

Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 526 **Pretoria, 3 April 2009** **No. 32090**

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GENERAL NOTICES

NOTICE 347 OF 2009

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004
DRAFT ALIEN AND INVASIVE SPECIES REGULATIONS, 2009

I, Marthinus Christoffel Johannes van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby publish for public comment, the draft regulations relating to alien species and listed invasive species under section 97(1)(b), (c), (f) and (h) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), in the Schedule.

Any person who wishes to submit written representations or comments in connection with the draft regulations are invited to do so within 30 days of the date of this notice. All written representations and comments must be submitted in writing to the Director-General of the Department of Environmental Affairs and Tourism:

By post to: The Director-General
Department of Environmental Affairs and Tourism:

Private Bag X447
Pretoria, 0001
Attention: Mr Bonani Madikizela

Delivered to: The Department of Environmental Affairs and Tourism
Attention: Bonani Madikizela
Fedsure Building
315 Pretorius Street
PRETORIA

By fax to: (012) 320 2733, and by e-mail to bmadikizela@deat.gov.za

Comments received after the closing date may not be considered.

Marthinus van Schalkwyk

MARTHINUS VAN SCHALKWYK
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE

Definitions

1. In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and—

"applicant" means a person applying for a permit in terms of regulation **43**, the amendment of a permit in terms of regulation **51** or the renewal of a permit in terms of regulation **54**;

"biological control" means the use of specimens of one species for the purpose of preying on, parasitizing on, damaging, killing or controlling another species;

"commercial use" in relation to a restricted activity involving an alien or listed invasive species, means the carrying out of the restricted activity for the primary purpose of obtaining economic benefit, including profit in cash or in kind, and is directed towards trade, exchange or another form of economic transaction;

"controlled environment" means an enclosure designed to hold specimens of an alien or listed invasive species in a way that —

(a) prevents them from escaping;

(b) facilitates intensive human intervention or manipulation in the form of the provision of—

  (i) food or water;

  (ii) artificial housing; or

  (iii) health care; and

(c) facilitates the intensive breeding or propagation of an alien and listed invasive species;

"dead specimen" means a specimen that is not able to propagate, reproduce or transfer genetic traits to another specimen;

"exempted species" means a species listed in List 1 of the Notice and regulated in terms of regulation **25**;

"existing alien species" means an alien species that—

(a) was present in the Republic prior to the date upon which these regulations came into effect; or

(b) was lawfully imported into the Republic after the date upon which these regulations came into effect;.

"Head of Conservation" means the Head of the provincial department responsible for conservation within a province or the Chief Executive Officer of an organ of state responsible for conservation within a province;

"hybrid" means a specimen that is the product of the cross-breeding of individuals from different species;

"invasion" means the establishment and subsequent spread of a species outside its distribution range in a manner or to the extent that it constitutes a threat to biodiversity;

"invasive species control plan" means a plan prepared by an organ of state in terms of regulation **9** for the control and eradication of alien or listed invasive species on land under its control;

"invasive species management programme" means a programme prepared by the Department in terms of regulation **8** for the control and eradication of an alien or listed invasive species that has been prioritised in terms of the national strategy;

"**land owner**" includes the registered owner of the land or the authorized representative of the registered owner, the person in possession or in control of the land or any person deriving a benefit from the land;

"listed invasive species" means a species listed in List 3 of the Notice and regulated in terms of regulations **27, 28** and 29 respectively;

"MEC" means a member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;

"newly introduced alien species" means an alien species that was first introduced into the Republic after the date on which these regulations came into effect;

"Notice" means the Government Notice published in terms of—

(a) section 66(1) listing the alien species or category of alien species exempted from the provisions of section 65;

(b) section 67(1) listing the alien species in respect of which a permit to carry out a restricted activity may not be issued; or

(c) section 70(1)(a) listing the invasive species in respect of which the Act will apply nationally;

"nursery" means a facility where specimens of an alien or listed invasive species are artificially propagated, reproduced or multiplied for commercial purposes;

"pathway" means the route by which an alien or listed invasive species is transported, introduced into or dispersed or spread within the Republic and includes natural means, inadvertent vectoring, or deliberate acts of human intervention;

"peat" means renewable, natural, organic material of botanical origin and includes an accumulation of partially decayed vegetation material that formed in waterlogged, sterile, acidic and anaerobic and low oxygen conditions;

"permit holder" means a person to whom a permit has been issued in terms of regulation **44**;

"permit" means a permit issued in terms of these Regulations;

"**personal use**" means any non-commercial use;

"**prescribed activity**" means an activity prescribed as a restricted activity in terms of regulation **22** and **23**;

"prohibited alien species" means a species listed in List 2 of the Notice and regulated in terms of regulation **26**;

"provincial authority" means the provincial organ of state responsible for conservation in the province;

"registered body" means a body registered by an issuing authority in terms of regulation **17**;

"registration certificate" means a certificate issued in terms of regulation 17;

"release" means the intentional or unintentional termination of exercising physical control of a specimen of a species;

"risk assessment" means a scientific evaluation of the threat or potential threat posed to biological diversity by a restricted activity involving a specimen of an alien or invasive species in terms of Chapter 6;

"the Act" means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

"vector" means any object by means of which an alien or listed invasive species is inadvertently or deliberately transported, dispersed or spread.

Purpose of regulations

2. The purpose of these regulations is to—

(a) prevent the unauthorized introduction and spread of alien species to ecosystem and habitats where they do not naturally occur;

(b) manage and control invasive species to prevent or minimize harm to the environment and to biological diversity in particular; and

(c) where possible and appropriate, eradicate invasive species that may cause such harm.

Application of regulations

3. These regulations do not apply to indigenous species unless the species is a listed invasive species

CHAPTER 2
DESIGNATION OF AUTHORITIES

Designation of issuing authorities

4 (1) The Minister is the issuing authority for a permit to undertake any other restricted activity involving an alien or listed invasive species if—

(a) the applicant is an organ of state;

(b) the species is a marine species regulated in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

(c) there is a threat that the species may migrate across provincial boundaries and the Head of Conservation of a province other than the province designated in terms of subregulation (4) objects to the permit being issued;

(d) after written notice from the Minister requiring it to do so, the issuing authority designated in terms of subregulation (2), (3) or (4) fails to properly exercise its powers; or

(e) the importation of any specimen of a new alien species or listed invasive species that is to be utilized as an agricultural food crop or fodder or is a plant, fish or animal to be used in the agricultural sector or for food security.

(2) The Minister of Agriculture, is designated as the issuing authority for a permit authorizing—

(a) the importation of an existing alien or listed invasive species into the country;

(b) the carrying out of a restricted activity involving a listed invasive plant species also regulated in terms of Regulation 15 of the Conservation of Agricultural Resources Act, No 43 of 1983.

(3) Notwithstanding the provisions of subregulation (2)(b), the Minister of Water Affairs and Forestry is designated as the issuing authority for a permit authorizing the carrying out of a restricted activity involving an alien or listed invasive plant species that also requires a water use permit in terms of the National Water Act,1998 (Act No. 36 of 1998).

(4) The Head of Conservation in which the restricted activity is to take place is designated as the issuing authority for a permit authorizing the carrying out of any restricted activity involving an alien or listed invasive species for which a permit is required other than an activity specified in subregulations (1), (2) and (3).

Designation of competent authorities

5. (1) The Minister is the competent authority for the control of alien and invasive species.

(2) The Minister of Agriculture is designated as the competent authority for the control of—

(a) an alien or listed invasive species imported into the Republic; and

(b) an alien or listed invasive species also regulated in terms of Regulation 15 of the Conservation of Agricultural Resources Act,1983 (Act No. 43 of 1983).

(3) The Minister of Water Affairs and Forestry is designated as the competent authority for the control of an alien or listed invasive species for which a water use permit is also required in terms of the National Water Act.

(4) The Chief Executive Officer of an organ of state responsible for the management of a protected area in which the restricted activity is to take place is designated as the competent authority for the control of alien or listed invasive species within that protected area.

(5) The Head of Conservation is designated as the competent authority for the control of alien or listed invasive species taking place within that province.

(6) The Municipal Manager of a local authority, is designated as the competent authority for the control of an alien or listed invasive species taking place within the municipal area of that local authority subject to the following conditions—.

(a) a local authority will only be designated as the competent authority if—

(i) the Minister has determined that the local authority has the capacity to act as a competent authority; and

(ii) the Minister has issued a written notification to the local authority authorizing it to act as a competent authority.

(b) the written notification in terms of sub regulation (a)(ii) records—

(i) the names of the persons designated by the local authority to act on its behalf;

(ii) the restricted activities in relation to which the local authority shall act as the competent authority;

(iii) any conditions determined by the Minister.

(7) Competent authorities designated in terms of this regulation must exercise their powers concurrently.

Integrated permits

6. The following permits will be issued as integrated permits in terms of section **92** of the Act and these regulations—

(a) a permit issued in terms of another chapter of the Act that has the effect of controlling a restricted activity involving an alien or listed invasive species;

(b) a permit issued by a provincial department or organ of state in terms of provincial legislation to undertake an activity that also constitutes a restricted activity involving an alien or listed invasive species;

(c) a permit issued by the Department of Agriculture in terms of the Agricultural Pests Act, the Plant Improvement Act, the Varieties Control Act, the Genetically Modified Organisms Act, the Animal Improvement Act or the Veterinary Health Act to import an alien or listed invasive species;

(d) a permit issued by the Department of Agriculture in terms of Regulation 15 of the Conservation of Agricutural Resources 1983, (Act No 43 of 1983) to undertake an activity that also constitutes a restriced activity involving an alien or listed invasive species; and

(e) a water use permit issued by the Department of Water Affairs in terms of section 20 of the National Water Act in order to undertake an activity that also constitutes a restricted activity involving an alien or listed invasive species; and

(f) a permit issued in terms of the Marine Living Resources Act 1998 (Act No. 18 of 1998).

CHAPTER 3
NATIONAL FRAMEWORK DOCUMENTS

National strategy for alien and listed invasive species

7. (1) The Department must prepare a national strategy for preventing, eradicating or controlling alien and listed invasive species within three years of the publication of these regulations.

(2) When preparing a national strategy, the Department must have regard to the contents of the following planning instruments—

(a) the national biodiversity framework;

(b) relevant bioregional plans; and

(c) any other relevant national strategy developed by another department

(3) A national strategy must—

(a) identify different taxa of alien and listed invasive species requiring invasive species management programmes for prevention, eradication or control;

(b) provide a framework for the prevention, eradication or control of alien and listed invasive species within each of the different taxa and within each of the functional areas for which an issuing or competent authority has been designated;

(c) provide a framework for an integrated and co-ordinated approach between different organs of state seeking to prevent, eradicate or control alien and listed invasive species of different taxa;

(d) using the best available scientific advice, identify species within the different taxa that need to be prioritised for prevention, eradication or control;

(e) identify areas that should be prioritised for the adoption of control measures; recommend management programmes to be implemented to facilitate the prevention, eradication or control of species that have been prioritised in terms of subregulation (d) and the adoption of control measures in areas prioritised in terms of subregulation (e);

(f) identify measures to rehabilitate areas that have been invaded; and

(g) recommend schemes and financial provisions that need to be adopted to ensure the implementation of the national strategy.

(4) The Department must review and amend the national strategy at least every five years.

Invasive species management programmes

8. (1) Within twelve months of the adoption or amendment of the national strategy in terms of regulation 7, the Department must develop an invasive species management programme for each species identified in regulation 7(3)(d).

(2) Notwithstanding the provisions of subregulation (1) any competent authority may at any time prepare and publish an invasive species management programme for a species to be eradicated or controlled.

(3) An invasive species management programme prepared and published in terms of subregulation (2), must not conflict with a programme prepared and published in terms of subregulation (1).

(4) An invasive species management programme must set out—

(a) the alien or listed invasive species to which it relates;

(b) the control measures to eradicate or control the alien or listed invasive species specified in subregulation (a);

(c) the areas in which the control measures set out in terms of subregulation (b) are to be applied; and

(c) any schemes to fund the control measures.

(5) An invasive species management programme may provide that the owner of any land regulated by the management programme who has not complied with the provisions of the management programme, may not—

(a) sell, transfer or donate the land regulated by the management programme;

(b) receive support in terms of a state-funded scheme or other state-supported programme to ensure the sustainable use of natural resources; or

(c) receive an exemption or rebate on municipal rates, or a grant in aid to encourage sound land management.

Invasive species monitoring, control and eradication plans

9. (1) The Institute must—

(a) within three years of the date on which these regulations come into effect, develop and publish on its website guidelines for the preparation of an invasive species control plan referred to in subregulation (2) and (3); and

(b) every five years, review and, if necessary, amend the guidelines prepared in terms of subregulation (a).

(2) Every organ of state and every management authority of a protected area must prepare a plan for the monitoring, control and eradication of invasive species in terms of section 76(2)(a) of the Act.

(3) A competent authority may require a land owner to prepare a plan for the monitoring, control and eradication of invasive species occurring on their land.

(4) An invasive species control plan prepared in terms of subregulation (2) or (3) must—

(a) comply with—

(i) the guidelines published in terms of subregulation (1);

(ii) the national biodiversity framework published in terms of section 38(2) of the Act;

(iii) the norms and standards determined in terms of section 9 of the Act; and

(iv) the national strategy in terms of subregulation (7);

(b) take account of any plan prepared by any other organ of state or management authority of a protected area in terms of any other legislation to prevent, eradicate or control alien or invasive species within the area under its jurisdiction, including—

(i) an environmental implementation or environmental management plan of a national or provincial organ of state prepared in terms of Chapter 3 of the National Environmental Management Act, 1998 (Act No 107 of 1998);

(ii) a catchment management plan prepared in terms of the National Water Act;

(iii) a disaster management plan prepared in terms of the National Disaster Management Act;

(c) have separate sections dealing with marine species, plants, vertebrates, invertebrates and microbes;

(d) include the following information—

(i) the area of jurisdiction of the organ of state or management authority;

(ii) the land within the area of jurisdiction to which the plan or strategy relates;

(iii) a detailed list and description of any prohibited species or restricted species prioritized for prevention in the national strategy occurring on that land;

(iv) a description of the parts of that land that are infested with such prohibited or restricted species;

(v) an assessment of the extent of such infestation;

(vi) the prioritization for control of the different areas of the land that are infested;

(vii) the prioritization for control of the different species occurring on the land;

(viii) the current and proposed measures to monitor, control and eradicate such prohibited or restricted species;

(ix) the rehabilitation measures to be adopted; and

(x) an estimate of the costs of implementing the measures;

(e) contain an annexure with the following information—

(i) the proposed timetable for implementing the measures detailed in the invasive species control plan; and

(ii) measurable indicators of progress and success with implementing the measures; and

(f) contain a record of all research into any aspect of the invasiveness of an alien or listed invasive species or the prevention, eradication or control of such invasiveness being undertaken on behalf of the organ of state or management authority.

(5) The information contained in paragraph (e) of subregulation (4) must be captured in a representative manner on topographical maps or aerial photographs of the land.

(6) An invasive species control plan referred to in subregulation (2) must be prepared within one year of the publication of the guidelines referred to in subregulation (1).

(7) A copy of the invasive species control plan referred to in subregulation (2) or (3) and the maps or aerial photographs referred to in subregulation (5) must be lodged—

(a) in the case of a municipality, with the provincial conservation authority; and

(b) in the case of any other organ of state or management authority, with the Department.

(8) A body receiving an invasive species control plan or amendment to such a plan in terms of subregulation (7) must—

(a) within six months of receiving the plan or amendment to the plan, assess the plan or amendment;

(b) request such further information as it considers necessary;

(c) if the plan or any amendment to the plan does not meet the requirements of the Act or Regulations, amend or refer the plan back to the organ of state or management authority submitting the plan with recommendations for its modification;

(d) report to the Minister on any matters detailed in the plan requiring intervention; and

(e) lodge a copy of the plan with—

(i) the Institute; and

(ii) any issuing or competent authority that may have jurisdiction over any aspect of the implementation of the plan.

(9) The organ of state or management authority preparing a plan in terms of subregulation (2) must—

(a) implement the plan;

(b) no later than every five years review the plan and the progress with its implementation; and

(c) following on from the review, submit to the provincial conservation authority or the Department, as the case may be—

(i) a report on progress with the implementation of the plan; and

(ii) any amendments to the plan.

National register of alien and listed invasive species and control plans

10. (1) The Institute must establish and maintain a national register of—

(a) all invasive species control plans submitted to it in terms of regulation **9**;

(b) the following species—

(i) all newly introduced alien species;

(ii) all exempted species that have been subjected to a risk assessment in terms of regulation **35**;

(iii) all alien and listed invasive species in relation to which a permit has been issued in terms of regulations **27, 28, 29,30** and **31** in respect of each species, whether the permit has been issued subject to conditions; and

(iv) any species that is being investigated in terms of regulation **33** as species with invasive potential;

(c) all areas demarcated in terms of regulation **30**;

(d) all research being undertaken into any aspect of the invasiveness of an alien or listed invasive species or the prevention, eradication or control of such invasiveness.

(2) Any person wanting to ensure that information is included in the register in terms subregulation (1) may submit it to the Institute in writing with a request that it be incorporated.

Invasive species research

11. (1) A report on any research into any aspect of the invasiveness of an alien or listed invasive species or the prevention, eradication or control of such invasiveness must be lodged with the Institute by—

(a) any organ of state or organisation conducting or funding such research; or

(b) any person in the Republic conducting such research where the research is wholly or partially funded by an organ of state.

(2) A report in terms of subregulation (1) must—

(a) be lodged prior to commencing the research;

(b) be in writing;

(c) contain the following information—

(i) the name of the researcher, his or her institution and contact details;

(ii) the species, pathway or vector being researched;

(iii) the hypothesis being tested;

(iv) the source of funding for the research; and

(v) the anticipated period of the research.

(3) A copy of any findings of research referred to in subregulation (1) must, upon completion, be lodged with the Institute, both electronically and in writing.

National status reports

12. (1) The Institute must, in terms of section 11(1)(a)(i) and (iii) of the Act, submit a report on the status of all alien and listed invasive species to the Minister within three years after promulgation of these regulations and every two years thereafter.

(2) A status report referred to in subregulation (1) must—

(a) contain an assessment of the national strategy and its effectiveness;

(b) contain a summary and assessment of—

(i) permits issued for restricted species;

(ii) notifications received from owners of land regarding restricted species occurring on that land;

(iii) invasive species control plans received from organs of state and management authorities of protected areas; and

(iv) directives involving alien and listed invasive species issued by competent authorities;

(c) identify—

(i) prohibited or restricted species that need to be prioritized for prevention, eradication or control;

(ii) prohibited or restricted species that require invasive species management programmes;

(iii) geographic areas that need to be prioritized for management interventions;

(iv) species that are exhibiting invasive potential; and

(d) recommend—

(i) invasive species management programmes that need to be implemented to facilitate the prevention, eradication or control of prohibited or restricted species in areas identified in subregulation (b);

(ii) identify measures to rehabilitate invaded areas; and

(iii) recommend amendments or additions to the lists published in terms of the Notice.

Publication of national framework documents

13. The national strategy, invasive species management programmes, invasive species control plans, the national register and the national status reports must be published electronically on the website of the Department.

CHAPTER 4

REGISTERS, REPORTING & GENERAL DUTIES

Register of permits

14. (1) An issuing authority must—

(a) establish a register of all permits issued by that authority in terms of these regulations;

(b) assign a distinct number to each permit issued;

(c) record in the register—

(i) the number assigned to each permit;

(ii) the scientific and common name of the species for which the permit was issued;

(iii) whether the species lawfully occurred in the Republic prior to the date on which these regulations came into effect;

(iv) whether the species was subjected to a risk assessment in terms of regulation **35**;

(v) the restricted activity for which the permit was issued;

(vi) any conditions under which the permit was issued;

(vii) the date on which the permit was issued;

(viii) the period of validity of the permit; and

(xi) the location where the restricted activity is to be carried out.

(2) An issuing authority issuing permits for importation must establish a register of risk assessments that have been carried out in terms of regulation **35**.

Reporting by issuing authorities

15. (1) An issuing authority must, on an annual basis, provide to the Department a written report containing—

(a) a list of all permits issued by it including permit numbers;

(b) a copy of the register established in terms of subregulation **14(1)(a)**;

(c) a summary of the information recorded in terms of subregulation **14(1)(c)** for each permit;

(d) a copy of the register, if any, established in terms of subregulation **17(2)**;

(e) a list of all reports received in terms of subregulation **17(6)**; and

(f) a summary of the information recorded in terms of subregulation **17(7)** for each report;

(g) a record of the progress made with the implementation of any invasive species control plan referred to it in terms of regulation **9**.

(2) A copy must be submitted by the issuing authority to the Institute.

Reporting by competent authorities

16. A competent authority must, on an annual basis, provide to the Department and the Institute, a written report recording—

(a) a list of all notifications received in terms of subregulation **18(1)**;

(b) a summary of the information recorded in terms of subregulation **18(2)** for each notification;

(c) the progress made with the implementation of any invasive species control plan prepared in terms of regulation **9** and referred to it by the Department.

Registered bodies

17. (1) A person carrying out a restricted activity involving an alien or listed invasive species for commercial or scientific purposes must apply to an issuing authority for registration as a registered body.

(2) An application for registration in terms of subregulation (1) shall be in writing and contain-

(a) the full names of the person making the application;

(b) the address and contact details of the person carrying out the restricted activity;

(c) if the person referred to in subregulation (a) is not a natural person, the full names of the person who is responsible for the restricted activities to be undertaken on behalf of that person;

(d) the alien or listed invasive species in relation to which the applicant has previously undertaken restricted activities;

(e) the details of all the restricted activities involving alien or listed invasive species that have been previously undertaken by the applicant;

(f) the details of any legal body or association made up of persons carrying out restricted activities involving alien or listed invasive species of which the applicant is a member;

(g) the details of all restricted activities involving alien or listed invasive species that the applicant intends to undertake;

(h) the alien or listed invasive species in relation to which the applicant intends to undertake restricted activities;

(i) the magisterial districts in which the restricted activities are to be undertaken; and

(j) such other information as the issuing authority may require.

(3) An application in terms of subregulation (1) must be accompanied by—

(a) written confirmation that the applicant—

(i) is a scientific institution funded in whole or part by the State research and that the restricted activities will be carried out for the purposes of scientific research; or

(ii) will carry out the restricted activity for commercial purposes.

(b) written confirmation from the body referred to in subregulation (2)(f) that the restricted activities previously undertaken by the applicant have been in accordance with the provisions of the Act and regulations and national norms and standards, if any; and

(c) the applicable processing fee as set out in Addendum **3.**

(4) An issuing authority receiving an application in terms of subregulation (1) must—

(a) assess the application taking into account whether—

(i) restricted activities involving alien or listed invasive species to be undertaken by the applicant are for scientific or commercial purposes;

(ii) restricted activities involving alien or listed invasive species to be undertaken by the applicant are in accordance with the provisions of the Act and regulations and national norms and standards, if any;

(iii) the applicant is a member in good standing of a national body or association made up of other persons undertaking similar restricted activities involving alien or listed invasive species; and

(iv) the objectives of the Act will be better served by the registration of the Applicant;

(b) if appropriate, issue a certificate

(5) A certificate issued in terms of subregulation (4) shall remain valid for a period of three years or such lesser period as is specified in the certificate.

(6) A registered body must annually submit a report to the issuing authority.

(7) A report in terms of subregulation (6) must—

(a) be in writing; and

(b) contain—

(i) the full names, address and contact details of the person submitting the report;

(ii) the full names, address and contact details of the registered body;

(iii) the restricted activities involving an alien or listed invasive species undertaken by it;

(iv) the alien or listed invasive species in relation to which the restricted activities were undertaken;

(v) the number of specimens of each alien or listed invasive species in relation to which the restricted activities were undertaken;

(vi) the magisterial districts in which the restricted activities were undertaken.

(8) An issuing authority receiving a report in terms of subregulation (1) must capture the information provided in subregulation (2).

Mandatory notification

18. (1) A person who is the owner of land on which occurs a specimen of a prohibited alien species, or a listed invasive species in respect of which a permit to undertake a restricted activity has not been issued, must notify the relevant competent authority, in writing, of the species occurring on that land.

(2) A notification in terms of subregulation (1) must—

(a) be in the form set out in Addendum 2; and

(b) contain—

(i) the full names of the owner of the land;

(ii) the address and contact details of the owner of the land;

(iii) the name and contact details of the person in control of the land;

(iv) the cadastral description or the title deed number of the land;

(v) the prohibited or restricted species occurring on the land;

(vi) the extent of the infestation and densities of the prohibited or restricted species occurring on the land or, if accepted by the competent authority, a detailed description;

(vii) a map of the land indicating the location of the prohibited or restricted species on the land;

(viii) a description of measures adopted to monitor, control and eradicate such prohibited or restricted species; and

(ix) measurable indicators of progress and indications of when control measures are likely to be completed.

(3) A competent authority receiving a notification in terms of subregulation (1) must capture the information provided in subregulation (2).

General duty of care of issuing and competent authorities

19. When exercising any power or performing any duty under the Act or these Regulations an issuing authority or competent authority must—

(a) have regard to—

(i) the national strategy;

(ii) any invasive species management programme; and

(ii) any control plan approved in terms of regulation **9**;

(b) exercise such power or perform such duty subject to the overall coordination of the Department.

General duty of MECs

20. The MEC for environmental affairs in a province wishing to control or manage an alien or listed invasive species in a manner that differs from that set out in these regulations may only do so after consultation with the Minister.

CHAPTER 5
RESTRICTIONS

Categories of alien and listed invasive species

21. (1) Alien and listed invasive species consist of the following categories of species-

(a) exempted species being alien species listed in List 1 of the Notice;

(b) prohibited alien species being species listed in List 2 of the Notice; and

(c) listed invasive species being invasive species listed in List 3 of the Notice as—

(i) species requiring compulsory control (1a).);

(ii) invasive species controlled by an invasive species management programme (1b)

(iii) invasive species controlled by area (2);

(iv) invasive species controlled by activity (3);

(2) A species may be listed in different categories in different parts of the country.

Restricted activities

22. (1) In addition to those activities defined as restricted activities in the Act, the following activities are prescribed as restricted activities—

(a) allowing any specimen of an alien or listed invasive species to grow, breed or multiply;

(b) allowing the movement or spread of a specimen of an alien or listed invasive species; and

(c) releasing a specimen of an alien or listed invasive species.

Prescribed activities

23. A person may not undertake the following activities:

(a) importing into the Republic, including introducing from the sea, any wooden packaging materials that does not comply with any determination made in terms of the Agricultural Pests Act, 1983 (Act No. 36 of 1983);

(b) importing into the Republic, including introducing from the sea, any peat or peat products without a permit;

(c) managing or discharging ballast water from ships in contravention of prevailing IOC standards;

(d) discharging or disposing into a waterway or the ocean, water from an aquarium, tank or other receptacle that has been used to keep a prohibited species or listed invasive species without a permit.

General restriction on importation

24. (1) A person may not import into the Republic a specimen of any species, including an exempted species, unless authorised to do so by a permit.

(2) A person may not release a specimen of a new alien species imported into the Republic in terms of subregulation (1) unless authorised to do so by a permit.

(3) An application for the importation of a specimen of a species into the Republic shall require the written consent of the Head of Department of the province to which the specimen is to be transported or in which it is to be released.

Exempted Species

25. (1) A person may, without a permit, undertake any restricted activity involving a specimen of an exempted species.

(2) Notwithstanding the provisions of subregulation (1) a person—

(a) intending to import an exempted species into the Republic may only do so if authorised by a permit issued in terms of Regulation **24**;

(b) intending to carry out a restricted activity involving a specimen of an exempted species is required to obtain any permits that may be required in terms of other legislation.

Prohibited alien species

26. A person may not import nor undertake any other restricted activity involving a specimen of a prohibited alien species;

Invasive species requiring Compulsory Control

27. (1) A person may not, without a permit, undertake any of the following restricted activity involving a specimen of a species listed in List 3 as an invasive species requiring compulsory control—

(a) importing a specimen into the Republic, including introducing it from the sea;

(b) possessing or exercising physical control over a specimen;

(c) growing a specimen, or allowing it to grow, breed or multiply;

(d) breeding or in any other way propagating a specimen or causing it to multiply;

(e) conveying, moving or otherwise translocating a specimen;

(f) selling or otherwise trading in, giving, donating or disposing of a specimen;

(g) buying, receiving, accepting as a gift, or in any way acquiring a specimen; or

(i) conducting any other activity prescribed in regulation **23** or **24** involving a specimen.

(2) A person who has under his or her control a specimen of an invasive species requiring compulsory control in respect of which a permit has not been issued must notify a competent authority in writing of this occurrence, in accordance with Addendum **1**.

Invasive species controlled by invasive species management programme

28. (1) No person may undertake the following restricted activity involving a specimen of species listed in List 3 as an invasive species controlled by invasive species management programme—

(a) importing a specimen into the Republic, including introducing it from the sea;

(b) breeding or in any other way propagating a specimen or causing it to multiply;

(c) conveying, moving or otherwise translocating a specimen;

(d) allowing the movement or spread of a specimen from an area under their control;

(e) selling or otherwise trading in, giving, donating or disposing of a specimen;

(f) buying, receiving, accepting as a gift, or in any way acquiring a specimen;

(g) conducting any other activity prescribed in regulation **22** or **24** involving a specimen.

(2) Where an invasive species management programme requiring the control of the species has been adopted in terms of regulation **8**, no person may, without a permit, possess or have in their possession or under their control a specimen of an invasive species controlled by invasive species management programme, where the control programme makes specific provision for control of that listed invasive species in that area, or where a directive has been issued.

(3) Notwithstanding the provisions of subregulations (1) and (2) a person may with a permit undertake a restricted activity listed in subregulations (1) or (2) if—

(a) the restricted activity is expressly authorised in terms of the invasive species management programme; or

(b) the restricted activity has as its objective the eradication of the specimen of the species involved.

Invasive species controlled by area

29. (1) No person may, without a demarcation permit, undertake any of the following restricted activities involving a specimen of a species listed in List 3, published in terms of section 70 of the Act, as an invasive species controlled by area—

(a) importing a specimen into the Republic, including introducing it from the sea;

(b) possessing or exercising physical control over a specimen;

(c) growing a specimen, or allowing it to grow or multiply;

(d) breeding or in any other way propagating a specimen or causing it to multiply;

(e) conveying, moving or otherwise translocating a specimen;

(f) selling or otherwise trading in, giving, donating or disposing of a specimen;

(g) buying, receiving, accepting as a gift, or in any way acquiring a specimen;

(h) allowing a specimen to grow, breed or multiply; or

(i) conducting any other activity prescribed in regulation **23** or **24** involving a specimen.

(2) A permit issued in terms of subregulation (1)—

(a) must stipulate the area in which the restricted activity may be carried out; and

(a) may relate to a single specimen or to multiple specimens of the same species.

(3) A person may, without a permit, carry out a restricted activity referred to in subregulation (1) in—

(a) that part of the Republic indicated on the map as the distribution range of the species; or

(b) an area demarcated for that purpose in terms of regulation **30**.

(4) The Director-General must publish maps referred to in subregulation (3) within 12 months of the coming into effect of these regulations.

(5) Until such time that the maps are publish in terms of subregulation 4, regulation 27 applies to fish species listed in list 3 and published in terms of section 70 of the Act.

(6) Until such time that the maps are publish in terms of subregulation 4, these regulations will not regulate the indigenous mammalian species listed in list 3 and published in terms of section 70 of the Act.

(7) Notwithstanding the provisions of subregulations (1) and (3) no person may undertake a restricted activity involving an invasive plant species managed by area within the riparian zone.

Demarcation of areas

30. (1) Any person or organ of state may apply to an issuing authority to demarcate an area as an area in which it is possible to undertake a restricted activity involving a species controlled by area without a permit.

(2) An application in terms of subregulation (1) must—

(a) be in writing;

(b) record the name of the applicant;

(c) state the area where the restricted activity is to be carried out;

(d) set out the measures that will be adopted to manage restricted activities involving the species undertaken within that demarcated area by persons other than the applicant.

(3) The information contained in subregulation (2)(c),must be captured in a representative manner on topographical maps or aerial photographs of the land.

(4) An issuing authority receiving an application in terms of subregulation (1) must subject the application to risk assessment.

(5) A demarcation in terms of sub-regulation (1)—

(a) may relate to a single specimen or to multiple specimens of the same species; and

(b) must stipulate the restricted activities involving a listed invasive species that may take place within the demarcated area without a permit.

(6) The applicant must, within the area demarcated in terms of subregulation (1), monitor compliance with the conditions of such demarcation by all persons carrying out a restricted activity in that area involving a specimen of a species to which the demarcation relates.

(7) The applicant must report to the issuing authority all instances of non-compliance in terms of sub-regulation (6).

Invasive species controlled by activity

31. (1) No person may, without a permit, undertake the following restricted activities involving a specimen of species listed in List 3 as a species controlled by activity—

(a) importing a specimen into the Republic, including introducing it from the sea;

(b) possessing or exercising physical control over a specimen;

(c) growing a specimen, or allowing it to multiply;

(d) breeding or in any other way propagating a specimen or causing it to multiply;

(e) conveying, moving or otherwise translocating a specimen;

(f) selling or otherwise trading in, giving, donating or disposing of a specimen;

(g) buying, receiving, accepting as a gift, or in any way acquiring a specimen;

(i) conducting any other activity prescribed in regulation **22** or **24** involving a specimen; or

(2) A permit in terms of subregulation (1) may only be issued for a purpose identified in Column 4 of the list as the purpose for which a permit relating to that species may be issued.

(3) A permit to sell or otherwise trade in a specimen of a species controlled by activity may only be issued to a registered body in terms of regulation **17**.

(4) No person may, without a permit, possess, exercise physical control over or allow a specimen of a species controlled by activity to grow if a competent authority has directed otherwise.

(5) Notwithstanding the provisions of subregulation (1), no person may undertake a restricted activity involving a plant species listed as a species managed by activity within the riparian zone.

Limitation on permits to sell or trade in a listed invasive species

32. Notwithstanding the provisions of regulations **27, 28, 29** or **31** a permit to sell or trade in a listed invasive species may only be issued to a person registered as a registered body in terms of Regulation 17.

Species with invasive potential

33. (1) The Department and the Institute may from time to time identify a species that-

(a) is already in South Africa; and

(b) is,or may become, invasive.

(2) A species identified in terms of subregulation (1) must be subjected to an initial risk assessment by the Department;

(3) An initial risk assessment in terms of subregulation (2) must determine whether that species has—

(a) a known propensity to invade in other parts of the world with similar geophysical conditions to parts of South Africa;

(b) a scientific record of invasive tendencies in the Republic. or

(c) any other property that may make it invasive.

(4) Should an initial risk assessment in terms of subregulation (2) indicate that the species has invasive potential, the Department must undertake a comprehensive assessment to determine whether the species should be listed as a prohibited or restricted species in terms of the Act.

Duty of disclosures and invasive species control certificate

34. (1) A person disposing of immovable property is obliged to disclose to the person acquiring the property whether—

(a) there occurs on the property any prohibited alien or prohibited invasive species or any invasive species controlled by programme; and

(b) any directive has been issued against the owner in terms of these regulations.

(2) A person acquiring ownership of an immovable property may at any time prior to transfer of the property require the person disposing of the property to furnish a certificate from a competent authority that, in relation to the property, the owner complies with the Act and Regulations.

CHAPTER 6
RISK ASSESSMENT

Activities requiring risk assessment

35. (1) A risk assessment must be undertaken prior to—

(a) carrying out of an activity prescribed in terms of regulation **23**;

(b) importing into the Republic a specimen of any species in terms of regulation **24**;

(c) demarcating an area in terms of regulation **30**; and

(d) issuing of a permit to undertake any other restricted activity involving a specimen of a listed invasive species.

(2) If so required by the Minister or an issuing authority, a risk assessment must be undertaken prior to carrying out an activity involving an exempted species.

General risk assessment requirements

36. A risk assessment in terms of regulation **35** must—

(a) consist of the following;

(i) an initial risk assessment; and

(ii) if the initial risk assessment does not clearly demonstrate that there would be no significant risk of invasion by the species to which the application relates, a comprehensive risk assessment;

(b) be undertaken in accordance with the framework set out in Addendum 4

Risk assessment for import permits

37. (1) A risk assessment in terms of regulation **35(1)(b)** must consider—

(a) in the case of a new alien species or exempted or listed invasive species introduced into the Republic less than 5 years before these regulations come into effect—

(i) the risks and potential impacts directly attributable to the species to which the application relates;

(ii) the risks of the specimen serving as a vector through which specimens of other alien species may be introduced into the Republic and the risks and potential impacts of the other alien species; and

(iii) the risks of the method by which a specimen is to be introduced or the restricted activity carried out serving as a pathway through which specimens of other alien species may be introduced and the risks and potential impacts by the other alien species.

(b) in the case of an exempted species or listed invasive species introduced into the Republic more than 5 years before these regulations come into effect-

(i) the risks referred to in subregulations (a)(ii),and (a)(iii); and,

(ii) if so required by the issuing authority, the risks referred to in subregulation (a)(i).

(2) Notwithstanding the provisions of subregulation (1)(a), for a period of one year after the date upon which these Regulations come into effect, an issuing authority may not require a risk assessment in terms of subregulation (1)(a)(iii) for a specimen of an exempted alien or listed invasive species that was legally introduced into the Republic in the period of five years immediately preceding the commencement of these Regulations.

Risk assessment framework

38. (1) The Institute must, within one year of the date on which these regulations come into effect, develop and publish on its website, guidelines for the carrying out of a risk assessment.

(2) Pending the publication of guidelines prepared in terms of subregulation.

(1) a risk assessment must consider-

(a) information regarding the relevant species, including-

(i) the taxonomy of the species, including the class, order, family, scientific name, scientific synonyms and common names of the species;

(ii) the originating environment of the species, including climate, extent of geographic range and trends;

(iii) persistence attributes of the species, including reproductive potential, mode of reproduction, dispersal mechanisms and undesirable traits;

(iv) invasive tendencies of the species elsewhere and taxonomic predisposition;

(v) the history of domestic propagation or cultivation of the species, introductions and the extent of naturalization; and

(vi) nutritional or dietary requirements of the species and, where applicable, whether it enjoys a specialist or generalist diet; and

(b) information regarding the restricted activity in respect of which the permit is sought, including-

(i) the nature of the restricted activity;

(ii) the reason for the restricted activity;

(iii) the location where the restricted activity is to be carried out;

(iv) the number and, where applicable, the gender of the specimens of the species involved; and

(v) the intended destination of the specimens, if they are to be translocated; and

(c) information regarding the receiving environment, including —

(i) climate match;

(ii) habitat;

(iii) the presence of natural enemies, predators and competitors; and

(iv) the presence of potentially reproductive compatible species.

(d) any other information that the issuing authority may determine.

(3) A risk assessment carried out in terms of subregulation (1) must identify —

(a) the probability that the species will naturalize in the area in which the restricted activity is to be undertaken or elsewhere in the Republic; and

(b) the probable impact of the species on the biodiversity and sustainable use of natural resources of-

(i) the area in which the restricted activity is to be undertaken; and

(ii) elsewhere in the Republic;

(c) the risks and potential impacts on biodiversity by the species to which the application relates;

(d) the risks of the specimen serving as a vector through which specimens of other alien species may be introduced;

(e) the risks of the method by which a specimen is to be introduced or the restricted activity carried out serving as a pathway through which specimens of other alien species may be introduced; and

(f) any measures to manage the risks.

(4) Based on the information in subregulation (1), (2) and (3), a risk assessment must consider –

(a) the likelihood of the risks being realized;

(b) the severity of the risks and consequences of the realization of the risks for other species, habitats and ecosystems;

(c) the potential costs associated with the control or eradication of the species to minimize harm to biodiversity;

(d) options for minimizing the potential risks; and

(e) management of the potential risks.

(5) Notwithstanding the provisions of subregulation (1), an assessment of the risks and potential impacts on biodiversity of the importation into the Republic or the introduction into a province of a specimen of a exempted or listed invasive species introduced into the Republic or the province more than five years prior to the date upon which these regulations come into effect, need only consider the matters set out in subregulation (2)(d), (e) and (f) and (3).

Risk assessment facilitator

39. (1) Unless otherwise determined by the issuing authority, a risk assessment must be undertaken by-

(a) the issuing authority; or

(b) if so directed the issuing authority, an environmental assessment practitioner designated by the issuing authority;

(2) An environmental assessment practitioner referred to in subregulation (b) must-

(a) be independent;

(b) have knowledge of the Act, the Regulations and any guidelines that have relevance to the proposed application; and

(c) have expertise in conducting risk assessments.

(3) The applicant must, in the case of a risk assessment to be undertaken by an environmental assessment practitioner, take all reasonable steps to verify whether the environmental assessment practitioner to be appointed complies with subregulation (2).

Risk assessment costs

40. (1) A risk assessment must be at the cost of the applicant who shall pay the fees set out in Addendum **4**.

(2) If requested by the applicant, the issuing authority must provide the applicant with an estimate of the cost of a risk assessment.

(3) The applicant may withdraw the application at any stage to avoid further costs.

Risk assessment procedure

41. (1) A risk assessment must be undertaken in accordance with-

(a) the guidelines contained in regulation **38**; and

(b) the framework contained in Addendum **4**.

(2) The applicant must provide the person undertaking the assessment of risks with access to all information at the disposal of the applicant regarding the application, whether or not such information is favorable to the applicant.

Risk assessment report

42. (1) The person carrying out the risk assessment must prepare a written report detailing-

(a) any information required in terms of subregulation (2);

(b) the risk of invasion as a result of the issuing of the permit;

(c) key economic, social and ecological considerations that will guide a decision on whether to issue a permit;

(d) any risk management measures that must be applied;

(e) a recommendation on whether or not a permit should be issued;

(e) any conditions that should apply if a permit is issued.

(2) A risk assessment report prepared in terms of subregulation (1) must be submitted by the issuing authority to the Department for scientific review by the Institute or other body appointed by the Department.

CHAPTER 7
ISSUING, AMENDMENT AND CANCELLATION OF PERMITS

Permit application requirements

43. An application for a permit in terms of these Regulations must—

(a) be in the form and contain the particulars set out in Addendum 2;

(b) be accompanied by the application fee prescribed in Addendum 3;

(c) be accompanied by the risk assessment report referred to in regulation **42**;

(d) provide details of where the restricted activity is to be carried out and the manner in which the alien or listed invasive species is to be managed;

(e) include additional information required by the issuing authority;

(f) be lodged —

(i) in duplicate with the issuing authority together with additional copies as may be required by the issuing authority;

(ii) electronically, if required by the issuing authority; and

(iii) with the original or certified documentation in support of the application required by the issuing authority.

Decision on application

44. (1) On receipt of an application for a permit in terms of regulation **43** the issuing authority must—

(a) request such further information as the issuing authority may require;

(b) where the issuing authority is a provincial authority, notify any province that may be adversely affected by the proposed activity, of the application.

(b) consider the application; and

(c) reach a decision.

(2) In adjudicating an application the issuing authority must have regard to-

(a) the national strategy;

(b) the contents of the risk assessment report prepared in terms of regulation **42.**

(3) A decision in terms of subregulation (1) must be made within 30 days of receipt of the information required in terms of subregulation (1)(a).

(4) An issuing authority must refuse an application if there is a risk that the restrict activity may result in a significant impact on biological diversity.

(5) After reaching a decision on an application, the issuing authority must—

(a) notify the applicant of the decision, in writing;

(b) if the application was approved, issue a permit in the name of the applicant within 14 working days; and

(c) if requested, give reasons for the decision.

Conditions subject to which permits may be issued

45. (1) A permit may be issued for—

(i) multiple restricted activities;

(ii) multiple specimens of a species; or

(iii) multiple species;

(2) Notwithstanding subregulation (1)(a) a permit for the import into the Republic, including introducing from the sea, of an alien or listed invasive species may only be valid for one consignment.

(3) A permit is issued subject to the condition that the permit may be cancelled at any stage if the issuing authority obtains information indicating that the species or the restricted activity for which the permit was issued, may be detrimental to biodiversity.

Discretionary conditions

46. When issuing a permit to undertake a restricted activity involving a specimen of an alien or listed invasive species the issuing authority may require the applicant to—

(a) be responsible for any growth or spread of propagules of the specimen in the area and within a distance from the area in which the species is to be established, as determined by the issuing authority;

(b) utilize control methods determined by the issuing authority, including the use of sterile varieties or the concurrent introduction of biological control agents; and

(c) pay a propagule pollution charge, as determined by the issuing authority, to address any possible growth or spread of propagules of the specimen.

Form and contents of permit application form and issued permit form

47. (1) A permit application form shall contain the information as prescribed in Addendum **2**.

(2) A permit shall be in the form as prescribed in Addendum **5**.

(3) A permit must—

(a) contain a sequential permit number;

(b) be in writing;

(c) specify-

(i) the person to whom it applies and their identity or registration number;

(ii) the species to which it relates;

(iii) the restricted activities for which the permit is issued;

(iv) the period for which the permit remains valid;

(d) be signed by the issuing authority and certified by means of an official stamp;

(e) contain conditions, if any.

Period of validity of permits

48. (1) A permit authorizing—

(a) the possession of a restricted species may not exceed five years;

(b) the undertaking of any other restricted activity involving a restricted species may be issued for a period not exceeding twelve months.

(2) Notwithstanding the provisions of subregulation (1) a permit may be issued for a period exceeding that set out in subregulation (1) if the restricted activity will be carried out by a scientific institution.

Transferability of permits

49. A permit may not be transferred to any other person.

Automatic lapsing of permits

50. A permit shall automatically lapse if the species to which it relates is subsequently listed as a prohibited species or species controlled by programme.

Cancellation or amendment of permits

51. (1) An issuing authority which issued a permit or demarcated an area may cancel the permit or demarcation or amend the related conditions if—

(a) the permit was issued as a result of misleading or false representations by the applicant;

(b) the applicant or permit holder has contravened or failed to comply with –

(i) any condition of the permit or demarcation; or

(ii) any provision of the Act or other law governing the permitted activity; or

(c) information is obtained by the issuing authority indicating that the species or the restricted activity for which the permit was issued or demarcation made is likely to have a detrimental impact on biodiversity.

(2) A permit or demarcation may be amended by –

(a) removing a condition;

(b) changing a condition;

(c) adding a condition;

(d) updating or changing any detail on the permit or demarcation; or

(e) correcting a technical or editorial error on the permit or demarcation.

(3) Before canceling or amending the conditions to a permit or demarcation in terms of subregulation (1), the issuing authority must notify a permit holder in writing of their intention to do so and provide the permit holder with an opportunity to make representations as to why the permit or demarcation should not be cancelled or amended.

(4) The issuing authority must, if they decide to cancel a permit or demarcation or amend the conditions of the permit or demarcation, after consideration of any representations in terms of subsection (2), notify the permit holder in writing that —

(a) the permit or demarcation is cancelled or that the conditions have been amended; and

(b) the date upon which the cancellation or amendment becomes effective.

Return of cancelled permits

52. A permit cancelled in terms of regulation **51**, must be returned to the issuing authority within 30 days of the date of cancellation.

Emergency suspension of permits.

53. (1) Notwithstanding the provisions of Regulation **51** the Minister or the issuing authority may suspend the operation of a permit.

(2) A suspension in terms of subregulation (1) may be effected if the Minister has reason to believe that the carrying out of the restricted activity will a have seriously harmful impact on the environment or ecosystems or there is an immediate threat of the species being invasive.

(3) A suspension in terms of subregulation (1) may be effected by verbal or written notice to the permit holder or any other person engaging with the permit holder.

Renewal of permits

54. (1) A permit holder may apply to the issuing authority that issued the permit for the renewal of the permit.

(2) An application referred to in subregulation (1) must be-

(a) made 60 days before the expiry of the period for which the permit was issued;

(b) in writing; and

(c) accompanied by —

(i) a written motivation setting out the reasons for the application; and

(ii) the applicable processing fee as set out in Addendum 3.

Consideration and decision of renewal applications

55. (1) On receipt of an application in terms of regulation **54**, the issuing authority-

(a) must consider the application; and

(b) may require the permit holder to furnish additional information.

(2) After having reached a decision on an application for renewal, the issuing authority must—

(a) notify the permit holder of the decision, in writing;

(b) if the application was approved, issue a new permit in the name of the permit holder;

(c) if the application was refused, draw the permit holder's attention to the fact that an appeal may be lodged against the decision in terms of regulation **56**; and

(d) if requested, give reasons for the decision.

Lodging of appeals

56. (1) A person aggrieved by a decision of an issuing authority to issue a permit conditionally, refuse a permit, cancel a permit or refuse to renew a permit, wishing to lodge an appeal in terms of section 94 of the Act, may do so by lodging the appeal with the—

(a) MEC of the relevant province, if the issuing authority is the provincial department; or

(b) Minister of the Department.

(2) An appeal referred to in subregulation (1) must—

(a) be in writing;

(b) set out the grounds of appeal in the form of an affidavit attested to before a Commissioner of Oaths;

(c) be accompanied by any supporting documentation referred to in the appeal and not in the Minister or MEC's possession;

(d) be supported by original or certified documentation; and

(e) be accompanied by the applicable processing fee as set out in Addendum 3;

(f) be lodged within 30 days after being notified of a decision taken by the issuing authority.

(3) The original and one copy of the appeal documents must be lodged with the Minister or MEC and one copy must be lodged with the issuing authority.

Processing of appeals

57. (1) After receipt of an appeal, the Minister or MEC must—

(a) within 14 days acknowledge receipt of the appeal;

(b) advise the appellant and other persons who have responded to the appeal if further information is required;

(c) request from the issuing authority—

(i) reasons for the decision against which the appeal is lodged; and

(ii) all relevant documentation in the possession of the issuing authority that was taken into account when the decision was made.

(2) Any further information that the Minister or MEC may require, must be submitted to the Minister or MEC, within 14 days of it being requested.

(3) If the Minister or MEC decides to appoint an appeal panel, the appeal and all the documentation in connection with the appeal must be submitted to that appeal panel.

Appeal panels

58. (1) If an appeal panel consists of—

(a) two members, a decision of the panel must be unanimous; or

(b) more than two members, the decision of the majority of the members of the panel prevails.

(2) An appeal panel must—

(a) consider an appeal within 30 days of its designation for the relevant appeal in terms of the Act; and

(b) inform the Minister or MEC in writing of its recommendation.

Decision on appeals

59. A decision of the Minister or MEC must—

(a) indicate the extent to which the decision being appealed against is upheld or overturned;

(b) give reasons for the decision; and

(c) be conveyed to the appellant in writing within 14 days of the decision.

60. Transitional permit provisions

(1) Any person who, immediately before the commencement of these regulations, conducted any restricted commercial activity involving a specimen of a restricted species may

continue with the restricted activity for a period of twelve months after the commencement without a permit.

(2) A person referred to in subregulation (1) must lodge with the issuing authority at least three months prior to the twelve month period an application for a permit.

(3) If an application referred to in subregulation (1) is refused, the applicant shall be afforded one further period of three months within which to reapply and obtain the necessary permit failing which the applicant must cease with the restricted activity.

CHAPTER 8
BIOLOGICAL CONTROL AND RESEARCH

Establishment of biological control reserves

61 (1) The Department may—

(a) demarcate an area as a biological control reserve for the breeding of biological control agents;

(b) determine the conditions that it considers necessary to secure the biological control reserves; and

(c) notify land users of the demarcation of a reserve and the conditions relating to it.

(2) Within a demarcated biological control reserve a land user shall be obliged to comply with the conditions set out in subregulation (1)(c) and may be held liable for costs should they wilfully hinder the management of a biological reserve.

Research and biological control exemptions

62. (1) Notwithstanding the provisions of regulations **23, 26, 27, 28, 29** or **31** an issuing authority may issue a permit to carry out a restricted activity involving a specimen of a prohibited or listed invasive species or to undertake a prescribed activity if—

(a) the applicant is a scientific institution; and

(b) the specimen—

(i) will be used for research;

(ii) forms part of a preliminary study into biological control methods or forms part of an effective biological control programme; or

(c) the restricted activity forms part of a national initiative to eradicate the species.

(2) When issuing a permit in terms of regulation (1)(b) the issuing authority must determine-

(a) restrictions and conditions, including quarantine conditions, for the importation of a specimen; and

(b) mechanisms for ensuring compliance with conditions for the prevention of escape by specimens.

(3) When issuing a permit in terms of subregulation (1)(b)(ii) the issuing authority must—

(a) determine restrictions and conditions, including quarantine conditions, for the importation, the release into the wild of a specimen and mechanisms for ensuring compliance with conditions relating to the introduction, research and release of specimens;

(b) apply and comply with the standards as set up by the International Standards For Phytosanitary Measures ISPM No. 3 (*Guidelines For The Export, Shipment, Import And Release Of Biological Control Agents And Other Beneficial Organisms)* of the International Plant Protection Organization, to which South Africa is a signatory, relating to the import and release of biological control;

(c) ensure compliance with the technical advice to the Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), where biological control agents are used inadvertently as bio-pesticides for commercial use; and

(d) determine mechanisms to ensure compliance with conditions for the prevention of escape by specimens and procedures to be followed in the event of an escape.

CHAPTER 9
COMPLIANCE AND ENFORCEMENT

Invasive Species control measures

63. (1) A competent authority may, by notice, initiate measures to control a prohibited or listed invasive species.

(2) The notice referred to in sub-regulation (1) must—

(a) be in writing;

(b) identify the invasive species to which it relates; and

(c) identify the area to which it relates.

(3) The notice referred to in sub-regulation (1) may—

(a) identify the measures to be adopted to prevent, control or eradicate the identified invasive species;

(b) stipulate time periods by when the measures must be implemented;

(c) be binding on a person or group of persons;

(d) indicate the financial or other assistance, if any, to be provided by the State to implement the measures.

(4) A notice issued in terms of sub-regulation (1) may be given by—

(a) delivering it to the person or group of persons or to their authorised representative;

(b) delivering it to the person in control of the area in which the programme is to be implemented;

(c) in the case of a juristic person, delivering it to the registered office of the juristic person;

(d) forwarding it by registered post to the person or group of persons;

(e) publication in one newspaper circulating in the area in which the measures are to be implemented; or

(f) publication in the *Gazette*.

Inspection

64. (1) Any person authorised in writing by a competent authority may enter any land for the purpose of inspecting it.

(2) A competent authority may—

(a) require the owner of land to lodge with the competent authority a management plan to control specified listed invasive alien species on the land user's land;

(b) require the land user to pay the costs of the inspection by the authorized person;

(c) issue an Invasive Alien Species Control Certificate indicating that the land user has applied the necessary controls over the specified listed invasive alien species on his or her land.

Emergency interventions

65. (1) A designated competent authority may declare an emergency intervention with respect to the control or eradication of an alien or invasive species, where—

(a) the species is an emerging invasive alien species and the designated competent authority considers it necessary to have a rapid response to the potential invasion;

(b) the disaster management or other risks associated with the alien or listed invasive alien species is considered to pose a sufficiently significant risk to the environment, agricultural productivity, water security, human health or the economy; or

(c) the early detection and rapid response to an alien or invasive alien species is considered likely to result in sufficiently significant financial savings.

(2) The designated competent authority may verbally or in writing direct any land-owner to comply with the requirements of the provisions of the emergency intervention.

(3) A verbal directive in terms of sub-regulation (2) must be confirmed in writing within 21 days, failing which it is considered withdrawn.

(4) The designated competent authority or an organ of state must provide assistance in the control or eradication of the alien or invasive alien species in terms of the emergency intervention.

(5) The designated competent authority must report the declaration of an emergency intervention within one working day to the Department.

(6) If–

(a) the responsible person fails to comply, or inadequately complies, with a directive issued in terms of sub-regulation (2); or

(b) it is not possible to give the directive to the responsible person timeously;

the competent authority may take the measures it considers necessary to—

(i) contain and minimise the effects of the alien or invasive alien species specified in the emergency intervention;

(ii) undertake any control or eradication procedures considered necessary; and

(iii) undertake any rehabilitation interventions considered necessary.

(7) The competent authority may recover all reasonable costs incurred by it from every responsible person jointly and severally.

(8) The costs to be recovered under sub-regulation (7) may include labour, administration and overhead costs.

Planning permission on invaded land

66. An organ of state considering any application for the approval of plans, subdivision, rezoning or other development of a property, or exercising any power in relation to land may withhold a decision on or refuse the application until the applicant has lodged with the organ of state a certificate from a competent authority confirming that the applicant has complied with the Act and regulations taken the required steps to control or eradicate prohibited or restricted species occurring on that land.

Requests for directives

67. (1) A competent authority may of its own accord or at the request of any person issue a directive.

if –

(a) a person carries out a restricted activity involving an alien species or a listed invasive species without a permit in contravention of the Act and regulations;

(b) a person authorized by a permit to carry out a restricted activity involving an alien species or a listed invasive species does not comply to the conditions of the permit; or

(c) a person, who is the owner of land on which listed invasive species occur, in contravention of the Act and Regulations, fails to -

(i) notify the competent authority of the listed invasive species occurring on that land;

(ii) take steps to control and eradicate the listed invasive species or prevent it from spreading; and

(iii) take all the required steps to prevent or minimize harm to biodiversity.

(2) A request to issue a directive in terms of subregulation (1) must be in the format set out in Addendum **7**.

(3) A request to issue a directive in terms of subregulation (2) must contain the following information—

(a) The full names of the person making the request;

(b) the address and contact telephone number of the person making the request;

(c) the name of the person who owns or is in control of the area to which the request relates;

(d) the contact details of the person who owns or is in control of the area to which the request relates;

(e) a detailed description of the area to which the request relates including, where the request relates to land, the cadastral description of the property;

(f) a description of the listed invasive species to which the request relates; and

(g) details of all steps taken by the person making the request to address the problem with the person who owns or is in control of the area to which the request relates (if applicable).

(4) A competent authority may waive any of the requirements of subregulation (3).

Format of directives

68. A directive issued by a competent authority in terms of section 69(2) or 73(3) of the Act—

(a) must be issued to a person;

(b) must contain the following information—

(i) The name, or identities of the persons to whom it is directed;

(ii) the area to which the directive applies;

(iii) the scientific and common names of the alien or listed invasive species to which the directive relates;

(iv) the restricted activity to which the directive relates;

(v) the measures to be adopted to ensure compliance with the Act;

(vi) the date by when the measures must be adopted;

(vii) the full names and designation of the official representing the competent authority;

(viii) the date of issue of the directive; and

(ix) any other information or requirements considered necessary for the proper application of these Regulations;

(c) may indicate the manner in which the listed invasive species are to be controlled and the period within which the measures to control the listed invasive species must be implemented;

(d) must state that it is a criminal offence not to comply with the directive; and

(e) must be in the format set out in Addendum 7.

Service of directives

69. (1) A directive issued in terms of section 69(2) or 73(3) of the Act may be served on a person by—

(a) delivering it to the person or to his or her authorized representative;

(b) delivering it to the person in control of the area to which the directive applies;

(c) in the case of a juristic person, delivering it to the registered office of the juristic person; or

(d) forwarding it by registered post to the person.

(2) When a directive is served—

(a) in terms of subregulation (1)(a), (b), (c) or (d) the person by whom it was delivered must after delivery thereof, record in writing the manner in which, the person to whom, the place at which and the date on and approximate time at which the directive concerned was thus delivered; and

(b) a copy of the directive must be made available to the issuing authority.

(3) If a directive has been served—

(a) in terms of subregulation (1)(d), the competent authority must obtain and retain as evidence, proof of posting; and

(b) in terms of subregulation (1)(a), (b), (c) or (d), the competent authority must retain the copy of the directive as evidence of the service thereof.

(4) The documentation referred to in subregulation (3) is proof of service in any legal proceedings relating to that directive.

Monitoring of compliance

70. (1) A competent authority may—

(a) at the time of issuing a directive identify—

(i) the steps that the competent authority will take to monitor compliance with the directive and the provisions of the Act; and

(ii) the dates upon which such steps will be taken.

(b) on the dates referred to in subregulation (a)(ii), carry out the steps identified in terms of subregulation (a)(i).

(2) Should a land-owner fail to pay the competent authority for the cost of clearing the land outlined in sub-regulation (2), the competent authority may—

(a) take legal action to recover the amount owed;

(b) invoke a bond against the property, whereby the owed amount plus interest must first be paid on the sale or transfer of the land;

(c) place a moratorium on the approval of any development applications for the land; and

(d) stop any subsidies, rebates and other benefits from any organ of state,

until agreement is reached on the payment of the amount owed.

Record of directives

71. A competent authority must—

(a) keep a record of all directives issued;

(b) state in the record—

(i) the person to whom the directive was issued;

(ii) the scientific and common name of the species for which the directive was issued;

(iii) the restricted activity for which the directive was issued;

(iv) the location where the restricted activity was undertaken;

(v) the measures to be adopted in terms of the directive;

(vi) the date by when the measures must be adopted;

(vii) the steps that the competent authority will take to monitor compliance with the directive and the dates upon which such steps will be taken.

(viii) pursuant to subregulation (vii)—

(aa) the steps taken by the competent authority;

(bb) the dates upon which the steps were taken; and

(cc) the extent of compliance with the directive by those dates.

(c) within three months of the end of each calendar year submit to the Institute a written report containing the following information—

(i) a list of all directives;

(ii) the information recorded in terms of subregulation (b) for each directive; and

(iii) any other information required by the Institute for the proper application of these Regulations;

Withdrawal of directives

72. A directive issued in terms of these Regulations may be withdrawn in writing by the competent authority when the circumstances giving rise to the issue of the directive no longer exist.

Presumptions

73. (1) In any legal proceedings, a person alleging that a specimen of a species is a specimen of an exempted species shall bear the onus of proving that the specimen is a specimen of the exempted species.

(2) Any person alleging that a species already lawfully occurs in an area shall bear the onus of proving that the specimen occurs there.

Offences

74. A person is guilty of an offence if that person—

(a) carries out a prohibited activity involving an alien species or a listed invasive species or a restricted activity without a permit issued by an issuing authority;

(b) fails to comply with the conditions under which a permit has been issued;

(c) fabricates or forges any document for the purpose of passing it as a permit or certificate of registration;

(d) knowingly makes any false statement or report for the purpose of obtaining a permit or certificate of registration;

(e) fails to notify a competent authority regarding the occurrence of listed invasive species on its land, if he or she is the owner of that land;

(f) fails to notify a competent authority of any activity taking place within a demarcated area, if he or she was the applicant for that demarcation, or

(g) fails to implement a directive issued by a competent authority.

Penalties

75. (1) A person convicted of an offence in terms of regulation 58, involving an alien or listed invasive species is liable to—

(a) a fine;

(b) to imprisonment for a period not exceeding five years; or

(c) to both a fine and such imprisonment.

(2) A fine in terms of subregulation (1) may not exceed an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

Name and commencement date

76. These Regulations are called the Alien and Invasive Species Regulations, 2009 and take effect on a date determined by the Minister by notice in the *Gazette*.

ADDENDUM 1

Listed Invasive Species Notification Form

Explanatory Note:

In terms of section 73(2)(a) of the Act the owner of land on which a listed invasive species occur must notify any relevant Competent Authority in writing, of the listed invasive species occurring on that land.

For official use:

Reference number: Date:

1. LAND OWNERS DETAILS:

Full Name:.....

Identity Number:.....

Postal Address:.....

.....

Postal Code:.....

Telephone Number: (Code:.....).....

Fax Number: (Code: .....).....

Cellular Number:.....

E-mail Address: .....

2. SITE AND SPECIES DETAILS:

1. Name (if applicable), province/magisterial district, erf number:

   .....

   .....

2. Listed invasive species occurring on land (Attach list if space is insufficient):

   Scientific name: .....

   Common name: .....

3. Extent of the infestation of each species (estimated number of specimens/area infested) and density of infestation (e.g. isolated specimens, small groups, large groups; sparse, dense, very dense) **(Provide information relating to each species in an Annex to the form)**

4. If appropriate, please provide details on the location of the listed invasive species on the property. Please mark on a separate 1:50,000 map or aerial photo.

5. What measures have been adopted to monitor, control and/or eradicate the invasive species listed in 2(2) above?

.....

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I, the undersigned, [FULL NAME:] .....

confirm that the above information is correct and complete to the best of my knowledge.

SIGNED: ..... DATE: .....