

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES
NOTICE 6 OF 2016**

REPUBLIC OF SOUTH AFRICA

PERISHABLE PRODUCTS EXPORT CONTROL BILL, 2015

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 39593 of 15 January 2015) (The English text is the official text of the Bill)

(MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES)

[B—2015]

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

The Perishable Products Export Control Act, 1983 (Act No. 9 of 1983) is intended to be repealed and replaced by the Perishable Products Export Control Bill, 2015. Below indicates differences between the repealed and proposed Perishable Products Export Control Bill, 2015.

BILL

To [provide for the control of perishable products intended for export from the Republic of South Africa and for matters connected therewith]

promote an orderly, efficient and sustainable cold chain for the export of perishable products from the Republic; to provide for the legal framework for the regulation and monitoring of perishable products thereof; to provide for the introduction of a cold chain information system and data base; to provide for public participation and co-ordination; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"assignee" means the board when designated as such in terms of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) or any other Act or regulation;

"BBBEE" means broad-based black economic empowerment means as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

"board" means the Perishable Products Export Control Board established in terms of section [2] 3;

"chief executive officer" means the chief executive officer contemplated in section 16;

"cold chain" means all aspects of the handling, packing, cooling, transportation and storage of perishable products, and includes perishable products not subject to cooling or refrigeration;

"cold chain management" means the prescribed principles of procedure which relate to the analysis, measuring, evaluation, control, documentation and validation of the cold chain;

"cold chain service provider" means any person that provides or performs services in respect of the cold chain;

"data" means electronic representations of information relating to the cold chain;

"data base" means the collection or storage of data relating to the cold chain, in electronic form, from where it may be accessed, reproduced or extracted;

"Department" means the Department of Agriculture, Forestry and Fisheries;

"exporter" means any person who —

(a) ___ despatches or conveys a perishable product **[by ship]** out of the Republic; or

(b) ___ makes any arrangement for the despatch or conveyance of a perishable product out of the Republic;

and includes, but is not limited to, the consignor of perishable products for export, and

"export" [has a] and "exported" have corresponding [meaning] meanings;

["export group" means any association of exporters formed in respect of a specific perishable product or group of products intended for export;]

["general manager" means the general manager mentioned in section 13"]

"generic information" means information as to the volumes of perishable products exported, but does not identify the identity of the exporter;

"information" means information in any form, including both documentary and electronic, relating to the cold chain of a perishable product and includes information as to total volumes of any perishable products exported from the Republic;

"information system" means a system for generating, sending, receiving, storing or otherwise processing and disseminating information;

"Minister" means the Minister of **[Transport Affairs]** Agriculture, Forestry and Fisheries;

"National Treasury" means the National Treasury contemplated in section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"perishable product" [means any of] includes the following products intended for export, and any **[by-product]** by-products derived from such **[product]** products, where such **[product]** products or **[by-product]** by-products **[requires]** require storage in refrigerated chambers or requires to be conveyed under cold storage conditions **[namely, vegetables, fruit, flowers, butter, deepfrozen foods, eggs, cheese, fish (including shellfish and crustaceans), meat and any other product which the Minister may by notice in the Gazette declare to be a perishable product;]:**

(a) vegetables;

(b) fruit;

(c) flowers;

(d) butter;

(e) deep-frozen foods;

(f) eggs;

(g) cheese;

(h) fish, including shellfish and crustaceans;

(i) meat; and

(j) any other product which the Minister may by notice in the *Gazette* declare to be a perishable product;

"point of discharge" means, for the purpose of—

(a) fruit in transit, the final port of discharge; and

(b) the selling market, the final intended market of sale,

of a perishable product exported from the Republic;

[“port” means a seaport or an airport”]

"prescribe" means prescribe by regulation in terms of this Act;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"PUC number" means any production unit code issued to a producer of perishable products which identifies the production source of the perishable product;

"registration certificate" means a registration certificate issued by the board in terms of section 22;

[“regulation” means a regulation made under this Act”]

[“ship” includes “ship” includes aircraft; and “shipment”, “shipowner”, “shipped”, “shipping” and “shipping space” have corresponding meanings.]

"this Act" means this Act including the regulations.

[2. Continued existence of the Perishable Products Export Control Board

The Perishable Products Export Control Board, established in terms of the Perishable Products Export Control Act, 1926 (Act No. 53 of 1926), shall,

notwithstanding the repeal of that Act by this Act, continue to exist and to be a juristic person.]

2. [3] Object of Act [board]

The object of [the board shall be the to bring about the orderly and efficient export of perishable products from the Republic.] this Act is to regulate and monitor the cold chain for the export of perishable products from the Republic by means of—

(a) promoting—

(i) the orderly, efficient and sustainable export of perishable products from the Republic so as to facilitate and optimise the competitiveness of perishable products exported from the Republic in the global market; and

(ii) an environment of open, fair and non-discriminatory access to the cold chain and to the information system;

(b) providing for—

(i) a legal framework for cold chain management;

(ii) the establishment of an information system and the dissemination of prescribed information relating to the export of perishable products from the Republic;

(iii) the establishment of a data base relating to the export of perishable products from the Republic; and

(iv) the registration of exporters of perishable products from the Republic, with the board; and

(c) facilitating BBBEE through the participation of black farmers, rural communities and exporters in the cold chain by establishing the information system and data base and by promoting and facilitating their easy access thereto.

3. Perishable Products Export Control Board

The Perishable Products Export Control Board is hereby established, as a juristic person.

4. Constitution of board

[(1) The board shall consist of the following members, to be appointed by the Minister, namely:

(a) six persons, of whom each shall represent one of the six largest export groups, determined on the basis of average annual export volume, as ascertained by the board, over the consecutive five years immediately preceding the year in which each such person is appointed a member;

(b) one additional person to represent each export group of which the average annual export volume, so ascertained, exceeds 20 per cent of the total annual export volume, so ascertained, of all perishable products;

(c) one person nominated by the South African Agricultural Union to represent exporters not represented in terms of paragraph (a) or (b); and

(d) one person designated by the Minister;

(2) (a) For the purpose of every appointment in terms of paragraph (a), (b) or (c) of subsection (1), the Minister shall cause every export group mentioned in that paragraph (a) or (b) and the South African Agricultural Union mentioned in that paragraph (c) to be called upon by notice in writing to submit to him, within a period specified in the notice, the names of three persons, from which every appointment in terms of the said paragraph (a), (b) or (c) may be made by the Minister.

(b) If, after having been called upon by notice in terms of paragraph (a), the body concerned fails to submit the names concerned within the period specified in such notice, the Minister may appoint such person or persons required as he may deem

suitable, to be a member or members of the board in terms of the paragraph concerned of subsection (1).]

- (1) The board consists of at least 12 members appointed by the Minister as follows:
- (a) the chief executive officer by virtue of his or her office;
 - (b) five persons each of which represents one of the five largest export groups, as ascertained by the board, according to the weight in tons of perishable product exported over the consecutive five years immediately preceding the year in which each such person is appointed: Provided that—
 - (i) the persons representing the five large export groups referred to in this paragraph must be nominated by the industry body representing not less than fifty one percent of production of the relevant perishable product destined for export constituting an export group; and
 - (ii) in the event of there at any time not being an industry body representing not less than fifty one percent, by volume, of exporters constituting an export group—
 - (aa) the board must call for nominations for such members;
 - (bb) the names of the persons nominated in accordance with item (aa) must be submitted by the board to the Minister; and
 - (cc) the Minister must appoint such members, from amongst the persons so nominated;
 - (c) two persons nominated by the board, who have special knowledge, expertise and qualifications relating to any matter falling within the functions of the board as contemplated in section 6;
 - (d) two persons to represent export groups for product types which are not represented in accordance with subsection (1)(b), after following a fair and competitive selection process;

- (e) in the event of the board acting as assignee in terms of this Act, one person nominated by each such assignor ;
- (f) one person who in the opinion of the Minister, by virtue of such person's knowledge and experience, is able to assist the board in achieving its objects.
- (2) The Minister may, on the recommendation of the board, appoint on such conditions and for such period as he or she may determine, a person as an additional member of the board for a particular purpose.

5. [11] Powers of board

In order to achieve its object and to perform its functions, the board may—

- (a) appoint, on such conditions as it may determine, persons as **[officers and]** employees of the board and delegate or assign to any such **[officer or]** employee any power or duty conferred or imposed upon the board by or under this Act: Provided that the board—
 - (i) **[shall not be]** is not divested of any power or duty so delegated or assigned; and
 - (ii) may amend or withdraw any decision made by any such **[officer or]** employee in the exercise or performance of any power or duty so delegated or assigned, subject to any rights that may have accrued to any person as a result of the delegation or assignment;
- (b) **[pay any person in its employ remuneration according to the conditions of his appointment, but subject, in the case of the general manager, to the approval of the Minister;]** make rules **[prescribing]** relating to the conditions of service of the persons in its employ;
- (c) purchase, **[or]** acquire **[or]**, sell **[or]**, dispose of **[in any other manner, or]**, hire, **[or]** let or hypothecate any of its movable or immovable property;
- (d) appoint committees consisting of members of the board and any other persons, and, subject to such conditions as the board may deem fit, delegate or assign

to any such committee such of its powers or duties as it may deem **[fit]** necessary;

- (e) establish a reserve fund **[which shall not exceed an amount approved by the Minister from time to time, for such purposes as, with due regard to section 18(7), it may deem fit]**;

[negotiate with shipowners or other persons and enter into contracts with them with regard to the export of perishable products from the Republic;]

- (f) carry out, or cause to be carried out, research in connection with perishable products, finance **[it]** such research or contribute financially thereto, and obtain the results of any research in connection with perishable products; and
- (g) generally do all such other things **[as are]** that it considers necessary **[or incidental to the performance of its functions or duties]** to achieve the object of this Act.

6. **[10] Functions of board**

The board **[shall]** must—

- (a) **[control]** monitor the cold chain in relation to the export [shipment] of perishable products from the Republic [and the order of shipment thereof at all ports], as may be prescribed;
- (b) **[determine which ships, aeroplanes or other means of conveyance are suitable for the conveyance of perishable products and the class of accommodation to which any perishable product shall be assigned];** establish and maintain cold chain management as may be prescribed;
- (c) **[call for and receive from intending exporters of perishable products estimates and other particulars of their intended exports];** determine which form of transportation is suitable for the conveyance of perishable products and the class of accommodation to which any perishable product is assigned;
- (d) **[call for and receive from shipowners or their representatives respecting the amount of space suitable for the conveyance of perishable products**

- available on any ship appointed to call at any port in the Republic]** determine which equipment and facilities are suitable for the handling, cooling, storage, refrigeration and transportation of perishable products;
- (e) **[make enquiries, negotiate and contract or otherwise arrange for the provision of such port facilities and shipping space for the handling and conveyance of perishable products as may be deemed necessary by the board]** maintain a register of exporters of perishable products from the Republic;
- (f) **[cause to be diverted, when the board deems it necessary, perishable products to such ports of shipment as in the opinion of the board are the most suitable]** call for, and receive from registered exporters of perishable products, particulars, information and data relating to the perishable products exported by them from the Republic;
- (g) **[make investigations regarding conveyance and cold storage requirements for perishable products and make recommendations thereon to any department of State or any interested person]** call for, and receive from ship-owners and cold chain service providers or their representatives, particulars, information and data relating to the perishable products handled and conveyed by them for the purpose of export and any aspects of the cold chain in connection therewith;
- (h) **[make recommendations regarding the way of handling perishable products when moved from and to railway trucks, other vehicles or cold stores]** establish and maintain an information system, whereby prescribed data is received, stored and made available, in the prescribed electronic form;
- (i) **[promote uniform freight rates in respect of the export of perishable products, with due allowance for particular perishable products, ports of export and means of conveyance]** maintain and manage a data base of information and records relating to perishable products—
- (i) intended for export;
 - (ii) exported from the Republic; and

- (iii) the cold chain in connection therewith
- (j) **perform such other functions in relation to the export of perishable products from the Republic as may be prescribed by regulation.]** investigate conveyance and cold storage requirements for perishable products and make recommendations thereon to any organ of State or any interested party;
- (k) make recommendations regarding the way in which perishable products may be handled when moved from and to railway trucks, other vehicles or cold stores;
- (l) act as assignee when so designated;
- (m) take appropriate steps to facilitate BBBEE and the participation of black farmers, rural communities and exporters in the cold chain by establishing the information system and data base and by promoting and facilitating their easy access thereto;
- (n) when the board deems it necessary—
 - (i) establish and maintain testing facilities and equipment for the purpose of conducting such tests as may be required from time to time; and
 - (ii) call for, and receive from ship-owners and cold chain service providers or their representatives, information and data in respect of the amount of cold storage and shipping space available for perishable products intended for export; and
- (o) perform such other functions in relation to the export of perishable products from the Republic as may be prescribed.

7. [6] [Chairman] Chairperson and [vice chairman] deputy chairperson of board

- (1) The members of the board **[shall] must**, from **[their number]** amongst themselves, elect a—

- (a) **[chairman]** chairperson; and
- (b) **[vice chairman]** deputy chairperson;
- (2) In the event that **[If]** the office of **[chairman]** chairperson or **[vice chairman]** deputy chairperson becomes vacant for any reason other than **[effluxion]** expiry of **[time]** the term of office, the members of the board **[shall]** must, at the first meeting after such vacancy **[occurred]** occurs or as soon thereafter as may be convenient, elect from **[their number]** amongst themselves a new **[chairman]** chairperson or **[vice chairman]** deputy chairperson, as the case may be: **[and the member so elected shall hold office]** Provided that the member so elected holds office for the unexpired portion of the period for which his or her predecessor was elected.
- (3) If for any reason the **[chairman]** chairperson is not able to **[act]** perform his or her duties, the **[vice chairman]** deputy chairperson **[shall]** must perform all the duties and exercise all the powers of the **[chairman]** chairperson.
- (4) The **[chairman]** chairperson or **[vice chairman]** deputy chairperson of the board may vacate his or her office without terminating his or her membership of the board.

8. **[7] [Tenure] Term of office of members of board**

- (1) A member of the board **[shall be]** is appointed—
- (a) for a period, but not exceeding three years; and
- (b) on such conditions as may be determined by the Minister at the time of appointment.
- (2) A member of the board **[shall continue to hold office after the period for which he was appointed has expired until his successor has been appointed or he has been re-appointed, but not for a period of more than 3 months]** may be reappointed at the end of his or her term of office for one further term.

- (3) The Minister must, when determining the period for which any member of the board is to be appointed—
- (a) take into account the need for continuity and retention of institutional knowledge; and
- (b) ensure that the term of office of not more than fifty per cent of the members of the board expire during a single calendar year.
- (4) A member of the board continues to hold office after the period for which he or she was appointed has expired until—
- (a) his or her successor has been appointed; or
- (b) he or she has been reappointed:

Provided that the period contemplated in paragraph (a) or (b), as the case may be, may not exceed twelve months.

9. **[5. Qualifications of members of board and circumstances in which they vacate office] Disqualification from membership of Board**

[No] A person [shall] may not be appointed as or remain as a member of the board, as the case may be if that person—

- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
- (b) has been declared by a competent court to be mentally ill;
- (c) has been convicted, in the Republic or elsewhere, of theft fraud, forgery, perjury or any other offence involving dishonesty;
- (d) **[b] [if he]** has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 took effect, and [has been] sentenced to imprisonment without the option of a fine;

- (e) has been, or is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
- (f) it otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
- (g) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of his or her functions as a member of the board.

[(2) A member of the board shall vacate his office -

- (a) **if he becomes subject to any disqualification for appointment mentioned in subsection (1);**
- (b) **if he dies;**
- (c) **if he resigns as a member;**
- (d) **if he has absented himself from three consecutive meetings of the board without the leave of the board; or**
- (e) **if he is removed from office in terms of subsection (3).**

(3) A member of the board may at any time be removed from office by the Minister -

- (a) **on the recommendation of the board or an export group or the South African Agricultural Union;**
- (b) **if he has failed to comply with a condition of his appointment;**
- (c) **if in the opinion of the Minister he has been guilty of improper conduct; or**
- (d) **if in the opinion of the Minister he is unable to perform efficiently his duties as a member of the board.]**

10. Resignation and removal from office

- (1) A member of the board may resign by giving to the Minister—
- (a) one month's written notice; or
- (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 200), remove a member of the board from office—
- (a) if such member becomes disqualified in terms of section 9
- (b) if such member acted contrary to this Act;
- (c) if such member failed to disclose an interest or withdraw from a meeting as required;
- (d) if such member has failed to perform the functions of his or her office efficiently and effectively;
- (e) on the ground of misconduct, incapacity or incompetence;
- (f) if such member is absent from three consecutive meetings without leave of the chairperson; or
- (g) on the recommendation of the board or the interest group which nominated the member to the Minister for appointment.

11. **[8] Vacancies on board**

- (1) If the office of a member of the board becomes vacant before the expiration of the period for which he or she was appointed, the Minister may, subject to **[the provisions of]** section 4 **[and 5(1)]**, appoint any other person as a member for the unexpired portion of that period on such conditions as the Minister may determine.
- (2) If the Minister is satisfied that a member of the board is for any reason unable to **[act]** perform his or her duties, the Minister may appoint any other person whom he or she deems fit **[(hereinafter referred to)]**—
- (a) as an acting member on such conditions as the Minister may determine; and

(b) to act in the member's stead while he or she is unable to **[act]** perform his or her duties.

12. **[9] Remuneration and allowances of members of board**

A member or acting member of the board who is not in the full-time employment of the State **[shall]** must be paid in respect of the performance of his or her functions as such member, from the funds of the board, such remuneration and such travelling and subsistence allowances as may be determined by the **[board]** Minister, with the concurrence of the Minister of Finance.

13. **[12] Meetings of board**

(1) The board **[shall]** must meet at such times and places as the **[chairman]** chairperson may determine.

(2) The **[chairman]** chairperson **[shall cause]** must give reasonable notice to **[be given to any member]** all members of the board, of the time and place of every meeting of the board.

(3) (a) The **[chairman]** chairperson **[or, if he is absent, the vice-chairman shall]**, must preside at all meetings of the board.

(b) **[and if]** In the event that both the **[chairman]** chairperson and the **[deputy chairperson]** vice chairperson are absent from a meeting of the board, the members present **[shall]** must elect a person from among themselves to preside at such meeting.

(4) (a) The decision of a majority of the members of the board present at a meeting of the board **[shall constitute]** constitutes a decision of the board.

(b) In the event of an equality of votes **[on]** in respect of any matter, the person presiding at the meeting in question **[shall have]** has a casting vote in addition to his or her deliberative vote.

(5) The quorum for a meeting of the board **[shall consist]** consists of—

(a) four members who represent at least three export groups; and

(b) the person presiding at the meeting.

[13. General manager

The board may designate an officer in its employ as who shall be the chief executive officer of the board with power to manage and control the work authorized by the board and to exercise supervision over the other officers and the employees in the employ of the board.]

[14. Inaccurate estimate of shipping space requirements

Whenever any exporter who has forwarded to the board an estimate of intended exports in terms of section 10(c) fails to export the estimated quantity and in consequence of such failure the board is unable to arrange for the occupation of so much of any shipping space contracted for on the faith of such estimate as would have been occupied but for such failure, the board may charge to him the cost of the shipping space so unoccupied or such other charge as may in the opinion of the board be fairly claimed by a shipowner as a result of such failure, and such charge shall be a debt due by such exporter to the board and may be recovered by the board from him.]

14. [15.] Appeal against [act or] decision of board

- (1) Any person aggrieved by any **[act or]** decision of the board may, after having given notice to the board in the prescribed manner within a period of 30 days after the date of such decision, appeal to the Minister in the prescribed manner against such decision.
- (2) The board must, within a period of 14 days after the date on which any notice referred to in subsection (1) is received by it, furnish the Minister with its reasons for the decision concerned.

- (3) The Minister may, after consideration of the **[said reasons and the]** appellant's grounds of appeal and the reasons contemplated in subsection (2) confirm, amend or set aside the board's decision.

15. **[16] Reports by board**

- (1) The board must, within **[six]** five months after the end of each financial year **[which shall end on 31 December]**, furnish the Minister **[and all registered exporters]** with a written report in respect of its activities during that financial year.

- (2) **[Every]** The report **[referred to in]** contemplated in subsection (1) **[shall be accompanied by a balance sheet, audited as provided by section 18(10), and a full statement, so audited, of the board's income and expenditure in respect of that financial year]** —

(a) may be in electronic format; and

(b) must be accompanied by a—

(i) balance sheet; and

(ii) full audited statement,

of the board's income and expenditure in respect of that financial year.

- [(3) The Minister shall lay every report, balance sheet and statement of income and expenditure furnished in terms of this section upon the Table of the House of Assembly within 30 days after receipt thereof, if the House of Assembly is then in ordinary session, or, if the House of Assembly is not then in ordinary session, within 30 days after the commencement of its next ensuing ordinary session.]**

16. **Chief executive officer**

- (1) The board must, after consultation with the Minister, appoint a chief executive officer.

- (2) The board must determine the terms and conditions of appointment of the chief executive officer, after consultation with the Minister of Finance.

17. Functions of chief executive officer

The chief executive officer—

- (a) is responsible for the administration and general management and control of the day-to-day functioning of the board, subject to the directions of the board;
- (b) must exercise supervision over the employees of the board; and
- (c) develop efficient, transparent and cost-effective administrative systems.

18. Imposition of a levy

- (1) The board may, by notice in the Gazette, with a view to meeting expenditure incurred by the board in the performance of its functions, **[in terms of this Act and the regulations, by notice in the Gazette]** impose **[a] levies [levy]** on **[any] perishable products [product] exported in any calendar year under contract or other arrangement made by, through or with the consent of the board.**
- (2) The **[said levy]** levies contemplated in subsection (1)-
- (a) **[shall] must be paid to the board** by the exporter or cold chain service provider of the perishable product on which the levies are [levy is] imposed **[to the board]**, in such manner and at such times as may be prescribed by regulation;
- (b) **[The said levy]** may differ according to the-
- (i) form of transport used in such export; and
- (ii) **[may differ further in respect of different categories]** category or kind [kinds] of perishable products; and
- (iii) may vary according to the aggregate quantity of any perishable product exported by all exporters of that perishable product at any time during the calendar year concerned.

[(4) The board shall deposit the proceeds of the said levy in an account mentioned in section 18(6).]

19. Funding and investment

(1) The funds of the board consist of—

(a) levies charged;

(b) monies held in the reserve fund established in accordance with section 5(e);

(c) income derived by the board from its investments;

(d) monies appropriated by Parliament for that purpose; and

(e) money received from any other source.

(2) The board may invest any of its funds not immediately required—

(a) subject to the Public Finance Management Act; and

(b) in such a manner as may be approved by the Minister in consultation with the Minister of Finance.

[18. Accounts and auditing

(1) The board shall keep proper account of all moneys received by it and of all payments made by it.

(2) The board shall as soon as possible after the end of each financial year prepare statements of account and a balance sheet showing in appropriate detail the moneys received and the expenditure incurred by it during, and its assets and liabilities as at the end of, that financial year.

(3) On or before 31 December of each year the board shall approve a detailed estimate of its proposed income and expenditure for the ensuing year.

(4) The board shall not incur any expenditure except in accordance with an estimate of expenditure approved in terms of subsection (3).

- (5) The board may, during the course of a financial year, approve supplementary estimates of expenditure for that year.
- (6) The board shall open accounts with banking institutions and may arrange for bank overdrafts.
- (7) All expenditure incurred by the board in the performance of its functions in terms of this Act or the regulations shall be met from moneys in any such account and, if such moneys are insufficient, the reserve fund established under section 11(f).
- (8) The board may direct that after payment of such expenditure the reserve fund be credited with any surplus or part thereof, on an account referred to in subsection (6).
- (9) If the board does not so direct or directs that a portion only of the said surplus be credited to the said reserve fund, such surplus or the balance thereof, as the case may be, shall be refunded to the exporters who paid the levy imposed during the year concerned, in such a manner that each such exporter receives an amount which bears the same ratio to the total amount to be refunded as the total amount of the levy paid by him bears to the total amount of the levy paid during that year by all exporters.
- (10) The board shall cause its books and accounts to be audited annually by a person registered as a public accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and appointed by the board.
- (11) The board shall produce and lay before the auditor all books and accounts of the board with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or under its control.
- (12) The auditor shall disallow any payment made without being authorized by the board, and report the disallowance to the board.
- (13) The expenses of or incidental to any audit shall be borne by the board.]

20. Application of Public Finance Management Act and financial year of board

- (1) The board is a national public entity and must comply with the Public Finance Management Act.
- (2) For the purposes of the Public Finance Management Act, the—

- (a) board is the accounting authority as contemplated in section 49(2)(a) of that Act; and
- (b) Minister is the executive authority.
- (3) The financial year of the board is from 1 April in any year to 31 March of the following year.

[19. Recovery of losses and damages

- (1) **If a person who is or was in the employ of the board caused the board any loss or damage because he -**
- (a) **failed to collect moneys due to the board for the collection of which he is or was responsible;**
- (b) **is or was responsible for an irregular payment of the board's moneys or for a payment of such moneys not supported by a proper voucher;**
- (c) **is or was responsible for fruitless expenditure of the board's moneys due to an omission to carry out his duties;**
- (d) **is or was responsible for a deficiency in, or for the destruction of, or damage to the board's moneys, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the board;**
- (e) **due to an omission to carry out his duties, is or was responsible for a claim against the board, the general manager shall determine the amount of such loss or damage and shall, subject to the provisions of subsection (5), by notice in writing, order that person to pay to him, within 30 days from the date of such notice, the amount so determined.**
- (2) **If a person who is in the employ of the board and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his salary or wages: Provided that such deduction shall not exceed one-fourth of his salary or wages at a time.**
- (3) **If a person who was in the employ of the board and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the general manager shall, subject to the provisions of subsections (4), (6) and (7), recover the amount from the person concerned by legal process.**

- (4) If a person who has in terms of subsection (1) been ordered to pay an amount makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the general manager may allow payment in such instalments as he may consider reasonable: Provided that if the redemption of that amount in terms of the offer will not be effected within a period of 12 months calculated from the date on which the first instalment is payable, the approval of the board shall be obtained for the payment thereof over a period in excess of the period mentioned, and the board may determine the other terms and conditions subject to which the amount shall be paid.
- (5) If for any reason whatsoever the general manager is of the opinion that the amount of a loss or damage referred to in subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, he may request the board to exempt that person from payment of the whole or a portion of that amount, and the board may in its discretion approve of the whole or a portion of such amount not being recovered: Provided that no amount shall be so exempted where such loss or damage is the result of theft or fraud by that person.
- (6) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of 30 days from the date of such order, in writing request the general manager, stating the grounds for his request, that a request as contemplated in subsection (5), be addressed to the board, and if the general manager refuses to address such a request to the board or if the board refuses to approve, as contemplated in the said subsection, of the whole or a portion of the amount in question not being recovered as requested, such person may within 30 days after he has been notified in writing of any such refusal, appeal against such refusal to the Minister, and the Minister may, after such further investigation as he may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, according as he may consider fair and reasonable, from the payment of such amount.
- (7) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Minister in accordance with subsection (6), apply within a period of 30 days from the date of the order, or within such further period as the court may allow, to a competent court for an order setting aside the first-mentioned order or reducing that amount, and the court may upon such an application, if it is not convinced by the general manager on the merits of the case that the order was rightly made or that that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.
- (8) If an amount is reduced in terms of subsection (5), (6) or (7), the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4).

- (9) **If a person who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, interest thereon shall be payable from the date immediately following on the date on which that period expires, at such rate as the board may determine.]**

21. Insurance against patrimonial damage or loss or claims

The board **[may]** must arrange with an insurer for insurance against any patrimonial damage or loss **[or]** against claims of any nature which may be instituted against the board.

22. [Freedom] Limitation [from] of liability

[a No liability shall attach to the State or to the board for any loss or damage occasioned to any person as a result of a bona fide performance by the board or a committee appointed under section 12(e) or by any agent, officer or employee of the board of any function or duty under this Act or the regulations.]

[b] A member, **[(] including an acting member [)]** or **[an officer or]** employee of the board **[shall not be]** is not personally liable for any act or default done or committed in good faith in the course of performing his or her functions in accordance with this Act or **[the]** regulations made under this Act.

23. Registration of exporters and provision of information

(1) Every exporter of perishable products must register with the board in the prescribed manner.

(2) Every prospective exporter must apply, within the prescribed period and in the prescribed manner, to the board for the issue of a registration certificate.

(3) A person who is not —

(a) registered with the board as an exporter; and

(b) the holder of a registration certificate,

may not, directly or indirectly, export perishable products from the Republic.

- (4) (a) Every exporter must furnish the board with particulars of all perishable products exported by such exporter in electronic format, as determined by the board.
- (b) Such particulars must be furnished within 24 hours of export of the perishable products from the Republic.
- (5) (a) Every cold chain service provider must furnish the board with particulars in electronic format as determined by the board of all—
- (i) perishable products intended for export or exported; and
- (ii) services performed or provided relating to the cold chain.
- (b) The particulars contemplated in paragraph (a) must include information in respect of temperatures and volumes exported.
- (6) (a) Every—
- (i) exporter; and
- (ii) cold chain service provider,
- of fruit must identify the fruit so exported by reference to—
- (aa) the PUC number;
- (bb) the cultivar;
- (cc) class;
- (dd) packing; and
- (ee) point of discharge,
- for the purposes of compliance with subsections (4) and (5).
- (b) The board may request an exporter to indicate the intended market for selling.
- (7) The Minister must, after consultation with the board, prescribe the criteria for registration as an exporter.

(8) The board may, on good cause shown and subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), suspend or cancel the registration of an exporter, and such person may not, directly or indirectly, export perishable products from the Republic.

24. Inspection and investigation

(1) The board may, either of its own accord or as a result of a complaint, institute an inspection and investigation into—

(a) the conduct of an exporter or a cold chain service provider; or

(b) an alleged contravention of this Act by an exporter or cold chain service provider.

(2) An inspection and investigation contemplated in subsection (1) must be conducted in accordance with the provisions of this section.

(3) The board may designate a suitable person as an inspector to exercise and perform periodic regulatory inspections at the business premises of any exporter or cold chain service provider with a view to determining whether the provisions of this Act have been complied with by such exporter or cold chain service provider: Provided that, for such purpose, the inspector is entitled to enter such business premises and to exercise any of the powers referred to in subsection (7), subject to subsection (8).

(4) An inspector must be furnished with a certificate of appointment signed by or on behalf of the board in which it is stated that he or she is an inspector appointed in accordance with this Act.

(5) An inspector must, when performing any functions in terms of this Act, have his or her certificate of appointment in his or her possession.

(6) In order to obtain any information required by the board in relation to an inspection, or in relation to the investigation of a complaint, charge or allegation lodged, an inspector may, subject to this section, enter any premises on or in which any book, document, data or other object connected with an inspection or investigation is or is suspected to be, and may—

- (a) inspect or search those premises, and there make such investigations or enquiries as may be necessary for the purpose of obtaining any such information;
- (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question and request from the owner or person in control of the premises or from any person in whose possession or control that object is, information regarding such object;
- (c) make copies of or extracts from any book, document or data found on or in the premises, which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information an explanation of any entry therein; and
- (d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, if the inspector needs to retain it for further examination or for safe custody.
- (7) Unless the owner or person in control of the premises has consented thereto in writing, an inspector may only enter premises and exercise any power contemplated in subsection (6) under a search warrant: Provided that such search warrant may only be issued by a judge or a magistrate, if it appears from written information given by the inspector to such judge or magistrate under oath or solemn affirmation that there are reasonable grounds to suspect that—

 - (a) a contravention of this Act has taken place or is taking place; and
 - (b) a book, document or other object which may afford evidence of such contravention is on or in those premises.
- (8) A search warrant contemplated in this subsection—

 - (a) must authorise an inspector contemplated in the warrant to enter only the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (6);
 - (b) must be executed by day, unless the judge or magistrate issuing the warrant authorises the execution thereof during the night; and

(c) is of force—

(i) until it is executed or cancelled by the judge or magistrate; or

(ii) for a period of one month from the day of its issue,

whichever occurs first.

(9) An inspector referred to in subsection (5) or an inspector executing a search warrant in accordance with subsection (6) must, before such execution, upon demand by any person whose rights may be affected—

(a) show such person his or her certificate of appointment; and

(b) hand to such person a copy of the warrant if he or she is acting under the authority of a warrant.

(10) A person from whose possession or control a book, document or data has been taken in accordance with this section is, as long as the book, document or data is in the possession or control of the inspector or of the board, allowed on request to—

(a) make copies thereof; or

(b) take extracts there from,

at any reasonable time at his or her own expense and under the supervision of that inspector or a person in the service of the board.

(11) A person is guilty of an offence if—

(a) he or she obstructs or hinders an inspector in the performance of his or her functions in terms of this section; or

(b) after—

(i) an inquiry has been made in accordance with subsection (7)(a); or

(ii) after having been requested for information or an explanation under subsection (7) (b) or (c),

and he or she—

(aa) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, such inquiry or request for information; or

(bb) gives an answer, information or an explanation which is false or misleading, knowing it to be false or misleading.

(12) A person from whom information or an explanation has been requested in terms of this section is not entitled to refuse to answer any question or to produce any book, document or data or object on the ground that he or she would thereby be exposed to a criminal or disciplinary charge: Provided that, to the extent that such answer, book, document, data or article does expose the person to a disciplinary or criminal charge, no evidence thereof is admissible in any disciplinary or criminal proceedings against that person, except where the person stands trial on a charge contemplated in subsection (11)(b).

(13) An inspector who is not in the full-time service of the State may be appointed on such conditions and at such remuneration as the board may determine, after consultation with the Minister.

25. Data base and information system

The board—

(a) must develop, establish and maintain an appropriate information system for the storage and dissemination of prescribed data in electronic form, with the technical ability to link all aspects of the cold chain in real time status in order to provide for—

(i) the issue of web-based export documentation; and

(ii) electronic tracking of perishable products intended for export;

(b) must, for the purposes of this section, take appropriate steps to facilitate the participation of black farmers, rural communities and exporters in the cold chain

by promoting and facilitating their easy access to the data base and information system; and

(c) may disclose generic information: Provided that it may not disclose confidential individual exporter or cold chain service provider information to any third party, except where required in terms the of operation of any law, or with the consent of such exporter or cold chain service provider.

26. [22] Exclusion of certain countries or territories

This Act does not apply to the export of perishable products to, and for consumption in, any country or territory excluded by the Minister by notice in the *Gazette* **[from the application thereto of this Act]**.

27. [23. Functions in respect of] Export of perishable products of foreign origin

If requested thereto by any person in any other country or territory, the board may—

(a) with the approval of the Minister; and

(b) on such conditions as the Minister may determine,

perform for, and in respect of, such person any function in relation to perishable products of such country or territory which it would be capable of performing in the Republic in **[terms of]** accordance with this Act.

28. Control over cold chain

(1) No person may export a perishable product unless such person—

(a) is registered as an exporter with the board;

(b) complies with the prescribed requirements of cold chain management are complied with; and

(c) has furnished the board with the prescribed records, data and returns, in the prescribed manner;

(2) The Minister may limit the application of subsection (1) to a prescribed category of persons or to a prescribed area.

(3) The Minister may authorise the board to exempt any person in writing, either entirely or partially, from a prohibition referred to in subsection (1), on the conditions which the board deems necessary: Provided that the board may grant such exemption either in general or in respect of a particular quantity or type of a perishable product.

29. Public participation and coordination

The Minister must, in the development and coordination of resources relating to the export of perishable products, in respect of the—

- (a) formulation of policy;
- (b) drafting of legislation;
- (c) determination of priorities; and
- (d) establishment of structures,

ensure for consultation and inclusive participation of civil society, communities, individuals, and other organs of State.

30. **[24] Offences and penalties**

- (1) Any person who wilfully and unlawfully—
 - (a) exports any perishable product without being registered with the board as an exporter;
 - (b) **[exports any perishable product save under contract or other arrangement made by, or through or with the consent of the board]** fails to comply with the prescribed requirements of cold chain management;
 - (c) **[accepts shipping space for the export of perishable products from anyone other than the board save under contract or other arrangement made by, through or with the consent of the board]** fails to furnish the board with the prescribed particulars, information and data; or
 - (d) submits to the board a false statement or representation, knowing it to be false, regarding any matter in connection with the **[export of perishable products]** cold chain or the export of perishable products,

[(e) save for the purpose of this Act or the regulations, or on the order of the Supreme Court of South Africa or with the consent of the board, discloses any information obtained from estimates or particulars received under section 10 section 10 (c),]

[shall be] is guilty of an offence and liable on conviction to a fine **[not exceeding R5 000]** or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

- (2) If any person convicted of an offence **[mentioned]** contemplated in subsection (1) is registered with the board as an exporter, the board may withdraw such registration for such period as it may determine, subject to due process of law.

31. **[25] Regulations**

- (1) The Minister may, after consultation with the board, make regulations **[as to]** that are not inconsistent with this Act, regarding—
- (a) the functions of the board in terms of this Act, except [the prescribing] in relation to [of] conditions of service contemplated in section [11(c)] 5(b);
- (b) **[the extent of shipments and shipping space required for the safe conveyance of perishable products and the standards required for such shipping space]** the cold chain management system and matters relating thereto;
- (c) the cleansing and disinfecting of any cold storage and shipping space intended for perishable products;
- (d) the environmental conditions and the manner of handling, conveyance and storage **[required for]** of perishable products;
- (e) the shipping of perishable products;
- (f) registration **[with the board]** of exporters with the board and matters related thereto;
- (g) any information **[with which exporters shall]** and data which exporters and cold chain service providers must furnish to the board;

- (h) any records and returns that must be maintained by exporters and cold chain service providers with regard to perishable products exported from the Republic, and the manner and time within which such records and returns are to furnished to the board;
 - (i) **[h]** statistics to be maintained by the board in respect of the export of perishable products;
 - (j) the information system to be established and maintained by the board;
 - (k) the data base of information relating to perishable products, that is to be established and maintained by the board and the manner in which same is disseminated, so as to promote export of perishable products from the Republic;
 - (l) **[i]** fees payable in respect of services rendered by the board in the performance of its functions;
 - (m) **[j]** any matter which in terms of this Act is required or permitted to be prescribed **[by regulation]** in terms of this Act, or generally, any other matter he or she deems necessary or expedient to prescribe in order to achieve the object of this Act.
- (2) The Regulations made under subsection (1) may prescribe penalties for any contravention of or failure to comply with their provisions, not exceeding the penalties contemplated in section **[24]** 29.

32. Transitional arrangements and savings

- (1) Any notice, approval, authorisation or document given, granted or issued or any contract concluded under any provision of any law repealed by Schedule I is deemed to have been given, granted, issued or concluded under this Act.
- (2) The Perishable Products Export Control Board, established in accordance with the Perishable Products Export Control Act, 1926 (Act No. 53 of 1926), continues to exist and be a juristic person until it is replaced by the board established in terms of section 3, within a period of six months after the commencement of this Act.

33. [26.] Repeal of laws

- [(1) Subject to the provisions of subsection (2), the Perishable Products Export Control Act, 1926 (Act No. 53 of 1926), the Perishable Products Export Control Amendment Act, 1935 (Act No. 31 of 1935), the Perishable Products Export Control Amendment Act, 1954 (Act No. 30 of 1954), the Perishable Products Export Control Amendment Act, 1957 (Act No. 50 of 1957), and the Perishable Products Export Control Amendment Act, 1979 (Act No. 1 of 1979), are hereby repealed.
- (2) Any notice, approval, authorization or document given, granted or issued or any contract concluded under any provision of any law repealed by subsection (1) shall be deemed to have been given, granted, issued or concluded under this Act.]

Subject to the provisions of section 31, the law listed in Schedule I is hereby repealed.

34. Short title and commencement

This Act [**shall be**] is called the Perishable Products Export Control Act, [**1983**] 2013, and [**shall come**] comes into operation on a date fixed by the [**State**] President by proclamation in the *Gazette*.

SCHEDULE I

(Section 32)

No and year of law	Short title	Extent of repeal
Act No. 9 of 1983	Perishable Products Export Control Act, 1983	The whole