

GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF AGRICULTURE FORESTRY AND FISHERIES DEPARTEMENT VAN LANDBOU, BOSBOU EN VISSERYE

No. R. 1026

19 December 2014

AGRICULTURAL PRODUCT STANDARDS ACT, 1990 (ACT No. 119 OF 1990)

REGULATIONS REGARDING CONTROL OF THE EXPORT OF GRAINS

The Minister of Agriculture, Forestry and Fisheries has under section 15 of the Agricultural Product Standards Act, 1990 (Act 119 of 1990)-

- (a) made the regulations in the Schedule;
- (b) determined that the said regulations shall come into operations on the date of publication; and
- (c) Read together with section 4 of the said Act, repeal the regulations published by Government Notice Nos. R. 2019 of 23 August 1991, R. 2020 of 23 August 1991, R. 2021 of 23 August 1991, R. 2022 of 23 August 1991, R. 2023 of 23 August 1991, R. 2024 of 23 August 1991, R. 2025 of 23 August 1991, and R.2402 of 04 October 21991, R. 2026 of 23 August 1991, R. 2027 of 23 August 1991 and R. 2028 of 23 August 1991, and R.3461 of 31 December 2014 with effect from the said date of commencement.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning, and --

"Accredited laboratories" means any laboratory that is not a National Reference

Laboratory and that is nominated by the Executive Officer in writing as being suitable or required for the testing of compliance as envisaged in terms of regulation 6(1) and 7(1);

"address" means a physical address in the Republic of South Africa and includes the

street or road number or name, and the name of the town, village or suburb and in case of a farm or silo, the name or number of the farm or silo and of the magisterial district in which it is situated;

"assignee" means a person, undertaking body, institution, association or board

designated as under section 2(3) of Agricultural Product standard Act No.119 of 1990;

"bread maize" means threshed seed of *Zea mays amylacea*;

"bread wheat" means the caryopsis of the plant *Triticum aestivum*;

"buckwheat" means the seed of the plant *fagopyrum esculentum*;

"**bulk container**" means a grain truck, any vehicle or container used for the transportation or storage of the grains;

"**castor beans**" means the threshed seed of the plant *Ricinus communis*;

"**certificate**" means a certificate that may be issued either in paper format (including electronically prepared) or in verified electronic format which describe and attest to conformity of a consignment of regulated agricultural products to stipulated requirements as set out in regulation 6;

"**cereals**" means maize, wheat, grain sorghum, barley, millet and buckwheat;

"**Codex alimentarius commission**" means a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to foods safety;

"**consignment**" means a quantity of grains of the same grade belonging to the same grade or class belonging to the same owner and which is delivered at any one time under cover of the consignment note, delivery note or receipt note, is delivered by the same vehicle or bulk container or railway truck, or which is loaded from the same bin of a grain elevator into different grades or classes, each quantity of each of the different grades or classes;

"**consignment note**" means a consignment note approved by the Executive Officer or the Assignee;

"**container**" means a bag or bulk container in which grains are stored or transported;

"**cotton seed**" means the ginned seed of the plant *Gossypium hirsutum*;

"**department**" means the Department of Agriculture, Forestry and Fisheries;

"**dry beans**" means the threshed ripe seeds of the plants *Phaseolus coccineus* L. (kidney beans), *P vulgaris* L. and *P actutifolius* a Gray (tepariy beans), which are intended for human consumption;

"**durum wheat**" means caryopsis of the species *Triticum durum*, *Triticum turqidum* and *Triticum polonicum*;

"**Executive Officer**" means the officer designated under section 2 (1) of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990);

"**fees**" means a gazetted amount payable for inspection and analysis;

"**food business operator**" means the person or persons responsible for ensuring that the prescribed requirements of these standards are met within the food business under his or her control and include both the management of the food business as well as the person with overall authority on site or in the specific establishment;

"fortification" means the addition of one or more micronutrients by means of a fortification mix as prescribed in terms of Food, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

"grains" means cereals, *leguminous seeds*, oilseeds, grass seeds and the processed grains thereof;

"grain sorghum" means the seed of any sorghum except a broom sorghum, hay sorghum or cane sorghum;

"grass seed" means the threshed seed of the following types of grasses:

- (a) Babala, also called pearl millet (*Pennisetum typhoides*);
- (b) Boer and German millet (*Setaria italica*);
- (c) Japanese Millets;
- (d) Japanese barnyard millet (*Panicum miliaceum*); and
- (e) Canary seed (*Phalaris canariensis*);

"groundnuts" means the fruit of the plant *Arachis hypogea*;

"inspector" means the Executive Officer or an office under his control, or an Assignee or an employee of an Assignee;

"ISO" means the international standard organization;

"lesser known types of maize" means waxy maize, popcorn, sweet corn and bread maize the threshed seed of the plant *zea mays amyacea*: Provided that white and yellow plant maize (*Zea mays indentata*) and white and yellow plant maize (*Zea mays indurata*) are, for the purpose of these regulations, not included; and

"leguminous seeds" means, the threshed seeds of soya beans (*Glycine max*); dry beans, velvet beans (*Mucuna deeringiana*), sword or jack beans (*Canava ensiformis*, *C gladiata*), cowpeas (*Vigna unguiculata*), pulses; peas (*Pisum sativum*), lupins, lentils (*Lens culinaris*) and chick peas or mung beans (*Cicer arietinum*, *Phaseolus mungo*, *Vinga mungo* of *Vigna radiata*);

"linseed" means the threshed seeds of the plant *Linum usitatissimum*;

"maize" means white maize, yellow maize, bread maize, lesser-known types of maize;

"maize products" means a commodity derived from the processing of maize or into which maize or any part of maize has been converted;

"millet" means the threshed seeds of the plant *pennisetum glaucum*;

"national reference laboratory" means an official laboratory of the Department of

Agriculture, Forestry and Fisheries that has been nominated in writing by the Executive Officer for the testing of compliance as envisaged in terms of regulation 6(1) and 7(1);

"oilseeds" means sunflower seed, soya beans, canola, castor beans, groundnuts linseed, cotton seed, and safflower seed;

"popcorn" means the threshed seed of *Zea mays everta*;

"processed " means maize products, wheat products and other unspecified processed grains;

"Processing" means shelling, drying, blanching, milling, crushing, coarse milling or rolling, cutting and fortification;

"pulses" means an edible seed that grows in a pod which include all beans, peas lentils, and lupins which are intended for human consumption;

"safflower seed" means the capsula of the plant *Carthamus tinctorius*;

"sunflower seed" means the capsula of the plant *Helianthus annuus*;

"sweetcorn" means the threshed seed of *Zea mays saccharata*;

"the Act" means the Agricultural Product Standards Act, 1990 (Act 119 of 1990);

"unspecified grains" means any other kind of grains which is not mentioned under this regulation;

"waxy maize" means the threshed type of maize which contains a high percentage of molecular branched amylopectin starch fraction in the endosperm and which normally originates from the plant *Zea mays ceratina*;

"wheat" means bread wheat, soft wheat and durum wheat; and

"wheat products" means a commodity derived from the processing of wheat or into which wheat or any part of wheat has been converted;

"white maize" means maize that consists of the white dent type botanically known as *Zea mays indentata* or of the white flint type botanically known as *Zea mays indurata*, or of a mixture of the two types or of one or more crossings of the two types;

"yellow maize" means maize that consists of the yellow flint type botanically known as *Zea mays indurata*, or of the yellow dent type botanically known as one *Zea mays indentata* or of a mixture of the two types or of one or more crossings of the two types;

Prohibition on the export of Grains

2. (1) Subject to the provisions of subregulation (2) no person shall export grains from the Republic unless each quantity thereof has been approved by the Executive Officer for that purpose.

(2) Grains which are –

- (a) exported in a consignment of less than 20kg; and
- (b) taken in as provisions for consumption abroad a conveyance to another country,

Shall be exempted from the prohibition set out in subregulation (1).

(3) An approval in terms of subregulation (1) may also be given by an Assignee designated with regard to grains.

Application for approval for export

3. (1) An application for an approval in terms of section 4 of the Act for the export of grains shall be directed in writing to the Executive Officer or the Assignee who has been designated with regard to grains as the case may be.

(2) Such an application shall be made at least three working days before the intended date of export.

(3) The following particulars shall be supplied when such application is made:

- (a) The name and address of the applicant and where applicable, of his agent or exporter.
- (b) The grade and the class of the grains.
- (c) The applicable Food Business Operator Code.
- (d) The number of containers and the mass of the grains
- (e) in the consignment concerned.
- (f) The intended date of export and the port from which the consignment concerned shall be exported.
- (g) The destination of the consignment concerned.
- (h) The address of the premises where the consignment concerned may be inspected and the date and time when the consignment will be ready for inspection.
- (i) Any other pertinent information concerning the consignment.

Presentation for inspection

4. (1) Each consignment of grains intended for export which has to be presented for inspection in terms of these regulations shall, prior to the export thereof, be inspected by an inspector.

(2) A consignment referred to in subregulation (1) that shall be thus

inspected, shall be stored in such a manner that access thereto can be obtained readily.

(3) Grains intended for export shall –

- a. be presented for inspection when delivery by the producer to a grain elevator;
- b. be presented for inspection at the port of export at least 48 hours before such grains is to be exported; and
- c. be presented for inspection at the inland point at which the consignment will be loaded and sealed into a shipping container, at least 48 hours before container is to be sealed and released to shipping agent.

(4) The person who furnishes an application for an approval in terms of regulation 3 shall pay the prescribed inspection fee specified in the regulations made for this purpose under section 15 of the Act, to the Executive Officer or the Assignee concerned, as the case may be.

Consignment note

5. (1) Every consignment of grains destined for export shall when submitted for inspection, be accompanied by a consignment note completed clearly, legibly, fully and correctly.

(2) All the copies of such a consignment note shall have the same serial number and one copy thereof shall be retained by the Department or Assignee.

Procedure at inspection

6. (1) An inspector may open as many containers in a consignment of grains, intended for export as he may deem necessary and inspect or analyse or have analysed the contents thereof in such a manner as he may deem fit.

(2) The result of an inspection or analysis in terms of subregulation (1) shall be deemed to be applicable to the whole consignment of grains from which such containers were abstracted.

- (3) (a) An inspector may re-inspect a consignment of grains which has already been approved for export, and may confirm or withdraw any previous approval with regard to the consignment concerned.
- (b) The provisions of regulation 4 and this regulation shall *mutatis mutandis* apply to such re-inspection: Provided that no inspection fee shall be payable in respect of a re-inspection carried out on demand of an inspector.

Assessment of the Competence of testing Laboratories involved in the export of grains

7. (1) For the purpose of analysis as required by regulation 6(1), there shall be a National Reference Laboratory or an Officially Recognized Laboratories involved in the export control of grains.

(2) The following criteria shall be used in the recognition of laboratories involved in the export control of grains.

- (a) Compliance with the general criteria for testing laboratories laid down in International Standard ISO/IEC 17025:2005;
- (b) Participation in appropriate proficiency testing schemes for analysis which conform to the requirements laid down in "The international harmonized protocol for the proficiency testing of analytical laboratories";
- (c) Whenever available, use methods of analysis which have been validated according to the principles laid down by the Codex *Alimentarius* Commission; and
- (d) Use internal quality control procedures, such as those described in the "Harmonized Guidelines for internal Quality Control in Analytical Chemistry Laboratories".

Fees for inspection and analysis

8. The following fees shall be payable for inspection and analysis:

- (1) The prescribed inspection fee when grains are presented for inspection.
- (2) The laboratory analysis fee when samples of grains are analyzed chemically, physically or microbiologically for export purposes.
- (3) The courier (transport) fee when samples are dispatched to the laboratory.

Approvals and rejections

9. (1) If an inspector approves the export of a consignment of grains he shall -

- (a) mark each container in that consignment with a mark of approval;
or
- (b) endorse the consignment note of that consignment to such effect;
and
- (c) issue a certificate to the effect that such consignment has been approved for export.

(2) If a consignment of grains has been rejected for export purposes as a result of an inspection or re-inspection carried out at a port of export, the custodian of that consignment shall as soon as feasible remove it from the port area concerned.

(3) Notwithstanding the provisions of subregulation (2), an inspector may, in the case of a consignment in connection with which an appeal is lodged --

- (a) direct that such consignment shall not without his consent be removed from the place where the inspection or re-inspection concerned was carried out; and
- (b) apply any mark to the containers concerned which he may deem necessary for identification purposes.

Appeals

10. (1) Any person who appeals in terms of section 10 of the Act against a decision or direction of an inspector, shall --

- (a) submit it within 48 hours of such decision or direction;
- (b) submit it in writing to the Director-General or at any office of the Executive Officer;
- (c) specify the grounds on which the appeal is based;
- (d) simultaneously pay the prescribed fees to the Executive Officer; and
- (e) inform the inspector concerned of the submission of the appeal.

(2) An appeal which is not lodged within the prescribed period or in respect of which the prescribed fees have not been paid, shall not be considered.

(3) An appeal board shall decide on such an appeal within four days, excluding Saturdays, Sundays and public holidays, after it has been lodged.

(4) The appeal board shall --

- (a) notify the appellant concerned as well as the inspector concerned at least two hours beforehand of the date and time on which and place at which the appeal shall be heard and afford them the opportunity to be heard;
- (b) direct the appellant concerned to present the consignment concerned on the specified date, time and place for inspection; and
- (c) after having identified the consignment concerned and having heard all interested parties, decide *in camera* on the appeal concerned: Provided that the appeal board may hear expert opinion and may take, inspect, analyse, grade and classify a sample of the product concerned, before deciding on such an appeal.

(5) If an appellant fails to present the consignment to which an appeal relates for inspection as referred to in subregulation (4) (b) or if the appeal concerned is dismissed, the fees paid in respect thereof shall be forfeited to the State.

(6) If an appeal board fails to decide on an appeal within the period specified in subregulation (3), it shall be deemed that such appeal board has set aside the decision or direction which had been appealed against.

(7) If an appeal is upheld in part only, an appeal board may, in terms of section 10(9)(b) of the Act, determine that a *pro rata* portion of the fee referred to in subregulation (1)(d) shall be refunded to the appellant: Provided that such a *pro rata* fund shall not be greater than 90 per cent of the fee concerned.

Offences and penalties

11. Any person who contravenes or fails to comply with the provisions of these regulations shall be guilty of an offence and shall be liable to a fine or imprisonment as set out in section 11 of the Act.