

THE AGRICULTURAL PRODUCE (EXPORT) ACT
(Cap. 319)

IN EXERCISE of the powers conferred by sections 9 and 10 of Agricultural Produce (Export) Act, the Minister for Agriculture makes the following Rules

THE AGRICULTURAL PRODUCE (EXPORT) (HORTICULTURAL PRODUCE)
(GENERAL) RULES, 2008

Short title and 1. These rules may be cited as the Agricultural Produce
citation (Export) (Horticultural Produce) (General) Rules,
2008.

Interpretation 2. In these Rules, unless the context otherwise requires

"actual conditions" in relation to horticultural produce includes any stage in the production, storage, transportation, distribution and processing of food commodities and animal feeds;

"agro-chemicals" include pest control products, fertilizers, hormones, herbicides, biochemical, microbial and macrobial pesticides and any other agrochemical used in agriculture and public health but does not include banned or pest control products which are not registered for use in Kenya;

"authorized safe use and rate" means safe use and rate of any agrochemical under actual conditions necessary for effective and reliable pest control, and applied in a manner which leaves a residue which is the smallest amount practicable that is determined at the national level, and includes nationally registered or recommended safe use and rate, which take into account public and occupational health, consumer safety, and environmental safety considerations;

"casual worker" means an individual whose terms of engagement provide for his payment at the end of each day and who is not engaged for longer period than twenty four hours at a time;

"contract of service" means an agreement whether oral or in writing and whether expressed or implied to employ, or to serve as an worker for any period of time and includes a contract of apprenticeship and indentured learner-ship but does not include a foreign contract of service to which Part III of the Employment Act, (Cap. 226), applies;

"export" means to take out of Kenya;

"good agricultural practices" means the best guidelines used in agriculture to produce agricultural products, ensuring food safety and quality in the whole production, storage, transportation, processing and marketing chain;

L.N. 229/1995
L.N.230/1995
L.N.231/1995

"horticultural crops", "horticultural produce exporter and shiphandler", and "marketing agent" have the meanings assigned to them under the Horticultural Crops Development Authority Order, 1995, and "horticultural produce" and "exporter" shall be construed accordingly;

"inspector" has the meaning assigned to it under the Act, and for purposes of these Rules, includes the Managing Director, Kenya Plant Health Inspectorate Service and any other officers deputed in writing by the managing director;

"out-grower" means a small or large scale grower of horticultural produce who grows and sells his crops or produce to another producer or exporter through a contractual farming arrangement;

"producer" means any person, firm, company, co-operative society or association of persons, who or which engages in production and marketing processes of horticultural produce for the export market, and includes his or its workers as managers, supervisors or agents;

"registered premises" means premises registered as a pack house and issued with a certificate of registration under Rule 18;

"worker" means any personnel employed in production of horticultural produce by any person, firm, company, co

operative society or any association of persons whether a permanent or casual worker, and includes a worker on contract terms of service;

- L. N. 340/1966
3. These Rules shall be in addition to, and shall not be in derogation of the Agricultural Produce (Export) (Horticultural Produce Inspection) Rules, the Act, and other relevant Laws of Kenya
- Selection of site for production
- 4(1) The producer shall select a site for production of horticultural produce and such a site shall not be in the land that has proximity to an area contaminated by industrial, faecal or domestic organic waste.
- (2) The producer shall draw farm plans and such farm plans shall indicate the selected sites and the facilities that have been strategically sited to ensure workers occupational health and safety, and to prevent contamination of crops or produce and packaging materials as required by the Laws of Kenya.
- (3) The areas selected for production of horticultural crops under sub rule (2) shall be indicated in the farm plans in relation to workers' housing, toilets, drinking water points, waste disposal pits, waste water treatment, utility stores, and social amenities.
- Environmental impact assessment
- 5(1) The farm plans prepared under sub rule (2) of Rule 4 shall be supported by the environmental impact assessment commissioned by the producer to the satisfaction of the licensing authority.
- (2) Where a pack house is constructed, it shall be the subject of an environmental impact assessment, and it shall comply with all relevant national laws. relating to working conditions, including health, sanitation, fire, electrical, mechanical, and structural safety.
- Soil and water analysis
- 6(1) The producer may have the soils of the selected sites and the water intended for irrigation to produce horticultural crops analyzed by a competent laboratory.
- (2) The selected site shall not be irrigated with unsuitable water rejected under sub-rule (1) or untreated sewage water.

Hygiene 7(1) and
cleanliness

The producer shall put in place the supervision procedures and training programmes and shall ensure that all workers involved in handling of horticultural produce observe high standards of personal hygiene.

- (2) The producer shall provide facilities for personal hygiene, including toilets with hand washing facilities, and they shall be kept clean at all times.
- (3) The producer and his supervisors shall ensure that workers involved in handling of fresh produce appear, and are in good health, and that workers with communicable diseases are not knowingly employed in field operations.
- (4) The workers shall be instructed to report to the supervisor if they are suffering from any illness either on arrival for work or during working hours.
- (5) No smoking, eating, chewing and drinking shall be permitted in the immediate vicinity of harvesting, grading, packing or storage of produce and other operations, and appropriate signs shall be displayed to this effect by the producer.
- (6) The producer shall install a planned washing programme that shall ensure that there are easily cleaned, plastic field buckets (for flowers) or crates (for fruits and vegetables) which shall be free from contamination.
- (7) The water for cleaning shall be free from microbial contaminants, free from metal or other foreign body contaminants and where possible be re-cycled through constructed wetlands

Provisions 8(1)
for health of
workers

The producer shall make potable water available for workers at all times, and the containers and water points shall be well marked.

- (2) The containers or outlets of water which is unsuitable for drinking shall be appropriately marked.
- (3) Every pack house shall be provided with sufficient, well stocked first-aid kits and shall have personnel trained in First Aid on hand to deal with emergencies as required by the Laws of Kenya.

(4) The producer shall demonstrate written procedures on how to deal with injuries requiring medical attention and they shall be displayed prominently.

(5) The rooms for changing and workers' eating areas shall be provided with sufficient clean toilets, wash hand basins, bactericidal liquid soap and hand drying facilities.

(6) Where tablet soap is used by workers, it shall be unscented and bactericidal to avoid cross contamination between workers.

Sick workers 9 (1) Any worker suffering from any communicable diseases including all gastric illness or having boils, sores or infected wounds, shall report to the immediate supervisor as required by sub-rule (4) of Rule 7.

(2) No sick worker shall be allowed to work on or handle fresh horticultural produce until a medical officer clears his condition.

10(1) The producer shall ensure that any worker having sores and cuts shall have them adequately covered with identifiable and appropriate (blue) food type waterproof dressings.

(2) The hand washing with bactericidal liquid soap and drying facilities, hot air or paper, not cotton, towels shall be available.

Personal
hygiene

(3) No powder shall be used on worker's hands.

(4) Every worker's finger nails shall be clipped short.

(5) Every worker shall wear protective clothing including overall, head covering which shall contain all hair, hair nets and ensure that they shall be worn at all times in packing areas.

Produce 11(1) pack
houses and
equipment

The operations in the pack houses shall be geared towards implementing quality management systems such as good hygiene practices and good manufacturing practices as integral parts of good agricultural practices.

- (2) The worktables, tops, knives, and cutting boards shall be made of metal and plastic construction only.
- (3) The items specified in sub-rule (2) shall be maintained in sound condition and be kept clean at all times.
- (4) The routine and general cleaning procedures for the facilities and the equipment shall be documented, monitored, and evaluated for effectiveness.

Horticultural
produce
traceability

12(1) The producer and exporter shall be required to develop a precise and detailed traceability system to ensure that consumers can be informed correctly on the horticultural produce specifications, its origin, and usage.

- (2) To put a traceability system in place, the producer and exporter shall design, implement and monitor a detailed produce flow that addresses:
 - (a) raw material procurement;
 - (b) production process and conditions;
 - (c) by-products generated;
 - (d) waste treatment;
 - (e) risk assessment;
 - (f) human resources;
 - (g) equipment employed; and
 - (h) governing standards and regulations in force in Kenya.
- (3) Every producer and every exporter shall maintain a register of all his/hers out-growers and apply "anti-poaching" measures while at the same time stimulating other stakeholders to act fairly with respect to each other.
- (4) Every producer and every exporter shall have a suitable process control system and shall maintain records of pertinent issues separate from the farm records, including:
 - a) labour and welfare;

- b) management of agro-chemicals;
- c) field handling, post harvest, pack house and packaging;
and
- d) environmental issues.

(5) Every producer and every exporter shall maintain precise and up-to-date records of the following:

- a) origin, nature and quantities of all inputs, including agro chemicals;
- b) use of all inputs specified in paragraph (a);
- c) field operations from planting to harvesting of every horticultural crop;
- d) agro-chemicals and usage particularly related to authorized safe uses and rates, application rates in actual conditions, dates of usage, and pre-harvest intervals;
- e) nature, quantities and consignees of all horticultural produce or products sold or exported.

(6) The producer and exporter shall ensure that every unit, lot or batch of horticultural produce is clearly marked in such a way that identification marks cannot be altered, adulterated or obliterated.

(7) Every exporter who processes his own horticultural produce, shall maintain precise records on the following:

- a) the origin, nature and quantities of horticultural produce which has been delivered to his pack house;
- b) the nature, quantities and consignees of horticultural produce which have been dispatched from his pack house; and
- c) the origin, nature and quantities of any ingredients, additives, preservatives, and processing aids delivered to

his pack house and composition of the final horticultural produce or product.

- (8) Every exporter, who processes and packs horticultural produce, shall do so in registered premises as required under Rule 18.
- (9) A producer packing and processing his own produce, may do so, as part of the production process only in registered premises, where such production processes are limited to produce grown by him.
- (10) A producer shall obtain and display the records of public health inspections.
- (11) Every exporter shall respect the confidentiality of the product specifications.
- (12). The exporter shall ensure that workers responsible for record-keeping are trained to do so accurately and that they are supervised.
- (13) The records shall be clearly written, dated and signed by a responsible person appointed by the producer or exporter as the case may be.
- (14) The recording of data showing non-conformity with standards shall be followed up with a written account of interventions.
- (15) All records shall be available for inspection by authorized persons.
- (16) No records shall be destroyed within the period that a product is in production, storage, distribution, retailing and consumption.
- (17) The minimum period for holding the records by the producer and the exporter shall be two years from the date of packaging and labeling.

Handling 13(1) of rejected produce Every exporter shall establish a written procedure to minimize wastage and for dealing with any raw material or horticultural produce that is rejected.

- (2) The rejected horticultural produce shall be disposed of safely by composting, burying, burning in incinerator or any other approved manner to avoid environmental pollution.

Residue analysis

- (1) There shall be a deliberate effort on the part of the producer and the exporter, based on risk assessment, to minimize pesticide residue through periodical residue analysis, and for collection of data, both pre-harvest and post-harvest sampling and analysis are highly recommended.
- (2) Every exporter shall obtain and be in possession of up to date maximum residue levels requirements set by the certifying agency of the importing country.
- (3) Every exporter shall demonstrate and provide evidence of residue testing and analysis by an accredited laboratory by obtaining and availing the certificate of analysis set out in Form A in the Schedule to these Rules.
- (4) The residue test records shall be traceable back to the producer, to the selected production site, and to the registered out-grower.
- (6) The exporter shall establish a written action plan in the event of the maximum residue level being exceeded documenting the action taken.

Records of receipt of produce

- (1) The exporter shall have in place a detailed and precise process flow that ensures that every unit, lot or batch of the produce received is clearly marked in a manner to enable the produce to be easily traced from receipt through the handling process to dispatch point.
- (2) The system specified in sub rule (1) shall be monitored and reviewed periodically for effectiveness.
- (3) Every exporter growing his own or receiving horticultural produce from out-growers shall periodically collect samples for analysis to verify the pesticide residue status in the produce at the time of receipt.
- (4) The records of such analysis specified in sub rule (3) shall be maintained in confidence, and the necessary corrective and

disciplinary action shall be taken by the competent authority where maximum residue levels are exceeded.

Phyto-
sanitary
requirements

- 16(1) Every exporter shall ensure that the horticultural produce complies with the national and international standards.
- (2) The phytosanitary certificate shall only be issued by the inspector to a producer or exporter in conformity with the prevailing laws and these regulations.

Workers'
welfare

- 17(1) To ensure the welfare of workers, producers shall abide by the regulation of wages and conditions of employment as specified in the Laws of Kenya.
- (2) To ensure the interest and welfare of out-growers who serve producers or companies and exporters, such producers and exporters shall abide by the terms and conditions of contracts signed between them and out growers, and the laws governing contracts in Kenya.

General
Provisions for
pack houses

- 18(1) A pack house, whether small or big, shall be constructed in compliance with the requirements of Rule 5.
- (2) Every pack house used by an exporter or a producer shall comply with the requirements of sub rules (8) and (9) of Rule 12.
- (3) Every producer and every exporter shall obtain and display at all times the certificates of inspection issued by the Directorate of Occupational Health and Safety Services, Ministry of Labour and Human Resources Development.
- (4) Any access to registered premises shall be restricted to authorized persons only, and signs shall be displayed to this effect.
- (5) The construction of a pack house shall be such as to prevent the entry of domestic animals, insects, birds, rodents, and any other unwanted animal.
- (6) The producer and the exporter shall put in place effective control measures which shall be fully documented.

- (7) The floors, doors and wall surfaces shall be made of impervious, non-absorbent, non-toxic, washable materials, which are easy to clean and disinfect.
- (8) The floors shall be durable and allow easy drainage without leaving wet areas.
- (9) The ceiling and overhead fixtures shall be designed, constructed and finished to prevent the accumulation of dirt and to reduce condensation, growth of undesirable moulds and shedding of paint flakes or particles.
- (10) (a) The doors, windows and other openings shall be constructed and finished to prevent the accumulation of dirt.
- (b) The door that can be opened to the outside environment shall be fitted with insect proof screens of appropriate mesh size.
- (c) The use of glass shall be avoided.
- (d) Where glass is used, there shall be a form of screening to prevent any broken glass etc. contaminating produce.
- (e) Any use of glass (windows, lights, etc) shall be recorded and a system of regular inspection shall be implemented to ensure any breakage is rectified promptly.
- (11) The lighting over inspection, grading, packing and cold store areas shall be adequate to allow effective produce inspections.
- (12) Every light fixture shall be protected to prevent the risk of broken glass contaminating the produce.
- (13) The pack house shall have adequate ventilation including windows, fans or air conditioners, as appropriate, in order to provide adequate ventilation, air circulation and temperature control.

- (14) The height of every grading table and other facility for work shall be appropriate for the comfort of the workers.
- (15) Every loading and dispatch area shall be roofed and proofed so as to prevent the nesting and roosting of birds.
- (16) The access to a vehicle from any loading bay shall be at the same level as the floor of the vehicle.

Produce handling

- 19(1) The horticultural produce at different stages of preparation shall be kept separate.
- (2) The floor layout shall allow for a smooth flow of produce from reception to finishing area, with adequate separation of raw material from finished product.
- (3) The waste material shall be removed regularly.
- (4) The semi-prepared or processed horticultural produce shall be handled in specially designed and equipped high risk facility of appropriate and recognized standard.
- (5) The horticultural produce shall normally be processed on a "first in, first out" (FIFO) basis unless there are quality, maturity or hygiene attributes identified for particular batches on receipt that indicate otherwise.
- (6) Where produce is processed on a non-FIFO basis, this procedure and the reasons for it shall be documented.
- (7) The traceability of all produce shall be documented throughout the process chain employing good agricultural practices.

Waste disposal

- 20 (1) There shall be written procedures for the safe, and hygienic disposal of rejected produce, organic waste and other rubbish.
- (2) Under no circumstances shall organic material from cut-flower crops which have been treated with pest control products or pesticides be fed to animals.

- (3) The wastewater disposal systems shall be environmentally acceptable such as the use of soak pits or constructed wetlands.

Storage and disposal of agro-chemicals 21 (1)

There shall be written procedures for the procurement, distribution, safe storage and usage of agro-chemicals.

- (2) The procedures documented under sub-rule (1) and disposal of any obsolete agro-chemicals and any water used to clean equipment and tools shall be in accordance with the provisions of the relevant law governing each type of agrochemical, and the environment.

Product inspection 22(1)

The inspection of horticultural produce for quality shall be a continuous process in certain designated areas, but inspection shall be mandatory at:

- (a) farm;
- (b) reception;
- (c) quality-control during processing;
- (d) final quality check when ready for dispatch; and (e) loading area.

(2) The final product check shall involve the following:

- a) identity of product, mark, lot/batch number, producer and/or pack house identity, date and packing code;
- b) essential information such as class, variety and post harvest treatment; and
- c) actual quality code and weight or counts for individual pack units.

Storage of packaging materials 23(1)

The packaging materials shall be stored in such a way so as to avoid contamination by rodents, pests, birds, physical and chemical hazards.

- (2) Where reusable crates are used, they shall be cleaned and re cleaned as necessary to ensure they are free from foreign materials which may be accidentally included in the produce and harm consumers' health.

Transport 24 (1) In a case where the horticultural produce is to be moved from one location to another, the packages or containers shall be labeled properly, indicating:

- (a) origin (name and address);
 - (b) destination (name and address);
 - (c) transit instructions;
 - (d) produce identity (batch number);
 - (e) name and address of producer;
 - (f) quantity (kilogrammes or tonnes); and
 - (g) date(s).
- (2) The type of transport or vessel, packages or containers used to transport or move produce shall possess general characteristics on hygiene, sanitation and handling so as to prevent contamination or damage of the horticultural produce and protect against any mechanical damages or loss due to spillage.
- (3) The package or container and vessel used to transport horticultural produce shall conform to the requirements of the existing law on environmental protection.
- (4) The conditions to be observed during transportation shall be well specified and documented indicating specific treatment on the horticultural produce during transportation and any precautions to be taken.
- (5) The containers and vessels used shall be able to hold horticultural produce intact during transportation so as to maintain traceability along the marketing chain.
- (6) Unless otherwise specified, only produce which possess similar characteristics shall be transported together in the same van or vehicle.
- (7) No unauthorized person(s), animals, or any other material, other than the specified horticultural produce shall be transported together in the same vehicle.

SCHEDULE

FORMA

CERTIFICATE OF ANALYSIS

{r.14(3)}

1. Producer () Exporter () Packer () other specify ()
(Please Tick as appropriate)
2. Source of commodity (Farm(s):
3. Applicant's address:
4. Applicant's reference number:
5. Applicant's sample code:
6. Destination of commodity:
7. Sampling place:
8. Sampling date:.....
9. Mode of transportation (to the laboratory):
10. Lot size (Kg or metric tonne):.....
11. Lot/Batch number:
12. Sample size received by the laboratory:
13. Storage location in the laboratory:
14. Storage condition:
15. Sampling protocol:
16. Requested tests
17. Objective of analysis: Monitoring 0 Pre-export testing 0 Compliance testing 0
Other (please specify).....
18. Date of receipt: (DD /MM/ VY): /..... /20.....
19. Date of analysis: (DD/MM/yy): /..... /20.....

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PARAMETERS TESTED

PARAMETERS

RESULTS

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Signed

Analyst

Head of Laboratory

NOTE:

Where the laboratory worker was not involved in sampling, the applicant (client) is responsible for the sampling and the results represent the submitted sample (private sample).

Dated this 28rd day of July 2008


WILLIAM ARAP RUTO
Minister of Agriculture