

## COUNCIL OF MINISTERS

Decree n° 5/2009

1<sup>st</sup> July

The agricultural sector in Mozambique is revealing an increasing potential to exports during the recent years, which demands to the country a need to strengthen its capacity to comply with international quality and phytosanitary standards, including pest surveillance, pest risk analysis and inspection systems as to increase the country credibility at regional and international levels, on the phytosanitary certificates issuance for plant and plant products exports.

In this terms, aiming to set out the legal framework on Phytosanitary Inspection and Plant Quarantine, under the paragraph f) n° 1) of article 204 of the Constitution of the Republic, the Council of Ministers decrees:

Article 1. It is approved the Phytosanitary Inspection and Plant Quarantine Regulation, attached to the present Decree thereof an integrant part of it.

Article 2. It is revoked all the legislation contrary to the present Decree.

Article 3. The present Decree enters into force 90 days after its publication.

Approved by the Council of Ministers, 17th February 2009.

Be published,

The Primer Minister, *Luisa Dias Diogo*

### REGULATION OF PHYTOSANITARY INSPECTION AND PLANT QUARANTINE

#### CHAPTER I

##### General

#### ARTICLE 1

##### Definitions

In the context of the present regulation the following terms are being defined:

1. **BEES**: common name of insects belonging to the order Hymenoptera, responsible for honey production.
2. **PHYTOSANITARY ACTION**: any official operation, as inspection, vigilance, test or treatment, carried out by the National Phytosanitary Authority for the implementation of any phytosanitary measure.
3. **OFFICIAL ACT**: any act established, authorized, carried out or ordered by the National Phytosanitary Authority, or carried out by any public entity on its behalf.

4. **PEST RISK ANALYSIS (PRA):** a process of biological assessment or other scientific and economic proofs to determine if a pest should be subject to a control and to define the scope of the equivalent phytosanitary measure.
5. **APPREHENSION:** maintain the consignment under official guardian or confinement as phytosanitary measure that may be or not returned to the proprietor.
6. **LOW PEST PREVALANCE AREA (LPPA):** an area, whether all of country a country or part of a country, region or part of it as identified by competent authorities, in which a specific pest occurs at low levels and which is subject to effective pest surveillance, control or eradication measures.
7. **PEST FREE AREA (PFA):** an area in which a specific pest does not occur, which is proven under scientific evidence and such condition shall be officially maintained.
8. **ENDANGER AREA:** a national territory area with favourable ecological factors for the establishment of a pest, which presence in that area would result in significant economic losses.
9. **NATIONAL PHYTOSSANITARY AUTHORITY – NPA**
10. **TECHNICAL ADVISER COMMITTEE – TAC**
11. **CONFISCATE:** detain the consignment for destruction.
12. **CONTAMINATION:** presence of harmful organisms on products subject to control.
13. **CONTROL:** elimination, containment or eradication of pest population.
14. **PACKING MATERIAL:** any material utilised to cover, enclose or protect products subject to control.
15. **POST-ENTRY QUARANTINE STATIONS:** a site approved by the National Phytosanitary Authority for the purpose of observation or for further inspections of goods after their import.
16. **EXPORTER:** individual or collective consigners of goods that exit the national territory.
17. **IMPORTER:** individual or collective consignees to whom the goods are consigned and are entering into the country.
18. **PHYTOSSANITARY INSPECTION:** visual examination of products subject to control with a purpose of detecting the presence of pests or compliance with the phytosanitary requisites.
19. **PHYTOSSANITARY INSPECTOR:** a nominated or designated official to undertake a phytosanitary inspection.
20. **IPPC:** International Plant Protection Convention denominated as Convenção Internacional de Plantas in Portuguese.
21. **IMPORT PHYTOSSANITARY LICENCE:** an official document that sets import conditions and requisites of products subject to control, issued by NPA or other public entity to which it has designated that competence.
22. **PROVISIONAL MEASURE:** a phytosanitary measure established without relevant scientific evidence, with a purpose to overcome the absence of pertinent information to undertake the phytosanitary act.
23. **EMERGENCY MEASURES:** phytosanitary measure established in the occurrence of a new or sudden phytosanitary situation, which may be or not provisional.
24. **PHYTOSSANITARY MEASURES:** any legislation or official procedure aiming to prevent the introduction establishment and/or spread of pests or diseases

of plants and plant products subject to quarantine or measures aiming to limit the economic impact of not regulated pests.

**25. QUARANTINE OBJECT:** any harmful organisms or plants or any plant pests.

**26. NOXIOUS ORGANISMS:** any living form of animal or plant or any pathogenic agent injurious to plants or plant products.

**27. COUNTRY OF ORIGIN:** the country where the plants or plant products were cultivated.

**28. COUNTRY OF PROVIENCE:** export country of products subject to control independently of being or not the country of origin

**29. PLANT:** any living organism of plant nature or part of it.

**30. PRODUCTS SUBJECT TO CONTROL:** any plant or part of it, plant product, bee products, growing substrate, packing material, containers, soil, other organisms, objects or material liable to host or spread plant pests.

**31. OFFICIAL ENTRY OR EXIT POINT:** the border of the country including airports, harbors, inland border posts or other sites defined or identified by law.

**32. PHYTOSANITARY INSPECTION POST (PIP):** inspection sites established by the NPA next to the entry and exit points.

**33. PEST:** any specie or strain or biotype of plant, animal or pathogenic agent noxious to plants or plant products.

**34. REGULATED PEST:** plant pests that are quarantine object or regulated pests and not subject to quarantine.

**35. QUARANTINE PESTS:** pests that cause potential economic injury in an endangered area, but not present in the country, or if not present, still not widely distributed and is being subject to an active official control.

**36. REGULATED PESTS AND NOT QUARANTINE OBJECT:** plant pests that are not a quarantine object but affects the use of these plants which may result in an unsustainable economic impact to the country and therefore its entry and movement into the country shall be under official control.

**37. CONSIGNED PRODUCT:** goods subject to control, entering or exiting the national territory accompanied respectively by a unique import or export certificate according to the transaction in progress.

**38. PLANT PRODUCTS:** seeds, any non-manufactured material of plant origin as well manufactured products, which by their nature and/or that of their processing, may constitute a risk for the introduction and/or spread of pest plants in the Mozambican territory.

**39. PROPRIETOR:** any individual that possesses any product or exerts an effective control on the product, possession, simple detention or use;

**40. PLANT QUARANTINE:** official confinement of products subject to control in a zone or specific area for observation, testing, treatment or application of another appropriate phytosanitary measure carried out by NPA or under its order and supervision.

**41. RETENTION.** Apprehension of merchandise for laboratory analysis.

**42. SPS:** Sanitary and Phytosanitary Measures, denominated Medidas Fitossanitarias in Portuguese.

**43. PHYTOSANITARY TREATMENT:** any form of disinfection or disinfestations by physical, chemical, mechanical process carried out by NPA or under its order and supervision.

**44. TRANSIT:** when the goods proceeding from abroad reach the country without rupture of the cargo, are consigned to the country of destination, independently of the temporary period of permanency in the country.

**45. TRANSPORT:** any mean utilized for the merchandise conveyance, including the planes, boats, tracks, containers, wagons and others.

**46. VEGETABLES:** all living plants and part of plants including seeds.

**47. WTO:** World Trade Organization, denominated Organizacao Mundial do Comercio in Portuguese.

**48. BUFFER ZONE:** established area all along the infected and/or infested zone, where specific control measures are maintained according to the pest epidemiology.

#### Article 2

### **Object and territorial scope**

1. The present regulation establishes rules to prevent and control propagation of the pest in the country.
2. The present regulation it is applicable to all national territory

#### Article 3

### **Objectives**

The main objectives of the present regulation are:

- a) To prevent the introduction and propagation/spread into the country of harmful organisms especially the quarantine objects;
- b) To control such pests and diseases within the country with the objective of preventing their spread, and where possible, to bring about their eradication
- c) To secure the necessary means to carry out phytosanitary inspection and certification of imports and exports.

## **CHAPTER II**

### **COMPETENCIES**

#### Article 4

### **Competencies**

For the implementation of the present Regulation, the National Phytosanitary Authority (NPA) is the Ministry that supervises agriculture through the National Directorate of Agrarian Service (DNSA).

#### Article 5

### **Executive entities**

The implementation of the present Regulation will be particularly under the responsibility of the following entities:

- a) Direcção Nacional dos Serviços Agrários (NDAS), through the phytosanitary inspectors,
- b) The local entities which can be given competencies officially recognized in the present regulation

Article 6  
**Competencies of (NPA)**

In full command of this function, the NPA competences are:

- a) The NPA shall establish administrative and phytosanitary rules required for import, export, re-exportation, treatment, movement and growing of regulated products and for control of harmful organisms considered quarantine objects
- b) To array regulated products under quarantine regime in the official station or with equivalent conditions during a period of time,
- c) Carry out inspection and control of regulated product as well as package and transport vehicles under custom regime including the franc zone,
- d) Issue import permit and phytosanitary certificate for import and export of regulate product,
- e) To confiscate, prescribe treatment, re-exportation or destruction of regulated product when do not comply with the present regulation and other disposals upon phytosanitary inspection and plant quarantine,
- f) To inspect and control agricultural production areas as well as forest population, seedlings, storage and vegetable selling locations in order to evaluate the phytosanitary situation and detect possible presence of quarantine organisms
- g) To propose the due fee regarding the phytosanitary inspection service and plant quarantine,
- h) To determine vegetable species that are likely to be alternative host of harmful organism in order to forbid its cultivation or recommend its eradication,
- i) To delegate competences foreseen in the present regulation,
- j) To promote dissemination of the present regulation and other legislation of the sector;
- k) To establish cooperation with other countries on plant protection issues at regional or international level.

Article 7  
**Technical adviser committee**

1. The Technical Adviser Committee, also briefly designated by (TAC) it is a consultation organ of the Ministry that supervises agriculture in plant protection related matters.

2. The Technical adviser committee is composed as follow:

- a) Minister that supervises agriculture as chairperson,
- b) National Directorate of Agrarian Service
- c) Head of Plant Protection Department
- d) One representative of National Directorate of Veterinary Services

- e) One representative of Agrarian Research Institute of Mozambique
- f) One representative of Agriculture Promotion Centre (CEPAGRI),
- g) One representative of academia
- h) One representative of the Ministry of Health
- i) One representative of the Ministry of environmental coordination and action
- j) One representative Industry and Commerce
- k) One representative of the Ministry of Tourism
- l) One representative of the Ministry of Public Safety (M. Interior)
- m) One representative of the Ministry of Customs (M. Actividade Tributaria)
- n) One representative of the private sector from the CTA
- o) One representative of the Botany Production and Inspection Center

3. Without prejudice to other applicable internal rules, the members mentioned in the paragraphs *d)* and *m)* shall be nominated by the respective institutions.

4. The members of Technical Adviser Committee (TAC), are invested by the Minister that supervises agriculture, that approves its Internal Regulation;

5. Technical Adviser Committee shall meet twice per year; extraordinary meetings may be convened by the Minister supervising agriculture,

6. The first session will take place at least three months after the present regulation entered into force,

7. The Minister supervising agriculture may convene other entities or individuals to be part of the Committee.

#### Article 8

##### **Duty of Phytossanitary Inspector**

- 1. The duty of phytossanitary inspector must be acknowledged in the Public Function of career and remuneration system.
- 2. When required, the Ministry that supervises agriculture, in coordination with any other ministry or public entity, may indicate one qualified officer to undertake temporarily duty of phytossanitary inspector
- 3. The officer indicated in terms of number above must comply with the qualifications required for the duty during a period of one year which can be renewed according to the terms of reference

#### Article 9

##### **Competence of Inspector**

- 1. Competes to the Phytossanitary Inspector:
  - a) To inspect and certify regulated product, imported and to be exported,
  - b) To inspect growing plant, storage product or in transportation with the purpose of detecting the presence, emergence or propagation of pest of regulated plants,
  - c) To insure compliance with the phytossanitary international standard
  - d) To prescribe phytossanitary treatment of consigning product

- e) To ask additional information to the import country whenever necessary,
- f) To carry out any phytosanitary action established in terms of the present regulation and other applicable regulation.

#### Article 10

### **Special power/competences of inspectors**

1. If any inspector has any evidence or suspicion of violation to the provisions disposed in the present regulation or other applicable law, through the credential letter issued by the NPA the inspector is authorized to:

- a) Access any area or site and make the necessary investigations taking into account the relevant legal provisions,
  - b) Require from any agent involved in export or import of products under control the exhibition of the legal phytosanitary documents
  - c) Inspect, examine and make copy of document mentioned in the previous paragraphs, including to take extracts or to proceed with their apprehension,
  - d) Detain and search any luggage, packaging, transport or goods subject to controls that are in transit, entering or leaving the country,
  - e) Suspend, in case of suspicion of occurrence of pest, the distribution, sale or use of products under control,
  - f) Confiscate or apprehend products under control,
  - g) Order the destruction or treatment of products under control whose expenses are to be borne by the owner,
2. The inspector to seize and order treatment, return or destruction of a product under subparagraphs f) and g) number 1, must devise and immediately send a notification to the proprietor with a description of actions,

3. In the exercise of their functions the inspector must identify himself to the effect of displaying his identification card and other applicable distinctives and may be accompanied by a staff member of the police authority.

## CHAPTER III

### **Importation of plant**

#### Article 11

### **Phytosanitary Measure of plants importation**

1. Phytosanitary Measures to be observed on importation of product under control are established on the appendix 1 and 2, which can be updated whenever necessary,

2. The ANF can with immediate effect modify and revoke the requirements and phytosanitary measures established and under the SPS/WTO agreement, notify the contracting parties,
3. The ANF has competence to publish in the Bulletin of the Republic and other appropriate means, the requirements and phytosanitary measures stated in the number 1 of the present article as well as other actions performed in the same context,
4. If there is a risk of introduction and/or propagation of a pest not foreseen in the subparagraph of number 1 of the present article, the ANF could establish new requirements and phytosanitary measures for a limited period of time shall include in the import permit an explanatory note regarding the aforementioned measure,
5. In case that the import permit has been previously issued before the measure mentioned in number 4 came into force or before the importation was realized, the ANF must communicate the importer by official letter and the phytosanitary authority of the exporting country

## Article 12 **Entry Conditions**

1. The importation or transit of the product under control are bound to request previously an importation authorization issued by ANF and the original of the Phytosanitary Certificate, including an additional declaration if required, excepting special cases to be defined by the minister that supervises agriculture
2. Importation of products subject to control not specified in Appendix 1 of this Regulation, it is subject to a previous authorization by the Phytosanitary authority, to be issued following a Pest Risk Assessment;
3. Importation of soil is forbidden as well as product under control holding soil except in case of research studies even so the material must be destroyed after studies, under ANF supervision
4. The original phytosanitary certificate issued by Phytosanitary authority of the exporter country must be filled according to the requirements stated in the import permit.
5. The phytosanitary certificate of the exporting country is valid for 14 days since the date of issue except in case that the consignment comes by ship which validity is extended up to 30 days;
6. The despatch of custom formalities by custom officer must be done after verification and previously report opinion by phytosanitary inspector

## Article 13 **Import Licence**

1. The Phytosanitary Import Licence model in the appendix 4 must be issued by request of interested individual, who would fill in the form number 3 and submit to ANF;
2. The licence issued by ANF is valid for 180 days. In the cases of partial importation each lot must be accompanied by the respective phytosanitary certificate;



3. Importation of growing substrates and alive organisms in any development stage either for scientific purpose or research require a Phytosanitary import licence;
4. The issuance of the phytosanitary import licence demands a previous authorization from the Department of Seeds from the Ministry that superintends agriculture.

Article 14  
**Post of Phytosanitary Inspection**

Recognized Posts of phytosanitary inspection are the posts established by NPA at the entry points and defined by law.

Article 15  
**Phytosanitary Certificates of the Country of Origin or Shipment**

1. The product under control must be accompanied by a Phytosanitary Certificate from the country of shipment and/or the country of origin; in accordance with rules of International Plant Protection Convention
2. The certificate must be correctly filled out in Portuguese, Spanish, French or English.  
The date of dispatch of the certificate must be at least 14 (fourteen) days before the dispatch of the goods from the country of shipment and/or the country of origin;
3. The section of the certificate concerning "additional declarations" must be correctly filled out in accordance with the requirements specified in the Phytosanitary Import Licence
4. Corrections erasure not confirmed render invalid Phytosanitary Certificate,
5. When the imported consignment is in more than one part, and each part is consigned to different entry point, each part must be accompanied by its own separate Phytosanitary Certificate;
- 6 Only Phytosanitary Certificates issued by the official service responsible for plant inspection and plant quarantine in the country of origin or shipment are valid.
7. When the imported consignment has been fractionized, moved from the original package or from the different transport in the country of origin (called re-exportation country), the consignment must be accompanied by re-exportation Phytosanitary Certificate in concordance with the form designed by the authority and an attested copy of the Phytosanitary Certificate of origin country
8. Only Phytosanitary Certificates of re-exportation issued by the official service responsible for plant inspection and plant quarantine in the country of re-exportation will be considered valid.

Article 16  
**Declaration Duty**

The importer are obliged to declare to the phytosanitary inspector in the point of entry before arrival any consignment and to requirer the due inspection;

Article 17  
**Inspection on arrival**

1. All products under control, growing substrate or any other imported product or in transit including those listed in Appendix 1 of the present regulation, will be subject to inspection by an Inspector at the entry point on their arrival;
2. To facilitate the inspection the importer, or his representative, shall apply to the Service for the inspection with a minimum of 14 (fourteen) days before the arrival of the merchandise, providing all necessary documents and paying all costs deriving from the execution of the inspection;
3. Depending on the merchandise, the inspection may be carried out on the whole lot or on the representative sample, according to the procedure established in the phytosanitary inspection manual.

Article 18  
**Inspection Site**

1. Inspectors, duly identified, may enter customs areas and other points of entry, mail bags, and stores containing plants, plant products, growing substrates and others.

Article 19  
**Post- Inspection Measures**

1. As per the result of the inspection, the phytosanitary inspector can decide the following measures:
  - a) Approval
  - b) Treatment
  - c) Retention
  - d) Quarantine
  - e) Devolution for the origin country
  - f) Destruction
2. The expenses and other costs due of the application of measure prescribed in the previous number are of the responsibility of the importer
3. The Mozambican State is not responsible for deterioration, destruction or other injury caused to the products under control, resulting from the implementation of any post-inspection measure undertaken in terms of the present regulation,

Article 20  
**Entry Authorization**

1. In connection with the inspection referred to in Article 17, the merchandise will be checked by the Inspector to assess conformity with the conditions stated in the Phytosanitary Import Licence.

2. Should the inspection result in the discovery of any harmful organism mentioned in appendices 1 of the present Regulation, the Inspector can, at the expense of the importer, order the treatment of the merchandise, its re-exportation, destruction or any other appropriate quarantine measure;
3. When only part of the consignment is affected by any of the harmful organisms referred to in appendices 1 & 2 of the present Regulation, the Inspector can, at the expense of the importer, order the treatment of that part, its re-exportation, destruction or any other appropriate quarantine measure consulting the NPA

#### IV Chapter

### **EXPORTATION, RE-EXPORTATION AND TRANSIT**

#### Article 21

#### **Consigned Products to Export**

1. When required by the law of the importing country, the exportation of product under control and growing substrates must be accompanied by a Phytosanitary Certificate according to the International Plant protection Convention.
2. The exportation will be executed by request of the concerned contracting party or his representative who must fill in and submit the request form for exportation appendix 5, being issued the phytosanitary certificate appendix 6 in conformity with the import permit issued by the importing country phytosanitary authority.
3. The exporter or his representative is required to apply to the Service for an inspection at least 14 (fourteen) days before the date of the exportation of the merchandise. In addition, the exporter must be prepared to provide all the means necessary for the execution of the inspection in a satisfactory manner, including covering all the costs involved.
4. The request mentioned in the terms of number 2 of present article must be submit to NPA 15 days before the probable date for exportation
5. The exporter provide with the phytosanitary certificate will comply with insurance requirement before export according to the procedure established on phytosanitary Inspection manual

#### Article 22

#### **Consigned Product to Re-export**

1. When the consignment of product is imported to Mozambique and afterwards exported to other country, the exporter must:
  - a) Request to the NPA the phytosanitary certificate of re-exportation, which will be issued in conformity with the form presented in appendix 7,
  - b) Provide all documentation required in terms of present regulation
  - c) Ensure the availability of the consignment of product for phytosanitary inspection

2. The request mentioned in terms of sub-heading a) number 1 of the present article shall be submitted to the NPA 15 days before the probable date for re-exportation
3. The consignment of product for re-exportation must be accompanied with the correspondent original phytosanitary certificate

Article 23  
**Consignment Product in Transit**

1. The transit of product under control in the country, packaged and sealed in the country of origin is authorized if accompanied by the import permit issued by the importing country and the phytosanitary certificate of the exporting country and if it does not represent a risk of pest dissemination.
2. In the merchandise does not come sealed or with rupture of consignment, that will be subject to obligatory inspection according what the stipulations foreseen in the present regulation
3. The responsibility associated with operation mentioned in number 2 will be covered by the owner of consignment

Article 24

**Internal Transit**

Movement of Products Subject to Control in National Territory.

1. Whenever a pest occurrence constitutes a risk to spread to other regions, the NPA (NPPO) determine domestic quarantine measures that shall be divulged through the mass media of larger coverage in the country.
2. In the areas covered by domestic quarantine, the movement of products that constitute a risk for pest dissemination is subject to an authorization issued by NPA (NPPO), through a transit declaration which shall contain the following statements:
  - a) Name and address of the applicant;
  - b) Local of origin(Province, District, Locality);
  - c) Type of product;
  - d) Quantity;
  - e) Transport to be utilized;
  - f) Vehicle identification;

g) Transporter identification.

3. The NPA (NPPO) it is entitled to establish the phytosanitary requisites to be observed during the transport of products subject to control, from an affected region to other areas.
4. Transport of products in contravention to the disposals in number 1 and 2 of the present article are apprehended and destroyed in the site and all incurred expenses will be under the responsibility of the proprietor.

## CHAPTER VI

### QUARANTINE

#### ARTICLE 25

##### **Quarantine Régime**

1. The NPA (NPPO) shall imposes a quarantine regime in a defined site if verifies:
  - a) Existence of reasons and/or evidence to suspect that products subject to control are infected/infested by pests;
  - b) Presence of products subject to control infected or infested by pests that are listed in the quarantine object pests in the country;
  - c) Existence of products subject to control that have been maintained or have been in transit in infected/infested areas or suspected areas;
  - d) Potential risk of pest to spread to free areas.
2. Whenever determined by the NPA (NPPO), entrance, exit, movement and transit of products subject to control will be subject to quarantine.
3. Quarantine is made known at local and national level through an advice, written or radio diffused communication.
4. Products subject to control retained may be subjected to quarantine regime and all costs incurred shall be covered by the proprietor.

#### Article 26

##### **Quarantine Limited Areas**

1. Quarantine limited areas are temporary or permanent areas.
2. Permanent areas shall be accessible areas near to the ports, airports and land borders.
3. Temporary quarantine areas are established according to the binding need and the nature of pest suspected to be present.

#### Article 27

##### **Management, maintenance and operation of quarantine limited areas**

1. Management, maintenance and operation of limited quarantine areas are of National Phytosanitary Authority (NPPO) responsibility.
2. Competes to the NPA (NPPO) the observation, diagnosis and prescribe treatment to products subject to control, submitted to quarantine regime.

#### ARTICLE 28

##### **Rules to be observed in the Quarantine Limited Areas**

1. Products subjected to control under quarantine regime are maintained in official stations or similar approved equivalent places.
2. It is prohibited the entrance of persons and vehicles in the quarantine stations, without previous authorization of the NPA (NPPO).
3. The entrance authorization it is temporary, lasting upon the quarantine period determined by the NPA (NPPO).
4. In accordance with the conditions specified in Annex I or following a decision by the NPA, certain products subject to control may, immediately on arrival, be placed in quarantine regime.
5. If, during the period in quarantine, the products subject to control are found to be affected by any of the harmful organisms mentioned in Annex 2 of the present Regulation, the products are subjected to treatment or destruction with no right of compensation to the importer.
6. If, during the period in quarantine, harmful organisms are found absent from the products subject to control, these must be released to the importer.
7. The importer will be formally informed in writing of the period of quarantine fixed by the authority that may be prolonged if necessary.
8. Quarantine regime may entail total or partial restrictions, with or without conditions for movement of plant products subject to control, vehicles, people or other materials or articles susceptible to disseminate pest infection or infestation.

## CHAPETR VII

### PEST CONTROL

#### ARTICLE 29

##### **Declaration of Regulated Pests**

1. The NPA (NPPO) may declare a pest as “quarantine object” or “regulated pest but not quarantine object” only based on pest risk analysis.
2. Competes to NPA (NPPO) to publish the declaration referred to in the number 1 in the present article and the subsequent alterations in the *Boletim da Republican* and other means of mass media.

#### ARTICLE 30

##### **Obligation of communication**

1. Pests of binding declaration listed in Annex 1 in the present Regulation must be declared immediately and constitutes the duty of all citizens to communicate the NPA or any local administrative authority the occurrence of any regulated pest, the NPA shall notify the countries in the region, trade partners and the International Plant Protection Convention.
2. Proprietors or producers are specially obliged to communicate if suspect the existence of regulated pests specified in the binding declaration of Pest Quarantine List.
3. Communications are made verbally or in writing, the most number of elements must be mentioned to enable the pest identification.
4. The binding declaration pest list is to be updated according to the national and international phytosanitary situation.
5. The update of the binding declaration pest list it is of NPA responsibility being announced and published in the *Boletim da Republica*, without prejudice of immediate actions to be adopted by the NPA (NPPO).

## Article 31

### **Measures in case of suspicion, evidence and occurrence of quarantine pests**

1. The Phytosanitary Inspector in case of suspicion of the occurrence of a quarantine pest in a certain locality shall:
  - a) Assess the locality, according to the provisions set in the line a) number 1 of the article 10 in the present Regulation;
  - b) Inspect the products subject to control;
  - c) Make or not a proposal to determine the locality as a area in quarantine regime.
2. Following the proposal elaborated according to the provisions mentioned on paragraph c) of the previous number, the NPA (NPPO) may adopt other emergency measures.  
The NPA (NPPO) may revoke or order to cease the quarantine status in the area or locality declared as such.

## ARTICLE 32

### **Declaration of Pest Free Areas**

1. NPA (NPPO) declares a area as free of pest by means of scientific evidence of pest absence'
2. In the case referred to in the previous number, the NPA must:
  - a) Adopt control measures to sustain and maintain the declared pest free area;
  - b) Establish in these areas a monitoring system to ensure compliance with the measures referred to in the previous paragraph, being the determinant conditions observed in the establishment of the pest free area to be preserved.

## CHAPTER 33

### **Area of Low Pest Prevalence**

1. NPA (NPPO) declares an area of low pest prevalence proven that a pest occurs at minimum levels in a specific area.
2. In the case referred to in the previous number, the NPA (NPPO) must:
  - a) Adopt control measures to maintain the area declared as of low pest prevalence;
  - b) Establish in these areas a monitoring system to ensure compliance with the measures referred to in the previous paragraph, the determinant conditions observed in the establishment of the low pest free area shall be maintained.

## CHAPTER 34

### **Implementaion of Phytosanitary Control Measures**

1. Any contaminated area or suspected to be contaminated by regulated pests, as well as any area declared as a pest free or as of low pest prevalence or as a buffer zone, may be subjected to the following official phytosanitary control measures:
  - a) Destruction of products subject to control;
  - b) Treatment prescription to  
products subject to control or to the means of transport used to carry contaminated cargo;
  - c) Prohibition or restriction of movement of products subject to control;
  - d) Prohibition of cultivation or replanting of any specified plant species in certain localities;
  - e) Any other phytosanitary measure considered pertinent by the NPA (NPPO).

2. The NPA shall notify the proprietor, using a proper form, on the area referred to in number 1 of the present article about the specific control phytosanitary measures to be implemented.
3. The destruction referred to in the line number 1 of the present article must be carried out by the NPA on the presence of proprietor of the area and other relevant authorities.
4. The implementation of the official control phytosanitary measures referred to in number 1 of the present article, excepting the line a), are of the responsibility of the proprietor of the area under the NPA supervision.

**CHAPTER VIII**  
**Supervision**

**ARTICLE 35**  
**Competencies**

Competes to NPA to supervise the compliance with the provisions stated in the present regulation, detect infractions and raise the Notification Act without prejudice to specific competencies and functions of other institutions.

**ARTICLE 36**  
**Intervenients in the supervision process**

Other entities than NPA may intervene in the supervision process: public security agents, security and protection forces, forest and wild animals control agents, fisheries control agents and all public officials including the community agents, whenever formally authorized by the NPA..

**ARTICLE 37**  
**Notifying Act**

The notifying act shall be triple drawn up and contain the following:

- a) Identification of the infractor and other infraction intervenientes;
- b) Date, time and location of the infraction and the act;
- c) Statement of facts and proofs of infraction;
- d) The legal provision infringed;
- e) The fixed fine to be applied;
- f) The means and products under infraction;
- g) The apprehensions executed by the official agent;
- h) Name, signature and function of the official;
- i) Identification of the witness if existing.

**CHAPTER IX**  
**Infractions and Penalties**

**ARTICLE 38**

Constitutes a phytosanitary infraction, from which the legal entitled of the holding or the occupier, the proprietor, the orderer, the official or the executor agent shall respond:



- a) Possession, selling, transportation or distribution of any products subject to control contaminated by Quarantine object pest;
- b) Assault, resistance, intimidation, threatening or obstruction against full execution of functions of any Phytosanitary Inspector;
- c) No compliance of any order or instruction legally set out according to the terms defined in the phytosanitary import license ;
- d) Introduction into the country of any products subject to control through entry points other than those declared in Annex I of the present Regulation;
- e) Import of any products subject to control in contrary conditions to the phytosanitary requisits defined in Annex I of of the present Regulation;
- f) Permission or intentional introduction into the country or spreading of any pest subject to control;
- g) Export of any product subject to control without the fulfilment of phytosanitary conditions established in terms of article 21 of the present Regulation;
- h) Failure to comply with the safety phytosanitary measures established to export consigned products, following the issuance of a phytosanitary certificate according to the terms defined in nr 5 of article 21 of the present Regulion;
- i) Refusal of access to production areas phytosanitary, transport and storage premises for the purpose of monitoring, inspection or collection of samples by the competent officials ubder the terms of the present Regulation;
- j) Removal of stamps from packagings containing products subject to control unduly authorized by the Phytosanitary Inspector;
- k) False declarations intentionally or by negligency pursuing the issuance of documents or any advantages resulting from the obligations imposed in the present Regulation;
- l) Alteration, forge, disfiguration or destruction of any document issued under the terms of the present Regulation;

#### ARTICLE 39

##### **Penalties**

1. Phytosanitary infractions described in article 38 of the present Regulation are punisheable according to the Table in Annex 10;
2. Besides the penalties referred to in Annex 10 of the present article, the infractors are to be penalized in conformity with the penal law;
3. The stipulated amounts in the table referred in the previous number are to be up dated by the Ministers that supervise the agriculture and finance areas.
4. Double penalty shaal be applied in case of reincidence
5. Cumulative infractions are penalized with the sum of penalties and the related fines,

#### ARTICLE 40

##### **(Payment of Fines)**

The stated period for fine payment it is of fifteen days, to be counted from the date of notification..

#### ARTICLE 41

##### **Destiny of Fine Values**

6. Without prejudice to the provisions stated in the current applicable legislation, 40% of the monetary values resulting from the penalties applied due to infractions to the present regulation, revert to the State Treasury and the remaining 60% revert to the Ministry of Agriculture, the application of these values are determined by the respective Minister with the purpose of ensuring the operationality of the NPA.

CHAPTER X  
**Fees**

ARTICLE 42  
**Fees**

Services rendered under the phytosanitary activity are subject to fee payment by the beneficiary, according to established in the table of fixed fees in Annex 8 of the present regulation.

ARTICLE 43  
**Distribution of Revenues**

Revenues resulting from the charges applied under the present regulation revert in 60% to the State Treasury and the remaining 40% revert in favour to the Ministry that superintends agriculture, the mechanisms of use are determined by the respective Minister pursuing the operationality of the NPA.

CHAPTER XI  
**Cooperating Obligations**

ARTICLE 44  
**Obligations of Cooperation from Public Entities and Authorities**

Entities and public authorities namely: the customs, ports, airports, airline companies, mail, naval services, police and autharchic authorities, whenever requested, shall support and provide assistance to the phytosanitary inspectors for the execution of the functions established in the terms of the present Regulation.

CHAPTER XII  
**Resources**  
ARTICLE 45

**Resources**

The proprietor of the productive holdings, transport operator or the importer of products subject to control may, in the terms of the present Regulation, appeal to decisions formulated by the NPA to the Minister that superintends agriculture.