

GMI

LEGAL NOTICE NO. 25

THE SEEDS AND PLANT VARIETIES ACT

(Cap. 326)

IN EXERCISE of the powers conferred by sections 3 and 9 of the Seeds and Plant Varieties Act, the Minister for Agriculture, makes the following Regulations:—

THE SEEDS AND PLANT VARIETIES (NATIONAL PERFORMANCE TRIALS) REGULATIONS, 2009

1. These Regulations may be cited as the Seeds and Plant Varieties (National Performance Trials) Regulations, 2009.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“application” means an application to submit a plant variety for national performance trials under section 9 (2) or 9 (3);

“authorized officer” means a public officer appointed by the Minister, under section 2 of the Act;

“breeder” means a person who discovers or breeds a new plant variety and includes his successor in title;

“commercial check” means a plant variety used to compare the candidate varieties in the national performance trial;

“commercialization” means the distribution, sale or offering a crop variety for sale to the public in any other manner and includes undertaking seed multiplication, conducting market research or seeking pre-market approval of a crop variety;

“distinctness, uniformity and stability test” means an evaluation to determine whether a new plant variety is different from any known plant variety in respect of some trait, uniform in morphological, physiological or other accepted traits; and stable in its description after repeated reproduction or propagation;

“national variety list” means the list of cultivars approved and gazetted by the Authorized Officer for commercialization;

“official list” means a list of plant varieties maintained or published by a country other than Kenya;

“plant variety” means an assemblage of cultivated individuals

which are distinguished by any character (morphological, physiological, cytological, chemical or others) which when reproduced (sexually or asexually) retain their distinguishing characters;

"performance trials" means national performance trials specified under section 9 of the Act;

"registration" means the inclusion of a released variety in the National Variety List;

"release" means a process whereby a plant variety listed under the Second Schedule has satisfactorily undergone trials and tests for distinctness, uniformity and stability, for yield or other special attributes, and is approved for release by the Release Committee;

"Release Committee" means National Variety Release Committee, established under regulation 12;

"reproductive material" means the reproductive part of a plant including seeds and other vegetative propagation material;

"The Kenya Plant Health Inspectorate Service (KEPHIS)" means the Kenya Plant Health Inspectorate Service established under paragraph 3 of the Kenya Plant Health Inspectorate Service Order, 1996;

L.N. 305/1996

"trials" means the national performance trial specified under section 9 of the Act;

"Trials Committee" means the National Performance Trials Committee, established under regulation;

Application for  
performance  
trials.

3. (1) A person shall, prior to the commercialisation of varieties of crops listed under the Second Schedule to the Act, ensure that the crops have undergone the performance trials in accordance with these Regulations.

(2) All varieties of crops listed under the Second Schedule to the Act shall undergo performance trials before commercialization in accordance with these Regulations.

(3) An application for a performance trial shall be made to the authorised officer in Form NPT I set out in the Schedule to these Regulations and shall be accompanied by any other specific information relating to the crop as the authorised officer may prescribe.

(4) An application under this Regulations, together with the

delivery of seeds, shall be made –

(a) between the 1st December and the 15th February for the long rain seasons; and

(b) between the 15th July and the 31st August for the short rain seasons.

4. (1) An application for exemption from performance trials under section 9(3) of the Act shall be made in Form NPT 2 set out in the Schedule to these Regulations and shall be delivered to the authorised officer.

Application for exemption:

(2) The application shall be accompanied by a statement stating that notwithstanding the fact that the seed of the plant variety was not included in the Index, it was in commercial use in Kenya before the publication of the Order under section 9(1).

5. (1) An applicant shall deliver to the authorized officer, within fourteen days following a written demand, or within such longer period as the authorized officer may allow, additional information, documents, records, materials or illustrations in support of an application made under these Regulations.

Additional information etc.

(2) Where an applicant fails to deliver the additional information required under paragraph (1), his application shall be deemed incomplete and shall be accordingly rejected.

(3) Where it appears to the authorized officer that it will not be practicable to undertake, in any season, trials of plant varieties submitted, the authorized officer may defer the commencement of the performance trials to the next season and such deferment shall be communicated to the applicant in writing.

6. The authorized officer shall evaluate the applications and submit a report to the Trials Committee established under regulation 7.

Evaluation of reports.

7. There is established a National Performance Trials Committee which shall consist of –

Establishment and membership of Trials Committee.

(a) managing director Kenya Plant Health Inspectorate Service who shall be the chair and Kenya Plant Health Inspectorate Service shall provide secretariat services;

(b) one representative of the Ministry of Agriculture;

(c) one representative of the Seed Trade Association of Kenya;

- (d) two representatives of the Plant Breeders Association of Kenya; and
- (e) not more than four crop specialists co-opted by the Managing Director Kenya Plant Health Inspectorate Service as necessary.
- Functions of Trials Committee.**
8. The Trials Committee shall perform the following functions—
- (a) oversee the conduct of performance trials;
- (b) review performance trials protocols, guidelines and minimum number of candidate varieties to constitute a performance trial;
- (c) evaluate the performance trials report and make recommendations to the Release Committee established under Regulation 12;
- (d) review applications for performance trials;
- (e) provide feedback to the applicants on performance of their entries in the performance trials; and
- (f) perform any other function necessary for the proper conduct of the performance trials.
- Meetings.**
9. The Trials Committee shall—
- (a) meet at least once a year;
- (b) develop rules for the conduct of meetings; and
- (c) invite applicants who have candidate plant varieties in the Trials to attend Trials Committee meetings.
- Period of trials & testing.**
10. (1) All varieties submitted for the performance trials shall undergo testing for at least two seasons.
- (2) Where a plant variety has already been officially released in any one of the East African Community countries, the variety shall undergo both performance trial and distinctness, uniformity and stability tests for at least one season in similar agro ecological zones: Provided that an applicant shall provide the data leading to release of the plant variety in that other country to the authorized officer.

(3) All varieties shall meet other release criteria under these Regulations.

11. (1) The authorized officer shall—

- (a) ensure appropriate site selection, timely planting and proper management of the performance trials according to the protocols and manuals on each crop including records of the various activities;
- (b) upon giving adequate notice, organize a visit for applicants to the performance trials sites to evaluate the conduct of the trials and the performance of the varieties;
- (c) ensure proper data collection and analysis from all performance trials sites and compilation of the final report;
- (d) send the draft report to the members of the Trials Committee and the applicants with candidate varieties at least fourteen days before the Trials Committee meeting;
- (e) convene a Trials Committee meeting which shall evaluate and make a summary report to the Release Committee;
- (g) prepare a summary report to the Release Committee which shall include results of distinctness uniformity and stability testing and recommendations of the Trials Committee ; and
- (g) ensure confidentiality of all materials and information provided by the applicant under these Regulations.

Management of trials.

(2) If at any time after the commencement of a performance trial and before the completion thereof, an applicant informs the authorized officer in writing that he intends to withdraw his application, the application shall be deemed withdrawn without prejudice to the ongoing performance trial.

12. There is established a National Variety Release Committee comprising of the following members—

- (a) the Agriculture Secretary, Ministry of Agriculture who shall be the Chairperson;
- (b) the Managing Director Kenya Plant Health Inspectorate Service, who shall be the secretary;
- (c) the Director responsible for matters relating to extension or research liaison in the Ministry of Agriculture;

Establishment and membership of Release Committee.

- (d) the Chief Executive Officer, Seed Trade Association of Kenya;
- (e) the Chairman of the Plant Breeders Association of Kenya;
- (f) one representative of an academic institution of higher learning offering training in seed science and technology appointed by the Agriculture Secretary;
- (g) the Chief Executive Officer, Kenya National Federation of Agricultural Producers; and
- (h) one representative of the consumer industry appointed by the Agriculture Secretary.

Functions of  
Release  
Committee.

13. The Release Committee shall perform the following functions—

- (a) consider the report of the Trials Committee and its recommendations;
- (b) consider the Distinctness Uniformity and Stability report;
- (c) approve and release qualifying varieties;
- (d) determine fees for any application under these Regulations;
- (e) moderate on any disputes relating to these Regulations;
- (f) provide advice on policies and procedures on performance trials;
- (g) prepare a list of approved and released plant varieties and forward the same to the authorized officer for Gazettement;
- (h) determine procedures for withdrawal of released plant varieties; and
- (i) determine the nomenclature to be applied to new varieties.

Release  
Committee  
meetings.

14. (1) The Release Committee shall be convened by the Agriculture Secretary and shall meet at least once a year.

- (2) Subject to these Regulations, the Release Committee shall regulate its own procedure.

(3) The Release Committee shall invite applicants of successful candidate plant varieties to attend variety release meetings.

15. (1) The authorized officer shall cause the names of the released varieties to be published in the Gazette within fourteen days of the Release Committee meeting.

Gazettement and commencement date.

(2) The authorized officer shall update and publish the National Variety List annually in the Gazette.

(3) The effective date for the purposes of commercialization of the released plant varieties shall be the date of release of the varieties by the Release Committee.

16. The authorized officer shall maintain a Register of all applications for performance trials and any exemptions granted and the record shall include the following particulars--

Records.

- (a) names of the applicants, dates of applications and particulars of the plant variety for performance trials;
- (b) names of the applicants, dates of applications and particulars of plant variety for exemption from performance trials;
- (c) decisions of the authorized officer on applications for exemption from performance trials under section 9 (3);
- (d) directions under section 9 (7) of the Act setting out when the provisions of sections 9 (4) and 9 (5) of the Act shall cease to apply to seed of a plant variety;
- (e) the date with effect from which an application for a performance trial is deemed to be withdrawn;
- (f) the time limit within which results of performance trials shall be published;
- (g) the time within which the performance trials are deemed to begin; and
- (h) the fee paid by the applicant.

17. (1) The authorized officer shall compile and maintain a performance trials register in respect of every plant variety which has undergone trials and the record shall include the following

Performance trials register.

particulars—

- (a) the name and the address of the applicant;
- (b) the name and the address of the agent;
- (c) the name or other designation of the plant variety;
- (d) the date of the application;
- (e) the date upon which a performance trial was declared to have begun;
- (f) the date of publication of the report on the performance trials by the Trials Committee;
- (g) the date on which an application was declared to have been withdrawn;
- (h) the date of completion of the performance trials; and
- (i) the result of the performance trials.

(2) Any interested person may obtain from the authorized officer, a copy of any entry in the register or a copy of the report on the result of a performance trial of a plant variety, upon payment of the fees as may be prescribed by the authorized officer from time to time.

(3) The authorized officer shall keep and maintain a copy of the report on every trial.

Fees.

18. (1) All applications under these Regulations shall be subject to payment of fees as may be determined by the Release Committee from time to time and the authorized officer shall cause such fees to be published in the Gazette.

(2) Where the person making the application is not resident in Kenya, he shall give to the authorized officer in writing an address within Kenya which shall be the address at which any notice or other document may be delivered to or served upon him.

Translation.

19. (1) All documents provided to the authorized officer shall be in the English language.

(2) If the document required to be provided to the authorized officer is not in the English language, the following shall apply—



- (a) an English translation of the document shall be provided along with the copy of the document;
- (b) the translation shall be certified to be an accurate translation by a competent authority;
- (c) if more than one copy of a document is required, one copy of the translation shall be provided for every copy of the document required;
- (d) if the authorized officer reasonably believes that the translation is not accurate, he may refuse it and require an accurate translation; and
- (e) the copy of the document shall be deemed not to have been provided until the required translation and copies are provided.

20. (1) Any person aggrieved by the decision of the authorized officer or the Trials Committee on any matter relating to these Regulations, may refer the matter in writing, to the Release Committee for moderation.

Appeals.

(2) A person aggrieved by any decision of the Release Committee under paragraph (1) may appeal to the Seeds and Plants Tribunal.

21. (1) Any person who—

Offences and penalties

- (a) with intent to defraud, gives false information to the authorized officer;
- (b) knowingly produces or displays any document required to be produced or displayed under these Regulations which is false in any material particular; or
- (c) contravenes any of the provision of these Regulations, commits an offence.

(2) Any person convicted of an offence under these Regulations shall be liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or both.

22. No legal proceedings shall lie against the authorized officer or his duly authorized agent for anything done in good faith and without negligence, in the exercise of their powers, or the performance of their functions or duties under these Regulations.

Protection from liability.

SCHEDULE

FORM NPT 1

{R.3 (2)}

THE SEEDS AND PLANT VARIETIES ACT  
(Cap. 326)

TO: The Authorized Officer/Managing Director  
Kenya Plant Health Inspectorate Service  
P.O. Box 49592-00100  
NAIROBI

APPLICATION FOR NATIONAL PERFORMANCE TRIALS (Each entry will require a separate form)

1. Name and address of the applicant(s): .....
2. Name and address of the agent (if any): .....
4. The name and address of breeder or discoverer and developer: .....
5. The name or other designation of the plant variety: .....
6. The date of application for Plant Breeder's Rights in Kenya (if applicable): .....
7. Are you the holder of rights for the plant variety, breeder or the discoverer and developer? YES/NO
8. If you are not, do you have the owner's consent to make this application? YES/NO  
If yes, attach the consent.....
9. The name of the country in which the plant variety was bred or discovered and developed: .....
10. Date of application for inclusion of the plant variety in the Index (where applicable): .....
11. Is the name of the plant variety included in the official list of any other country?  
YES/NO  
If yes,  
(a) Name of the country: .....
- (b) Title of the official list: .....

- (c) Date of inclusion in the official list:.....
- 12. Document(s) in support of the application which should include:
  - (a) Trials Data:.....
  - (b) Variety
    - Description:.....
  - (c) Variety Owner's Consent where applicable:.....
  - (d) Any other relevant document(s):.....
- 13. Quantity of seed submitted:.....
- 14. The technical report of DUS is attached (where applicable):.....
- Dated at..... Day of..... 20.....
- Signature of the applicant/agent (indicate as appropriate) .....

FORM NPT 2

{(R. 4(1))}

THE SEEDS AND PLANT VARIETIES ACT

(Cap. 326)

TO: The Authorized Officer/ Managing Director  
 Kenya Plant Health Inspectorate Service  
 P.O. Box 49592 - 00100  
 NAIROBI

APPLICATION FOR EXEMPTION FROM NATIONAL PERFORMANCE TRIALS  
 UNDER SECTION 9(3) OF THE ACT

1. Name and address of the applicant(s): .....
2. Name and address of the agent, if any: .....
3. Name and address of breeder or discoverer and developer: .....
4. The class of the Index to which the plant variety relates (where applicable):.....
5. The date of application and/or grant of plant breeder's rights in Kenya (if applicable):..
- 6 (i). Are you the holder of the plant variety or discoverer and developer?  
 YES/NO
- (ii) If NO, do you have the owner's consent to make this application? If yes, attach proof of consent.
7. The name of the country in which the plant variety was bred or discovered and

developed: .....

9. Date of application for inclusion of the plant variety in the Index (where applicable):...

10. Is the name of the plant variety included in the official list of any other country?

YES/NO

If yes,

(a) Name of the country:.....

(b) Title of the official list: .....

(b) Date of inclusion in the official list: .....

11. Documents in support of the application: .....

Dated at..... Day of ..... 20.....

Signature of the applicant or agent.....

Dated the 7th January, 2009.

WILLIAM RUTO,  
*Minister for Agriculture.*