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CONTENTS • INHOUD

No.		*Page No.*	*Gazette No.*
	GENERAL NOTICE		
Agriculture, Forestry and Fisheries, Department of			
General Notice			
610	Marketing of Agricultural Products Amendment Bill, 2013: Invitation for public comments	3	36562

GENERAL NOTICE

NOTICE 610 OF 2013

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES (DAFF)
MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL, 2013
INVITATION FOR PUBLIC COMMENTS

I, Tina Joemat-Pettersson, Minister of Agriculture, Forestry and Fisheries hereby invite all interested institutions, organizations and individuals to submit written comments on the Marketing of Agricultural Products Amendment Bill 2013.

The purpose of the draft bill is to:

- Further redefine certain definitions;
- redefine the mandate of the National Agricultural Marketing Council;
- clarify the role of the Department of Agriculture, Forestry and Fisheries in agricultural marketing;
- further clarify matters connected to management and utilization of statutory levies and agricultural industry trust funds;
- provide for the public trusteeship of the nation's agricultural and food markets;
- provide for assignments and delegations;
- provide for the monitoring, evaluation, assessment and reporting; and
- provide for the national monitoring of provinces.

Copies of the bill may be obtained from the Directorate Marketing, Tel: 012 319 8455/6; e-mail: MogalaM@daff.gov.za / PA.DM@daff.gov.za and from the DAFF website (www.daff.gov.za) under legislation on the side menu.

The following process may be followed to view the Bill on the website:
• Step one: Open DAFF website, www.daff.gov.za
• Step two: Click on Legislation
• Step three: Click on Bills
• Step four: Open the Marketing of Agricultural Products Amendment Bill 2013

All stakeholders are requested to forward their written comments to the department within 60 days of the publication date of this notice. All correspondence may be addressed to Mr. H. M. Mamabolo, Director: Marketing:

Post to: Private Bag X15, Arcadia, 0007.

The comments may also be hand-delivered to Office 710, Sefala Building, 503 Belvedere Street, Arcadia, Pretoria; or by fax on **012 319 8131**; or
Email to: MogalaM@daff.gov.za or PA.DM@daff.gov.za

Please note that comments received after the closing date will not be taken into account.

REPUBLIC OF SOUTH AFRICA

MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL

2013

(As introduced in the National Assembly (proposed section 75))

(The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX—2013]

GENERAL EXPLANATORY NOTE:

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

BILL

To amend the Marketing of Agricultural Products Act, 1996 and to further redefine certain definitions; to redefine the mandate of the National Agricultural Marketing Council; to clarify the role of the Department of Agriculture, Forestry and Fisheries in marketing of Agriculture, Forestry and Fisheries products; to further clarify matters connected to the management and utilization of statutory levies and agricultural industry trust funds; to provide for offences and penalties; for assignments and delegations; for the public trusteeship of the nation's agricultural and food markets; for monitoring, evaluation, assessment and reporting; for performance auditing; for the national monitoring of provinces; for inter-governmental relations and related structures; for public participation and co-ordination; for administrative justice; for the promotion of access to information; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows;-

Amendment of the Long Title of Act 47 of 1996

1. The Long Title of Act 47 of 1996 (hereinafter referred to as the "principal Act") is hereby amended by the substitution for the Long Title of the following:

> **"To authorize the establishment and enforcement of regulatory measures to intervene in the marketing of agricultural products, including the introduction of levies on agricultural products; to establish a National Agricultural Marketing Council;[and] to provide for [matters connected therewith.]<u>offences and penalties; for assignments and delegations; for the public trusteeship of the nation's agricultural and food markets; for monitoring, evaluation, assessment and reporting; for performance auditing; for the national monitoring of provinces; for inter-governmental relations and related structures; for public participation and co-ordination; for administrative justice; for the promotion of access to information; and to provide for matters connected therewith.</u>"**

Amendment of the Arrangement of Sections of Act 47 of 1996

2. The Arrangement of Sections of the principal Act is hereby amended by the substitution for the Arrangement of Sections of the following:

> "1. Definitions
> <u>1A.Public trusteeship of nation's agricultural and food markets</u>
> 2. Intervention in marketing of agricultural products
> <u>2A.The role of the Department in agricultural marketing</u>
> 3. Establishment of National Agricultural Marketing Council
> 4. Constitution of Council
> 5. Meetings and recommendations of Council

6. Vacation of office by member of Council
7. Committees of Council
8. Personnel of Council and conditions of service
8A. Financing of Council
9. Functions of Council
10. Request for establishment, continuation, amendment or repeal of statutory measure
11. Consideration of request
12. Recommendations to the **[Council]** Minister by provincial government
13. Establishment, amendment or revocation of statutory measure
14. Implementation of statutory measures
15. Introduction of levies
16. Control of exports of agricultural products
17. Conducting of pools
18. Records and returns
19. Registration
20. Register of directly affected groups
21. Inspectors
22. Prohibition of import and export of agricultural product
23. Transparency and confidentiality
23A.Regulations
24. Offences and penalties
25. Delegation of powers
25A. Assignment of administration of matters pertaining to agricultural and food markets to MECs
25B. Delegation of powers and assignment of duties by Minister to MECs
25C. Inventory of assignments and delegations
25D. Assignment between spheres of government
25E. Legal effect of delegation of power
25F. Delegation proceedings in writing
25G. Record of delegations
26. Regulation of assets, liabilities and contractual rights and obligations of control boards
26A. Agricultural industry trusts and trust funds
27. Repeal of Acts, and savings
27A.Agricultural tariffs, competition issues and related matters
27B. Reporting, monitoring, evaluation and assessment
27C. Performance auditing
27D. National monitoring of provinces
27E. Applicability of intergovernmental relations framework policy and legislation
27F. Governance and other structures
27G. Categories of intergovernmental structures
27H. Powers, functions and duties of intergovernmental structures
27I. Dissolution and reconstitution of intergovernmental structures
27K. Powers, functions and duties of Intergovernmental Forum on Agricultural and Food Markets
27J. Public participation and coordination
27K. Administrative justice

27 L. Promotion of access to information
27M.Copies of Act, Regulations and Notices to be made available
28. Short title
Schedule Acts repealed [section 27(1)]"

Amendment of section 1 of Act 47 of 1996

3. Section 1 of the Marketing of Agricultural Products Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by —

(a) the substitution for the definition of "agricultural product" of the following definition:

"**"agricultural product"** means primary and secondary products and their by-products declared as agricultural products in terms of subsection (2) and means all agricultural products listed in chapters 1 to 24; 44 and 50 of the Harmonized Commodity Description and Coding System (HS) of tariff nomenclature".

(b) the insertion after the definition of "agricultural product" of the following definition:

"**"agricultural and food markets"** means physical location for trading agricultural products including fresh produce markets, virtual markets that trade with agricultural products and food, and any other related platforms".

(c) the insertion after the definition of "agricultural and food markets" of the following definition:

"**"agricultural industry trust"** means a trust referred to in section 26A (1) of this Act";

(d) the insertion after the definition of "agricultural trust" of the following definition:

"agriculture" *means the practice of producing food and fiber , including hunting, raising livestock, forestry and fishing and the preparation and marketing of the resulting products".*

(e) the insertion after the definition of "agriculture" of the following definitions:

"assignment" means –
(a) the permanent transfer of a power, duty, role or function from the functional domain of national government to one or more provincial governments or public entity, and
(b) of the administration of a matter listed in Schedule 4 (Part A) of the Constitution,
and "**assign**" has a corresponding meaning";

(f) the insertion after the definition of "assign" of the following definition:

"**"competent authority"**" means the Minister or any duly assigned person or institution.

(g) the substitution for the definition of "Department" of the following definition:

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

(h) the insertion after the definition of "food security" of the following definition:

"Head of Department" means – Head of the Department responsible for Agriculture in the provincial government; and

(i) the insertion after the definition of "market" of the following definition:

"**"MEC"** means the Member of the Provincial Executive Council, and "**MECs**" has a corresponding meaning;

Insertion of Section 1A in Act 47 of 1996

4. The following section is inserted in the principal Act after section 1:

"**Public trusteeship of nation's agricultural and food markets**

1A.(1) As the public trustee of the nation's agricultural and all other food markets the National Government, acting through the Minister, must ensure that these agricultural and food markets are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.

(2) Without limiting subsection (1), and without detracting from the mandate of the Director General, as contemplated in this Act, the Minister is ultimately responsible to ensure that all agricultural and food markets are equitably accessed and used beneficially in the public interest, while—

(a) ensuring long term national food security;

(b) promoting economic and social development; and

(c) promoting environmental values."

Amendment of section 2 of Act 47 of 1996

5. Section 2 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The objectives of this Act are –

(a) the increasing of market access for all producers and value chain players**[;]** by providing market access support measures such as provision of marketing information, marketing infrastructure, marketing skills and any other relevant intervention aimed at enhancing competitiveness of and efficiency in the marketing value chain;

(b) the promotion of efficiency of the marketing of agricultural, forestry and fisheries products**[;]** through enhancement of value chain competitiveness;

(c) the optimization of export earnings from agricultural, forestry and fisheries products**[;]**,through the establishment of trade support/promotion measures;

(d) the enhancement of the viability of the agricultural, forestry and fisheries sectors**[.]** through diversification, value addition, creation of new rural agro-industries and innovation in agro-food value chains;

(e) the establishment of an agricultural economic and market research program aimed at enhancing the competitiveness of South African agricultural, forestry and fisheries sector in global value chains/markets; and

(f) the creation of a provision for the implementation of trade agreements and trade measures relating to agriculture, forestry and fisheries."

Insertion of Section 2A in Act 47 of 1996

6. The principal Act is hereby amended by the insertion after section 2 of the following section:

"**The role of the Department in marketing of agricultural, forestry and fisheries**

2A.(1) The Department must:

(a) promote and facilitate the establishment of marketing groups and marketing cooperatives for producers and facilitate their integration with the mainstream commercial commodity associations as a strategy to link all producers to markets;

(b) establish marketing support programs to support producers and agri-businesses;

(c) implement a marketing skills development program to assist producers to effectively participate in agricultural, forestry and fisheries markets;

(d) collect, analyze and disseminate marketing information to all role-players across the value chain;

(e) facilitate the development and implementation of a program of linking producers to markets in collaboration with other industry stakeholders;

(f) promote and facilitate investment in critical marketing infrastructure to facilitate value addition and agro-processing;

(g) facilitate access to logistics network to link producers with mainstream markets;

(h) liaise with the NAMC on the investigation of requests for establishment, continuation, amendment or repeal of statutory measures and facilitate approval thereof;

(i) liaise with the NAMC to monitor the use of agricultural industry trust funds and manage the reporting processes between the Minister and the Ministerial Trustees; and

(j) direct the development and implementation of a national marketing policy and strategy for agricultural, forestry and fisheries products in relation to national economic, social and development policies and international trends and developments."

Insertion of Section 3A

7. The following section is hereby inserted after section 3 of the principal Act:

"**Objects of the Council**

3A. The Council shall:

(1) serve as an advisory body to the Minister on matters relating to statutory measures and agricultural industry trusts;

(2) be a government owned agency responsible for undertaking agricultural economic and marketing research;

(3) serve as a trade promotion organization for South Africa's agricultural, forestry and fisheries products in global markets

(4) coordinate the marketing of agricultural, forestry and fisheries products both domestically and internationally; and

(5) streamline marketing, regulatory and developmental activities within the broader agricultural, forestry and fisheries markets.

Amendment of section 4 of Act 47 of 1996

8. Section 4 of the principal Act is hereby amended by —

(a) the substitution for subsection (2) of the following subsection:

"(2) The members of the council **[shall]** must be persons who have a research background and practical knowledge and experience in one or more of the following, namely-

(a) the commercial production, marketing and trade of agricultural, forestry and fisheries products;

(b) agricultural product-related trade and industry, and agri-business management;

(c) agricultural economics, including agricultural marketing and international agricultural trade, agricultural economic and marketing research as well as research on market access for smallholder producers;

(d) consumer issues relating to agricultural, forestry and fisheries products, including issues relating to previously disadvantaged communities; and

(e) the production and marketing of agricultural, forestry and fisheries products by small scale and previously disadvantaged producers.";

(b) the substitution for subsection (8) of the following subsection:

"(8) When the **[first]** council is constituted in terms of this Act, **[half of the members shall, subject to section 6, be appointed for a period of four years, and the other half for a period two years, after which]** all appointments to the Council shall be for a period not exceeding four years."; and

(c) the deletion of subsection (11)

Amendment of section 8 of Act 47 of 1996

9. Section 8 of the principal Act is hereby amended by—

(a) the addition after subsection (1)(a) of the following subsections:

"(b) The personnel referred to in subsection (1)(a) shall be under the control of the Chief Executive Officer of the council;

(c) The Chief Executive Officer must be appointed by the Council;

(d) The Chief Executive Officer must be appointed on contract basis on such terms and conditions as the Council may decide;

(e) A person may be appointed as Chief Executive Officer for not more than two consecutive terms, with each term not exceeding five years.

(f) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Council;

(g) The Council and the Chief Executive Officer may when circumstances dictate, in writing and by agreement, amend the performance agreement on an annual basis."

(h) The Chief Executive Officer is accountable to the Council and responsible for—

(i) the management of the council, subject to the direction of the Council Members;
(ii) the day to day administrative functioning of the Council;
(iii) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Minister;
(iv) the appointment of members of personnel contemplated in paragraph (a);
(v) reporting to the Council on his or her activities in terms of subparagraphs (i), (ii), (iii) and (iv).

(i) The Chief Executive Officer may, with the approval of the Council, enter into agreements with persons for the performance of specific duties or the provision of specific services."

Amendment of section 8A of Act 47 of 1996

10. Section 8A of the principal Act is hereby amended by the substitution for paragraph (4)(a) of the following paragraph:

"(a) The **[chairperson]**Chief Executive Officer of the Council is the accounting officer charged with the responsibility of accounting for all monies received and the utilization thereof."

Amendment of section 9 of Act 47 of 1996

11. Section 9 of the principal Act is hereby amended by:

(a) deletion of paragraph (e) in subsection (1).

(b) insertion of the following paragraphs after paragraph (f) in subsection (1):

(g) shall undertake applied agricultural economic research and analysis, which includes:
(i) agricultural economics and resource economics research;
(ii) agricultural marketing and trade research;
(iii) agricultural market intelligence research; and
(iv) agricultural production economics research including farm surveys.

(h) shall establish and maintain a permanent Food Price and Input Cost Monitoring system;

(i) shall undertake international agricultural trade research to provide technical support to the department and Minister in international trade negotiations;

(j) shall establish an international trade support unit to undertake generic promotion of South African agricultural, forestry and fisheries products in international markets in collaboration with industry stakeholders;

(k) shall undertake economic research aimed at enhancing market access for producers of agricultural, forestry and fisheries products;

(l) shall conduct demand-driven marketing research for the government and the industry or clients outside of the government;

(m) shall monitor the use of agricultural industry trust funds and manage the reporting processes between the Minister and the Ministerial Trustees;
(n) shall provide an integrated marketing function nationally to stimulate the demand of agricultural, forestry and fisheries products locally and internationally; and
(o) must prepare the budget of its expenses on an annual basis for approval by the Minister."

Substitution of section heading in section 12 of Act No. 47 of 1996

12. The heading of section 12 of the principal Act is hereby amended by the substitution for the heading of the following:

"Recommendations to the [Council] Minister by provincial government"

Amendment of section 15 of Act 47 of 1996

13. Section 15 of the principal Act is hereby amended by the addition of the following subsections:

"(7)(a) While a levy is in force, the Minister may appoint one or more Auditors to conduct an audit of the affairs of all or any of the following:
(i) some or all of the persons collecting the levy,
(ii) some or all of the persons who are or may be liable to pay the levy,
(iii) both (i) and (ii).
(b) An officer or employee of any of the following persons or organizations must not be appointed as an Auditor:
(i) any industry organization,
(ii) any person engaged in the collection of levies,
(iii) any person who is or may be liable to pay a levy.
(c) if a levy is imposed on quantities of a commodity imported into the republic, it must be proven that:—
(i) the organization collecting the levy has regard to the importers' views on the spending of the levy;
(ii) the importers benefit from the levy;
(iii) the imposition of the levy on the imported commodity is not contrary to South Africa's international obligations;
(iv) that the organization, by virtue of its membership and structure, represents adequately the views and interests of the persons who are primarily responsible for paying the levy; and
(v) that the organization has in place adequate systems for accounting to the Minister and persons who are primarily responsible for paying the levy, of its receipt and expenditure.

(8)(a) A commodity association or group may not spend any amount of the levy for commercial or trading activity.
(b)Subject to paragraph (a) a levy can only be used for:

(i) research, including market research relating to the commodity or commodities concerned, or in relation to any matter connected therewith,
(ii) the development of products derived from the commodity concerned,
(iii) the development of markets for the commodity or product derived from the commodity,
(iv) the promotion (including generic advertising) of the industry concerned, the commodity or product derived from the commodity,
(v) education, information, or training related to the commodity concerned,
(vi) the advancement of transformation in the industry concerned,
(vii) day to day administration of only the activities that are linked to the objectives of the levy as specified in the Notice (not being the administration, direct or indirect, of any commercial or trading activity undertaken by the organization or on its behalf), and
(viii) any other purpose the Minister may consider fit."

Amendment of section 16 of Act 47 of 1996

14. Section 16 of the principal Act is hereby amended by-

(a) the substitution for the heading of section 16 of the following heading:

"**Control of exports and imports of agricultural, forestry and fisheries products**"

(b) the substitution for subsection (1) of the following subsection:

"(1) The Minister may by notice under section 13 direct a person who wishes to export or import the agricultural product or the class of agricultural product to which that notice pertains, to dispose of that product in the manner determined in the notice, subject to such conditions as may be specified in the notice."

(c) the substitution for subsection (3) of the following:

"(3) In formulating recommendations with regard to a direction contemplated in subsection (1) the Council **[shall]** must have regard to –

(a) the need to encourage some diversity of marketing channels to foreign markets or in respect of different classes of agricultural products;

(b) whether value will be added to the agricultural product before it is exported;

(c) whether the potential exporters have invested from the commencement of this Act in the development of the market to which the exports relate or intend to develop a new market; and

(d) whether the exporters have facilitated or have demonstrated an intention to facilitate access to the market by small-scale producers."

(d) the addition after subsection (3) the following subsection:

"(4) The Director-General may allow the importation into or the exportation from the Republic, of agricultural, forestry and fisheries products under the authority of a permit issued by the Director-General on such conditions as the Director-General may determine and set out in such a permit."

Repeal of section 17 of Act 47 of 1996

15. Section 17 of the principal Act is hereby repealed.

Insertion of section 23A in Act 47 of 1996

16. The following section is hereby inserted in the principal Act after section 23:

"**Regulations**

23A.(1) The Minister may, by notice in the *Gazette* and after consultation with the Council, promulgate regulations not inconsistent with this Act pertaining to —

(a) declaration of any product to be an agricultural product for the purposes of this Act, contemplated in section 1(2)(a) of this Act;

(b) the establishment, amendment or revocation of a statutory measures, contemplated in section 13 of this Act;

(c) entrusting to any juristic person or body of persons, institution or the Department the implementation, administration and enforcement of one or more statutory measures in respect of any agricultural product or class thereof, contemplated in section 14 of this Act;

(d) a levy on an agricultural product or class, contemplated in section 15(4)(a) of this Act;

(e) conditions regarding the export and imports of agricultural, forestry and fisheries product or the class of agricultural, forestry and fisheries product contemplated in section 16 of this Act;

(f) records and returns contemplated in section 18 of this Act;

(g) registration contemplated in section 19 of this Act; and

(h) any other matter that is reasonably necessary or expedient to achieve the objects of this Act.

(2) The Minister must, by notice in the *Gazette*, make regulations not inconsistent with this Act pertaining to –

(a) nominations for members of Council, contemplated in section 4 of this Act; and

(b) registration of directly affected groups, contemplated in section 20 of this Act; and

(c) any other matter that is reasonably necessary or expedient to achieve the objects of this Act.

(3) Any amendment to –

(a) a schedule to;

(b) any regulation in terms of;

(c) any notice under; or

(d) practice note

in terms of this Act, and relating to State revenue or expenditure, must be made in consultation with the Minister of Finance.

(4) Any regulation or notice contemplated in this section may provide that any person contravening such regulation or failing to comply therewith is guilty of an offence and liable on conviction to a fine, or to imprisonment not exceeding two years, or both."

Amendment of section 25 of Act 47 of 1996

17. Section 25 of the principal Act is hereby repealed.

Insertion of Section 25A in Act 47 of 1996

18. The following section is inserted in the principal Act after section 25:

"**Assignment of administration of matters pertaining to agricultural and food markets to MECs**

25A. The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC responsible for agriculture, in writing assign a matter or matters relating to the administration of matters pertaining to implementation of this Act."

Insertion of Section 25B in Act 47 of 1996

19. The following section is inserted in the principal Act after section 25A:

"**Delegation of powers and assignment of duties by Minister to MECs**

25B.(1) The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC responsible for agriculture, in writing delegate any power or assign any duty conferred on him or her by or under this Act, other than—

(a) the power to publish a notice contemplated in section 23A; and

(b) the power to make regulations contemplated in section 23,to the concerned.

(2) Such delegation or assignment, or the execution of such power, as the case may be, does not prevent the carrying out of the assigned duty by the Minister.

(3) The Minister may at any time withdraw or amend, in writing, a delegation or assignment as contemplated in subsection (1).

(4) The delegation of any power or the assignment of any duty does not divest the Minister of the accountability concerning the execution of the delegated power or carrying out of the assigned duty, as the case may be."

Insertion of Section 25C in Act 47 of 1996

20. The following section is inserted in the principal Act after section 25B:

"**Inventory of assignments and delegations**

25C.(a) The Minister, and at provincial level, every MEC, must establish and maintain an inventory of all assignments and delegations made in accordance with this Act by the Minister to—

(i) a MEC;

(ii) the head of the Department;

(iii) an official of the Department;
(iv) an official of another Department of the National Government or a Provincial Government, as the case may be; and
(v) an entity established as contemplated in this Act.

(b) The inventories contemplated in this section must also include all sub-delegations.

(c) The head of the National Department and the head of every Provincial Department must publish an updated version of the inventory contemplated in this section on the departmental website concerned on the first day of every financial year."

Insertion of Section 25D in Act 47 of 1996

21. The following section is inserted in the principal Act after section 25C:

"**Assignment between spheres of government**

25D.(1) Any assignment to an MEC of a matter contemplated in this Act must be in accordance with the assignment and delegation framework that must be developed in consultation with all the MECs responsible for agriculture, and published in the Gazette within a period not exceeding six months after the commencement of this Act.

(2) Any person or entity effecting an assignment must—
(a) ensure the availability of sufficient funding and other resources required for the full and effective implementation of such assignment; and
(b) monitor and review its implementation."

Insertion of Section 25E in Act 47 of 1996

22. The following section is inserted in the principal Act after section 25D:

"**Legal effect of delegation of power**

25E.(1) The delegation of a power does not prevent a competent authority from exercising that power, subject to sub-section (3).

(2) The delegation of a power does not relieve the competent authority from accountability for the exercise of the power.

(3) When an MEC exercises a power that has been delegated to him or her, the exercise of the power has the same force as if it had been exercised by the competent authority.

(4) Any activity in the exercise of a power by an MEC, which was carried out within the scope of the delegation, remains in force and is not invalid by reason—
(a) of the competent authority electing subsequent to the activity contemplated in this subsection, to exercise that power; or
(b) a subsequent amendment to, or withdrawal of, the delegation."

Insertion of Section 25F in Act 47 of 1996

23. The following section is inserted in the principal Act after section 25E:

"**Delegation proceedings in writing**

25F.(1) All proceedings relating to any delegation contemplated in this Act, must be in writing.

(2) The record of proceedings contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times."

Insertion of Section 25G in Act 47 of 1996

24. The following section is inserted in the principal Act after section 25F:

"**Record of delegations**

25G.(1) Both the competent authority and the organ of state to whom a power has been delegated, must compile and maintain an updated inventory of all delegations made as contemplated in this Act, as contemplated in section 25F.

(2) The inventory contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times."

Amendment of section 26 of Act 47 of 1996

25. Section 26 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

(3)(a) On dissolution of any scheme in terms of the Marketing Act, 1968 (Act No. 59 of 1968), any surplus or shortfall of assets over liabilities of that scheme shall be dealt with in terms of the applicable scheme;

(b) If the Minister, on advice from the Council or on own accord, is not satisfied that the surplus referred to in paragraph (a) is not being dealt with in terms of the applicable scheme, the Minister shall determine how such surplus is to be dealt with.

Insertion of Section 26A

26. The following section is hereby inserted after section 26 of the principal Act:

"**Agricultural industry trusts and trust funds**

26A. (1) All trusts that received funds originating from the collection of levies imposed under sections 46A and 84A of the Marketing Act, 1968 (Act No. 59 of 1968), must align their objectives and activities with the objectives mentioned in section 2".

(2) The Minister may —

(a) by notice in the *Gazette,* on the advice of the Council or on own accord, issue regulations on how trust funds should be utilized to achieve the objectives of this Act;
(b) at any time, on advice from the Council or on own accord, order any agricultural trust to stop utilizing the trust funds referred to in subsection (1) if such a trust fails to comply with any of the provisions of this Act or any regulations issued in terms of this Act; and
(c) issue a directive to any agricultural industry trust to initiate amendments to and review the agricultural trust deeds of such a trust, provided that such a directive is not inconsistent with the objectives of this Act and those of the Trust Property Control Act, 1988 (Act. No. 57 of 1988).

(2) Every trust which administers agricultural industry trust funds must—
(a) within three months before the beginning of its financial year, submit to the Minister for approval a business plan for its activities and the budget for its subsequent financial year."
(b) within six months after the end of its financial year, submit to the Minister a report on its activities and finances during its preceding financial year."

Insertion of section 27A in Act 47 of 1996

27. The principal Act is hereby amended by the insertion after section 27 of the following section:

"**Tariffs on agricultural, forestry and fisheries products, competition issues and related matters**

27A.(1) The department and the Council shall provide advice on the determination and implementation of any tariff policy position on agricultural, forestry and fisheries products as proposed by the International Trade Administration Commission (ITAC) in accordance with the department's tariff policy for agricultural, forestry and fisheries products.

(2) The Minister shall, subject to applicable provisions of Competition Act, 1998 (Act No. 89 of 1998), be consulted for advice during the Competition Commission's investigations relating to mergers and acquisitions that affect the agricultural, forestry and fisheries industries and any other matter relating to uncompetitive practices in agricultural, forestry and fisheries markets, before a final decision is taken."

Insertion of Section 27B in Act 47 of 1996

28. The following section is inserted in the principal Act after section 27A:

"**Reporting, monitoring, evaluation and assessment**

27B. The Minister must, by notice in the Gazette and within six months after commencement of this Act, taking into account national and provincial norms and standards, publish a framework—

(a) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of all matters relating to agricultural and food markets; and
(b) establishing the necessary mechanisms, processes, procedures and indicators, to report on, monitor, evaluate, assess, and determine the impact of the exercise of powers, the performance of functions and the execution of duties in accordance with this Act and any other law by entities in the public and private agricultural sector."

Insertion of Section 27C in Act 47 of 1996

29. The following section is inserted in the principal Act after section 27B:

"**Performance auditing**

27C.(1) 1) All programmes and projects executed, grants allocated, funds allocated, delegations or assignments effected, service level agreements or public private partnerships entered into, or any other administrative action performed in terms of this Act, are subject to monitoring, evaluation, impact assessment and the submission of a written report by the structures as established in terms of section 27F of this Act.

(2) The structures established in terms of section 27F of this Act must—
(a) in respect of national and provincial frameworks for monitoring, evaluation and impact assessment—
(i) be guided by such frameworks;
(ii) develop structures and systems as required in terms of such frameworks; and
(iii) submit reports as required in terms of such frameworks; and
(b) take into account any written—
(i) report that must be submitted from time to time by a commodity organisation; and
(ii) submission, which relates to the provision of agricultural marketing services by an organisation, made by any interested party.

(3) On receipt of the written report referred to in subsection (1), every Head of a Department—
(a) may take whatever steps he or she may deem appropriate;
(b) must inform the Minister or the delegated authority, as the case may be, in writing of the steps he or she has taken, and of the reasons for such steps; and
(c) must inform the organisation concerned in writing of the steps he or she has taken, and of the reasons for such steps."

Insertion of Section 27D in Act 47 of 1996

30. The following section is inserted in the principal Act after section 27C:

"**National monitoring of provinces**

27D.(1) The Minister must, in consultation with the MECs responsible for agriculture, establish mechanisms, processes and procedures to monitor Provincial Governments in respect of their performance of the agricultural marketing function.

(2) In the event of the National Department submitting a report to the Minister in respect of the non-delivery or the insufficient delivery of agricultural marketing services by a Provincial Government, the Minister may, after consultation with the MEC responsible for agriculture—
(a) issue a directive to the Provincial Government concerned describing the extent of its failure to provide the specified agricultural marketing service and stating any steps the Provincial Government must follow in order to meet its required obligations; or
(b) determine that one or more specified provincial agricultural marketing services must be performed by the National Department or an agricultural service provider or an agricultural service provider appointed by the national Department, for such period and subject to such conditions as the Minister may determine.

(3) In the event of the Minister electing to proceed in terms of subsection (2)(b), the Minister must send written notice to the Provincial Government informing the Provincial Government of—
(a) the nature and extent of services to be performed by the National Department or agricultural service provider;
(b) the reason(s) for the taking over of the performance of the specified service(s); and
(c) the date on which the service will be taken over."

Insertion of Section 27E in Act 47 of 1996

31. The following section is inserted in the principal Act after section 27D:

"**Applicability of intergovernmental relations policy framework and legislation**

27E. All intergovernmental relations in respect of matters pertaining to agricultural and food markets between the National Department and every MEC responsible for agriculture are governed by the relevant national policy framework and legislation, as well as provincial transversal policy framework and legislation regulating intergovernmental relations."

Insertion of Section 27F in Act 47 of 1996

32. The following section is inserted in the principal Act after section 27E:

"**Governance and other structures**

27F.(1) The Minister may, at the request of the NAMC, a provincial Head of Department, or at the Minister's own discretion, establish by notice in the

Gazette, one or more governance and other structures to assist in the achievement of the objects and the realisation of the provisions of this Act.

(2) The notice contemplated in subsection (1) must stipulate—

(a) the composition of the structure concerned;

(b) membership of the structure;

(c) the terms of reference;

(d) procedural matters;

(e) reporting requirements; and

(f) any other matter that the Minister may deem appropriate for the effective functioning of such structure."

Insertion of Section 27G in Act 47 of 1996

33. The following section is inserted in the principal Act after section 27F:

"**Categories of intergovernmental structures**

27G. The structures contemplated in section 27F are—

(a) governance structures consisting of the National Department, Provincial Government departments, organs of state, and public entities;

(b) stakeholder consultative forums consisting of the National Department, agricultural service providers and other interest groups, and in the discretion of the Minister, also other provincial government departments, organs of state, and public entities; and

(c) any other structures that the Minister may establish by notice in the *Gazette*."

Insertion of Section 27H in Act 47 of 1996

34. The following section is inserted in the principal Act after section 27G:

"**Powers, functions and duties of intergovernmental structures**

27H. The structures established in terms of section 27F—

(a) must, in respect of their specific functional domain, advise the Minister on—

(i) agricultural marketing policy;

(ii) achieving operational uniformity of programs, projects and services relating to agricultural and food markets;

(iii) any matter related to agricultural and food markets or the rendering of related services in respect of which the Minister requests advice;

(iv) any other function related to the objects and other provisions of this Act as determined in the establishment notice of the structure concerned;

(v) any other matter related to the objects and other provisions of this Act as requested by the Minister; and

(vi) the performance of any other function or the execution of any duty imposed on it by this Act or any other law;

(b) must—

(i) liaise with national and provincial organizations concerned with agricultural and food markets or the rendering of related services; and

(ii) exercise any power, perform any functions and execute any duty conferred on it by this Act or any other law; and

(c) may generally do everything which is deemed necessary or expedient to achieve the objects of this Act as referred to in section (2).

Insertion of Section 27I in Act 47 of 1996

35. The following section is inserted in the principal Act after section 27H:

"**Dissolution and reconstitution of intergovernmental structures**

27I. The Minister may, after consultation with the structure concerned, at any time, by notice in the *Gazette*, dissolve or reconstitute any of the structures provided for in section 27F."

Insertion of Section 27J in Act 47 of 1996

36. The following section is inserted in the principal Act after section 27P:

"**Public participation and coordination**

27J.(1) The Minister, in consultation with the MECs responsible for agriculture within each province, must, in respect of the development and coordination of agricultural and food markets, as regards the—

(a) formulation of policy;

(b) drafting of legislation;

(c) determination of priorities; and

(d) establishment of structures,

implement systems to provide for consultation and inclusive participation of civil society, communities, individuals, and organs of state.

(2) The Minister, in consultation with the MECs responsible for agriculture within each province, must, in respect of the development and coordination of agricultural and food markets at national and provincial level, take into consideration the—

(a) national policy and statutory framework; and

(b) transversal provincial policy and statutory framework as applicable in the province concerned."

Insertion of Section 27K in Act 47 of 1996

37. The following section is inserted in the principal Act after section 27J:

"**Administrative justice**

27K. The national Department responsible for agriculture, forestry and fisheries, every provincial department responsible for agriculture and every intergovernmental structure established as contemplated in this Act, must exercise its powers, perform its functions and carry out its duties in full compliance with the constitutional, national legislative and common law framework relating to administrative justice."

Insertion of Section 27L in Act 47 of 1996

38. The following section is inserted in the principal Act after section 27K:

"**Promotion of access to information**

27L. The national Department responsible for agriculture, forestry and fisheries, every provincial department responsible of agriculture and every intergovernmental structure established as contemplated in this Act, must comply with the constitutional and national legislative framework that promotes access to information."

Insertion of Section 27M in Act 47 of 1996

39. The following section is inserted in the principal Act after section 27L:

"**Copies of Act, Regulations and Notices to be made available**

27M. The Minister must ensure that an electronic version of this Act and all Regulations made under, and all notices issued in terms of, this Act, are—

(a) maintained and updated on a regular basis; and

(b) made available to the public at large for their access and perusal, which may be downloaded electronically in digital format free of charge."

Short title

40. This Act is called the Marketing of Agricultural Products Amendment Act, 2013 and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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