

GOVERNMENT NOTICE

MINISTRY OF AGRICULTURE, WATER AND LAND REFORM

No. 2022

REGULATIONS RELATING TO THE EXPORTATION OF CONTROLLED PRODUCTS: AGRONOMIC INDUSTRY ACT, 1992

Under section 24(1) of the Agronomic Industry Act, 1992 (Act No. 20 of 1992), after consultation with the Namibian Agronomic Board, I –

- a) have made the regulations, compliance with which has been made compulsory in terms of section 24 of that Act, as set out in the Schedule; and
- b) determine that the regulations come into effect on xxx date.

CARL-HERMANN G. SCHLETTWEIN, MP
MINISTER FOR AGRICULTURE, WATER AND LAND REFORM

Windhoek, 2022

SCHEDULE

ARRANGEMENT OF REGULATIONS

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1. DEFINITIONS

In these regulations, a word or an expression to which a meaning has been given in the Act has that meaning, and unless context otherwise indicates -

Note: This section could include explanations for:

- a. Definitions,
- b. Acronyms,
- c. Abbreviations, and
- d. Interpretations

“agent” means a person who has been appointed with authority to act on behalf of an entity.

“AMID” means the computer system of the Board, named Agricultural Marketing Information Management.

“Board” means the Namibian Agronomic Board established by section 3(1) of the Agronomic Industry Act, Act 20 of 1992

“border control inspector” means an employee of the Board with responsibility to verify whether all the requirements of an export permit have been met, prior to clearing controlled products for exit to export markets.

“border receipt” means a document, issued at the port of exit by the border control inspector, to confirm that the consignment was cleared for exit out of Namibia.

“carrier” means the person or company who will transport the carrying unit to its destination.

“carrying unit” means a ship, shipping container, truck, trailer or any other item, or equipment, used in the conveyance of a controlled product.

“compliance inspector” means an employee of the Board, with responsibility to inspect – and make decisions or recommendations on – controlled products.

“consignee” means the person to whom the consignment is being sent.

“consignment” means a quantity of controlled product, grouped together by similarity and documented in a single document, showing unambiguous detail contained therein and destined for delivery to a permit holder

“consignment note” means a document which clearly shows the contents of a consignment and the address of the intended consignee.

“controlled product” means an agronomic crop or agronomic product to which the provisions of the Act apply.

“entity” means any natural person, company, group or association.

“export” means the process of sending controlled products, from Namibia, to another country.

“exported” means the completion of the export process.

“exporter” means a person, company or entity, who is registered as an exporter with the Board and has the intention of exporting controlled agronomic and/or horticultural products to another country for sale.

“food safety” means assurance that a food product is acceptable for human consumption according to its intended use.

“FSMS” means a Food Safety Management System, which is a system based on the principles of HACCP.

“G.A.P.” means Good Agricultural Practices, which is a collection of principles applied to on-farm production and post-production processes, resulting in safe and healthy food and non-food agricultural products.

“G.M.P.” means Good Manufacturing Practices, which is the practices required in order to conform to the guidelines recommended by agencies that control the authorization and licensing of the manufacture and sale of food and beverages, cosmetics, pharmaceutical products, dietary supplements, and medical devices.

“HACCP” means Hazard Analysis Critical Control Points, which is a system that identifies, evaluates, and controls hazards, which are significant for food safety.

“hazard” means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

“inspection” means the determination of conformity to specified requirements.

“inspector” means a person appointed as an Inspector of controlled products by the Board under section 13(1) of the Agronomic Industry Act, 1992 (Act 20 of 1992).

“M.I.S” means a Management Information System, which combines data from various sources and produces information to assist the Board in decision-making and statistical reporting.

“mode of transport” means the type of transport used for exporting the controlled products, and could either be a ship, sea container, rail truck, road trailer, or aircraft.

“NAB website” means the website of the Namibian Agronomic Board, which is www.nab.com.na.

“NamRA” means the Namibia Revenue Agency.

“organic food” means products grown without the use of synthetic chemicals, such as human-made pesticides and fertilizers, and do not contain genetically modified organisms.

“non-compliance” means not meeting requirements.

“regulator” means the Board, which is the institution that has the authority to monitor agronomic and horticultural products in Namibia for the purpose of ensuring compliance with these regulations.

“shipment” means the stuffing of a sea container or the loading of a ship, trailer, truck or aircraft with controlled products, destined for export.

“surveillance” means a systematic iteration of conformity assessment activities as a basis for maintaining the validity of the statement of conformity.

“surveillance inspection” means the action of inspecting controlled products after initial approval and before being purchased by end consumers.

“taint” means the contamination of a product by odours from chemical applications, or previous cargo, in a carrying unit.

“the Act” means the Agronomic Industry Act, 1992 (Act 20 of 1992).

"traceability" means the ability to trace and follow a food product or substance intended to be, or expected to be, incorporated into a food product through all stages of production, packing, processing, handling and distribution.

2. PURPOSE (OBJECTIVE)

The purpose of these regulations is to ensure that all controlled products, exported from the Republic of Namibia, comply with the requirements set out herein, with the objective of ensuring that exported Namibian products comply with applicable export market legislative requirements governing food safety and quality and therefore become products of choice in the markets of the world.

3. SCOPE

These regulations apply to all controlled products intended for export from the Republic of Namibia for commercial use and specifically for human consumption, whether by sea, air, rail or road.

4. REQUIREMENTS UNDER THIS REGULATION

4.1 Registration as an exporter of controlled products

4.1.1 All exporters shall be required to register with the Board on application and in the prescribed form, as per section 10(1)(j) of the Agronomic Industry Act (Act 20 of 1992).

4.1.2 All exporters shall have met all requirements for local production.

4.1.3 Upon registration, a licence, certificate, or card valid for a specific period shall be issued to confirm registration, and such entity may engage in the production, processing, storage, and marketing of controlled products

4.2 Export Permits

4.2.1 Registered exporters shall have a valid export permit, issued by the Board after the consignments has been approved for export by the Compliance Services sub-division and upon successful application, for all controlled products intended for export from the Republic of Namibia.

4.3 Inspection

4.3.1 The registered exporter shall inform the Compliance Services Sub-division of the export consignment, in writing, at least ten (10) working days prior to the shipment taking place, on application and in the prescribed form and includes i.e.:

- (a) Name of registered exporter
- (b) Mode of transport and identity thereof, where applicable
- (c) Date of intended shipment

- (d) Place of intended shipment
 - (e) Current location of product for inspection, if not same as (d)
 - (f) Product(s) to be shipped
 - (g) Quantities planned for shipment
 - (h) Country of destination
- 4.3.2 All controlled products, intended for export, shall be inspected by the Compliance Inspector prior to shipment, in accordance with the “Risk Based Inspection Model for controlled products, intended for export”, which is available from the Board on request.
- 4.3.3 Any product which is labelled with a claim that it has been produced under organic conditions shall provide proof of certification based on the Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods which were adopted by the Codex Alimentarius Commission, or equivalent certification in the country of final destination.
- 4.3.4 Notwithstanding the requirements of the inspection model referred to in 4.3.2, the exporter shall present the following documents to the inspector at the time of inspection:
- (a) A consignment note, detailing the quantities, groups and or sizes of the controlled products within the consignment intended for export, including the address of the consignee
 - (b) A certified copy of a valid GLOBALG.A.P. certificate for the production premises where the product(s) was produced.
 - (c) A certified copy of a valid FSMS certificate for the premises where the product(s) was manufactured, or handled for reasons including packaging and/or storage.
 - (d) A supplier invoice(s), containing the following information:
 - (i) Name and address of supplier,
 - (ii) Invoice date,
 - (iii) Name(s) of each product,
 - (iv) Quantity(ies) of each product,
 - (v) Mass – in kilogrammes – of the products, and
 - (vi) Monetary value – in NAD - of the products
- 4.3.4 Failure to provide the Compliance Inspector with the information required as in 4.3.1 and 4.3.3 will result in refusal to provide inspection and the exporter shall have no claim against the Board resulting from any delays caused by their non-compliance.
- 4.3.5 After inspection, the Compliance Inspector will determine whether the consignment meets all requirements for export and confirm in writing, which will authorise the approved products to be exported.
- 4.3.6 If the consignment, or part of the consignment, is rejected, the inspector will issue a rejection receipt, detailing the reasons for rejection. Rejected products will not be allowed to be exported.
- 4.3.7 The carrying unit, whether a road trailer, rail truck or shipping container, shall be presented by the carrier, at the point of export, in a hygienically clean condition and free of taint.
- 4.3.8 Where export products are exported on pallets, these pallets shall be free of any hazard, which could contaminate the product stacked thereon and wooden pallets shall be free of bark.

- 4.3.9 If the export products are supported for transport, or protected from external contamination, these materials used shall not pose a hazard to the products being protected or supported.
- 4.3.10 Producers, packhouses and exporters of controlled products shall ensure that the products traceability at all stages of production, processing, handling and distribution and be able to withdraw controlled products where a risk to the health of consumers has been identified.
- 4.3.11 Where a risk to consumer health has been identified, the exporter shall advise the General Manager: Regulations immediately after this risk has been identified on regulatory@nab.com.na.
- 4.3.12 At the port of exit the Border Control Inspector shall verify the documentation of all consignments of controlled products to ensure that these regulations and other permit conditions are complied with.
- 4.3.13 Border inspection results:
- (a) If the consignment is cleared, a border receipt shall be issued to the exporter by the Border Control Inspector as proof of compliance with the permit and these regulations. The consignment will then be authorised for export.
 - (b) A copy of the border receipt will be provided to NamRA at the port of exit to allow them to clear the consignment.
- 4.3.14 The carrying unit of an approved consignment shall be sealed before departure, either at the entity's premises or at the port of exit.
- 4.3.15 Legible copies of all documentation used in the inspection process and at the port of exit will be collated by the Compliance Inspector and Border Control Inspector and used for input into the AMID system and the M.I.S., where applicable and then filed appropriately for a period of three years.
- 4.3.16 All documentation relevant to the exportation of a controlled product shall be maintained by the exporter for three years and any information required by the Board shall be submitted without delay.

5. WITHDRAWAL OF REGISTRATION

5.1 Registration as an exporter will be withdrawn if:

- (a) The registered exporter is found guilty of an offence in accordance with clause 11 of these regulations.
- (b) The registered exporter is declared insolvent in terms of the Insolvency Act (Act 24 of 1936).
- (c) The registered entity ceases to exist, or the individual, who is registered, passes away.
- (d) If the exporter fails to pay outstanding debt to the Board.
- (e) Found to be exporting inferior quality products, or products which are proven to be unsafe for human or animal consumption.
- (f) Failure to comply and meet minimum requirements for local production.

6. SURVEILLANCE

- 6.1 Where export products have been stored into containers and are awaiting shipment, surveillance inspection may be done to ensure that temperature and/or pre-carrying requirements are maintained prior to shipment.
- 6.2 Road and/or rail trucks may be inspected after the product has been loaded to ensure that the product(s) are suitably covered, where applicable and not exposed to unnecessary risk of contamination.

7. LEVIES & FEES

Fees to be paid by the exporter of controlled products shall be as follows:

- 7.1 Exporters of controlled products shall be required to pay fees for inspection as determined by the Board from time to time.
- 7.2 Fees shall be charged for the application and issuance of export permit for controlled products as determined by the Board from time to time.
- 7.3 Additional fees for inspection, product sampling and testing analysis shall be charged, if and when the regulator has to conduct surveillance inspection for the purpose of confirming continuous compliance, as determined from time to time.

8. CONFIDENTIALITY

- 8.1 All employees of the Board are bound by confidentiality and will not disclose any detail of communication, transactions or decisions, taken to a third party, save with the approval of the party involved.
- 8.2 Exporters shall respect the confidentiality requirements involved in export transactions and shall not disclose any part of the process, including transactions and decisions, to third parties, save with the written approval of the Board.

9. PROHIBITIONS

- 9.1 Should any prohibitions be placed on the export of controlled products, this will be published in the Government Gazette and also on the NAB's website.

10. RESTRICTIONS

- 10.1 Should any restrictions be imposed on the export of controlled products, this will be published in the Government Gazette and also on the NAB's website.

11. OFFENCES & PENALTIES

- 11.1 If a person exports agronomic and/or horticultural product that do not comply with these regulations, the person commits an offence and on conviction is liable to a fine or imprisonment or to both such fine and such imprisonment.

- 11.2 Any violations of these regulations shall be dealt with in accordance with Section 22 of Agronomic Industry Act 20 of 1992 and any other applicable rules and procedures, issued in terms of the Act or Directives.
- 11.3 The penalties applicable to offences are shown in the table in 13.4 - Annexure D.

12. APPEALS

- 12.1 All appeals on the decision of the Board made in regard to these regulations, shall be made in accordance with Section 11 of the Agronomic Industry Act 20 of 1992 and the Appeals Procedure.

13. ANNEXURES

- 13.1 Annexure A – Exporter registration – Application form
- 13.2 Annexure B – Request for product inspection - Application form
- 13.3 Annexure C – Appeals procedure
- 13.4 Annexure D – Offences and penalties