

## DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

NO. R. 65

29 JANUARY 2016

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

## REGULATIONS REGARDING CONTROL OF THE EXPORT OF TREE NUTS

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; and
- (b) determined that the said regulations shall come into operations on the date of publication thereof.

## 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);

**"cashew nuts"** unshelled edible seeds of the tree *Anacardium occidentale*;

**"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;

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

**"consignment"** means a quantity of tree nuts 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 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;

**"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;

**"hazel nuts"** means nuts of any of the species of the genus *Corylus*;

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

**"ISO"** means the International Standard Organization;

**"macadamia nut means"** unshelled edible seeds of the genus *Macadamia*;

**"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);

**"pecan nut"** means unshelled edible seeds of the tree *Carya illinoensis*;

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

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

**"tree nuts"** means cashew nuts, hazel nuts, walnuts, pecan nuts and macadamia nuts; and

**"walnuts"** means unshelled edible seeds of the tree *Juglas nigra*.

#### **Prohibition on the export of Tree Nuts**

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

(2) Tree nuts 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 tree nuts.

#### ***Application for approval for export***

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

(2) Such an application shall be made at least three (3) 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 tree nuts.
- (c) The applicable Food Business Operator Code.
- (d) The number of containers and the mass of the tree nuts in the consignment concerned.
- (e) The intended date of export and the port from which the consignment concerned shall be exported.
- (f) The destination of the consignment concerned.
- (g) 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.
- (h) Any other pertinent information concerning the consignment.

#### ***Presentation for inspection***

4. (1) Each consignment of tree nuts intended for export which has to be presented for inspection in terms of these regulations. Shall, prior to the export thereof, be approved for export by an inspector with the provision that the consignment concerned shall be presented for inspection at least 48 hours before such tree nuts consignment is to be exported or as otherwise arranged with the Executive Officer or designated Assignee.

(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 and the marks, printing or stamping on such containers can readily be read.

(3) 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 tree nuts 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 tree nuts 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 tree nuts from which such containers were abstracted.

(3) (a) An inspector may re-inspect a consignment of tree nuts 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 tree nuts**

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

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

(a) Compliance with the general criteria for testing laboratories laid down in ISO/IEC Guide 17025;

(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 tree nuts are presented for inspection.
- (2) The laboratory analysis fee when samples of tree nuts 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 tree nuts he/she 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 tree nuts 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 of the Department 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 (2) 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.