



# agriculture, forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

Directorate Food Safety and Quality Assurance, Department of Agriculture, Forestry and Fisheries  
Private Bag X343, Pretoria 0001, [Tel: 012 319 6023](tel:0123196023). Fax: 319 6055. E-mail: [BillyM@daff.gov.za](mailto:BillyM@daff.gov.za)

27 February 2017

**TO: ALL AFFECTED STAKEHOLDERS  
DESIGNATED ASSIGNEES**

## **INTERPRETATIVE GUIDELINE REGARDING INSPECTION OF REGULATED AGRICULTURAL PRODUCTS BY DESIGNATED ASSIGNEES IN THE REPUBLIC OF SOUTH AFRICA**

This interpretative guideline seeks to provide clarity with respect to obligations that sellers owe towards the successful implementation of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) ("the Act") and its subordinate legislation.

It is first of all important to take cognisance of the scope of the definition for 'sell' as defined in the Act:

*"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;*

### **1. RESPONSIBILITIES AND OBLIGATIONS OF THE SELLER - CONTROL OVER SALE OF REGULATED AGRICULTURAL PRODUCTS**

1.1 In terms of section 3 (1) of the Act, no regulated agricultural products shall be presented for sale at any point within in the Republic of South Africa, unless amongst others, the product complies with the prescribed standards regarding the quality thereof, or a class or grade thereof, and the product is packed, marked and labelled in the prescribed manner. In other words, the local sale of all regulated agricultural products is conditional on its compliance with the set regulations as published in terms of section 15 of the Act.

1.2 The assignee designated in terms of section 2(3) of the Act shall for purposes of the application of the Act, *inter alia*, inspect, grade and sample for quality control in order to establish compliance of the regulated agricultural products with the regulations concerned. The enforcement of the promulgated regulations by assignees shall be carried out in terms of section 3A (1) of the Act.

1.3 No seller shall obstruct or interfere with the regulatory work of the designated assignees. 'Seller' in this instance, refers to a place or conveyance or person responsible for the sale of the regulated agricultural products, and shall include but not limited to the manager, representative, agent, employee or

member of the family of a person. Examples include: Market Agents, Market Masters, Retailers and Wholesalers, Representatives of the owners, Owners, Importers, Silos, Pack houses, Abattoirs, Ports of Entry, Bakeries, Manufactures, Factories, Warehouses, Distribution Centres, etc.

1.4 The assignee is under no obligation to seek out the owner of the regulated agricultural products, at any point of sale, during either inspection or for any other incidental activity arising out of the application of the Act and its subordinate legislation.

1.5 The seller or the person in charge of the place or conveyance where the regulated product is offered for sale shall *ipso facto* be taken as the face of the owner of the regulated product, or the intermediary of the owner with respect to the regulated products being offered for sale. In other words, any person referred to in paragraph 1.3, who sells regulated agricultural products, shall, for all intents and purposes, be presumed to be the owner of such regulated products.

1.6 In certain circumstances, the risk will fall on the seller to seek out the true owner of the regulated agricultural products and see to it that obligations emanating from the Act are fulfilled. These obligations may relate to, among others, ensuring that directions issued are complied with and necessary payments for inspection undertaken are effected.

## 2. CHARGING AND PAYMENT OF FEES

2.1 Fees as determined (i.e. published in the Government Gazette) by the designated assignees in terms of section 3 (1A) of the Act, shall be payable for powers exercised and duties performed by them. The bill of account for payment of activities undertaken in the course of the application of the Act and its subordinate legislation shall -

- (a) be presented by the designated assignee to the seller at the point of sale, or as otherwise arranged; and
- (b) be payable by the seller and/or owner of the regulated products (the one to pay absolving the other from payment); or
- (c) in case of imported regulated agricultural products, be payable by the seller or the importer (the one to pay absolving the other from payment), as the case may be.

2.2 The seller shall take all reasonable measures and steps to comply with the provisions of the Act. Should he or she *inter alia* fail to comply with the action under paragraph 2.1 (b) or (c) above, it would be deemed to be a contravention of the Act, and such seller shall be held liable in terms of section 11 of the said Act and he or she could be liable to a fine or imprisonment.

2.3 Any instruction contrary to the foregoing, regardless of whether such is issued by, amongst others, the owner of the regulated agricultural products, shall not afford the seller an excuse not to comply with the Act.



2.4 The seller is obligated, at all material times during the sale of regulated agricultural products, to take all reasonable steps to prevent the act or omission that would fall foul of the Act. In other words, the seller will only be released from any responsibility or liability by an order of Court instructing otherwise.

### **3. OBLIGATIONS OF DESIGNATED ASSIGNEES TOWARDS THE SELLER**

3.1. The designated assignees shall at all material times conduct themselves and their activities in terms of the Act. Therefore, they are obligated to provide the following administrative regulatory functions:

3.1.1. Carry out inspection, grading and sampling for quality control as set out in section 3A (1) of the Act.

3.1.2. Downgrade, under certain circumstances, the regulated product that is found to be of another grade than the presented one.

3.1.3. Issue a direction, which will direct the owner or person in charge of the place, premises or conveyance to classify, grade, pack or mark (label), as envisaged in terms of section 3A (1) (b) in case the product does not comply.

3.1.4. Issue a seizure under exceptional circumstances of non-compliance of a regulated agricultural product.

3.1.5. Use accredited facilities or institutions for carrying out some tests.

3.1.6. Provide quarterly reports as to the state of compliance or lack thereof of products falling under their inspection control.

3.1.7. Ensure the positive identification of their authorised personnel whenever and wherever inspection is carried out.

3.1.8. Apply the Act reasonably, fair, consistently and generally across all applicable regulated agricultural products and at all inspection points.

3.1.9. Charge and provide an invoice for inspection work undertaken accompanied by a detailed inspection report.

3.1.10. Demonstrate to the affected stakeholders that all points of inspections are covered by inspection, or the provision of reasons, in cases where there is omission of certain points of sale.

#### *3.2. Non- performance or non- delivery of an assignee on what the Act requires of them*

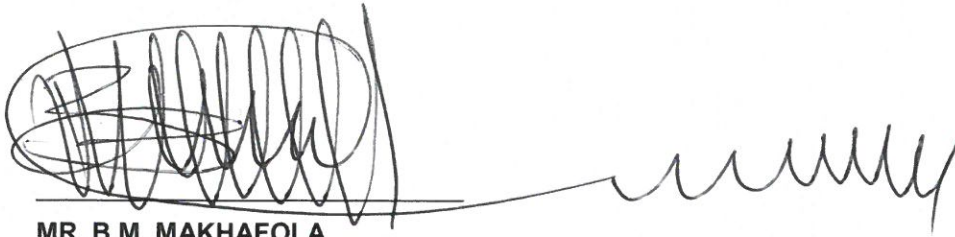
The Minister reserves the right to revoke the mandate assigned to the designated assignee if performance lacks in the following area:

3.2.1. Total lack of performance, i.e. the assignee is not exercising its mandate satisfactorily.

3.2.2. Lack of compliance where the material provisions of the Act is contravened by the assignee.

3.2.3. Lack of compliance with what has been outlined in paragraph 3.1.

3.2.4. On account of reported complaints from the affected stakeholders regarding the conduct and performance of the assignee.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**MR. B.M. MAKHAFOLA**

**EXECUTIVE OFFICER: AGRICULTURAL PRODUCT STANDARDS**