

DEPARTMENT OF AGRICULTURE FORESTRY AND FISHERIES

No. R. 1031

19 December 2014

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

**REGULATIONS REGARDING CONTROL OF THE EXPORT OF FRESH
VEGETABLES**

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 thereof; and
- (c) read together with section 4 of the said publication; repeal the regulations published by Government Gazette Notice Nos. R.2031 of 23 August 1991, R.2032 of 23 August 1991, R.2033 of 23 August 1991 and R.3462 of 31 December 1992

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 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, the name or number of the farm 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;

“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 vegetables of the same kind, belonging to the same owner which is delivered at any one time under cover of the same consignment note, delivery note or receipt note, or is delivered by the same vehicle or if such quantity is divided into different classes, grades, cultivars, counts or size groups each quantity of each of the different classes, grades, cultivars, counts or size groups;

“**consignment note**” means a consignment note approved by the Executive Officer or the assignee;

“**container**” means the immediate container in which fresh vegetables are packed directly and the outer container but excluding shipping containers in which pallet loads are shipped;

“**certificate**” means a certificate that may be issued either in paper format (including electronically prepared) or in a 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;

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

“**Department**” means the Department of Agriculture, Forestry and Fisheries;

“**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;

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

“**fresh vegetables**” means herbs, endives, artichokes, asparagus, aubergines (also known as egg plant or brinjals), baby marrows (courgettes), beetroot, broccoli, Brussels sprouts, butternut, cabbage, capsicums (also known as sweet peppers), carrots, cauliflower (also known as witloof chicory), chillies, Chinese cabbage, courgettes, celery, chives, cucumbers, garlic, gem squashes, ginger, green beans, green peas, green onions (also known as chives), leeks, lettuce, okra, dry onions, parsley, parsnips, peppers, pumpkin, potatoes, radishes, rhubarb, shallots, spinach, sweet corn, sweet potatoes, tomatoes, turnips and unspecified vegetables;

“**herbs**” means parsley, lemon basil, balm, rosemary, paprika, cinnamon, celery, oregano and other unspecified herbs;

“**ISO**” means the International Standard Organization;

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

“**miniature vegetables**” means a variety of carrots, courgettes, aubergines, cauliflower, cabbage, sweet corn or other type of vegetables obtained through plant breeding or special cultivation techniques;

“**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);

“non- miniature varieties” means produce of varieties which have not fully developed or are inadequate in size and have “mini vegetables” or “baby vegetables” a corresponding meaning; and

“the Act” means the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990);

Prohibition on the export of fresh vegetables

2. (1) Subject to the provisions of sub regulation (2) no person shall export fresh vegetables from the Republic of South Africa unless each quantity thereof has been approved by the Executive Officer for that purpose.

(2) fresh vegetables 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 sub regulation (1).

(3) An approval in terms of sub regulation (1) may also be given by an Assignee designated with regard to fresh vegetables.

Application for approval for export

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

(2) Such an application shall be made at least five 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 kind of vegetable, as well as specific class thereof.

(c) The applicable Food Business Operator code.

(d) The number of containers, the mass or the number of units, as the case may be which comprises 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 fresh vegetables 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 of fresh vegetables referred to in sub regulation (1) that shall be thus inspected, shall be stored in such a manner that –

- (a) access to each container therein can be obtained readily; and
- (b) the marks, printing or writing on such containers can readily be read.

Consignment note

5. (1) Every consignment of Fresh Vegetables 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 in any consignment of fresh vegetables open as many containers and inspect the contents thereof and remove samples of such contents for the purpose of further inspection or analyses as he/she may deem necessary.

(2) An inspector's finding in relation to the containers opened by him/her by virtue of the provisions of sub regulation (1), and the contents thereof, shall apply as a finding in respect of the whole consignment from which such containers were abstracted.

(3) If an inspector is satisfied after his/her inspection that the consignment of fresh vegetables -

- (a) comply with the requirements of these regulations he/she shall approve such consignment for export, either by marking or causing to be marked on each container or label affixed thereto with a mark of approval or by issuing a certificate which indicates such approval: Provided that, the Executive Officer taking into consideration the country of destination's legal requirements may in his or her discretion authorize in writing the issuance of a certificate(s) within a prescribed time after the vegetables have left South Africa; or
- (b) do not comply with the requirements of these regulations he/she shall prohibit such consignment for export, either by marking or causing to be marked on each container or label affixed thereto with a mark or prohibition or by issuing a certificate which indicates such prohibition.

(4) An inspector may at his/her own discretion re-inspect a consignment of fresh vegetables which has already been approved for export, and may confirm or withdraw according to sub regulation (3) (b) any previous approval with regard to the consignment concerned: 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 fresh vegetables

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 fresh vegetables.

(2) The following criteria shall be used in the recognition of laboratories involved in the export control of fresh vegetables:

- (a) Compliance with the general criteria for testing laboratories laid down in 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 fresh vegetables are presented for inspection.

(2) The laboratory analysis fee when samples of fresh vegetables 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 fresh vegetables 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 fresh vegetables 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 sub regulation (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 one day of such decision or direction;
- (b) submit it in writing to the Director-General or at the 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, analyze, 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 sub regulation (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 sub regulation (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 sub regulation (1) (d) shall be refunded to the appellant: Provided that such a *pro rata* fund shall not be greater than 90 percent 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.