

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. R. 3484

2 June 2023

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

REGULATIONS REGARDING CONTROL OF THE EXPORT OF TREE NUTS

The Minister of Agriculture Land Reform and Rural Development has, under section 15 of the Agricultural Product Standards Act, 1990 (Act 119 of 1990), made the regulations in the Schedule.



A.T. Didiya
Minister of Agriculture, Land Reform and Rural Development

SCHEDULE**Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning, and -

"address" means a physical address in the Republic of South Africa and includes the street or road number or name, and the name of the town, village or suburb and in case of a farm or silo, the name or number of the farm or silo and of the magisterial district in which it is situated;

"assignee" means a person, undertaking body, institution, association or board designated as under section 2(3) of Agricultural Product Standards Act No.119 of 1990;

"cashew nuts" means unshelled edible seeds of the tree *Anacardium occidentale*;

"certificate" means a certificate that may be issued either in paper format (including electronically prepared) or in verified electronic format which describe and attest to conformity of a consignment of regulated agricultural products to stipulated requirements as set out in regulation 6;

"consignment" means a quantity of tree nuts of the same grade belonging to the same grade or class belonging to the same owner and which is delivered at any one time under cover of the consignment note, delivery note or receipt note, is delivered by the same vehicle or bulk container or railway truck, or which is loaded from the same bin or into different grades or classes, each quantity of each of the different grades or classes;

"consignment note" means a consignment note approved by the Executive Officer or Assignee;

"container" means a bag or bulk container in which tree nuts are packed, stored or transported;

"Department" means the Department of Agriculture, Land Reform and Rural Development;

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

"fees" means a gazetted amount payable for inspection and analysis;

"Food Business Operator" (FBO) means the person or persons responsible for ensuring that the prescribed requirements of these regulations are met within the food business under his or her control and include both the management of the food business as well as the person with overall authority on site or in the specific establishment;

"Food Business Operator code" means an alpha-numeric code which needs to be uniquely identified and has been registered with the Executive Officer of the Act by each responsible person (FBO) producing or handling in any way products of plant origin destined for the export market. Examples include farms, fields, processing facilities, storage units, transportation, etc.;

"hazel nuts" means nuts of any of the species of the genus *Corylus*;

"inspector" means the Executive Officer or an officer under his control, or an Assignee or an employee of an Assignee;

"ISO" means International Organization for Standardization;

"macadamia nuts" means unshelled edible seeds of the genus *Macadamia*;

"National Reference Laboratory" means an official laboratory of the Department of Agriculture, Land Reform and Rural Development and the Perishable Products Export Control Board (PPECB) that has been nominated in writing by the Executive Officer for the testing of compliance as envisaged in terms of regulations 6(1) and 7(1);

"Officially Recognized Laboratories" means any laboratory that is not a National Reference Laboratory and that is nominated by the Executive Officer in writing as being suitable or required for the testing of compliance as envisaged in terms of regulations 6(1) and 7(1);

"pecan nuts" means unshelled edible seeds of the tree *Carya illinoensis*;

"the Act" means the Agricultural Product Standards Act, 1990 (Act 119 of 1990);

"tree nuts" means cashew nuts, hazelnuts, macadamia nuts, pecan nuts, walnuts and other nuts; and

"walnuts" means unshelled edible seeds of the tree *Juglas nigra*.

Prohibition on the export of Tree Nuts

2. (1) Subject to the provisions of subregulation (2) no person shall export Tree nuts from the Republic unless each quantity thereof has been approved by the Executive Officer for that purpose.

(2) Tree nuts which are –

- (a) exported in a consignment of less than 20 kg; and
- (b) taken in as provisions for consumption abroad a conveyance to another country, shall be exempted from the prohibition set out in subregulation (1).

(3) An approval in terms of subregulation (1) may also be given by an Assignee.

Application for approval for export

3. (1) An application for an approval in terms of section 4 of the Act for the export of tree nuts shall be directed in writing to the Executive Officer or Assignee, as the case may be.

(2) Such an application shall be made at least three working days before the intended date of export.

(3) The following particulars shall be supplied when such application is made:

- (a) The name and address of the applicant and where applicable, of his agent or exporter.
- (b) The grade and the class of the tree nuts.
- (c) The applicable Food Business Operator code.
- (d) The number of containers and the mass of the tree nuts in the consignment concerned.
- (e) The intended date of export and the port from which the consignment concerned shall be exported.
- (f) The destination of the consignment concerned.
- (g) The address of the premises where the consignment concerned may be inspected and the date and time when the consignment will be ready for inspection.

- (h) Any other pertinent information concerning the consignment.

Presentation for inspection

4. (1) Each consignment of tree nuts intended for export which has to be presented for inspection in terms of these regulations shall, prior to the export thereof, be approved for export by an inspector: Provided that the consignment of tree nuts concerned shall be presented for inspection –

- (a) at least 12 hours prior to the intended time of export or as otherwise arranged with the Executive Officer or Assignee; or
- (b) when the consignment is ready for export at the processing facilities before such tree nuts are loaded into a bulk container or onto a truck for transport to a port of export.

(2) A consignment referred to in subregulation (1) shall be presented for inspection and be stored in such a manner that --

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

Consignment Note

5. (1) Every consignment of tree nut destined for export shall when submitted for inspection, be accompanied by a consignment note completed clearly, legibly, fully and correctly.

(2) All the copies of such a consignment note shall have the same serial number and one copy thereof shall be retained by the Department or Assignee, as the case may be.

Procedure at inspection

6. (1) An inspector may open as many containers in a consignment of tree nuts intended for export as he/she may deem necessary and inspect or analyse or have analysed the contents thereof in such a manner as he/she may deem fit.

(2) The result of an inspection or analysis in terms of subregulation (1) shall be deemed to be applicable to the whole consignment of tree nuts from which such containers were abstracted.

- (3) (a) An inspector may re-inspect a consignment of tree nuts which has already been approved for export and may confirm or withdraw any previous approval with regard to the consignment concerned.
- (b) The provisions of regulation 4 and this regulation shall *mutatis mutandis* apply to such re-inspection: Provided that no inspection fee shall be payable in respect of a re-inspection carried out on demand of an inspector.

Assessment of the competence of testing Laboratories involved in the export of tree nuts

7. (1) For the purpose of analysis as required by regulation 6(1), analysis may be conducted by a National Reference Laboratory or an Officially Recognized Laboratories.

(2) The Executive Officer shall nominate a National Reference Laboratory or Officially Recognized Laboratory in writing to conduct analyses as set out in subregulation (1).

(3) The said laboratories shall be considered on the basis of their suitability, which suitability shall *inter alia* be based on the following criteria:

- (a) A reasonable demonstrable knowledge or expertise in the testing and analysis of tree nuts;
- (b) Compliance with the general criteria for testing laboratories as laid down in ISO/IEC 17025: 2017;
- (c) Annual participation in appropriate proficiency testing schemes for analysis which conform to the requirements as laid down in the document titled "The international harmonized protocol for the proficiency testing of analytical laboratories";
- (d) Whenever available, use methods of analysis which have been validated according to the principles as laid down by the *Codex Alimentarius Commission*; and
- (e) Use internal quality control procedures as described in the document titled "Harmonized Guidelines for internal Quality Control in Analytical Chemistry Laboratories".

(4) In addition to compliance with suitability criteria as set out in subregulation (3) an Officially Recognized Laboratory shall be considered for nomination on the following grounds:

- (a) Of necessity in as far as fulfillment of capacity as determined from time to time by the Executive Officer.
- (b) On a three-year period, the period which may be considered for renewal upon assessment by the Executive Officer.

Fees for inspection and analysis

8. The following fees shall be payable for inspection and analysis:

- (1) The determined inspection fee when tree nuts are presented for inspection.
- (2) The fee for testing and analysis of samples shall be charged by the laboratory concerned and this shall include incidental costs such as courier or transport fee.

Approvals and rejections

9. (1) If an inspector approves the export of a consignment of tree nuts he/she shall --

- (a) mark each container in that consignment with a mark of approval; or
- (b) endorse the consignment note of that consignment to such effect; and
- (c) issue a certificate to the effect that such consignment has been approved for export.

(2) If a consignment of tree nuts has been rejected for export purposes as a result of an inspection or re-inspection carried out at a port of export, the custodian of that consignment shall as soon as feasibly remove it from the port area concerned.

(3) Notwithstanding the provisions of subregulation (2), an inspector may, in the case of a consignment in connection with which an appeal is lodged --

- (a) direct that such consignment shall not without his/her consent be removed from the place where the inspection or re-inspection concerned was carried out; and
- (b) apply any mark to the containers concerned which he may deem necessary for identification purposes.

Appeal

10. Any person may lodge an appeal against a decision or direction of the Executive Officer or an Assignee in terms of section 10(1) of the Act or as prescribed in the Appeal Procedures Regulations promulgated under the Act, to the Director-General.

Offences and penalties

11. Any person who contravenes or fails to comply with the provisions of these regulations shall be guilty of an offence and shall be liable to a fine or imprisonment as set out in section 11 of the Act.

Commencement

12. These regulations shall come into operation on the date of publication.

Repeal

13. Regulations published by Government Notice No. R. 65 of 29 January 2016 are hereby repealed from the date of commencement of these regulations.