



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprijs • Selling price
(AVB uitgesluit/GST excluded)
Plaaslik **70c** Local
Buitelands R1,00 Other countries
Posvry • Post free

Vol. 301

KAAPSTAD, 13 JULIE 1990

No. 12641

CAPE TOWN, 13 JULY 1990

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1621.

13 Julie 1990

No. 1621.

13 July 1990

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

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

—No. 119 van 1990: Wet op Landbouproduktstandaarde, 1990.

No. 119 of 1990: Agricultural Product Standards Act, 1990.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- _____** Words underlined with solid line indicate insertions in existing enactments.

ACT

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

(Afrikaans text signed by the State President.)
(Assented to 28 June 1990.)

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

Definitions

1. In this Act, unless the context otherwise indicates—
- 5 (i) “advertisement”, in relation to a product, means any written, illustrated, visual or other descriptive matter or oral statement, communication, representation or reference which is distributed among members of the public or otherwise brought to their notice, and which is or purports to be intended to promote the sale of a product or to encourage the use thereof
- 10 or otherwise to draw attention thereto; and “advertise” has a corresponding meaning; (i)
- (ii) “appeal board” means an appeal board appointed in terms of section 10 (1); (ii)
- 15 (iii) “assignee” means a person, undertaking, body, institution, association or board designated as such under section 2 (3); (vi)
- (iv) “class or grade”, in relation to a product, means a class of that product determined according to the size, mass, measure, number, measurements, colour, appearance, purity, or chemical, physical or micro-biological composition, or another feature or characteristic, of the product concerned, or a unit or quantity thereof; (viii)
- 20 (v) “department” means the Department of Agriculture; (iv)
- (vi) “Director-General” means the Director-General: Agriculture; (v)
- (vii) “distinctive mark” means a distinctive mark prescribed under section 5 (1); (x)
- 25 (viii) “executive officer” means the officer designated under section 2 (1); (xiv)
- (ix) “export” means export from the Republic by any means and for any purpose, and when used as a noun it shall have a corresponding meaning; (xiii)
- (x) “Minister” means the Minister of Agriculture; (ix)
- 30 (xi) “officer” means an officer as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984), and includes an employee as defined in section 1 of that Act; (iii)
- (xii) “prescribed” means prescribed by regulation; (xvi)
- (xiii) “product” means—

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

- (a) any commodity of vegetable or animal origin, or produced from a substance of vegetable or animal origin, and which consists wholly or partially of such substance; and
- (b) any other commodity which in general appearance, presentation and intended use corresponds to a commodity referred to in paragraph (a);
- (xi)
- (xiv) "regulation" means a regulation made under section 15; (xii)
- (xv) "sell" includes agree to sell, or offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale, or to exchange or to dispose of in any way for any consideration; (xv)
- (xvi) "this Act" includes the regulations. (vii)

Designation of executive officer and assignees

2. (1) The Minister shall designate an officer in the service of the department as executive officer, who shall, subject to the control and directions of the Minister, exercise the powers and perform the duties conferred upon or assigned to the executive officer by or under this Act.
- (2) (a) The executive officer may, unless expressly provided otherwise, in writing delegate or transfer to any officer under his control any such power or duty, or in writing authorize or direct any such officer to exercise such power or perform such duty.
- (b) A power exercised or duty performed by an officer other than the executive officer shall be deemed to have been exercised or performed by the executive officer: Provided that the executive officer may at any time amend or withdraw any decision made or order given by such other officer.
- (3) (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.
- (b) An assignee thus designated shall—
- (i) unless expressly provided otherwise and subject to the directions of the executive officer, exercise the powers and perform the duties that are conferred upon or assigned to the executive officer by or under this Act, with regard to the product referred to in paragraph (a);
- (ii) in the case of a juristic person, notwithstanding anything to the contrary contained in any other law or in the absence of any express provision to that effect, be competent to exercise the powers and perform the duties referred to in subparagraph (i); and
- (iii) unless the Minister in a particular case otherwise directs, have no recourse against the State in respect of any expenses incurred in connection with the exercising of such powers or the performance of such duties.
- (c) The chief executive official, chairman or other person in charge of such assignee who is not a natural person—
- (i) shall act on behalf of that assignee in the exercise of the powers concerned and the performance of the duties concerned; and
- (ii) may in writing delegate or transfer to an employee of that assignee any such power or duty which the assignee concerned shall or may exercise or perform by or under this Act, or in writing authorize or direct any such employee to exercise such power or perform such duty.
- (d) A power exercised or duty performed by an employee referred to in paragraph (c) (ii), shall be deemed to have been exercised or performed by the chief executive official, chairman or other person in charge, as the case may be: Provided that the chief executive official, chairman or other person in charge, as the case may be, may at any time amend or withdraw any decision made or order given by such employee.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

Control over sale of products

3. (1) The Minister may—
- (a) prohibit the sale of a prescribed product—
 - (i) unless that product is sold according to the prescribed class or grade;
 - (ii) unless that product complies with the prescribed standards regarding the quality thereof, or a class or grade thereof;
 - (iii) unless the prescribed requirements in connection with the packing, marking and labelling of that product are complied with;
 - (iv) if that product contains a prescribed prohibited substance or does not contain a prescribed substance; and
 - (v) unless that product is packed, marked and labelled in the prescribed manner or with the prescribed particulars;
 - (b) determine that a prohibition referred to in paragraph (a) shall apply only to a prescribed category of persons or in a prescribed area, or exclude a prescribed category of persons or a prescribed area from such prohibition, or determine that a prohibition shall only apply under such other prescribed circumstances as the Minister deems necessary; and
 - (c) authorize only the executive officer to exempt any person in writing, either entirely or partially, on the conditions which the executive officer deems necessary, from a prohibition referred to in paragraph (a), and the executive officer may grant such exemption either in general or in respect of a particular quantity of a product.
- (2) (a) A notice issued under section 84 of the Marketing Act, 1968 (Act No. 59 of 1968), and in force immediately prior to the commencement of this section, shall be deemed to be a prohibition referred to in subsection (1) (a).
- (b) A regulation made under section 89 of the Marketing Act, 1968, which is connected with a notice referred to in section 84 of that Act, and in force immediately prior to the commencement of this section, shall be deemed to be a regulation made under section 15 of this Act.

Control over export of products

4. (1) The Minister may—
- (a) prohibit the export from the Republic of a prescribed product unless each quantity of that product, intended for export, has been approved by the executive officer for that purpose;
 - (b) determine that a prohibition referred to in paragraph (a) shall only apply to the export of a prescribed product to a prescribed country or for a prescribed purpose, or in a prescribed form or quantity, or under such other prescribed circumstances as the Minister deems necessary; and
 - (c) exclude the export of a prescribed product to a prescribed country or for a prescribed purpose, or in a prescribed form or quantity, from a prohibition referred to in paragraph (a).
- (2) An application for an approval referred to in subsection (1) shall be made in the prescribed manner, and the prescribed fees shall be payable, in the prescribed manner and at the prescribed time, in respect of such application.
- (3) (a) A quantity of a product shall only be approved for export under subsection (1)—
- (i) subject to the conditions specified by the executive officer in the approval; and
 - (ii) if that quantity of the product complies with the standards regarding the quality of the product, and with the requirements regarding the packing, marking and labelling of the product, stipulated only by the executive officer for the product concerned.
- (b) Particulars of the standards and requirements referred to in paragraph (a) (ii)—
- (i) shall be available free of charge for inspection only at the office of the executive officer and, if he deems it necessary, at any other office determined by him; and
 - (ii) shall only be obtainable from the executive officer on payment of the applicable amount determined by him.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

- (c) The standards and requirements referred to in paragraph (a) (ii), or any amendment thereof, shall come into operation on a date seven days after notice of the stipulation or amendment thereof, as the case may be, has been given by the executive officer in the *Gazette*.
- 5 (4) Notwithstanding the provisions of subsection (3) (a), the executive officer 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—
- 10 (a) is to be exported as an experiment or under such other special circumstances as may be approved by the executive officer in the case concerned; and
- (b) complies with the requirements for such product in force in the country to which it is to be exported.

Distinctive marks

- 15 5. (1) The Minister may prescribe a distinctive mark for use in connection with the sale of a product referred to in section 3 (1) (a), or a particular class or grade of such product, so as to certify the correctness of the indication of the class or grade concerned.
- (2) No person shall in connection with the sale of a product, or a class or grade of
- 20 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);
- 25 (b) such product, or such class or grade of that product, complies with the requirements prescribed in terms of section 3 (1) (a) for the sale 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 of his product, or a class or grade of that product, as the case may be.
- 30 (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 deems it necessary in the case of a product, or a class or grade thereof, prescribe the fees payable in respect of such application: Provided that the Minister may prescribe different amounts in respect of the distinctive products, or classes or grades of those products.
- 35 (4) Subject to the provisions of subsection (2) (b), the executive officer shall issue an authority referred to in subsection (2) (c) subject to such conditions as he may determine and specify in the authorization.
- (5) A person to whom an authority referred to in subsection (2) (c) has been issued, and in respect of whom fees have been prescribed in terms of subsection (3),
- 40 shall pay the prescribed fees within the prescribed period in order to maintain the authorization for the use of the distinctive mark concerned.
- (6) An authority referred to in subsection (2) (c)—
- (a) shall lapse if the holder thereof fails to pay the fees referred to in subsection
- 45 (5); and
- (b) may be withdrawn by the executive officer if he is satisfied that the holder thereof refuses or fails to comply with the requirements referred to in subsection (2) (b) or that the conditions referred to in subsection (4) are not being complied with.

Prohibition of false or misleading descriptions for products

- 50 6. No person shall use any name, word, expression, reference, particulars or indication in any manner, either by itself or in conjunction with any other verbal, written, printed, illustrated or visual material, in connection with the sale of a product in a manner that conveys or creates or is likely to convey or create a false or misleading impression as to the nature, substance, quality or other properties, or the
- 55 class or grade, origin, identity, or manner or place of production, of that product.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

Powers of entry, investigation and sampling

7. (1) (a) The executive officer or any other officer referred to in section 2 (2) (a) acting under a delegation or authorization of the executive officer may, whenever he deems it necessary in the exercising or performing by him of any power or duty which is conferred upon or assigned to the executive officer by or under this Act, at any reasonable time, without prior notice, enter upon any place, premises or conveyance.
- (b) The provisions of paragraph (a) shall, in so far as it relates to the exercising of a power or the performing of a duty with regard to a product in respect of which an assignee is designated in terms of section 2 (3) (a), apply *mutatis mutandis* to the assignee, or chief executive official, chairman, or other person in charge of such assignee, or an employee referred to in section 2 (3) (c) (ii) acting under a delegation or authorization of that assignee, or chief executive official, chairman or other person in charge, as the case may be.
- (c) A person who enters upon any place, premises or conveyance in terms of this subsection shall show proof of his identity and authority when requested thereto by the person in charge of the place, premises or conveyance concerned.
- (2) A person entering upon a place, premises or conveyance in terms of the power conferred under subsection (1), may—
- (a) classify, grade, pack or mark any quantity of a product to which this Act applies and which is found in or upon that place, premises or conveyance, 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;
- (b) examine or test or cause to be examined or tested any quantity of a product, or any material, substance or other article which is used or is suspected to be used at or in connection with the production, processing, treatment, preparation, classification, grading, packing, marking, labelling, keeping, removal, transporting, exhibition or sale of such product;
- (c) inspect the operations or processes in connection with any action referred to in paragraph (b), and demand from the owner or custodian of the product, material, substance or other article concerned, or from the person supervising such operations or processes, any information or an explanation regarding the operation, process, product, material, substance or other article concerned: Provided that such information or explanation shall only be admissible as evidence in a court of law against such owner, custodian or person on a charge referred to in section 11 (1) (e);
- (d) take such samples of the product, material, substance or other article concerned as he may deem necessary, and for such purpose open any container in which that product, material, substance or other article is contained and require reasonable assistance from the owner or custodian of that product, material, substance or other article;
- (e) examine and make copies of or take extracts from any book or document in respect of which he on reasonable grounds suspects that it relates to such product, material, substance or other article, irrespective of whether or not it is kept on or at the place, premises or conveyance concerned or at any other place, and demand from the owner or custodian of that book or document an explanation regarding any record or entry therein: Provided that such explanation shall only be admissible as evidence in a court of law against such owner or custodian on a charge referred to in section 11 (1) (e);
- (f) if he is of the opinion—
- (i) that the class or grade of a product is indicated incorrectly on the product or a container of the product; or
- (ii) that a distinctive mark or a representation purporting to be a distinctive mark is indicated on that product or a container of the product in contravention of the provisions of section 5,

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

- cancel the said indication, or direct the owner or person in charge of the place, premises or conveyance concerned to cancel such indication, and the provisions of paragraph (a) shall apply *mutatis mutandis* regarding the reclassification, regrading, repacking or re-mark of the product concerned;
- 5 (g) take with him such assistants, appliances, instruments, tools or other things as he may deem necessary for the purposes of this subsection; and
- (h) perform any act or take those steps which he is empowered or compelled to perform or to take in terms of this Act, or which he deems necessary to perform or to take in order to promote the objects of this Act.
- 10 (3) A sample taken in terms of subsection (2) (d) shall, as soon as possible after it has been taken, be submitted to a person who is competent to test, examine or analyse that sample.
- (4) A person referred to in subsection (1) shall in respect of each sample taken, issue a receipt of sampling to the custodian of that product, at the request of such
- 15 custodian.
- (5) In the case of action in terms of subsection (2) (a) or (f) by a person referred to in subsection (1) (a) or (b), the owner of the product concerned shall pay the prescribed fees for such action: Provided that in the case of action by a person referred to in subsection (1) (b) such fees shall be payable in favour of the
- 20 assignee, if so determined by the Minister with the concurrence of the Minister of Finance.

Seizures

8. (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, seize the whole, or
- 25 any part or quantity, of a product, material, substance or other article, or any book or document, that—
- (a) is concerned or is on reasonable grounds believed by him to be concerned in the commission or suspected commission of any offence under this Act;
- (b) may afford evidence of the commission or suspected commission of any
- 30 such offence; or
- (c) is intended or is on reasonable grounds suspected to be intended to be used in the commission of any such offence.
- (2) The person concerned may remove any quantity of a product, material, substance or other article, or any book or document thus seized, from the place,
- 35 premises or conveyance where he seized it, or leave it thereon and, if he deems it necessary, attach such identification mark or seal as he may deem necessary on such product, material, substance or other article or the container thereof, or on such book or document.
- (3) (a) The executive officer or an officer referred to in section 2 (2) (a) may—
- 40 (i) grant authority that a product, material, substance or other article seized in terms of subsection (1), may within the period specified in such authorization, be treated or dealt with;
- (ii) if he is satisfied that the cause for the seizure concerned has been removed by such treatment or action, return that product, material,
- 45 substance or other article to the person from whom it was seized.
- (b) If no criminal proceedings are instituted in connection with a product, material, substance or other article seized in terms of subsection (1), 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
- 50 product, material, substance or other article shall be returned to the person from whom it was seized.

Secrecy

9. No person shall, except for the purpose of the performance of his functions under this Act, or for the purpose of legal proceedings under this Act, or when
- 55 required to do so by any competent court or under any law, or with the written

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

consent of the Minister, disclose to any other person any information acquired by him in the performance of his functions under this Act and which relates to the business or affairs of any person.

Appeals

- 5 10. (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.
- 10 (2) An appeal referred to in subsection (1) shall be lodged in the prescribed manner within the prescribed period, and the prescribed fee shall be payable in respect of such appeal.
- (3) (a) An appeal board shall consist of the person or persons who, in the opinion of the Director-General, have adequate skills and who are otherwise suitable to decide on the appeal concerned.
- 15 (b) If an appeal board consisting of more than one person has been appointed, the Director-General shall designate one of the members as chairman of the appeal board concerned.
- (c) An appellant or a person employed by the appellant or, in the case of an appeal against a decision or direction of the executive officer, the executive officer or an officer under the control of the executive officer or, in the case of an appeal against a decision or direction of the assignee, the assignee or an employee of the assignee, or any other person who has a direct or indirect personal interest in the outcome of an appeal, shall not be appointed as a member of an appeal board.
- 20 (4) 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 decision of the majority of the members thereof shall be the decision of that appeal board; and
- 30 (b) the chairman of that appeal board shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.
- (5) There may be paid to a member of an appeal board who is not in the full-time employment of the State, from moneys appropriated by Parliament for this purpose, such remuneration or allowances as may be determined by the Minister, with the concurrence of the Minister of Finance, in general or in any particular case.
- 35 (6) Any appeal board may—
- (a) confirm, set aside or amend the decision or direction concerned which is the subject of the appeal; or
- (b) make any other order in connection therewith as it may deem fit.
- 40 (7) The executive officer or the assignee, as the case may be, shall be bound to a decision of an appeal board.
- (8) The decision of an appeal board together with the reasons therefor shall be in writing, and copies thereof shall be furnished to the Director-General, the appellant and the executive officer or the assignee, as the case may be.
- 45 (9) If a decision or direction which is the subject of an appeal—
- (a) is set aside, the amount referred to in subsection (2) shall be refunded to the appellant concerned; and
- (b) is amended, such portion of the amount referred to in subsection (2) as the appeal board concerned may determine, shall be refunded to the appellant concerned.
- 50

Offences and penalties

11. (1) Any person who—
- (a) contravenes or fails to comply with a provision of section 5 (2), 6 or 9;
- 55 (b) refuses or fails to pay the prescribed fees in terms of section 7 (5);
- (c) contravenes or fails to comply with a condition imposed in terms of section 4 (3) (a) (i) or 16 (3) (a);
- (d) obstructs or hinders a person referred to in section 7(1) in the exercise of his powers or the performing of his duties or functions under this Act, or

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

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);

(e) refuses or fails to furnish information or give an explanation or to answer to the best of his ability to a question lawfully demanded from or put to him by a person referred to in section 7 (1) in the exercising of his powers or the performing of his 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;

5

(f) tampers with a sample taken in terms of section 7 (2) (d), or the identification or seal of such sample;

10

(g) sells, removes or tampers with a product, material, substance or other article, or a book or document seized in terms of section 8, or tampers with an identification mark or other seal attached thereto in terms of that section;

15

(h) falsely holds himself 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),

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), 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;

25

(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;

30

(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

35

(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.

(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 Presumptions and evidence

12. In criminal proceedings under this Act—

(a) it shall be presumed, unless the contrary is proved, that the applicable provisions of this Act apply to the product in respect of which the offence concerned has allegedly been committed;

45

(b) any quantity of a product, material, substance or other article in or upon any place, premises or conveyance when a sample thereof is taken pursuant to the provisions of this Act shall, unless the contrary is proved, be deemed to be of the same composition as that sample, and to possess in all other respects the same properties as that sample;

50

(c) any statement or entry contained in any book or document kept by any person or the manager, agent or employee of such person, or found in or upon any place or premises occupied by, or any conveyance used in connection with the business of, such person, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment; and

55

(d) it shall be presumed, unless the contrary is proved, that no permit,

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

- 5 authorization, consent, approval, certificate or other document has been issued, given or granted to any person who in terms of this Act is required to be in possession thereof and who cannot produce such permit, authorization, consent, approval, certificate or other document at the request of the executive officer, an officer referred to in section 2 (2) (a), an assignee, or a person or employee referred to in section 2 (3) (c).

Forfeiture

- 10 13. A court convicting any person of an offence under this Act may, when requested thereto by the public prosecutor, in addition to any other penalty imposed in respect of that offence, order that the quantity of the product, material, substance or other article concerned which formed the subject of the charge against that person, be forfeited to the State.

Vicarious liability

- 15 14. (1) When a manager, representative, agent, employee or member of the family of a person (in this section referred to as the principal) does or omits to do any act, and it would be an offence in terms of this Act for the principal to perform or omit to do such act himself, that principal shall be deemed himself to have done or omitted to do the act, unless he satisfies the court that—

- 20 (a) he neither connived at nor permitted the act or omission by the manager, representative, agent, employee or member concerned;
- (b) he took all reasonable steps to prevent the act or omission; and
- 25 (c) an act or omission, whether lawful or unlawful, of the nature charged, on no condition or under no circumstance came within the scope of the authority or employment of the manager, representative, agent, employee or member concerned.

- (2) In the application of subsection (1) (b) the fact that such principal issued instructions whereby an act or omission of that nature is prohibited, shall not in itself be regarded as sufficient proof that he took all reasonable steps to prevent the act or omission.

- 30 (3) When a principal is by virtue of subsection (1) liable for an act or omission by a manager, representative, agent, employee or member of his family, that manager, representative, agent, employee or member shall also be liable therefor as if he is the principal concerned.

- 35 (4) Subsection (2) shall not release a manager, representative, agent, employee or member contemplated in that subsection from any other liability which he may have incurred apart from the liability which he shares with the principal concerned.

- 40 (5) In the application of this section in criminal proceedings, evidence that any article was at the time of the act or omission charged, in the possession or under the custody, supervision, control or care of any manager, representative, agent, employee or member of the family of the principal, shall be *prima facie* proof that the principal concerned is the owner of the article concerned.

Regulations

- 45 15. (1) The Minister may make regulations regarding—
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) a prohibition of the sale or export of a prescribed product;
- (c) methods and procedures in connection with the taking of samples;
- (d) the procedure at proceedings of an appeal board;
- 50 (e) the permissible tolerances with regard to prescribed requirements, specifications or other directions;
- (f) the period within which an appeal board shall decide on an appeal; or
- (g) any other matter the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to achieve or promote the objects of

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

this Act: Provided that the generality of this paragraph shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations which differ in the respects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection 5 (1) in respect of different areas in the Republic or different products or classes thereof.

(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 or imprisonment for a period of two years or both that fine and that imprisonment.

10 (4) A regulation prescribing fees shall be made with the concurrence of the Minister of Finance.

Discretionary powers

16. (1) When the executive officer or an assignee, as the case may be, considers any application or request made in terms of this Act, such officer or assignee, as the case may be, may make any investigation or inquiry in connection therewith which 15 may be deemed necessary, and for the purposes of such investigation or inquiry demand that the relevant documents, information or samples be submitted to the executive officer or the assignee, as the case may be.

(2) The executive officer or an assignee, as the case may be, may, on good cause 20 shown, extend any prescribed period, either before or after the expiry thereof.

(3) An approval, authorization or consent given or granted in terms of this Act may, unless expressly provided otherwise—

(a) be made subject to such conditions as the executive officer or an assignee, as the case may be, may in each case determine; and
25 (b) be amended or withdrawn by the executive officer or an assignee, as the case may be.

(4) If the executive officer or an assignee, as the case may be, by virtue of a power vested in him or the assignee by or under this Act—

(a) refuses to approve an application or a request which was submitted in 30 writing; or
(b) amends or withdraws an approval, authorization or consent in terms of subsection (3) (b),

the executive officer or assignee, as the case may be, shall notify the person concerned in writing of his decision and of the grounds on which it is based.

35 Delegation of powers

17. The Director-General may, subject to such conditions as he may determine, in writing delegate any power conferred on him by this Act to an officer employed by the department, but shall not be divested of any power so delegated and may amend or set aside any decision of the delegate made in the exercise of such a power.

40 Defects in form

18. A defect in the form of any document which in terms of any law is required to be executed in a particular manner, or in a document issued in terms of this Act, shall, if the document substantially complies with the applicable legal requirements, not render unlawful any administrative act performed in terms of this Act in respect 45 of the matter to which such document relates, and shall not be a ground for exception to any legal procedure which may be taken in respect of such matter.

Limitation of liability

19. No person, including the State, shall be liable in respect of anything done or

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

omitted in good faith in the exercise of a power or the performance of a duty under or by virtue of this Act, or in respect of anything that may result therefrom.

Repeal and amendment of laws

20. Subject to the provisions of section 3 (2) (a) and (b), the laws specified in the
5 Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

Short title and commencement

21. (1) This Act shall be called the Agricultural Product Standards Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in
10 the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

Schedule
LAWS REPEALED OR AMENDED
(SECTION 20)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 30 of 1961	Dairy Industry Act, 1961	The repeal of the whole.
Act No. 34 of 1965	Dairy Industry Amendment Act, 1965	The repeal of the whole.
Act No. 59 of 1968	Marketing Act, 1968	<p>1. The amendment of section 1 by the substitution for the definition of "specified power" of the following definition:</p> <p style="padding-left: 2em;">"specified power" means a power which a scheme may confer on its control board under section 56 (1) (dA), 58, 59 (3) (b) or (c) or (6), 60, 60A, 61, 62, 63 (1), 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76 or 77;"</p> <p>2. The amendment of section 56 by the insertion of the following paragraph after paragraph (d) of subsection (1):</p> <p style="padding-left: 2em;">"<u>(dA) to issue directions, with the approval of the Minister, relating to the classification, grading, packing and marking of a product which it is empowered to buy in terms of paragraph (a) or to receive in terms of paragraph (d);</u>"</p> <p>3. The amendment of section 79 by the substitution for paragraph (c) of the following paragraph:</p> <p style="padding-left: 2em;">"<u>(c) direction, determination, requirement, condition or fixation of a date under section 52 (2) (a) or (b), 56 (1) (dA), 59, 60 (1) (b), 61 (1), 63 (1) (a), 65 (1) (e), 66 (3) (a), 70, 72 (1A), 75 (1) (a), (b) or (c) or 78; or</u>"</p> <p>4. The repeal of sections 82, 83, 83A, 83B and 84.</p> <p>5. The amendment of section 85—</p> <p style="padding-left: 2em;">(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 4em;">"<u>(1) Whenever a [national mark has been prescribed under section 82 or any inspection mark has been prescribed under section 83A or a] prohibition has been imposed under section [84] 84D, 84E, 84F or 87 in respect of any product, the Minister may designate persons to perform, subject to the control of the Minister, the functions referred to in subsection (2).</u>";</p> <p style="padding-left: 2em;">(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 4em;">"<u>Any person designated under subsection (1) may at all reasonable times enter upon any premises or vehicle in or on which there is or is suspected to be sold, kept, manufactured, produced, processed, treated, prepared, loaded or unloaded [graded, classified, packed or marked] any product in respect of which [any such national mark or any such inspection mark has been prescribed or] any such prohibition has been imposed, and may—</u>";</p> <p style="padding-left: 2em;">(c) by the deletion of paragraphs (a) and (b) of subsection (2); and</p> <p style="padding-left: 2em;">(d) by the deletion of subsection (3).</p> <p>6. The amendment of section 89—</p> <p style="padding-left: 2em;">(a) by the deletion of paragraphs (c), (cA), (d), (dA), (e) and (f) of subsection (1); and</p>

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

No. and year of law	Short title	Extent of repeal or amendment
		<p>(b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:</p> <p>“(g) the time and manner in which an appeal under section 53 (2), 59 (7), 72 (2) [85 (3)] or 87 (3) shall be prosecuted, the security (if any) to be lodged in connection with any such appeal (other than an appeal under section 53 (2)), and the disposal of any security so lodged [and the officer of the department who shall designate, or may nominate another such officer to designate, the person or persons by whom an appeal under section 85 (3) shall be decided];”.</p> <p>7. The amendment of section 89A by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Minister may in writing delegate to any officer in the department, or after consultation with the Director-General, to the marketing board, all or any of the powers conferred upon him by this Act, other than a power conferred upon him by section 12, 14, 15A, 16, 17 (3), 24, 53 (2), 59 (7), 60 (2A), 72 (2), 80, 81 [82, 83A (1), 83B, 84], 86 or 87 (1) or (3) or by this section, or the power to publish a notice in the <i>Gazette</i> in pursuance of the provisions of section 15 (3), 46A, 64 (4), 84A, 84D, 84E, 84F or 88.”.</p> <p>8. The amendment of section 90 by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:</p> <p>“(a) contravenes any prohibition imposed under section 75 (2) [83B, 84], 84D, 84E, 84F, 86 or 87, or contravenes or fails to comply with any condition of a permit referred to in section 86 or 87; or</p> <p>(b) contravenes or fails to comply with any provision of section 31B (2) (or that provision as applied by section 29 (3)) [or of section 83 or 83A]; or”.</p>
Act No. 1 of 1969	Dairy Industry Amendment Act, 1969	The repeal of the whole.
Act No. 52 of 1969	Marketing Amendment Act, 1969	The repeal of section 15.
Act No. 69 of 1970	Marketing Amendment Act, 1970	The repeal of section 16.
Act No. 51 of 1971	Agricultural Produce Export Act, 1971	The repeal of the whole.
Act No. 96 of 1971	Dairy Industry Amendment Act, 1971	The repeal of the whole.
Act No. 32 of 1972	Dairy Industry Laws Amendment Act, 1972	The repeal of sections 1, 2 and 3.
Act No. 68 of 1972	Marketing Amendment Act, 1972	The repeal of section 13.
Act No. 31 of 1973	Marketing Amendment Act, 1973	The repeal of section 14.
Act No. 73 of 1974	Marketing Amendment Act, 1974	The repeal of sections 3 and 4.
Act No. 7 of 1976	Dairy Industry Amendment Act, 1976	The repeal of the whole.
Act No. 37 of 1983	Dairy Industry Amendment Act, 1983	The repeal of the whole.
Act No. 66 of 1984	Marketing Amendment Act, 1984	The repeal of sections 36, 37, 38, 39 and 40.

AGRICULTURAL PRODUCT STANDARDS ACT, 1990

Act No. 119, 1990

No. and year of law	Short title	Extent of repeal or amendment
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	The repeal in the First and Second Schedules of the items relating to the Dairy Industry Act, 1961 (Act No. 30 of 1961), and the Agricultural Produce Export Act, 1971 (Act No. 51 of 1971).
Act No. 79 of 1987	Marketing Amendment Act, 1987	The repeal of sections 13 and 14.