

No. R. 886

14 November 2014

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

AGRICULTURAL PRODUCT STANDARDS ACT, 1990
(ACT No. 119 OF 1990)REGULATIONS REGARDING CONTROL OF THE EXPORT OF FRESH CUT
FLOWERS AND FRESH ORNAMENTAL FOLIAGE

The Minister of Agriculture, Forestry and Fisheries has, under section 15 of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) -

- (a) made the regulations in the Schedule;
- (b) determined that the said regulations shall come into operation on the date of publication and
- (c) read together with section 4 of the said Act, repeal the regulations published by Government Notice Nos. R. 2014 of 23 August 1991, R. 2015 of 23 August 1991, R. 2016 of 23 August 1991, R. 2017 of 23 August 1991, R. 2159 of 12 November 1993, R. 189 of 13 February 1998 with effect from the said date of commencement.

SCHEDULE

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning, and –

“accredited laboratories” means any laboratory that is not a National Reference Laboratory and that is nominated by the Executive Officer in writing as being suitable or required for the testing of compliance as envisaged in terms of regulation 6(1) and 7(1);

“assignee” means a person, undertaking, body, institution, association or board designated as such under section 2 (3) (a) of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990);

“certificates” means a certificate that may be issued either in paper format (including electronically prepared) or in a verified electronic format which describe and attest to conformity of a consignment of regulated agricultural products to stipulated requirements as set out in regulation 6.

“chinkerinchees” means the sexual reproductive parts of the genus *Ornithogalum*;

“consignment” means a quantity of fresh cut flowers and fresh ornamental foliage of the same cultivar, belonging to the same owner and delivered at the same time under cover of the same delivery note, consignment note or receipt note, or is delivered by the same vehicle, or in the case of a quantity of fresh cut flowers and fresh ornamental foliage that is divided into different cultivars, classes, diameter groups, pallet loads, trademarks or types of packaging, every quantity of each of the different cultivars, classes, diameter groups, pallet loads, trademarks or types of packaging;

"consignment note" means a description of consignment approved by the Executive Officer or the Assignee;

"Executive Officer" means the officer designated under section 2 (1) of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990)

"flowers" means the inflorescence or buds which normally houses the sexual reproductive parts of plants, foliage and stems which is not dried and of which the moisture content is more than 15 per cent, and -

- (i) fresh foliage and stems of plants or mixtures of different plants; and
- (ii) fresh parts of plants,

which are destined to be used for decorative purposes;

"fresh cut flowers and fresh ornamental foliage" means flowers of the kinds chinkerinchees, flowers, ornamental foliage, ornithogalum bulbs and protea;

"inspector" means the Executive Officer or an officer under his control, or an Assignee or an employee of an Assignee;

"national reference laboratory" means an official laboratory of the Department of Agriculture, Forestry and Fisheries that has been nominated in writing by the Executive Officer for the testing of compliance as envisaged in terms of regulation 6(1) and 7(1);

"ornamental foliage" means the fresh leaves and fresh stems of any plant (*inter alia* ferns) which are used for ornamental purposes.

"ornithogalum bulbs" means the subterranean reproduction parts obtained from the genus *Ornithogalum*; and

"protea" means the sexual reproductive and vegetative parts of the family Proteaceae

"the Act" means the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990); and

Prohibition on the export of fresh cut flowers and fresh ornamental foliage

2. (1) Subject to the provisions of subregulation (2), no person shall export fresh cut flowers and fresh ornamental foliage from the Republic unless each quantity thereof has been approved by the Executive Officer for that purpose.

(2) Fresh cut flowers and fresh ornamental foliage which are -

- (a) exported in a consignment of less than 10 kg net mass; and
- (b) taken in as provisions aboard a conveyance to another country,

shall be exempted from the prohibition set out in subregulation (1).

(3) An approval in terms of subregulation (1) may also be given by an Assignee designated with regard to fresh cut flowers and fresh ornamental foliage.

Application for approval for export

3. (1) An application for an approval in terms of section 4 of the Act for the export of a consignment of fresh cut flowers and fresh ornamental foliage, shall be directed in writing to the Executive Officer or the Assignee who has been designated with regard to fresh cut flowers and fresh ornamental foliage

(2) Such an application shall be made at least four working days before the intended date of export or as otherwise arranged with the Executive Officer or designated Assignee.

(3) The following particulars shall be supplied when such an application is made:

- (a) The name and address to the applicant and, where applicable, of his agent or exporter.
- (b) The cultivar and class thereof.
- (c) The number and type of containers in the consignment.
- (d) The intended date and time of export and the port or airport from which the consignment concerned shall be exported.
- (e) The particulars concerning the marking and destination of the consignment concerned.
- (f) The address of the premises where the consignment concerned can be inspected and the date and time when the consignment will be ready for inspection.
- (g) Any other additional information regarding the consignment concerned.

Presentation for inspection

4. (1) Each consignment of fresh cut flowers and fresh ornamental foliage intended for export which has to be presented for inspection in terms of these regulations shall, prior to the export thereof, be approved for export by an inspector: Provided that the consignment of fresh cut flowers and fresh ornamental foliage concerned shall be presented for inspection at least 12 hours prior to the intended time of export or as otherwise arranged with the Executive Officer or designated Assignee.

(2) A consignment of fresh cut flowers and fresh ornamental foliage referred to in subregulation (1), shall be submitted for inspection in such a manner that -

- (a) access to each container therein can be obtained readily; and
- (b) the marks, printing or stamping on such containers can readily be read.

Consignment note

5. (1) Every consignment of fresh cut flowers and fresh ornamental foliage destined for export shall, when submitted for inspection, be accompanied by a consignment note completed clearly, legibly, fully and correctly.

(2) All the copies of such a consignment note shall have the same serial number and one copy thereof shall be retained by the Department or Assignee.

Procedure at inspection

6. (1) An inspector may in any consignment of fresh cut flowers and fresh ornamental foliage open as many containers and inspect the contents thereof and remove samples of such contents for the purpose of further inspection or analyses as he/she may deem necessary.

(2) An inspector's finding in relation to the containers opened by him/her by virtue of the provisions of subregulation (1), and the contents thereof, shall apply as a finding in respect of the whole consignment from which such containers were abstracted.

(3) If an inspector is satisfied after his/her inspection that the consignment of fresh cut flowers and fresh ornamental foliage:

- (a) comply with the requirements of these regulations he/she shall approve such consignment for export, either by marking or causing to be marked on each container or label affixed thereto with a mark of approval or by issuing a certificate which indicates such approval; or
- (b) do not comply with the requirements of these regulations he/she shall prohibit such consignment for export, either by marking or causing to be marked on each container or label affixed thereto with a mark or prohibition or by issuing a certificate which indicates such prohibition.

(4) An inspector may at his/her own discretion re-inspect a consignment of fresh cut flowers and fresh ornamental foliage which has already been approved for export, and may confirm or withdraw according to sub regulation (3)(b) any previous approval with regard to the consignment concerned: Provided that no inspection fee shall be payable in respect of a re-inspection carried out on demand of an inspector.

Assessment of the Competence of testing Laboratories involved in the export of fresh cut flowers and fresh ornamental foliage

7. (1) For the purpose of analysis as required by regulation 6 (1), such analyses shall be conducted by a National Reference Laboratory or Accredited Laboratories.

(2) The Executive Officer shall in accrediting or nominating a National Reference Laboratory or Accredited Laboratories to conduct such analyses in regulation 7(1) consider inter alia their suitability with regards to the following criteria:

- (a) A reasonable knowledge or expertise in fresh cut flowers and fresh ornamental foliage;
- (b) Compliance with the general criteria for testing laboratories laid down in ISO/IEC Guide 17025;
- (c) Participation in appropriate proficiency testing schemes for analysis which conform to the requirements laid down in "The international harmonized protocol for the proficiency testing of analytical laboratories";
- (d) Whenever available, use methods of analysis which have been validated according to the principles laid down by the Codex *Alimentarius* Commission; and
- (e) Use internal quality control procedures, such as those described in the "Harmonized Guidelines for internal Quality Control in Analytical Chemistry Laboratories".

Fees for inspection and analysis

8. The following fees shall be payable for inspection and analysis:

(1) The prescribed inspection fee when fresh cut flowers and fresh ornamental foliage are presented for inspection.

(2) The laboratory analysis fee when samples of fresh cut flowers and fresh ornamental foliage are analysed chemically, physically or microbiologically for export purposes.

(3) The courier (transport) fee when samples are dispatched to the laboratory.

Appeal

9. (1) Any person who appeals in terms of section 10(1) of the Act against a decision or direction of an inspector, shall submit a written notice of appeal to an inspector within one day after he/she has been notified of the said decision or direction unless that day falls on a Saturday, Sunday or public holiday in which case the appeal shall be submitted on the first following working day.

(2) Such person shall pay the prescribed fee with the inspector or at any office of the Executive Officer, as the case may be: Provided that such fee shall be paid in respect of each separate consignment, and provided further that if the notice of appeal and the fee are not submitted and paid within the period specified in subregulation (1), the appellant shall lose his/her right of appeal.

(3) An inspector may apply any mark or marks which he/she may deem necessary for identification purposes to the fresh cut flowers and fresh ornamental foliage in respect of which an appeal has been submitted, or to the containers thereof, and such fresh cut flowers and fresh ornamental foliage shall not without his consent, be removed from the place where they were inspected or where they are stored.

(4) The Director-General shall designate at least three persons to serve as an appeal board.

(5) Such an appeal board shall give the appellant or his representative a reasonable notice of the time and place determined for the hearing of the appeal and may, after the fresh cut flowers and fresh ornamental foliage concerned have been produced and identified and all interested parties have been heard, instruct all persons to leave the place where the appeal is being considered: Provided that the appeal board may make use of persons to assist in an advisory capacity.

(6) An appeal board shall decide an appeal within 48 hours (excluding Sundays and public holidays) after it was submitted, and its decision shall be final.

(7) If the fresh cut flowers and fresh ornamental foliage concerned are not produced at the time and place determined by the appeal board, the amount paid in respect thereof shall be forfeited.

Offences and penalties

10. Any person who contravenes or fails to comply with the provisions of these regulations shall be guilty of an offence and shall be liable to a fine or imprisonment as set out in section 11 of the Act.