

6

AGRICULTURAL PRODUCT STANDARDS ACT

NO. 119 OF 1990

[ASSENTED TO 28 JUNE, 1990]

[DATE OF COMMENCEMENT: 1 SEPTEMBER, 1991]

(Afrikaans text signed by the State President)

as amended by

General Law Third Amendment Act, No. 129 of 1993

[with effect from 1 September, 1993—see title GENERAL LAW AMENDMENT ACTS]

Agricultural Product Standards Amendment Act, No. 63 of 1998

GENERAL NOTE

In terms of section 17 of Act No. 63 of 1998, the words "he", "his" and "him", wherever they occur, are substituted by the words "he or she", "his or her" and "him or her" respectively.

ACT

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

[Long title substituted by s. 16 of Act No. 63 of 1998.]

1. Definitions.—In this Act, unless the context otherwise indicates—

"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 or otherwise to draw attention thereto; and "advertise" has a corresponding meaning;

"appeal board" means an appeal board appointed in terms of section 10 (1);

"assignee" means a person, undertaking, body, institution, association or board designated as such under section 2 (3);

"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;

"conveyance" means any aircraft, ship, boat, train, motor car, van, truck, cart or other vehicle or mode of transport of whatever kind, including the fittings and equipment;

[Definition of "conveyance" inserted by s. 1 (a) of Act No. 63 of 1998.]

"department" means the Department of Agriculture;

"Director-General" means the Director-General: Agriculture;

"distinctive mark" means a distinctive mark prescribed under section 5 (1);

"executive officer" means the officer designated under section 2 (1);

"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;

"import" means to bring into the Republic by any means and for any purpose and when used as a noun it shall have a corresponding meaning;

[Definition of "import" inserted by s. 1 (b) of Act No. 63 of 1998.]

"management control system" means the principles of procedure with regard to a product, from its primary production to its sale or export;

[Definition of "management control system" inserted by s. 1 (b) of Act No. 63 of 1998.]

"Minister" means the Minister of Agriculture;

"officer" means an officer as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes an employee as defined in section 1 of that Act;

[Definition of "officer" substituted by s. 1 (c) of Act No. 63 of 1998.]

"prescribed" means prescribed by regulation;

"product" means—

- (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);

"regulation" means a regulation made under section 15;

"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;

"this Act" includes the regulations.

2. Designation of executive officer and assignees.—(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 or her 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 particular knowledge in respect of the product concerned, as an assignee in respect of that product.

[Para. (a) substituted by s. 2 of Act No. 63 of 1998.]

(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.

3. Control over sale of products.—(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 management control system, packing, marking and labelling of that product are complied with;

[Sub-para. (iii) substituted by s. 3 (a) of Act No. 63 of 1998.]

- (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.

(1A) (a) Fees may be charged in respect of the powers exercised and duties performed by the executive officer or the assignee, as the case may be, to ensure compliance with this section.

(b) In the case of powers exercised and duties performed by—

- (i) the executive officer, the prescribed fee shall be payable; and
- (ii) the assignee, the fee determined by such assignee shall be payable.

[Sub-s. (1A) inserted by s. 3 (b) of Act No. 63 of 1998.]

(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.

3A. Inspection, grading and sampling for quality control.—(1) The executive officer or the assignee may, during business hours of the industry in question in the case of control in terms of section 3 (1), or at any time in the case of control in terms of sections 4 (1) and 4A (1), enter any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, removed, transported, exhibited or sold, and—

- (a) open any container found at or on the place, premises or conveyance which the relevant person referred to in subsection (1) believes on reasonable grounds contains any product, material, substance or other article to which this Act applies;
- (b) classify, grade, pack or mark any quantity of a product 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;
- (c) inspect or test or cause to be tested any quantity of a product;
- (d) inspect or test or cause to be tested any quantity of a product, material, substance or other article which is used or 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;
- (e) subject to subsection (2) (d), take such samples of a product, material, substance or other article in question as he or she may deem necessary; and
- (f) require the owner or custodian to produce for inspection, or for obtaining a copy or extract, any book, label or other document or paper with regard to the administration of this Act.

(2) (a) In the case of action under subsection (1), the relevant person referred to in that subsection may take with him or her such assistant, appliance, instrument or other tool as he or she may deem necessary for the purpose of that subsection.

(b) If, in the case of action under subsection (1) (b), the relevant person referred to in subsection (1) is of the opinion that—

- (i) the class or grade of a product is indicated incorrectly on the product or on the container thereof; or

- (ii) a distinctive mark or a representation purporting to be a distinctive mark is indicated on the product or on the container thereof in contravention of the provisions of section 5,

such person may cancel the said indication, or direct the owner or person in charge of the place, premises or conveyance in question to cancel such indication, and the provisions of subsection (1)(b) shall apply *mutatis mutandis* regarding the reclassification, regrading, repacking or re-marking of the product in question.

(c) In the case of action under subsection (1)(d), the relevant person referred to in subsection (1) may inspect the management control system in connection with any action referred to in subsection (1)(d), and demand from the owner or custodian of the product, material, substance or other article in question, or from the person supervising such management control system, any information or an explanation regarding the management control system, product, material, substance or other article in question.

(d) Any sample taken under subsection (1)(e) shall—

- (i) be taken in the presence of the person in charge of, or the owner or custodian of such product, material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and a receipt of sampling in respect of each sample taken shall, on request, be issued to the person in charge, owner or custodian of that product;
- (ii) if necessary, be packed and identified in such a manner as the nature thereof permits; and
- (iii) as soon as possible after it has been taken, be submitted to a person, undertaking, body, institution, association, board or laboratory which is competent to test, inspect or analyse that sample.

(3) A person who enters upon any place, premises or conveyance under this section shall show proof of his or her identity and authority when requested thereto by the person in charge of the place, premises or conveyance in question.

(4) In the case of action under subsection (1)(b), (c), (d) or (e) by the relevant person referred to in subsection (1), the owner of the product in question shall pay the prescribed fees or the amount determined by the assignee, as the case may be, for such action.

(S. 3A inserted by s. 4 of Act No. 63 of 1998.)

4. Control over export of products.—(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—

- (a) in the case where an assignee has been designated under section 2(3)(a), be made at the time and in the manner determined by such assignee, and upon payment of the fees that the said assignee determines; or

- (b) in the case where no assignee has been so designated, be made in the prescribed manner and the prescribed fee shall, in respect of such application, be payable in the prescribed manner and at the prescribed time.

[Sub-s. (2) substituted by s. 73 of Act No. 129 of 1993.]

- (1) — (3) (a) A quantity of a product shall only be approved for export under subsection

- (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 management control system, packing, marking and labelling of the product, stipulated only by the executive officer for the product concerned.

[Sub-para. (ii) substituted by s. 5 (a) of Act No. 63 of 1998.]

- (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 or she 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.

(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*.

(4) Notwithstanding the provisions of subsection (3) (a), only the executive officer and any person contemplated in section 2 (2) (a) 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 —

- (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.

[Sub-s. (4) amended by s. 5 (b) of Act No. 63 of 1998.]

4A. Control over sale of imported products.—(1) The Minister may —

- (a) prohibit the sale of a prescribed product imported into the Republic unless each quantity of such product intended for sale in the Republic complies with the provisions of section 3 (1); and
(b) determine by notice in the *Gazette* that a particular prescribed product imported for sale in the Republic shall not be removed from the prescribed port of entry or such other place as the executive officer may determine unless —
(i) each quantity of such product intended for sale in the Republic has been approved by the executive officer for that purpose; or
(ii) written permission for the removal of a particular quantity of such product has been granted by the executive officer on the conditions which he or she deems necessary.

(2) The executive officer may exempt, in writing, a quantity of a prescribed product from complying with the provisions of subsection (1) if such quantity of a product is imported for purposes other than for the purpose of sale in the Republic.

(3) An application for an approval referred to in subsection (1) (b) (i) shall be made in the prescribed manner and the prescribed fee shall, in respect of such application, be payable in the prescribed manner and at the prescribed time.

[S. 4A inserted by s. 6 of Act No. 63 of 1998.]

5. Distinctive marks.—(1) The Minister may prescribe a distinctive mark for use in connection with—

- (a) the sale of a product referred to in section 3 (1) (a), the export of a product referred to in section 4 (1), or a particular class or grade of such products, so as to certify the correctness of the indication of the class or grade or, in the case of organically produced products, the production method concerned; and
- (b) a particular management control system.

[Sub-s. (1) substituted by s. 7 (a) of Act No. 63 of 1998.]

(2) No person shall in connection with the sale or the export of a product, or the management control system, or a class, grade or production method of 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);
- (b) such product, management control system, or class, grade or production method of that product, complies with the requirements prescribed in terms of section 3 (1) (a) for the sale, or in terms of section 4 (1) for the export, 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 or the export of his or her product, or the management control system, or a class, grade or production method of that product, as the case may be.

[Sub-s. (2) substituted by s. 7 (b) of Act No. 63 of 1998.]

(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 or she deems it necessary in the case of a product, or the management control system, or a class, grade or production method thereof, prescribe the fees payable in respect of such application: Provided that the Minister may prescribe different amounts in respect of the distinctive products, management control systems, or classes, grades or production methods of those products.

[Sub-s. (3) substituted by s. 7 (c) of Act No. 63 of 1998.]

(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 or she 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), 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 (5); and
- (b) may be withdrawn by the executive officer if he or she 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.

6. Prohibition of false or misleading descriptions for products.—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 class or grade, origin, identity, or manner or place of production, of that product.

6A. Prohibition and exemption on use of names.—(1) The Minister may, notwithstanding any other agricultural laws relating to a specific product and taking into account the Republic's international obligations, by notice in the *Gazette*, prohibit the use of specified geographical or other names, or terms in connection with the sale or export of a specified product, on such conditions as may be specified in such notice.

(2) A prohibition issued under subsection (1) shall also apply where the geographical name in question—

- (a) is used in connection with an indication of the true origin of the product in question;
- (b) is used in translation; or
- (c) is used together with words such as "kind", "type", "style", "imitation" or similar words or expressions.

(3) The Minister may in such notice authorise the executive officer to exempt a person from the prohibition under such circumstances as may be specified in such notice.

[S. 6A inserted by s. 8 of Act No. 63 of 1998.]

7. Powers of entry, investigation and sampling.—(1) The executive officer or the assigee may, on the authority of a warrant issued in terms of subsection (2), and for purposes other than for the purpose of the application of section 3A, at any time—

- (a) enter upon any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, removed, transported, exhibited or sold;
- (b) perform any of the acts referred to in section 3A for such other purposes; and
- (c) seize any product, material, substance or other article or any book or document.

(2) A warrant referred to in subsection (1) shall be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the conveyance is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1) (a) or (c) is upon or in such place, premises or conveyance and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued.

(3) A warrant issued in terms of this section shall be executed by day unless the person who issued the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or conveyance specified in such warrant shall be conducted with strict regard to decency and order, including—

- (a) a person's right to, respect for and protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(4) The relevant person referred to in subsection (1) executing a warrant in terms of this section shall immediately before commencing with the execution—

- (a) identify himself or herself to the person in control of the place, premises or conveyance, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent spot on the place, premises or conveyance; and
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(5) The relevant person referred to in subsection (1) may without a warrant enter any place, premises or conveyance, classify, grade, pack, mark, inspect or test any quantity of a product and search for, seize, take samples of and remove any article referred to in subsection (1) if—

- (a) the person who is competent to do so, consents to such entry, classification, grading, packing, marking, inspection, testing, search, seizure, taking of samples and removal; or
- (b) he or she upon reasonable grounds believes that—
 - (i) the required warrant would be issued to him or her in terms of subsection (2) if he or she were to apply for such warrant; and
 - (ii) the delay caused by obtaining such warrant would defeat the object of such warrant.

(6) (a) The relevant person referred to in subsection (1) who may, on the authority of a warrant issued in terms of subsection (2), or under the provisions of subsection (5), enter and search any place, premises or conveyance, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or conveyance unless he or she has audibly demanded admission to the place, premises or conveyance and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.

(7) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or conveyance in question contains privileged information and refuses the inspection or removal of such article, the relevant person referred to in subsection (1) executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the High Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

(8) A warrant issued in terms of this section may be issued on any day and shall be of force until—

- (a) it is executed; or
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
 - (c) the expiry of one month from the date of its issue; or
 - (d) the purpose for which the warrant was issued, no longer exists,
- whichever may occur first.

(9) If no criminal proceedings are instituted in connection with any product, material, substance, book, other article or document seized under subsection (1) or (5), or if it appears that such product, material, substance, book, other article or document is not required at the trial for purposes of evidence or an order of court, that product, material, substance, book, other article or document shall be returned to the person from whom it was seized.

[S. 7 amended by s. 74 of Act No. 129 of 1993 and substituted by s. 9 of Act No. 63 of 1998.]

8. Seizures.—(1) A person referred to in section 7 (1) may in terms of section 7 (1) (c) or (5), seize the whole, or 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 or her 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 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.

[Sub-s. (1) amended by s. 10 (a) of Act No. 63 of 1998.]

(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, premises or conveyance where he or she seized it, or leave it thereon and, if he or she deems it necessary, attach such identification mark or seal as he or she 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—

- (i) grant authority that a product, material, substance or other article seized in terms of section 7 (1) (c) or (5), may within the period and in the manner specified in such authorization, be treated or dealt with; or

[Sub-para. (i) substituted by s. 10 (b) of Act No. 63 of 1998.]

- (ii) if he or she is satisfied that the cause for the seizure concerned has been removed by such treatment or action, return that product, material, 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 section 7 (1) (c) or (5), 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 product, material, substance or other article shall be returned to the person from whom it was seized.

[Para. (b) substituted by s. 10 (c) of Act No. 63 of 1998.]

9. Secrecy.—No person shall disclose any information acquired by him or her through the exercise of his or her powers or the performance of his or her duties in terms of this Act and which relates to the business or affairs of any person, except—

- (a) in so far as it is necessary for the proper application of the provisions of this Act;
- (b) where it is deemed to be in the interest of the public or for the protection of the consumer;
- (c) for the purpose of any legal proceedings under this Act;
- (d) when ordered to do so by any competent court; or
- (e) if he or she is authorized in writing to do so by the Minister.

[S. 9 substituted by s. 11 of Act No. 63 of 1998.]

10. Appeals.—(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 the Director-General.

[Sub-s. (1) substituted by s. 12 (a) of Act No. 63 of 1998.]

(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) The Director-General shall—

- (i) refer the appeal for investigation and decision to an appeal board, the members of which shall be appointed for the appeal in question by the Director-General, and which shall consist of at least three persons who have adequate skills and who are otherwise suitable to decide on the appeal; and
 - (ii) designate one of the members as chairperson of the appeal board concerned.
- (b) A person appointed under subparagraph (i) of paragraph (a) shall be disqualified as a member of the appeal board concerned if he or she has any direct or indirect personal interest in the outcome of the appeal.

[Sub-s. (3) substituted by s. 12 (b) of Act No. 63 of 1998.]

(4) (a) All the members of the appeal board in question shall constitute a quorum for a meeting of that appeal board.

(b) The decision of the majority of the members of the appeal board shall be the decision of that appeal board.

(c) The chairperson of the appeal board shall, in the case of an equality of votes, have a casting vote in addition to his or her deliberative vote.

[Sub-s. (4) substituted by s. 12 (c) of Act No. 63 of 1998.]

(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.

(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 the appeal board may deem fit.

[Para. (b) substituted by s. 12 (d) of Act No. 63 of 1998.]

(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 therefore 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.

(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.

11. Offences and penalties.—(1) Any person who—

(a) contravenes or fails to comply with a provision of section 5 (2), 6, 6A or 9;

- (b) refuses or fails to pay the prescribed fees in terms of section 3 (1A) (b) (i), 3A (4), 4 (2) (b), 4A (3), 5 (3) or 10 (2);
- (c) contravenes or fails to comply with a condition imposed in terms of section 4 (3) (a) (i), 4A (1) (b) or 16 (3) (a);
- (d) obstructs or hinders a person referred to in section 3A (1) or 7 (1) in the exercise of his or her powers or the performing of his or her duties or functions under this Act, or refuses or fails to comply with a direction referred to in section 3A (1) (b);
- (e) refuses or fails to furnish information or give an explanation or to answer to the best of his or her ability to a question lawfully demanded from or put to him or her by a person referred to in section 3A (1) or 7 (1) in the exercising of his or her powers or the performing of his or her 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;
- (f) tampers with a sample taken in terms of section 3A (1) (e) or for the purpose of section 7 (1) or the identification or seal of such sample;
- (g) sells, removes or tampers with a product, material, substance or other article, or a book or document seized in terms of section 7 (1) (c), or tampers with an identification mark or other seal attached thereto in terms of that section;
- (h) falsely holds himself or herself 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);
- (i) alters a permit, authorization, consent, approval, certificate or other document issued in terms of this Act;
- (j) fails to display a permit, authorization, consent, approval, certificate or other document which, in terms of this Act, such a person is required to be in possession of;
- (k) makes a document or causes a document to be made which purports to be a certificate, authorization or other document issued in terms of this Act, shall be guilty of an offence.

(2) Any person who is convicted of an offence in terms of this Act shall—

- (a) in the case of a first conviction of an offence referred to in subsection (1) (a), (c), (d), (e), (i), (j) or (k), be liable to a fine or to imprisonment for a period not exceeding two years;
- (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 or to imprisonment for a period not exceeding four years;
- (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 or to imprisonment for a period not exceeding six months; and
- (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 or to imprisonment for a period not exceeding one year.

(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.

[S. 11 substituted by s. 13 of Act No. 63 of 1993.]

12. Presumptions and evidence.—In criminal proceedings under this Act—

(a)

[Para. (a) deleted by s. 14 (a) of Act No. 63 of 1998.]

(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; and

(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 or her 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 or her work as manager, or in the course of his or her agency or employment.

(d)

[Para. (d) deleted by s. 14 (a) of Act No. 63 of 1998.]

13. Forfeiture.—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.

14. Vicarious liability.—(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 or she satisfies the court that—

(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

(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 or she took all reasonable steps to prevent the act or omission.

(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 or her family, that manager, representative, agent, employee or member shall also be liable therefor as if he or she is the principal concerned.

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

(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.

15. Regulations.—(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;
 - (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;
 - (g) inspection fees that have been determined by the assignee;
- [Para. (g) inserted by s. 15 (b) of Act No. 63 of 1998.]
- (h) a prohibition or exemption under section 6A; or
- [Para. (h) inserted by s. 15 (b) of Act No. 63 of 1998.]
- (i) 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 this Act: Provided that the generality of this paragraph shall not be limited by the preceding paragraphs of this subsection.

[Para (i), formerly para. (g), amended by s. 15 (b) of Act No. 63 of 1998.]

(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 (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 fine or imprisonment for a period not exceeding two years.

[Sub-s. (3) substituted by s. 15 (c) of Act No. 63 of 1998.]

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

16. Discretionary powers.—(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 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 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
- (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 her or the assignee by or under this Act—

- (a) refuses to approve an application or a request which was submitted in 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 or her decision and of the grounds on which it is based.

17. Delegation of powers.—The Director-General may, subject to such conditions as he or she may determine, in writing delegate any power conferred on him or her 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.

18. Defects in form.—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 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.

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

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

21. Short title and commencement.—(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 the *Gazette*.

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

Schedule
 LAWS REPEALED OR AMENDED
 (SECTION 20)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 30 of 1961 Act No. 34 of 1965 Act No. 59 of 1968	Dairy Industry Act, 1961 Dairy Industry Amendment Act, 1965 Marketing Act, 1968	The repeal of the whole. The repeal of the whole. 1. The amendment of section 1 by the substitution for the definition of "specified power" of the following definition: " '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."

No. and year of law	Short title	Extent of repeal or amendment
		2. The amendment of section 56 by the insertion of the following paragraph after paragraph (d) of subsection (1): “(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 (e) or to receive in terms of paragraph (d);” 3. The amendment of section 79 by the substitution for paragraph (c) of the following paragraph: “(c) direction, determination, requirement, condition or fixation of a date under section 52 (2) (e) or (f), 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” 4. The repeal of sections 82, 83, 83A, 83B and 84. 5. The amendment of section 85— (a) by the substitution for subsection (1) of the following subsection: “(1) Whenever a prohibition has been imposed under section 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).” (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “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 any product in respect of which any such prohibition has been imposed, and may—” (c) by the deletion of paragraphs (a) and (b) of subsection (2); and (d) by the deletion of subsection (3). 6. The amendment of section 89— (a) by the deletion of paragraphs (c), (cA), (d), (dA), (e) and (f) of subsection (1); and (b) by the substitution for paragraph (g) of subsection (1) of the following paragraph: “(g) the time and manner in which an appeal under section 53 (2), 59 (7), 72 (2) 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.” 7. The amendment of section 89A by the substitution for subsection (1) of the following subsection: “(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 or her by this Act, other than a power conferred upon him or her by section 12, 14, 15A, 16, 17 (3), 24, 53 (2), 59 (7), 60 (2A), 72 (2), 80, 81, 86 or 87 (1) or (3) or by this section, or the power to publish a notice in the Gazette in pursuance of the provisions of section 15 (3), 46A, 64 (4), 84A, 84D, 84E, 84F or 88.”

Sch.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA-AGRICULTURE
Agricultural Product Standards Act, No. 119 of 1990

Sch.

No. and year of law	Short title	Extent of repeal or amendment
Act No. 1 of 1969	Dairy Industry Amendment Act, 1969	8. The amendment of section 90 by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively: "(a) contravenes any prohibition imposed under section 75 (2), 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 (b) contravenes or fails to comply with any provision of section 31B (2) (or that provision as applied by section 29 (3)); or". 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.
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.