothing in this chapter shall prohibit the department from taking measures on state-owned or state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

78.5(5) Out-of-state ginseng. No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571—78.9(456A) shall be transported into or be in the state of Iowa lawfully.

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571—78.6(456A) Ginseng permits. The department shall issue a grower’s permit or dealer’s permit upon receipt of a signed and complete application. An application shall be submitted on the form provided by the department, and payment of the appropriate fee, if applicable, shall be included with the application. Harvester’s permits are available for sale through the department’s electronic licensing system for Iowa (ELSI), which may be accessed through license agents throughout the state or on the department’s Web site. The department shall not issue a permit if the department determines that the permit will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or applicable federal laws. A person shall not carry, possess or use any other person’s permit issued pursuant to these rules, except as specifically provided by these rules.

78.6(1) Grower’s permits.

a. A person must obtain a permit from the department to legally grow cultivated ginseng. There is no fee for the permit, except for the charge associated with ELSI.

b. In order to be considered, an application for a grower's permit shall be made on the form provided by the department, shall be complete, and shall be executed by the person seeking the grower's permit.

c. A grower's permit shall be valid for five years from the date of issuance.

d. An application for permit renewal must be filed with the department within 60 days of expiration of the existing permit.

78.6(2) Dealer's permits.

a. A dealer in Iowa must have a valid dealer's permit issued by the department. A dealer's paid employees and family members who work at a dealer's primary place of business as identified on the dealer's permit may operate legally under the dealer's permit. For purposes of this subrule, family members include a dealer's spouse, domestic partner, parents, siblings, and children.

b. In order to be considered, an application for a dealer's permit shall be made on the form provided by the department, shall be complete, and shall be executed by the person seeking the dealer's permit.

c. Dealer's permits shall be issued as either Class A or Class B. A Class A dealer's permit authorizes a person to deal in any amount of ginseng in a license year. The permit application shall be accompanied by a \$250 permit fee for Iowa residents and a \$500 permit fee for nonresidents. A Class B dealer's permit authorizes an Iowa resident to deal in not more than five pounds dry weight of wild ginseng in a license year. The permit application shall be accompanied by a \$50 permit fee. There shall be an additional charge associated with ELSI. The department's issuance of the permit may take in excess of 60 days to complete.

d. A dealer's permit shall be valid for a license year, from April 1 until March 31 of the following year.

e. A dealer's permit must be shown to the department when the department is certifying ginseng and must be shown to harvesters or other dealers when the dealer is buying ginseng.

78.6(3) Harvester's permits.

a. Any person who harvests wild ginseng must have a valid harvester's permit issued by the department and shall produce such permit upon the request of the department while the person is engaged in harvesting activities, including the person's moving to or from the harvest site, transporting ginseng and the selling of the harvested ginseng.

b. An application for a harvester's permit shall be made on the form provided by the department, unless the harvester's permit is purchased through ELSI, and shall be accompanied by a fee of \$35 for residents and \$65 for nonresidents. There shall be an additional charge associated with ELSI. The application and subsequent harvester's permit shall be signed by the applicant.

c. A harvester's permit shall be valid from September 1 through March 15 of the following year.

d. A harvester who has a valid harvester's permit may sell wild ginseng from September 1 through March 15 of the following year.

e. A harvester with a valid harvester's permit may retain no more than four ounces of dry wild ginseng for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

f. No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the Code of Federal Regulations.

78.6(4) Duplicate permits. A duplicate grower's permit, harvester's permit or dealer's permit may be issued upon application to the department and the payment of a \$5 fee, plus any charges assessed to use ELSI to issue the duplicate permit.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.7(456A) Dealers—record keeping.

78.7(1) Contents of records. Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction. The records shall be on forms prescribed by the

department, which shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

- a. The date of transaction; and
- b. The name and address of the buyer or seller, whichever is applicable for the transaction; and
- c. The harvester's permit number or dealer's permit number, if a dealer is buying ginseng in the transaction; and
- d. A description of the ginseng transacted, including the actual weight of the ginseng transacted and whether the ginseng is dried or green. If the ginseng is green ginseng, the weight shall also be converted to the dried weight of ginseng according to the ratio in rule 571—78.3(456A); and
- e. The name of the county or counties where the ginseng was harvested if the ginseng is purchased from a harvester; and
- f. A copy of the ginseng's certificate of origin, signed by the seller, if applicable; and
- g. The year of harvest for the ginseng bought or sold; and
- h. Any additional information as requested by the department and included on the department's form.

78.7(2) Monthly reporting. Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

78.7(3) Annual reporting. Each dealer shall file an annual report with the department, which shall be delivered or postmarked by April 15. The annual report shall be filed on forms provided by the department and shall include the following information:

- a. A summary of all the dealer's transactions during the preceding license year, from April 1 through March 31, including sales to out-of-state persons; and
- b. An inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including the roots' certified weight and designation as either wild ginseng or cultivated ginseng, or a statement that the dealer has no roots remaining in the dealer's possession in Iowa as of that date. Any certification regarding a root's weight as required by this subrule shall be completed through the department or its agents at locations designated by the department, upon appointment.
- c. Any roots carried over from one license year to the next shall be documented on the following license year's reports.

78.7(4) Records retention. All records required by this rule shall be kept by the dealer for a period of three years after the expiration of the dealer's permit.

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571—78.8(456A) Dealer locations.

78.8(1) Generally. Ginseng dealers shall transact business only at the location specified on the dealer's permit or at the place of business specified on the permit of any other dealer who holds a dealer's permit in Iowa and is involved in the transaction.

78.8(2) Location permits. A dealer who wishes to transact business at a location other than the locations provided for in subrule 78.8(1) may obtain a location permit from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified on the corresponding dealer's permit.

The department shall, upon application and payment of the applicable location permit fee, furnish a location permit to the dealer. The location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed for use of ELSI to issue the permit.

78.8(3) Duplicate location permits. A duplicate location permit may be issued upon application to the department and the payment of a \$5 fee, plus any charge assessed for use of ELSI to issue the duplicate permit.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.9(456A) Certificates of origin.

78.9(1) Shipments. Every shipment of ginseng to a location outside the state of Iowa by a grower, harvester or dealer shall be accompanied by a certificate of origin, or shipping certificate, which certifies that the ginseng was lawfully harvested.

a. The department will issue a certificate of origin for cultivated ginseng to a grower or dealer upon application by the permit holder and based upon the completeness of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

b. The department will issue a certificate of origin for wild ginseng to a harvester upon application by the permit holder and based upon the completeness of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

c. The certificate of origin for wild ginseng will be issued by the department and its agents after the roots have been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

d. A grower, harvester, or dealer seeking a certificate of origin must have a valid grower's permit, harvester's permit, or dealer's permit, respectively, and must present the permit to receive a certificate of origin.

78.9(2) Fees. The department shall issue a certificate of origin free to any grower or dealer who lawfully possesses a valid grower's permit or dealer's permit, respectively, and for a fee of \$5 for each certificate to any harvester who lawfully possesses a valid harvester's permit.

78.9(3) Compliance. Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng.

78.9(4) Wild ginseng originating in another state.

a. No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued pursuant to this chapter.

b. No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

c. If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

d. A dealer shall maintain a copy of the certificate of origin with the record of transaction.

e. It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside Iowa and lawfully brought into the state so long as the person possesses a valid certificate of origin for the wild ginseng.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.10(456A) Inspection.

78.10(1) At any time upon request, any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner or person in lawful control of the land upon which the permittee may be harvesting wild ginseng. Failure of a person to carry or refusal to show or exhibit a valid permit while engaged in or presumed to be engaged in the harvesting, growing or dealing of ginseng in Iowa shall be a violation of this chapter. However, a person charged with violating these rules shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a permit issued to that person and valid when the person was charged with a violation of these rules. Failure to make such permit available is a violation of these rules.

78.10(2) Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

78.10(3) Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show the ginseng to the department, director or officer; a refusal to do so is a violation of this chapter.
[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.

78.11(1) Every person shall have in possession a valid, department-issued permit to harvest wild ginseng for the current harvest season when harvesting, cutting, uprooting, gathering, destroying, possessing or transporting wild ginseng.

78.11(2) No person shall harvest a plant unless the plant possesses three or more true leaves or prongs and a flowering or fruiting stalk with red berries. If, after a person removes a plant from the soil with the requisite leaves or prongs, it is determined the root has less than five stem scars, the person shall return the plant to the soil at the same location and make best efforts to return the plant and the surrounding area to their condition prior to harvest of the plant. In no event shall a person harvest or possess a wild ginseng root unless the root has at least five stem scars.

78.11(3) When a person harvests wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester's residence or place of business, as identified in the harvester's permit.
[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.

78.12(1) Seeds.

a. All persons harvesting wild ginseng shall plant all seeds collected from such plants within 100 feet of the parent plant. Seeds collected for planting pursuant to this subrule should be collected from the fruit by gently pressing the fruit of the ginseng.

b. A person shall use no tool other than the person's finger to plant seeds from wild ginseng and shall push each seed to a depth of no more than one inch into the soil.

c. A person shall not possess or transport seeds of wild ginseng more than 100 feet from the site of the parent plant.

78.12(2) Dealing.

a. A person shall not purchase or sell wild ginseng if the person knows or should have known that the ginseng was harvested illegally.

b. A dealer shall not purchase wild ginseng without inspecting the permit of the harvester or dealer. A dealer shall not purchase wild ginseng if the dealer knows or should have known that the harvester or dealer has violated this chapter.

c. A person shall not buy, deal, purchase or otherwise transact business involving seeds from wild ginseng.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.13(456A) Compliance with laws. A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.14(456A) Violations of this chapter.

78.14(1) A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4, and permit suspension, modification and revocation pursuant to 571—78.17(456A).

78.14(2) Separate offense. Each ginseng plant or part thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

78.14(3) Materials determined by the department's law enforcement personnel to be contraband or to have been taken in violation of this chapter may be seized and disposed of in conformance with Iowa Code chapter 809.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.15(456A) Possession. When a person is in possession of wild ginseng, including the shipping or transporting of wild ginseng, and a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.16(456A) Valuation. The value of seized ginseng that was harvested in violation of these rules shall be based on the current market value, as determined by the department.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.17(456A) Revocation of permits. Any permit issued pursuant to this chapter may be revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any provision of this chapter and determines that continuation of the permit is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

571—78.18(456A) Reciprocity. Nonresident harvesters, growers and dealers from states that regulate American Ginseng by allowing the harvesting, cultivating and dealing in American Ginseng but that prohibit Iowa harvesters, growers and dealers to lawfully operate in those states are not eligible for permits issued by the department.

[ARC 7680B, IAB 4/8/09, effective 4/1/09]

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