

AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT, DEPARTMENT OF

NOTICE 1627 OF 2023



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APPLICATION FOR THE CONTINUATION OF STATUTORY MEASURES IN THE WINTER CEREAL INDUSTRY: LEVIES IN TERMS OF THE MARKETING OF AGRICULTURAL PRODUCTS ACT, 1996, (ACT NO 47 OF 1996), (MAP ACT) AS AMENDED

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**INVITATION TO DIRECTLY AFFECTED GROUPS IN THE WINTER CEREAL INDUSTRY
 TO FORWARD COMMENTS REGARDING THE REQUEST FROM THE
 SA CULTIVAR AND TECHNOLOGY AGENCY (SACTA), FOR THE CONTINUATION OF LEVIES ON
 WHEAT, BARLEY AND OATS FOR BREEDING AND TECHNOLOGY PURPOSES**

The statutory levy on wheat, barley and oats of R32 per ton (VAT excluded) to fund seed breeding and technology, that is administered by the SA Cultivar and Technology Agency (SACTA), will lapse on 30 September 2023.

On 10 February 2023, the National Agricultural Marketing Council (NAMC) received a request from SACTA, on behalf of role players in the winter cereal industry, that the Minister of Agriculture, Land Reform and Rural Development, in terms of section 15 of the Marketing of Agricultural Products Act, Act No 47 of 1996 (MAP Act), establish the following statutory levies (VAT excluded) for the different winter cereal commodities, as indicated below:

Commodity	Period	Amount (VAT excluded)
Wheat	1/10/2023 to 30/9/2024	R 33,00 per metric ton
	1/10/2024 to 30/9/2025	R 34,00 per metric ton
	1/10/2025 to 30/9/2026	R 35,00 per metric ton
Barley	1/10/2023 to 30/9/2024	R 33,00 per metric ton
	1/10/2024 to 30/9/2025	R 34,00 per metric ton
	1/10/2025 to 30/9/2026	R 35,00 per metric ton
Oats	1/10/2023 to 30/9/2024	R 33,00 per metric ton
	1/10/2024 to 30/9/2025	R 34,00 per metric ton
	1/10/2025 to 30/9/2026	R 35,00 per metric ton

The levies will be payable to SACTA by buyers, processors and persons issuing a silo receipt, and be recovered from producers. Persons collecting and paying the levy may claim 2,5% commission on the amount of the levies recovered, in accordance with the conditions set by SACTA from time to time.

Seed breeding and technology levies, based on the international end point royalty system, were administered by SACTA since 1 October 2016.

PARTICULARS OF STATUTORY MEASURE REQUIRED UNDER SECTION 10 OF THE MAP ACT

The relevant particulars, as required in terms of section 10(2) of the MAP Act, to be included in a request for the establishment of a statutory measure of this nature, are as follows:

- (a) The proposed statutory levy would relate to locally produced wheat, barley and oats; and will apply to the whole of the Republic of South Africa in order to have a uniform system of levies without discrimination, which would exist if levies had to be imposed in certain areas and not in others.
- (b) The manner in which the objectives referred to in section 2(2) of the MAP Act will be advanced (namely increased market access for all market participants, promotion of the efficiency of the marketing of agricultural products, optimisation of export earnings from agricultural products and the enhancement of the viability of the agricultural sector) is summarised below.

The purpose and aim of this statutory measure are to compensate breeders of wheat, barley and oats varieties for their proportionate contribution towards obtaining and utilising improved international intellectual property to the benefit of the wheat, barley and oats industries in the Republic of South Africa. SACTA will distribute the levy income in terms of a formal agency agreement concluded with seed breeders.

Sustainable commercial farming, as well as food security, are to a large extent dependent on the cultivation of high yielding crops from seed varieties most suited to a particular region.

The development of new cultivars with improved quality and yield characteristics constitutes an important part of breeding and technology research undertaken by various organisations. The continuous development of new cultivars is indispensable to the sustained production of winter cereals in South Africa.

Worldwide the levels of Plant Variety Protection ("PVP") legislation and protection of self-pollinated crops are insufficient to guarantee a return on investment on intellectual property for the holders of such plant breeders' rights. This is due to PVP exceptions such as "Farmer's Privilege" and the fact that the offspring or grain produced from self-pollinated crops has the same genetic content as the parent. This means that seed can be harvested and replanted by farmers. This creates a situation where farmers could, for example, only purchase one season's seed, then lawfully save seed from their harvest for the next and subsequent planting seasons.

The existence of international networks is critical in seed breeding as most agriculture related intellectual property is owned by or falls under foreign control. Without an appropriate mechanism to receive adequate compensation, and to account for the risk of exploitation, South Africa remains an unattractive destination for agriculture related intellectual property associated with self-pollinated crops. This means that access to international nurseries, markers, techniques and technologies is being constrained. The result is that South African farmers do not have access to improved agriculture related intellectual property that is available worldwide.

Most industry role players have realised the need for a sustainable industry research funding strategy for self-pollinated crops. These role players have agreed to a breeding and technology levy on such crops to encourage and stimulate the breeding of self-pollinated crops for the benefit of the production, processing and other value-adding industries in the Republic of South Africa.

- (b) The Administration of SACTA will take responsibility for the collection of the levy and for the administration functions associated with the proposed levy. The Board of Directors of SACTA appointed specific persons to carry out these functions. These persons were designated and authorised as inspectors by the Minister to perform the functions referred to in Section 21 of the MAP Act.
- (c) Annual audits will be available to the Auditor-General.

BUSINESS PLAN PROPOSED

The income by means of the statutory levy is based on an estimated average crop size of the different commodities for the next three years (where available), but it is envisaged that yields may increase due to the release of new cultivars and technology.

The estimated rate of recovery is based on a reasonable average based on the actual recovery percentages during the 2022/2023 marketing season, of 90%, 92% and 60% on wheat, barley and oats respectively. It is accepted that the unique circumstances regarding oats in the current year may not continue, but the estimate is nevertheless maintained at the current rate of recovery.

The business plan envisaged for the first year is as follows:

Income		Expenditure	
	2023/24 R		2023/24 R
Wheat	61 516 800	Administration (Audit and operating costs)	2 152 896
Barley	9 862 400	Commission on levy paid by customers (2,5%)	1 794 080
Oats	384 000	Breeding & Technology payout to seed companies	53 822 400
Total	71 763 200	Transformation done by seed companies	13 993 824
		Total	71 763 200

The utilisation of statutory funds to support breeding research functions is based on the following:

- The levy funds are earmarked for commercial breeding activities of seed companies based on their performance and utilisation in the seed market;
- Funds will be distributed according to the calculated market share of each seed company;
- At least 20% of the levy income will be used for transformation and development projects within the seed companies or by selected service providers;
- The budget for administration cost, as defined by the NAMC, represents approximately 3,1% of the expected income by means of statutory levy on wheat, barley and oats during the next year; and
- The levy is applicable on local production only and not on imported commodities.

As the proposed breeding and technology levy is consistent with the objectives of the MAP Act, the NAMC is investigating the possible implementation of the relevant statutory levy.

Directly affected groups in the winter cereal industry are kindly requested to submit comments or objections regarding the proposed breeding and technology levy to the NAMC in writing (e-mail lizettem@namc.co.za) on or before 17 March 2023, to enable the Council to formulate its recommendation to the Minister in this regard.