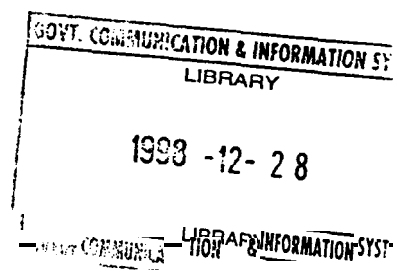




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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1216.

28 September 1998

No. 1216.

28 September 1998

It is hereby notified that the Acting President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 63 of 1998: Agricultural Product Standards Amendment Act. 1998.

No. 63 van 1998: Wysigingswet op Landbouproduktstandaarde. 1998.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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ACT

To amend the Agricultural Product Standards Act, 1990, so as to insert and substitute certain definitions; to further regulate the appointment of assignees; to make provision for the charging of certain fees; to make provision for quality control; to make further provision for exemption from export standards and requirements; to make further provision for imported products; to make further provision for distinctive marks; to provide for the use of geographical or other names; to further regulate provisions relating to powers of entry, investigation, sampling and seizure; to provide for disclosure of information to protect the consumer; to amend appeals; to adjust penalties; and to make further provision for matters to be prescribed; and provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 119 of 1990

1. Section 1 of the Agricultural Product Standards Act, 1990 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion after the definition of “class or grade” of the following definition:
- “ ‘conveyance’ means any aircraft, ship, boat, train, motor car, van, truck, cart or other vehicle or mode of transport of whatever kind, including the fittings and equipment;” 10
- (b) by the insertion after the definition of “export” of the following definitions:
- “ ‘import’ means to bring into the Republic by any means and for any purpose and when used as a noun it shall have a corresponding meaning; ‘management control system’ means the principles of procedure with regard to a product, from its primary production to its sale or export;” 15
- and

- (c) by the substitution for the definition of “officer” of the following definition:
 “ ‘officer’ means an officer as defined in section 1 of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994), and includes an employee as defined in section 1 of that Act;”.

Amendment of section 2 of Act 119 of 1990

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2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) The Minister may, for the purposes of the application of this Act or certain provisions thereof, with regard to a particular product, designate any person, undertaking, body, institution, association or board having [an interest in or] particular knowledge in respect of the product concerned, as an assignee in respect of that product.”

Amendment of section 3 of Act 119 of 1990

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (a) of the following subparagraph: 15

“(iii) unless the prescribed requirements in connection with the management control system, packing, marking and labelling of that product are complied with;” and

- (b) by the insertion after subsection (1) of the following subsection: 20

“(1A)(a) Fees may be charged in respect of the powers exercised and duties performed by the executive officer or the assignee, as the case may be, to ensure compliance with this section.

(b) In the case of powers exercised and duties performed by—

- (i) the executive officer, the prescribed fee shall be payable; and 25
 (ii) the assignee, the fee determined by such assignee shall be payable.”

Insertion of section 3A in Act 119 of 1990

4. The following section is hereby inserted in the principal Act after section 3:

“Inspection, grading and sampling for quality control” 30

3A. (1) The executive officer or the assignee may, during business hours of the industry in question in the case of control in terms of section 3(1), or at any time in the case of control in terms of sections 4(1) and 4A(1), enter any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, removed, transported, exhibited or sold, and— 35

(a) open any container found at or on the place, premises or conveyance which the relevant person referred to in subsection (1) believes on reasonable grounds contains any product, material, substance or other article to which this Act applies; 40

(b) classify, grade, pack or mark any quantity of a product in accordance with the prescribed requirements, or direct the owner or person in charge of that place, premises or conveyance to thus classify, grade, pack or mark such quantity; 45

(c) inspect or test or cause to be tested any quantity of a product;

(d) inspect or test or cause to be tested any quantity of a product, material, substance or other article which is used or suspected to be used at or in connection with the production, processing, treatment, preparation, 50

- classification, grading, packing, marking, labelling, keeping, removal, transporting, exhibition or sale of such product;
- (e) subject to subsection (2)(d), take such samples of a product, material, substance or other article in question as he or she may deem necessary; and 5
- (f) require the owner or custodian to produce for inspection, or for obtaining a copy or extract, any book, label or other document or paper with regard to the administration of this Act.
- (2) (a) In the case of action under subsection (1), the relevant person referred to in that subsection may take with him or her such assistant, appliance, instrument or other tool as he or she may deem necessary for the purpose of that subsection. 10
- (b) If, in the case of action under subsection (1)(b), the relevant person referred to in subsection (1) is of the opinion that—
- (i) the class or grade of a product is indicated incorrectly on the product or on the container thereof; or 15
- (ii) a distinctive mark or a representation purporting to be a distinctive mark is indicated on the product or on the container thereof in contravention of the provisions of section 5, such person may cancel the said indication, or direct the owner or person in charge of the place, premises or conveyance in question to cancel such indication, and the provisions of subsection (1)(b) shall apply *mutatis mutandis* regarding the reclassification, regrading, repacking or re-marking of the product in question. 20
- (c) In the case of action under subsection (1)(d), the relevant person referred to in subsection (1) may inspect the management control system in connection with any action referred to in subsection (1)(d), and demand from the owner or custodian of the product, material, substance or other article in question, or from the person supervising such management control system, any information or an explanation regarding the management control system, product, material, substance or other article in question. 25
- (d) Any sample taken under subsection (1)(e) shall—
- (i) be taken in the presence of the person in charge of, or the owner or custodian of such product, material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and a receipt of sampling in respect of each sample taken shall, on request, be issued to the person in charge, owner or custodian of that product; 35
- (ii) if necessary, be packed and identified in such a manner as the nature thereof permits; and 40
- (iii) as soon as possible after it has been taken, be submitted to a person, undertaking, body, institution, association, board or laboratory which is competent to test, inspect or analyse that sample.
- (3) A person who enters upon any place, premises or conveyance under this section shall show proof of his or her identity and authority when requested thereto by the person in charge of the place, premises or conveyance in question. 45
- (4) In the case of action under subsection (1)(b), (c), (d) or (e) by the relevant person referred to in subsection (1), the owner of the product in question shall pay the prescribed fees or the amount determined by the assignee, as the case may be, for such action.”. 50

Amendment of section 4 of Act 119 of 1990, as amended by section 73 of Act 129 of 1993

5. Section 4 of the principal Act is hereby amended— 55
- (a) by the substitution in subsection (3) for subparagraph (ii) of paragraph (a) of the following subparagraph:
- “(ii) if that quantity of the product complies with the standards regarding the quality of the product, and with the requirements regarding the management control system, packing, marking and labelling of the 60

product, stipulated only by the executive officer for the product concerned.”; and

- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) Notwithstanding the provisions of subsection (3)(a), only the executive officer and any person contemplated in section 2(2)(a) may deviate from the standards and requirements stipulated under that subsection and issue the approval referred to in subsection (1) in respect of a quantity of a product that—”.

Insertion of section 4A in Act 119 of 1990

6. The following section is hereby inserted in the principal Act after section 4:

“Control over sale of imported products

4A. (1) The Minister may—

- (a) prohibit the sale of a prescribed product imported into the Republic unless each quantity of such product intended for sale in the Republic complies with the provisions of section 3(1); and
- (b) determine by notice in the *Gazette* that a particular prescribed product imported for sale in the Republic shall not be removed from the prescribed port of entry or such other place as the executive officer may determine unless—
- (i) each quantity of such product intended for sale in the Republic has been approved by the executive officer for that purpose; or
- (ii) written permission for the removal of a particular quantity of such product has been granted by the executive officer on the conditions which he or she deems necessary.

(2) The executive officer may exempt, in writing, a quantity of a prescribed product from complying with the provisions of subsection (1) if such quantity of a product is imported for purposes other than for the purpose of sale in the Republic.

(3) An application for an approval referred to in subsection (1)(b)(i) shall be made in the prescribed manner and the prescribed fee shall, in respect of such application, be payable in the prescribed manner and at the prescribed time.”.

Amendment of section 5 of Act 119 of 1990

7. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister may prescribe a distinctive mark for use in connection with—

- (a) the sale of a product referred to in section 3(1)(a), the export of a product referred to in section 4(1), or a particular class or grade of such [product] products, so as to certify the correctness of the indication of the class or grade or, in the case of organically produced products, the production method concerned; and
- (b) a particular management control system.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) No person shall in connection with the sale or the export of a product, or the management control system, or a class, [or] grade or production method of that product, use a distinctive mark, or any name, word, expression, reference, particulars or indication which creates or is likely to create the impression that it is a distinctive mark, unless—

- (a) it is a distinctive mark prescribed by the Minister in terms of subsection (1);

- (b) such product, management control system, or [such] class, [or] grade or production method of that product, complies with the

- requirements prescribed in terms of section 3(1)(a) for the sale, or in terms of section 4(1) for the export, of the product concerned; and
- (c) that person has been authorized in writing by the executive officer to use the distinctive mark concerned in connection with the sale or the export of his or her product, or the management control system, or a class, **[or]** grade or production method of that product, as the case may be.”; and
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) An application for an authorization referred to in subsection (2)(c) shall be made in the prescribed manner, and the Minister may, if he or she deems it necessary in the case of a product, or the management control system, or a class, **[or]** grade or production method thereof, prescribe the fees payable in respect of such application: Provided that the Minister may prescribe different amounts in respect of the distinctive products, management control systems, or classes, **[or]** grades or production methods of those products.”.

Insertion of section 6A in Act 119 of 1990

8. The following section is hereby inserted in the principal Act after section 6:

“Prohibition and exemption on use of names

- 6A. (1) The Minister may, notwithstanding any other agricultural laws relating to a specific product and taking into account the Republic’s international obligations, by notice in the *Gazette*, prohibit the use of specified geographical or other names, or terms in connection with the sale or export of a specified product, on such conditions as may be specified in such notice.
- (2) A prohibition issued under subsection (1) shall also apply where the geographical name in question—
- (a) is used in connection with an indication of the true origin of the product in question;
- (b) is used in translation; or
- (c) is used together with words such as “kind”, “type”, “style”, “imitation” or similar words or expressions.
- (3) The Minister may in such notice authorise the executive officer to exempt a person from the prohibition under such circumstances as may be specified in such notice.”.

Substitution of section 7 of Act 119 of 1990, as amended by section 74 of Act 129 of 1993

9. The following section is hereby substituted for section 7 of the principal Act:

“Powers of entry, investigation and sampling

7. (1) The executive officer or the assignee may, on the authority of a warrant issued in terms of subsection (2), and for purposes other than for the purpose of the application of section 3A, at any time—
- (a) enter upon any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, removed, transported, exhibited or sold;
- (b) perform any of the acts referred to in section 3A for such other purposes; and
- (c) seize any product, material, substance or other article or any book or document.
- (2) A warrant referred to in subsection (1) shall be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the conveyance is or

will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) or (c) is upon or in such place, premises or conveyance and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued. 5

(3) A warrant issued in terms of this section shall be executed by day unless the person who issued the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or conveyance specified in such warrant shall be conducted with strict regard to decency and order, including— 10

- (a) a person's right to, respect for and protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(4) The relevant person referred to in subsection (1) executing a warrant in terms of this section shall immediately before commencing with the execution— 15

- (a) identify himself or herself to the person in control of the place, premises or conveyance, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent spot on the place, premises or conveyance; and 20
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(5) The relevant person referred to in subsection (1) may without a warrant enter any place, premises or conveyance, classify, grade, pack, mark, inspect or test any quantity of a product and search for, seize, take samples of and remove any article referred to in subsection (1) if— 25

- (a) the person who is competent to do so, consents to such entry, classification, grading, packing, marking, inspection, testing, search, seizure, taking of samples and removal; or 30
- (b) he or she upon reasonable grounds believes that—
 - (i) the required warrant would be issued to him or her in terms of subsection (2) if he or she were to apply for such warrant; and
 - (ii) the delay caused by obtaining such warrant would defeat the object of such warrant. 35

(6) (a) The relevant person referred to in subsection (1) who may, on the authority of a warrant issued in terms of subsection (2), or under the provisions of subsection (5), enter and search any place, premises or conveyance, may use such force as may be reasonably necessary to overcome resistance to such entry or search. 40

(b) No person may enter upon and search any place, premises or conveyance unless he or she has audibly demanded admission to the place, premises or conveyance and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified. 45

(7) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or conveyance in question contains privileged information and refuses the inspection or removal of such article, the relevant person referred to in subsection (1) executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the High Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged. 50 55

(8) A warrant issued in terms of this section may be issued on any day and shall be of force until—

- (a) it is executed; or
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
- (c) the expiry of one month from the date of its issue; or
- (d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(9) If no criminal proceedings are instituted in connection with any product, material, substance, book, other article or document seized under subsection (1) or (5), or if it appears that such product, material, substance, book, other article or document is not required at the trial for purposes of evidence or an order of court, that product, material, substance, book, other article or document shall be returned to the person from whom it was seized.”.

Amendment of section 8 of Act 119 of 1990

10. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“(1) A person referred to in section 7(1) may **[at any reasonable time and in any manner deemed fit by him, without prior notice to any person]** in terms of section 7(1)(c) or (5), seize the whole, or any part or quantity, of a product, material, substance or other article, or any book or document, that—”;

- (b) by the substitution in subsection (3) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) grant authority that a product, material, substance or other article seized in terms of **[subsection (1)]** section 7(1)(c) or (5), may within the period and in the manner specified in such authorization, be treated or dealt with; or”;

- (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) If no criminal proceedings are instituted in connection with a product, material, substance or other article seized in terms of **[subsection (1)]** section 7(1)(c) or (5), or if it appears that such product, material, substance or other article is not required at the trial for the purposes of evidence or an order of court, that product, material, substance or other article shall be returned to the person from whom it was seized.”.

Amendment of section 9 of Act 119 of 1990

11. The following section is hereby substituted for section 9 of the principal Act:

“Secrecy

9. No person shall disclose any information acquired by him or her through the exercise of his or her powers or the performance of his or her duties in terms of this Act and which relates to the business or affairs of any person, except—

- (a) in so far as it is necessary for the proper application of the provisions of this Act;
- (b) where it is deemed to be in the interest of the public or for the protection of the consumer;
- (c) for the purpose of any legal proceedings under this Act;
- (d) when ordered to do so by any competent court; or
- (e) if he or she is authorized in writing to do so by the Minister.”.

Amendment of section 10 of Act 119 of 1990

12. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) Any person whose interests are affected by any decision or direction of the executive officer or an assignee under this Act, may appeal against such decision or direction to **[an appeal board appointed by] the Director-General [for the purposes of the appeal concerned].**”;
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) (a) The Director-General shall—
 (i) refer the appeal for investigation and decision to an appeal board, the members of which shall be appointed for the appeal in question by the Director-General, and which shall consist of at least three persons who have adequate skills and who are otherwise suitable to decide on the appeal; and
 (ii) designate one of the members as chairperson of the appeal board concerned.
 (b) A person appointed under subparagraph (i) of paragraph (a) shall be disqualified as a member of the appeal board concerned if he or she has any direct or indirect personal interest in the outcome of the appeal.”;
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) (a) All the members of the appeal board in question shall constitute a quorum for a meeting of that appeal board **[and if an appeal board consists of more than one member—]**.
 [(a) the] (b) The decision of the majority of the members **[thereof] of the appeal board** shall be the decision of that appeal board **[and]**.
 [(b) the chairman] (c) The chairperson of **[that] the** appeal board shall, in the case of an equality of votes, have a casting vote in addition to his or her deliberative vote.”; and
- (d) by the substitution for paragraph (b) of subsection (6) of the following paragraph:
 “(b) make any other order in connection therewith as **[it] the appeal board** may deem fit.”.

Amendment of section 11 of Act 119 of 1990

13. The following section is hereby substituted for section 11 of the principal Act:

“Offences and penalties 35

11. (1) Any person who—
- (a) contravenes or fails to comply with a provision of section 5(2), 6, 6A or 9;
- (b) refuses or fails to pay the prescribed fees in terms of section **[7(5)] 3(1A)(b)(i), 3A(4), 4(2)(b), 4A(3), 5(3) or 10(2);** 40
- (c) contravenes or fails to comply with a condition imposed in terms of section 4(3)(a)(i), **4A(1)(b)** or 16(3)(a);
- (d) obstructs or hinders a person referred to in section **3A(1) or 7(1)** in the exercise of his or her powers or the performing of his or her duties or functions under this Act, or refuses or fails to comply with a direction referred to in section **[7(2)(a) or to render the assistance referred to in section 7(2)(d)] 3A(1)(b);** 45
- (e) refuses or fails to furnish information or give an explanation or to answer to the best of his or her ability to a question lawfully demanded from or put to him or her by a person referred to in section **3A(1) or 7(1)** in the exercising of his or her powers or the performing of his or her duties under this Act, or furnishes information, an explanation or an answer to such person which is false or misleading, knowing that it is false or misleading; 50

- (f) tampers with a sample taken in terms of section **[7(2)(d)] 3A(1)(e)** or for the purpose of section 7(1) or the identification or seal of such sample;
- (g) sells, removes or tampers with a product, material, substance or other article, or a book or document seized in terms of section **[8] 7(1)(c)**, or tampers with an identification mark or other seal attached thereto in terms of that section; 5
- (h) falsely holds himself or herself out to be the executive officer, another officer referred to in section 2(2)(a), or in the case of an assignee, such an assignee, or a person or an employee referred to in section 2(3)(c); 10
- (i) alters a permit, authorization, consent, approval, certificate or other document issued in terms of this Act;
- (j) fails to display a permit, authorization, consent, approval, certificate or other document which, in terms of this Act, such a person is required to be in possession of; 15
- (k) makes a document or causes a document to be made which purports to be a certificate, authorization or other document issued in terms of this Act, shall be guilty of an offence.
- (2) Any person who is convicted of an offence in terms of this Act shall— 20
- (a) in the case of a first conviction of an offence referred to in subsection (1)(a), (c), (d), **[or] (e), (i), (j) or (k)**, be liable to a fine **[not exceeding R8 000]** or to imprisonment for a period not exceeding two years **[or to both that fine and that imprisonment];**
- (b) in the case of a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine **[not exceeding R16 000]** or to imprisonment for a period not exceeding four years **[or to both that fine and that imprisonment];** 25
- (c) in the case of a first conviction of an offence referred to in subsection (1)(b), (f), (g) or (h), be liable to a fine **[not exceeding R2 000]** or to imprisonment for a period not exceeding six months **[or to both that fine and that imprisonment];** and 30
- (d) in the case of a second or subsequent conviction of an offence mentioned in paragraph (c), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine **[not exceeding R4 000]** or to imprisonment for a period not exceeding one year **[or to both that fine and that imprisonment].** 35
- (3) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act." 40

Amendment of section 12 of Act 119 of 1990

14. Section 12 of the principal Act is hereby amended—
- (a) by the deletion of paragraphs (a) and (d);
- (b) by the insertion at the end of paragraph (b) of the word "and"; and 45
- (c) by the deletion at the end of paragraph (c) of the word "and".

Amendment of section 15 of Act 119 of 1990

15. Section 15 of the principal Act is hereby amended—
- (a) by the deletion at the end of paragraph (f) of subsection (1) of the word "or";
- (b) by the insertion in subsection (1) after paragraph (f) of the following paragraphs, the existing paragraph (g) becoming paragraph (i): 50
- “(g) inspection fees that have been determined by the assignee;
- (h) a prohibition or exemption under section 6A; or”; and

(c) by the substitution for subsection (3) of the following subsection:

“(3) A regulation may for any contravention thereof or failure to comply therewith, prescribe a [**penalty which shall not exceed a fine of R8 000**] fine or imprisonment for a period [of not exceeding two years **[or both that fine and that imprisonment]**.”.

5

Substitution of long title of Act 119 of 1990

16. The following long title is hereby substituted for the long title of the principal Act:

“ACT

To provide for control over the sale and export of certain agricultural products, control over the sale of certain imported agricultural products; and control over other related products; and for matters connected therewith.”.

10

General amendment to Act 119 of 1990

17. The principal Act is hereby amended by the substitution for the words “he”, “his” and “him”, wherever they appear in the Act, of the words “he or she”, “his or hers” and “him or her” respectively.

15

Short title

18. This Act shall be called the Agricultural Product Standards Amendment Act, 1998.