REPUBLIC OF SOUTH AFRICA

FERTILIZERS AND FEEDS BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 35902 of 23 November 2012)
(The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B 41—2012]

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GENERAL EXPLANATORY NOTE:

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

BILL

To provide for the licensing of facilities and rendering plants; to provide for the registration of feed additives, raw materials, animal by-products, imported fertilizers, feeds or pet foods, and home mixers; to provide for the appointment of a Registrar to administer the Act; to provide for the establishment of the Technical Standards Advisory Council; to provide for the designation of technical advisers, analysts and auditors; to provide for the regulation of the import, export, acquisition, disposal, sale or use of fertilizers and feeds; to repeal certain laws relating to fertilizers, feeds and sterilizing plants; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING—

- the need to ensure safe fertilizer and feed production for food;
- the need to ensure the availability of safe and efficacious additives and raw material for use in the manufacture of compound fertilizers and feeds;
- the critical role of fertilizers and feeds in food safety and food security;
- the need for a traceability system within the fertilizer and feed industries;
- the need for supporting fertilizer, feed and rendering enterprises competing in the fast-moving consumer goods industry and for public policy objectives which promote compliance with issues in terms of animal, human and environmental health;

AND IN ORDER TO—

- disseminate an efficient and effective traceability system;
- ensure compliance with food safety requirements;
- improve food security through the availability of safe and efficacious fertilizers and feeds;
- protect the consumers and users of fertilizers and feeds;
- enhance product liability and consumer protection; and
- ensure compliance with matters that relate to animal, human and environmental health,

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

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CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise—

"advertisement" means any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference distributed to members of the public or brought to their attention in any other manner and which is intended to promote the sale of fertilizers or feeds, or encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof, and ''advertise'' has a corresponding meaning;

"analyst" means any person or institution appointed as such in terms of section 34(2)*(a)*;

"animal" means any mammal, bird, fish, reptile or amphibian which is a member of the *phylum vertebrates* or any member of the *phylum mollusca* and *phylum crustacea* normally consumed by a human being, including the carcass of any such animal;

"Animal Diseases Act" means the Animal Diseases Act, 1984 (Act No. 35 of 1984);

"animal product" means any product or by-product obtained from the carcass of an animal;

"auditor" means an officer appointed as an auditor in terms of section 34(2)*(c)*;

"Board" means the Appeal Board established by the Minister in terms of section 32(1);

"brand" means a word, name, symbol or device, or combination thereof, which identifies the feed additive, raw material, fertilizer, feed or pet food of a distributor and distinguishes it from that of others;

"bulk" means a type of product in solid or liquid state in a non-packed form, delivered in bulk containers or tankers;

"Council" means the Technical Standards Advisory Council established by section 2;

"distribute" means to sell or offer for sale, exchange or barter feed additive, raw material, fertilizer, feed or pet food or to supply, furnish or otherwise provide feed

additive, raw material, fertilizer, feed or pet food, and ''distribution'' has a corresponding meaning;

"distributor" means any person who distributes feed additive, raw material, fertilizer, feed or pet food;

"export" means the delivery or supply of feed additive, raw material, fertilizer, feed or pet food within the Republic for the sole purpose of dispatching such feed additive, raw material, fertilizer, feed or pet food to any destination outside the Republic;

"facility" means the premises, including a private dwelling, where fertilizers, feed, pet food or premixtures are manufactured as primary products, compounded, controlled, packed, marked or labelled for the purposes of sale or distribution as fertilizers, feed, pet food or premixtures, including warehouses where products are stored for distribution or sale, and ''establishment'' has a corresponding meaning;

"feed" means any solid or liquid substance or product, whether processed, partially processed or unprocessed, which is intended to be used for oral feeding for animals, and excludes the private domestic production of feeds for—

(a) food-producing animals kept for domestic consumption; and

(b) animals not kept for food production;

"feed additive" means any substance in any form, micro-organism or preparation, other than raw materials and premixtures, which is not classified as a medicinal substance, and is intentionally added to feed or water in order to perform, in particular, one or more of the following functions:

(a) To favourably affect the characteristics of feeds;

(b) to favourably affect the characteristics of animal products;

(c) to favourably affect the colour of animals, including ornamental fish and birds;

(d) to satisfy the nutritional needs of animals;

(e) to favourably affect the environmental consequences of animal production;

(f) to favourably affect animal production, performance or welfare, particularly by affecting the gastro-intestinal flora or digestibility of feeding stuffs,

and is proven to be safe under the conditions of its intended use, and includes, but is not limited to, neutraceuticals and herbal supplements;

"fertilizer" means any substance which is intended or offered to be used for improving or maintaining the growth of plants or the productivity of the soil, including custom formula fertilizer prepared for any person or by that person, in accordance with his or her directions for use as fertilizer or making a compounded fertilizer, but excludes plant growth regulators;

"Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act" means the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947);

"herbal supplements" means herbs or botanicals which include phytonutrients, but does not include phytomedicines or medicinal herbs, and which belong to the group of neutracines;

"home mixer" means any person on a farm who derives consistent income from mixing feed for animals under his or her own care for the purpose of production and sale of the animals or animal products for human consumption, and includes any person who mixes fertilizers under his or her own care, including fertilizer from his or her own mining operation for the purpose of plant production and sale of the harvest or harvest by-products for animal or human consumption, but does not include a person who mixes fertilizers or feed for resale;

"inspector" means an officer appointed as an inspector in terms of section 34(2)*(b)*;

"label" means a display of written, printed or graphic matter upon, or affixed to, the container in which a feed additive, raw material, fertilizer, feed or pet food is distributed, or on the invoice or delivery note with which a feed additive, raw material, fertilizer, feed or pet food is distributed;

"labelling" means all labels and other written, printed or graphic matter attached to a feed additive, raw material, fertilizer, feed or pet food, any of its containers or wrappers, or accompanying such feed additive, raw material, fertilizer, feed or pet food;

"manufacture" means to grind, mix or blend, produce or further process a feed additive, premixture, raw material, fertilizer, feed or pet food;

"mark" means a mark as defined in section 1 of the Trade Marks Act, 1993 (Act No. 194 of 1993);

"Meat Safety Act" means the Meat Safety Act, 2000 (Act No. 40 of 2000);
"medicated feed" means any premixture, feed or pet food which contains a registered or approved veterinary medicine in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act or the Medicines and Related Substances Act;
"medicinal claim" means any claim or statement made, purported or used regarding the suitability of any substance for use as veterinary medicine;
"Medicines and Related Substances Act" means the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);
"Minister" means the Cabinet member responsible for agriculture, forestry and fisheries;
"National Environmental Management: Waste Act" means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);
"Natural Scientific Professions Act" means the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003);
"neutraceutical" means a formulation of isolated nutrients, dietary supplements, diets and herbal preparations or any substance that may be considered as food, or part of food, that can provide medical or health benefits, including assisting in the management and treatment of diseases, also classified as an ingredient;
"Occupational Health and Safety Act" means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
"officer" means an officer as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
"official sample" means any product sample taken in terms of section 37(1)*(a)*;
"pet" means an animal belonging to a species normally kept as a companion and nourished by human beings;
"pet food" means any feed prepared and distributed for consumption by pets;
"Pharmacy Act" means the Pharmacy Act, 1974 (Act No. 53 of 1974);
"premixture" means a mixture of one or more feed additives, with or without feed ingredients or water used as carriers, intended for inclusion in the manufacture of compound feed as part of its formulation;
"premises" means any land, retail building, warehouse or any other building or other structure, and includes any train, boat, ship, aircraft or other vehicle;
"prescribed" means prescribed by regulation or directive;
"product" means feed additive, raw material, animal by-product, fertilizer, feed, pet food or premixture;
"product name" means the name of the feed additive, raw material, fertilizer, feed or pet food which identifies it in accordance with its kind, class or specific use;
"raw material" means organic or inorganic products in a solid or liquid form, including various products of vegetable or animal origin, in their natural state, fresh or preserved, and products derived from the industrial processing thereof, whether or not they contain feed additives, which are intended for use in oral animal feeding or for use as a fertilizer, either directly as such, or after processing, in the preparation of compound feeds or compound fertilizers or as carriers of premixtures, and ''ingredient'' has a corresponding meaning;
"Registrar" means the Registrar appointed in terms of section 11;
"rendering plant" means a facility where animals and animal by-products, derived from food producing animals or legally slaughtered game or wild animals, are processed, either in an intermediary form, or as a final sterilized and safe product, which is safe for animal consumption;
"sell" includes agreeing to sell, or to offer, advertise, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration whatsoever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid, and ''sale'' has a corresponding meaning;
"speciality pet" means any domesticated pet normally maintained in a cage or tank, including, but not limited to, dragon flies, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, gold fish, snakes and turtles;
"speciality pet food" means any pet food prepared and distributed for consumption by a speciality pet;
"technical adviser" means an officer delegated by the Registrar in terms of section 34(1);
"this Act" includes any regulations or directives made under this Act;

"tonnage" means a net weight of one thousand kilograms and, in a liquid form, means one thousand litres;

"Veterinary and Para-Veterinary Professions Act" means the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982); and

"veterinary medicine" means any substance or mixture of substances, used or purporting to be suitable for use or manufactured or sold for use in connection with vertebrates, for the treatment, diagnosis, prevention or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth, production or working capacity, or for curing, correcting or modifying any somatic or organic function, or for correcting or modifying behaviour, and ''stock remedy'' has a corresponding meaning.

CHAPTER 2

TECHNICAL STANDARDS ADVISORY COUNCIL

Establishment of Technical Standards Advisory Council

2. There is hereby established a juristic person to be known as the Technical Standards Advisory Council.

Functions of Council

3. (1) The Council must—

(a) advise the Minister or the Registrar on fertilizers and feeds regulatory policy matters; and

(b) make recommendations on compulsory regulatory standards and guidelines.

(2) In order to achieve its objects, the Council may—

(a) solicit information from the South African commerce industry and the public about regulatory matters of concern;

(b) establish and maintain the necessary scientific and technical expertise on an internationally acceptable level, including obtaining membership of, participating in or developing relationships with, foreign or international bodies having objects similar to those of the Act;

(c) perform, in so far as it is not contrary to or inconsistent with any Act, such functions as the Minister may assign to it; and

(d) establish specialist consultative committees to provide input into the process to interpret and implement compulsory regulatory specifications and guidelines.

Appointment and composition of Council

4. (1) The Council consists of 21 members, including technical advisers, inspectors and analysts, and is made up as follows:

(a) The Registrar who, by virtue of his or her office, must be the chairperson;

(b) the vice-chairperson who must be appointed by the Registrar from the technical advisers;

(c) three technical advisers, two inspectors, two auditors and two analysts, by virtue of their appointment or delegation; and

(d) the rest of the members, who are appointed by the Minister.

(2) When appointing the members of the Council, the Minister must invite public nominations through publication in the *Gazette*, and must ensure that such members—

(a) are broadly representative of the demographics of the country; and

(b) have sufficient knowledge, experience or qualifications in one or more of the following fields:

(i) Monogastric nutrition;
(ii) ruminant nutrition;
(iii) pet nutrition;
(iv) animal science, animal health or husbandry;
(v) veterinary pharmacology or veterinary toxicology;
(vi) chemistry or biochemistry;
(vii) microbiology or food science;
(viii) public health or environmental health;

(ix) soil science; or
(x) agronomy, plant physiology or botany.

Term of office

5. (1) Members of the Council who are appointed by the Minister hold office for a period not exceeding five years and are eligible for re-appointment for a further period, not exceeding two terms.

(2) A person appointed to fill a vacancy as member of the Council holds office for the remaining portion of the term of the vacating member.

(3) A member of the Council may resign by giving at least one month's written notice to the Registrar.

Disqualification and dissolution

6. (1) A person may not be appointed or continue to serve as a member of the Council if he or she—

(a) is an unrehabilitated insolvent;
(b) has at any time been convicted of an offence involving dishonesty; or
(c) has been declared by a court to be mentally ill or unfit.

(2) A member of the Council must vacate his or her office—

(a) if he or she is absent from three consecutive meetings of the Council without a valid excuse for non-attendance and prior leave from the chairperson; and
(b) after a hearing, constituted by the Registrar and two members of the Council, to make a determination on this matter.

(3) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may at any time, after consulting the Council, terminate the term of office of any member of Council if there are compelling reasons for doing so.

(4) Subject to the Promotion of Administrative Justice Act, 2000, the Minister may at any time dissolve the Council if there are compelling reasons for doing so.

Conditions of appointment

7. (1) The conditions of appointment of members of the Council, who are not in the employ of an organ of state, are determined by the Minister, after consultation with the Minister of Finance.

(2) The conditions of appointment may include remuneration and any subsistence and travel allowance payable by the Registrar, after consultation with the Minister of Finance.

(3) Members who are employed by an organ of state are not entitled to remuneration, but are entitled to such allowances as determined by the Minister for out-of-pocket expenses.

Operating procedures of Council

8. (1) The Council must meet at least four times a year.

(2) The chairperson of the Council decides after consultation with Council members when and where the Council will meet.

(3) If the chairperson is absent from a meeting, the vice-chairperson must preside at that meeting.

(4) If the chairperson and the vice-chairperson are both absent from a meeting, the Council may elect a member from among their number to preside at that meeting.

(5) Fifty per cent plus one of the members of the Council constitutes a quorum for a meeting of the Council.

(6) A decision of the majority of the members constitutes a decision at a meeting of the Council.

(7) In the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberate vote.

(8) The Council must keep minutes of its proceedings and decisions.

(9) The Council may, by resolution, make rules to further regulate its proceedings.

Committees

9. (1) The Council may establish committees to assist it in the performance of its functions.

(2) The Registrar, after consultation with the Minister, must determine the composition, rules and procedures of committees established in terms of this section.

(3) The Council may from time to time by resolution dissolve or reconstitute a committee.

(4) Any decision taken by a committee established under this section must be ratified by the Council.

Conflict of interests

10. A member of the Council or of a committee appointed in terms of sections 3 and 9 respectively, must declare to the Registrar and the Minister his or her commercial interests related to the fertilizer, feed, rendering or related industries, which interests include, but are not limited to—

(a) any consultancy, paid or unpaid;
(b) any research grant from which the member directly or indirectly benefits;
(c) any equity holding;
(d) any executive or non-executive directorship; or
(e) any other financial benefit or benefit in kind,

and must recuse himself or herself from any discussion or decisions that relates, directly or indirectly, to the interests referred to in paragraphs *(a)* to *(e)*.

Appointment of Registrar

11. (1) The Minister must appoint a Registrar to administer the Act.

(2) The Registrar must exercise the powers and perform the duties conferred to or imposed upon him or her by the Minister.

(3) The Registrar may delegate or assign any duty conferred or imposed upon him or her, except those assigned in terms of section 34, to any officer with appropriate knowledge and experience who is under the control of the Registrar;

(4) A delegation of power or assignment of duty under subsection (3) must be in writing and—

(a) may be subject to any conditions or restrictions determined by the Registrar;
(b) does not prevent the exercise of that power or the performance of that duty by the Registrar; and
(c) may be withdrawn or amended by the Registrar.

CHAPTER 3

REGISTRATION AND LICENSING PROCEDURE

Registration and licensing procedure

12. (1) An application for—

(a) the registration of a feed additive, raw material, animal by-product, imported feed, fertilizer, pet food or home mixer; or
(b) the licensing of a facility or rendering plant,

must be made to the Registrar in the prescribed manner and must be accompanied by the prescribed application fee.

(2) Any person who applies for registration or licensing in terms of subsection (1) must supply or make available to the Registrar, in the manner and at the time and place as prescribed, the samples, building plans, any information that relates to the composition, safety, health or environmental risks or the value of the product and any additional particulars that the Registrar may require.

(3) When an application has been received for the licensing of a facility or rendering plant, the Registrar must order an inspection or audit of the facility or rendering plant before the registration process may proceed.

(4) A distributor is not required to obtain a licence or registration to distribute a product if the manufacturer or supplier of that product is already registered or licensed under subsection (1).

Registration of feed additives, raw materials or animal by-products

13. (1) If the Registrar, after consideration of any application referred to in section 12(1), and after such inspection or audit referred to in section 12(3) as the Registrar considers necessary, is satisfied that—

(a) the feed additive, raw material or animal by-product in respect of which registration is applied for—

(i) is suitable and sufficiently effective for its intended purpose;

(ii) has been scientifically trialed and tested by an institution approved in terms of this Act for such a purpose, as prescribed; and

(iii) complies with such requirements as may be prescribed;

(b) it is not contrary to the public interest that the feed additive, raw material or animal by-product be registered; and

(c) the establishment where it is manufactured is suitable for such manufacture,

the Registrar must register such feed additive, raw material or animal by-product.

(2) If the imported fertilizer, feed or pet food contemplated in subsection (1)*(a)* contains any veterinary medicine, such veterinary medicine must be registered in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act or the Medicines and Related Substances Act.

Registration of imported fertilizers, feeds or pet foods

14. (1) If the Registrar, after consideration of any application referred to in section 12(1), and after such inspection or audit referred to in section 12(3) as the Registrar considers necessary, is satisfied that—

(a) the imported fertilizer, feed or pet food in respect of which registration is applied for—

(i) is suitable and sufficiently effective for its intended purpose;

(ii) has been scientifically trialed and tested by an institution approved in terms of this Act for such a purpose, as prescribed; and

(iii) complies with such requirements as may be prescribed;

(b) it is not contrary to the public interest that the imported fertilizer, feed or pet food be registered; and

(c) the establishment where the imported fertilizer, feed or pet food is manufactured, is suitable for such manufacture and complies with the domestic law in the country of origin,

the Registrar must register such fertilizer, feed or pet food.

(2) If the imported fertilizer, feed or pet food contemplated in subsection (1)*(a)* contains any veterinary medicine, such veterinary medicine must be registered in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act or the Medicines and Related Substances Act.

Registration of home mixers

15. If the Registrar, after consideration of any application referred to in section 12(1), and after such inspection or audit referred to in section 12(3) as the Registrar considers necessary, is satisfied that—

(a) the home mixer in respect of whom registration is applied for—

(i) has equipment which is suitable and sufficiently effective for its intended purpose;

(ii) complies with such requirements as may be prescribed;

(iii) where applicable, complies with the requirements of the National Environmental Management: Waste Act; and

(iv) where applicable, complies with the requirements of the Occupational Health and Safety Act;

(b) it is not contrary to the public interest that the producer mixes his or her own feed or fertilizer; and

(c) where applicable, the facility in which feed is manufactured, is suitable for such manufacture,

the Registrar must register such home mixer.

Licensing of facilities

16. If the Registrar, after consideration of any application referred to in section 12(1), and after such inspection or audit referred to in section 12(3) as the Registrar considers necessary, is satisfied that—

(a) the facility in respect of which licensing is applied for—

(i) is suitable and sufficiently effective for its intended purpose;

(ii) complies with such requirements as may be prescribed;

(iii) complies with the requirements of the National Environmental Management: Waste Act; and

(iv) complies with the requirements of the Occupational Health and Safety Act; and

(b) the registration of such facility is not contrary to the public interest,

the Registrar must license such facility as a feed, fertilizer, pet food or premixture facility.

Licensing of rendering plants

17. If the Registrar, after consideration of any application referred to in section 12(1), and after such inspection or audit referred to in section 12(3) as the Registrar considers necessary, is satisfied that—

(a) the rendering plant in respect of which licensing is applied for—

(i) is suitable and sufficiently effective for its intended purpose;

(ii) complies with such requirements as may be prescribed;

(iii) complies with the requirements of the National Environmental Management: Waste Act; and

(iv) complies with the requirements of the Occupational Health and Safety Act; and

(b) the licensing of such rendering plant is not contrary to the public interest,

the Registrar must license that rendering plant.

Refusal to register or license

18. The Registrar may refuse an application for—

(a) the registration of a feed additive, raw material, imported fertilizer, feed, pet food or home mixer; or

(b) the licensing of a facility or rendering plant,

in accordance with the procedure contained in section 31(1), if it does not comply with the requirements of section 13, 14, 15, 16 or 17, whichever is applicable.

Registration or licensing period

19. Any registration or licensing in terms of this Act—

(a) must be done in the prescribed manner;

(b) is subject to such additional conditions as may be determined in the directives by the Registrar;

(c) is valid for such period as may be prescribed; and

(d) is only valid if the Registrar has issued a certificate of registration or licence in respect of such registration or licensing to the person who applied for it.

Renewal of registration or licensing period

20. (1) Subject to subsection (7), any registration or licensing period under this section may be renewed when the prescribed period for which it is valid has lapsed: Provided that the holder of a registration certificate or license must pay—

(a) a prescribed administrative renewal fee;

(b) a prescribed tonnage fee on products sold; and

(c) where an audit is conducted, a prescribed audit fee.

(2) The quantity of tonnage sold by the holder of a registration certificate or license in terms of section 13, 14, 15, 16, or 17, whichever is applicable, must be reported to the Registrar in the prescribed manner.

(3) The tonnage fee referred to in subsection (1)*(b)* is calculated on feed additives, raw materials, fertilizers, feeds, pet foods and premixtures sold, whether imported or locally produced: Provided that tonnage fee is not paid on feed additives, raw materials, fertilizers, feeds, pet food or premixtures if—

(a) payment was made by a previous distributor; or

(b) feed additives or raw materials are used for further manufacture of fertilizers, feeds or premixtures on which a tonnage fee must be paid by the same manufacturer.

(4) The Registrar reserves the right to require any additional proof or information to validate the declared amount of tonnage sold and may verify the accuracy of the volume sales in the tonnage report required by subsection (2).

(5) Information furnished under this section must not be disclosed by an employee of the State, institution or organisation appointed as auditors in a manner which divulges the business operations of the holder of a registration certificate or licence.

(6) The Registrar must consider the information furnished for the renewal and determine whether a further review of the registered product, home mixer or licensed facility or rendering plant is necessary before the registration or licensing period may be renewed.

(7) The Registrar must, after having considered the information furnished and after having determined whether a further review of the registered product, home mixer or licensed facility or rendering plant is necessary in terms of subsection (6), issue a renewal certificate to the holder of a registration certificate or licence if the Registrar is satisfied that the holder has paid the prescribed fees referred to in subsection (1).

(8) The requirements and procedures for the registration of any product or home mixer and licensing of any facility or rendering plant in terms of this Act apply, with the necessary changes, to the renewal of such registration or licensing.

Handling of registration certificate or licence

21. A person to whom a registration certificate or licence has been issued in terms of this Act, must—

(a) in the case of a feed additive, raw material, imported fertilizer, feed, pet food or home mixer, at all times, make the registration certificate, or a copy thereof, available for inspection by the Registrar, inspector or auditor at the establishment where such product is manufactured and processed for distribution; or

(b) in the case of a facility or rendering plant, at all times, make the licence, or a copy thereof, available for inspection by the Registrar, inspector or auditor at such facility or rendering plant.

Lapse of registration certificate or licence

22. (1) The registration of any feed additive, raw material, imported fertilizer, feed, pet food, home mixer or licensing of any facility or rendering plant, issued in terms of this Act, lapses if—

(a) the holder of a registration certificate or licence ceases to manufacture, distribute or sell the registered feed additive, raw material, imported fertilizer, feed or pet food or to operate the licensed facility or rendering plant;

(b) the licensed facility is no longer permanently used for the manufacture of fertilizers, feed, pet food or premixtures; or

(c) the licence holder of a facility uses personnel or a contractor that is not registered under the Natural Scientific Professions Act to formulate compound feed, compound fertilizer, compound pet food or premixture.

(2) When the registration of a product, or licensing of a facility or rendering plant has lapsed in terms of subsection (1), or has been cancelled in terms of section 30, the holder of the registration certificate or licence must, within the prescribed period, return such registration certificate or licence to the Registrar.

Exemption from registration of raw materials

23. (1) A home mixer who—

(a) grows field crops and processes them for use as raw material in the manufacture of compound feed for feeding his or her own animals;

(b) manufactures animal by-products from a licensed rendering plant and uses them as raw material in the manufacture of feed for feeding his or her own animals;

(c) manufactures animal by-products from a licensed rendering plant and uses them as raw material in the manufacture of fertilizers or as fertilizers for own use in crop production; or

(d) manufactures raw material from his or her own mining operation and uses the raw material in the manufacture of fertilizers or feeds for own use,

is exempted from registering such raw material.

(2) A facility licence holder who—

(a) grows field crops for use as raw material in the manufacture of feed for feeding his or her own animals;

(b) manufactures animal by-products from a licensed rendering plant and uses them as raw material in the manufacture of feed for feeding his or her own animals;

(c) manufactures animal by-products from a licensed rendering plant and uses them as raw material in the manufacture of fertilizers or as fertilizers for own use in crop production; or

(d) manufactures raw material from his or her own mining operation and uses the raw material in the manufacture of fertilizers or feeds for own use,

is exempted from registering such raw material.

Database

24. The Registrar must keep a database of—

(a) all registered products and home mixers; and

(b) all licensed facilities and rendering plants, including a list of all products manufactured in those facilities and rendering plants,

which information must be stored in a manner that protects confidential and personal information.

CHAPTER 4

RULES OF COMMERCE

Trading conditions

25. (1) Any person who manufactures, distributes or sells any product, must ensure that—

(a) the facility where such product is manufactured, is licensed in terms of this Act;

(b) the feed additives or raw material used in the manufacture of such product are registered in terms of this Act: Provided that the product in respect of which—

(i) the period of validity of the product registration certificate or the facility license has expired; or

(ii) the registration certificate or facility licence has been cancelled in terms of section 30, or has lapsed in terms of section 22,

and which, before or on the date of such expiry, lapse or cancellation, was no longer under the control of, or owned by, the person to whom that registration certificate or licence was issued, may, subject to the provisions of section 22, be sold;

(c) the product name or mark under which it is sold, is declared to the Registrar;

(d) it is, subject to the provisions of paragraph *(c)*, packed in such a manner and mass or volume as may be prescribed;

(e) the container in which it is sold, complies with the prescribed requirements and is sealed and labelled or marked in such a manner as may be prescribed or, if it is not sold in a container, it is accompanied by the invoice referred to in subsection (2);

(f) the transport used to transport the products, complies with the prescribed transport requirements;

(g) the product—

(i) is of the composition and efficacy specified in the application for registration thereof;

(ii) possesses all chemical, physical and other properties so specified; and
(iii) complies with the prescribed requirements;

(h) there is an auditable traceability system in place that can track and trace products from feed additives, raw material, premixtures and inclusion of veterinary medication through processing up to finished products manufactured; and

(i) the product meets the plant nutritional requirements or is nutritionally adequate for its intended purpose, as prescribed.

(2) Any person who sells or distributes any product in bulk, must give to the purchaser, at the time of delivery, or send to him or her, at the time of dispatch, an invoice containing the particulars in respect of such product as may be prescribed.

(3) The Registrar may order the owner of any licensed facility or rendering plant to discontinue the use of any equipment or procedure if he or she is of the opinion that such equipment or procedure used for the purpose of manufacturing, processing or rendering, is not suited for its intended purpose: Provided that the Registrar must provide the owner with reasons, in writing, for his or her decision.

(4) The Registrar may, in writing, require the holder of a registration certificate to—

(a) compile information, conduct tests and monitor the effects of products for the purpose of obtaining additional information with respect to their safety, efficacy, and effect on animals, plants, human health and the environment; and

(b) report the additional information to the Registrar in the prescribed manner.

Prohibitions

26. (1) The Registrar may, by notice in the *Gazette*, prohibit the manufacture, import, export, acquisition, distribution, disposal, sale or use of certain products: Provided that—

(a) the Minister may exempt any person from this prohibition, subject to such conditions as may be specified in the notice; or

(b) the Registrar may issue a permit containing conditions under which a product may be manufactured, imported, exported, acquired, distributed, disposed of, sold or used.

(2) Any prohibition issued under subsection (1) may apply—

(a) throughout the Republic or in one or more specified areas;

(b) to any facility or rendering plant;

(c) to any person belonging to any specified class or group of persons or to a person belonging to any such class or group of persons; or

(d) in respect of all or one or more classes or kinds of products.

(3) Subject to the promotion of the right to equality, contained in section 9 of the Constitution of the Republic of South Africa, 1996, any condition referred to in subsection (1) may differ in respect of different areas, facilities or rendering plants, persons or classes or groups of persons.

Adulterated or misbranded products

27. (1) A product is considered to be adulterated and in violation of this Act if—

(a) it bears a poisonous or deleterious substance which may render the product harmful to the health of animals, plants, human beings or the environment, except if the substance is not a deliberately added substance, in which case the product is not considered to be adulterated under this section if the quantity of the substance does not ordinarily render the product harmful to the health of animals, human beings or plants;

(b) it bears or contains unregistered or unapproved feed additives, raw material or veterinary medicine;

(c) any valuable component has been extracted, omitted, either wholly or partly, from it, or any less valuable substance substituted for it; or

(d) it contains any undesirable substance or exceeds the tolerance level established on restricted substances.

(2) A product is considered to be misbranded and in violation of this Act if—

(a) its labelling is false or misleading in any particular manner which may be harmful to animals, human beings, plants or the environment;

(b) it is distributed under the name of another product;

(c) it is not labelled in the prescribed manner;

(d) it purports to be, or is represented as, a feed additive, raw material fertilizer, feed, pet food or premixture but does not meet the requirements of a feed additive, raw material, fertilizer, feed, pet food or premixture as detailed in this Act;

(e) it purports to contain, or is represented as containing, raw material, other than raw material as defined in terms of this Act; or

(f) a word, statement or other information required in terms of this Act to appear on the label or labelling, is not prominently visible compared to other words, statements, designs or devices in the labelling and phrased in a manner that would render it likely to be read and understood by any person under customary conditions of purchase and use.

(3) A product manufacturer who voluntarily recalls a product which has been introduced into the channels of trade beyond his or her control, and who supports the conclusion that the product processed by him or her is adulterated or misbranded in a manner that would create a risk to animals, plants, human beings or the environment, must immediately notify the Registrar, in writing, of the recall and the reasons therefor.

(4) The notification contemplated in subsection (3) must contain a clear description of the adulterated or misbranded product, an evaluation of the risk related thereto and a statement of the measures to be taken to protect animals, plants, human beings or the environment from the risk.

(5) Information or a statement exclusively that a person derives from the notification contemplated in subsection (3), except for information contained in records required to be maintained under this Act, shall not be used as evidence in any legal proceedings against such person pursuant to this Act: Provided that such notification occurred before or concurrently with the contravention of the Act.

(6) A product manufacturer, distributor or trader who sells a product which has been introduced into the channels of trade, that is—

(a) manufactured from an unlicensed facility;

(b) not registered in terms of this Act; or

(c) adulterated or misbranded in terms of subsection (1) or (2),

must immediately notify the Registrar, in writing, and recall such product at his or her own expense.

(7) The Registrar may order a manufacturer, distributor or trader referred to in subsection (6) to immediately recall such a product at his or her own expense, if it does not comply with the prescribed requirements of this Act.

(8) Any person who knows about—

(a) an unlicensed facility, rendering plant or unregistered product or home mixer in terms of this Act; or

(b) adulterated or misbranded products in terms of subsection (1) or (2),

must immediately notify the Registrar, in writing or through electronic or telephonic communication, including any other manner deemed appropriate by that person.

Product administration

28. (1) Any person who, at the request of the owner or the person in control of an animal, land or crop, administers, for payment, any product to that animal, land or crop, must, before such administration, notify such owner or person in control of—

(a) proof of registration issued under the Natural Scientific Professions Act, the Veterinary and Para-Veterinary Professions Act or the Pharmacy Act, whichever is applicable;

(b) the purpose of such administration;

(c) the registered name and number of the product or facility licence number where such product was manufactured, before it is so administered; and

(d) the precautions to be taken before, during and after such administration.

(2) The notification referred to in subsection (1)*(d)* may be furnished verbally: Provided that it is confirmed in writing within three days after the administration concerned.

Products containing veterinary medicines or animal products

29. Any person who manufactures or administers any product containing veterinary medicines, animal products or by-products, bone or any other substance derived from an animal carcass, must ensure that—

(a) such veterinary medicine is registered in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act or the Medicines and Related Substances Act, for its intended use;

(b) such veterinary medicine when used in the manufacture of a product, is used under the prescript and authorisation for inclusion of a veterinary script where applicable and in the case of a facility, it is licensed as a medicated feed facility;

(c) such bone or substance or by-product thereof has been produced at a registered slaughter establishment under the Meat Safety Act and is fit for human consumption;

(d) such bone or substance has been sterilized in such manner as may be prescribed; or

(e) such bone or substance has, subject to the provisions of section 39, been imported and is in compliance with the conditions of a permit issued under the Animal Diseases Act.

CHAPTER 5

CANCELLATIONS, EXCLUSIONS AND APPEALS PROCEDURE

Cancellation, revocation or suspension of registration or licence

30. The Registrar may, at any time, cancel, revoke or suspend the registration or licence of any product, home mixer, facility or rendering plant if he or she is satisfied that—

(a) the registration or licence holder has, in connection with the registration or licence concerned, contravened, or failed to comply with, any provision of this Act;

(b) the registration or licence holder has contravened, or failed to comply with, any of the registration or licence conditions;

(c) a product so registered—

(i) is not of the composition and efficacy specified in the application for registration thereof;

(ii) does not possess the chemical, physical and other properties so specified; or

(iii) does not comply with any requirements that may be prescribed;

(d) the practices followed, and equipment available at or in respect of the home mixer, facility, or the operation of the undertaking at such a facility are not suitable for the manufacture of the product concerned;

(e) the manufacturing, processing or rendering plant does not comply, after an audit, with the prescribed conditions, or is otherwise not effectively equipped for its intended purpose;

(f) the person managing the facility or rendering plant does not have a relevant educational qualification or experience to manage such an undertaking;

(g) it is contrary to the public interest that the product or home mixer remains registered, or the facility or rendering plant remains licensed; or

(h) any incorrect or misleading advertisement is used in connection with a registered product, or licensed facility or rendering plant, or products manufactured in those facilities or rendering plants.

Furnishing of reasons for refusal, determination or cancellation

31. (1) If—

(a) any application for registration or licensing in terms of this Act is refused;

(b) the Registrar determines any conditions on registration or licensing in terms of section 19*(b)*; or

(c) any registration or licensing is cancelled in terms of section 30,

the Registrar must, in writing, within 90 days, furnish the applicant concerned, or the holder of the registration certificate or license, with reasons for such refusal, determination of conditions or cancellation, as the case may be.

(2) A person who feels aggrieved by any decision referred to in section 30 may, within a month, in the prescribed manner and upon payment of the prescribed fees, lodge an appeal to the Minister against such decision.

Appeal Board

32. (1) The Minister must, after consultation with the Director-General, establish an Appeal Board.

(2) The Board must consist of—

(a) one person designated as chairperson on account of his or her knowledge of the law; and

(b) three persons whom, in the opinion of the Minister, command sufficient knowledge in the relevant field regarding the matters in issue when the appeal is considered.

(3) The Minister must refer an appeal, contemplated in section 31(2), for consideration and decision to the Board.

(4) Any appeal lodged in terms of section 31(2) must be heard on the date and at the time and place fixed by the chairperson of the Board who must advise the appellant and the Registrar in writing thereof.

(5) The chairperson of the Board may, for the purposes of determining an appeal—

(a) summon any person who, in his or her opinion—

(i) may give relevant information concerning the issues in the appeal; or

(ii) has, or is suspected to have, in his or her possession or custody or under his or her control, any document which relates directly or indirectly to the appeal,

to appear before the Board as a witness at a time and place specified in the summons, to testify;

(b) administer an oath to, or accept an affirmation from, any person called as a witness at the hearing of the appeal;

(c) call any person summoned to appear at the hearing of the appeal as a witness; and

(d) require any person to produce any document in his or her possession or custody or under his or her control.

(6) The procedure to be followed at the hearing of an appeal must be prescribed by the Minister.

(7) If a member of the Board, established under subsection (1)—

(a) dies during the hearing of the appeal or so soon before its commencement that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the hearing of the appeal has commenced, unable to continue as a result of being compromised,

the appellant and the Registrar may agree that the hearing be conducted by the remaining members.

(8) In the event where the member who has died or has become incapacitated in terms of subsection (7) was or is the chairperson of the Board, the Minister must designate one of the remaining members to act as chairperson of the Board.

(9) *(a)* If the members do not agree in terms of subsection (7), the hearing of the appeal must be adjourned to allow the Minister to appoint a member, in accordance with subsection (1), to replace the member who has died or has become incapacitated.

(b) Where an appointment has been made in terms of paragraph *(a)*, the hearing of the appeal must, if the members agree, continue from the stage at which the hearing was interrupted by the death or incapacitation of the member referred to in subsection (7), or must, if the members do not so agree, commence from the beginning.

(10) The Board may, after hearing and considering the appeal—

(a) confirm, set aside or vary the relevant decision of the Registrar; or

(b) order the Registrar to execute the decision of the Board in connection therewith.

(11) The chairperson of the Board must notify the appellant and the Registrar in writing of the decision of the Board.

(12) If the Board sets aside any decision of the Registrar, the prescribed fees paid by the appellant in respect of the appeal must be refunded to him or her: Provided that if the Board varies any decision of the Registrar, it may, in its discretion, direct that the whole or any part of the prescribed fees be refunded to the appellant.

(13) A member of the Board who is not in the full-time service of the State may be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

Exclusions from operation of Act

33. The Minister may by notice in the *Gazette* exclude, subject to such conditions as he or she may determine, any home mixer, product, facility or rendering plant from the operation of any or all of the provisions of this Act.

CHAPTER 6

GENERAL PROVISIONS

Delegations and appointments

34. (1) For the purpose of this Act, the Registrar must delegate, in writing, officers as technical advisers who must advise the Registrar with regard to matters referred to them by the Registrar: Provided that such officers must be registered in terms of the Natural Scientific Professions Act, the Veterinary and Para-Veterinary Professions Act or the Pharmacy Act.

(2) In order to ensure compliance with this Act, the Registrar must, in general or for a specific purpose, appoint suitably qualified officers as—

(a) analysts to test and analyse products and equipment;

(b) inspectors to inspect premises, conduct market surveillance and enforce the Act; or

(c) auditors to audit facilities, monitor scientific experiments or research trials and enforce the Act.

(3) An officer appointed in terms of subsection (2) must be—

(a) registered in terms of the Natural Scientific Professions Act, the Veterinary and Para-Veterinary Professions Act or the Pharmacy Act; and

(b) furnished with a certificate, signed by the Registrar, stating that he or she has been appointed as an analyst, inspector or auditor, as the case may be, for the purposes of this Act.

(4) The Registrar, in consultation with the Minister, may contract the services of any person or institution to perform an analyst function as prescribed.

(5) Any person or institution contracted as an analyst in terms of subsection (4), must only be contracted if—

(a) there is an accurate description of the task that may be carried out, the conditions and the timeframe under which the task may be performed;

(b) there is proof that the analyst has the expertise, equipment and infrastructure required to perform the contracted task;

(c) in case of an institution, the institution has a sufficient number of suitably qualified and experienced staff who must be registered in terms of the Natural Scientific Professions Act, the Veterinary and Para-Veterinary Professions Act or the Pharmacy Act in their related field of practice;

(d) the person or institution is impartial and free from any conflict of interest with regard to the exercise of the contracted task; or

(e) in the case of an analyst, the laboratory where analyses are performed is accredited, by a body that is recognised under the South African National Accreditation System, to perform such analyses.

(5) The contract for a person or institution contracted as an analyst in terms of subsection (4) must be made in writing and the person or institution contracted, must be furnished with a certificate stating the nature and details of such a contract, for the purposes of this Act.

(6) The Minister or Registrar may, in writing, withdraw any contract referred to in subsection (4).

(7) The Minister may, with the concurrence of the Minister of Finance, determine and pay any person or institution contracted in terms of subsection (4) a compensation fee, remuneration or allowances.

Powers to enter, inspect, search and seize

35. (1) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, an inspector or auditor may at any time within business or operating hours and without prior notice enter any premises, other than a private dwelling, in or upon which—

(a) a product is—
(i) manufactured or sold;
(ii) stored or used in the course of any business; or
(iii) stored for any purpose in connection with the import or export of a feed additive, raw material, fertilizer, feed, pet food or premixture;
(b) any manufacture, sale, use or storage is reasonably suspected; or
(c) any records with regard to the import, manufacture or sale of a product referred to in paragraph *(a)* or *(b)* are kept.

(2) An inspector or auditor may enter a private dwelling or any place other than a place referred to in subsection (1) only—
(a) with the consent of the owner or occupier; or
(b) with the authorisation to do so by a warrant issued in terms of subsection (3).

(3) A warrant contemplated in subsection (2) may be issued by a judge or magistrate if it appears, from written information given by the inspector on oath or affirmation, that there are reasonable grounds for believing that a contravention of this Act has been, or is being, committed within the area of jurisdiction of that judge or magistrate.

(4) The warrant contemplated in subsection (3) must specify the parameters within which the inspector or auditor may perform an entry, search or seizure.

(5) An inspector or auditor entering any premises referred to in subsections (1) and (2) may be accompanied by an interpreter, after establishing the need for such interpreter.

(6) An inspector or auditor who enters and inspects or audits any premises under this section must conduct the entry and inspection or audit with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(7) An inspector or auditor who removes anything from any premises which is being searched or audited in terms of this section, must immediately issue a receipt as proof of such removal to the owner or occupier of the premises.

Identification prior to entry and co-operation with inspectors or auditors

36. (1) An inspector or auditor must immediately upon entering any premises in accordance with section 35—
(a) audibly identify himself or herself, produce his or her identification card and demand admission to the premises;
(b) notify the owner or occupier in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such notification may defeat the purpose of the search; and
(c) on request of the owner or occupier of the premises, produce an identification card issued by the Registrar to that person.

(2) Any person who is the occupier of a premises referred to in section 35(1) must at all reasonable times co-operate and furnish such assistance as an inspector or auditor may require in the exercise of his or her powers under this Act.

(3) In the event of resistance to an entry and search conducted in terms of section 35(1), an inspector or auditor may contact the South African Police Service to use such force as is reasonably necessary, including the breaking of a door or window of the premises.

(4) In the event of resistance to an entry and search conducted in terms of section 35(2), an inspector or auditor may contact the South African Police Service for assistance in order to gain access to the premises.

Powers to question and examine

37. (1) In order to monitor and enforce compliance with this Act, an inspector or auditor may—
(a) examine and take samples of any product referred to in section 35(1) or any component, material or substance in or upon the premises, including at a retail shop, concerned that is used or sold, or suspected to be intended for use or sale, in the manufacture of fertilizer, feed, pet food or premixture: Provided that the sample taken must—
(i) be taken in the presence of the owner or the person having custody of that product, or if such owner or person is not available, in the presence of an immediate witness at the premises; and
(ii) in the presence of such owner, person having custody or witness, be divided into three parts, each part packed in a suitable container, sealed

with a seal and labelled or marked in such a manner as the nature thereof permits, so that such sample may be readily identified and one part of each divided sample must be—

(aa) handed or forwarded by registered post to the owner or person having custody, referred to in section 37(1)*(a)*(i);

(bb) forwarded to an analyst who must, as soon as practicable test, examine or analyse the part in accordance with the methods which the Registrar may determine, record the result of such test, examination or analysis in writing and submit the result of the test to the Registrar; and

(cc) retained by the Registrar for a year where necessary;

(b) open and examine the contents of any package or container which contains, or is reasonably suspected to contain, a product referred to in section 35(1) or any component, material or substance in or upon the premises concerned used, or suspected to be intended for use, in the manufacture of such a product;

(c) examine any operation or process carried out in or upon the premises referred to in section 35(1) in connection with the manufacture or supply of the product;

(d) at any time demand from any person that he or she at a time and place fixed by the inspector or auditor produce to him or her any book, notice, record, list or other document which is in the possession or custody or under the control of that person or any other person on his or her behalf;

(e) examine a book, notice, record, list or other document referred to in paragraph *(d)* and make copies thereof, take extracts therefrom or request that they be made, if it relates to a product or record referred to in section 35(1)*(a)* or *(c)*;

(f) demand from a person in charge of any records referred to in section 35(1)*(c)* an explanation of any record or entry therein, and seize such record if it may afford evidence of any offence in terms of this Act;

(g) demand any owner or person who is in control of the premises referred to in section 35(1) to appear at a time and place fixed by the inspector or auditor, and question that person with regard to any matter which the inspector or auditor is investigating;

(h) examine any relevant document of a manufacturer or importer of a product to determine whether that manufacturer or importer has paid the prescribed fees referred to in section 20(1)*(b)*; or

(i) inspect a facility outside the Republic that exports products into the Republic.

(2) A person questioned by an inspector or auditor conducting an investigation in terms of this section must answer each question truthfully and to the best of his or her ability.

Samples and information

38. (1) Notwithstanding anything to the contrary in this Act, any person who imports, sells or supplies any product which is registered under this Act, must upon a request in writing by the Registrar, within a period stated in the request, and at that person's own cost—

(a) submit, or make available, to the Registrar any sample as may be specified in the request, for examination, testing or analysis;

(b) furnish to the Registrar such information as may be specified with regard to the product concerned or its manufacturing; and

(c) comply with the sampling requirements for that product.

(2) The Registrar may examine any sample obtained in terms of this Act, or have it tested or analysed, in order to determine whether the product, component, material or substance concerned complies with, has the characteristics of or has been manufactured in accordance with the requirements of this Act.

(3) The result of any examination, test or analysis of any sample of a product is regarded to be valid for the whole consignment or batch from which that sample was obtained or to similar services by the supplier, until the contrary is proved, or unless otherwise specified.

Imports and exports

39. (1) Any person who imports any product into the Republic, must ensure that—

(a) such product—

(i) is imported through prescribed ports of entry;

(ii) is registered in terms of section 13 or 14;

(iii) is manufactured in a facility that complies with domestic legislation in the country of origin and meets the requirements of this Act;

(iv) is of the composition and efficacy specified in the registration certificate;

(v) possesses all chemical, physical and other properties specified and complies with the requirements prescribed in respect thereof; and

(vi) is packed in a sealed container which is marked or labelled appropriately, unless the import is made in bulk;

(b) in the case of a product that contains animal product, bone or any other substance derived from the carcass of an animal, a permit referred to in section 29*(e)* has been issued in respect thereof;

(c) if the Registrar directs that the facility where the product is manufactured be audited or inspected, the cost of such an audit or inspection must be borne by the importer;

(d) if the Registrar directs that a sample be taken from such a product, the product must not be removed from any premises or port of entry without permission, in writing, by the Registrar; and

(e) if a sample thereof has been taken, such product not be sold in the Republic except upon the written permission of the Registrar and subject to the conditions specified therein.

(2) Notwithstanding the provisions of subsection (1) the Registrar may, in his or her discretion and on such conditions as he or she may determine, in writing, permit the import of any consignment of any product which does not comply with the requirements referred to in subsection (1)*(a)* for own use and that product must not be sold in the Republic.

(3) The provisions of sections 37(1)*(a)*, *(b)*, *(c)*, *(d)* and 38 in relation to samples taken applies to this section.

(4) If any product has been imported contrary to the provisions of this section, the Registrar must, in writing, provide the importer with the following options for the disposal of such imported product:

(a) At the expense of such importer the product must be removed by the importer from the Republic back to the country of origin within such period as the Registrar may determine; or

(b) the product must be forfeited to the State and be either destroyed or otherwise disposed of as the Registrar may direct.

(5) Any costs incurred by the State in connection with the destruction or disposal of any product in terms of subsection (4)*(a)* must be recovered from the importer concerned.

(6) All products imported into the Republic may only be transported on leaving the prescribed port of entry to a licensed facility, or registered home mixer, or to a licensed facility or registered home mixer via a warehouse that is licensed by the Registrar: Provided that the details of such licensed warehouse and licensed facility or registered home mixer must appear clearly on the delivery note.

Certification of product for export

40. (1) Any person who intends to certify a product for export out of the Republic, must ensure that—

(a) such product—

(i) is exported through prescribed ports of exit;

(ii) is of the composition and efficacy specified in the application for certification of export;

(iii) possesses all chemical, physical and other properties so specified and complies with the requirements prescribed in respect thereof; and

(iv) is packed in a sealed container which is marked or labelled appropriately, unless the exportation is made in bulk;

(b) in the case of a product containing animal product, bone or any other substance derived from the carcass of an animal, a veterinary export permit has been issued in respect thereof; and

(c) if the Registrar directs that a sample be taken from such product, it not be removed from any premises or port without permission, in writing, by the Registrar.

(2) Notwithstanding the provisions of subsection (1) the Registrar may, in his or her discretion and on such conditions as he or she may determine, in writing, permit the export from the Republic of any consignment of any product which does not comply with the requirements referred to in subsection (1)*(a)*.

Presumption of importer of product

41. If it is necessary, for the purposes of this Act, to determine the importer of a product, the person indicated as the importer on the documents concerning the import transaction is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the importer of that product.

Criminal proceedings under Act

42. (1) In any criminal proceedings under this Act—

(a) any quantity of a product in or upon any premises at the time a sample thereof is taken pursuant to the provisions of this Act is, unless the contrary is proved, considered to be of the same composition, to have the same degree of efficacy and to possess, in all other respects, the same properties as that sample;

(b) any person who is proved to have deliberately tampered with any sample shall, in the absence of evidence to the contrary which raises a reasonable doubt, be considered to have acted with fraudulent intent;

(c) a certificate stating the result of an analysis or test carried out in pursuance of the provisions of section 37(1)*(a)*(ii), purporting to be signed by the analyst who carried out such analysis or test, shall, in the absence of evidence to the contrary which raises a reasonable doubt, be accepted as prima facie proof of the facts stated therein; and

(d) any statement or entry contained in any book, electronic record or document kept by any manufacturer, importer or owner of a product, or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle used in, the business of that person—

(i) is admissible as evidence against that person; and

(ii) shall, in the absence of evidence to the contrary which raises a reasonable doubt, be admissible as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by such person, or by any manager, agent or employee of that person in the course of his or her work as manager, or in the course of his or her agency or employment.

Confidentiality

43. Any person who is or was involved in the performance of any function in terms of this Act, may not disclose any information which he or she obtained in the performance of such function, except—

(a) to the Minister;

(b) to any person who, out of necessity, requires it for the performance of his or her functions in terms of this Act;

(c) if such person, out of necessity, supplies it in the performance of his or her functions in terms of this Act;

(d) if such information is required in terms of any law or as evidence in any court of law; or

(e) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution.

Disclosures by Registrar

44. (1) Subject to sections 10, 35 and 36 of the Constitution of the Republic of South Africa, 1996, the Registrar may, notwithstanding section 43, if it is necessary in the public interest, disclose—

(a) any information which he or she considers necessary to prevent the public from being misled concerning any aspect regulated by this Act;

(b) the fact that a product, facility, rendering plant or home mixer is not in compliance with this Act; or

(c) the name of a person who does not comply, to any extent, with a provision of this Act or any aspect regulated by this Act.

(2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a product, the name of a facility, rendering plant or home mixer and details of the owner.

Offences and penalties

45. (1) Any person who discloses, except—

(a) to the Minister or to any other person for the purpose of the performance of his or her duties;

(b) in the exercise of his or her powers and the performance of his or her functions under this Act; or

(c) when required to do so by any court of law or under any law,

any information acquired by him or her in the exercise of any duty or function under this Act, in relation to the business or affairs of any other person, is guilty of an offence and liable on conviction to a fine not exceeding R100 000.00 or imprisonment.

(2) Any person who—

(a) fails to comply with the provisions of section 28(2) and section 37(1);

(b) obstructs the Registrar, inspector, auditor, technical adviser or analyst in the exercise of his or her powers, or performance of his or her duties in terms of this Act;

(c) fails to make any statement or give any explanation if he or she is requested to do so by the Registrar, inspector, auditor, technical adviser or analyst in the exercise of his or her powers, or the performance of his or her duties in terms of this Act;

(d) fails to comply with an order issued in terms of section 25(3);

(e) contravenes, or fails to comply with, the provisions of section 12, 13, 14, 15, 16, 17, 19, 25, 26, 27(3), 29 or 39 or with any condition contemplated in section 19*(b)*, 39(1)*(d)* or 39(2);

(f) acquires, disposes of, sells or uses a product contrary to a prohibition issued under section 26;

(g) tampers with any sample taken, or with anything seized, in terms of this Act;

(h) makes use, in connection with any product, of any certificate, invoice or other document issued in respect of any other product which is no longer valid;

(i) makes any false or misleading statement in connection with any product—

(i) in any application for the registration or licensing thereof;

(ii) in any invoice issued in terms of section 25(2);

(iii) in any advertisement thereof;

(iv) in the course of the sale thereof;

(v) in an application for a permit referred to in section 26(1)*(b)*;

(vi) in a notification referred to in section 28(1);

(vii) in obtaining a permit referred to in section 39(1)*(b)*; or

(viii) for certification referred to in section 40(1);

(j) sells any product in a container on which a false or misleading statement in connection with such contents is printed or written;

(k) sells any product which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold;

(l) having been duly summoned in terms of section 32(5)*(a)* to appear before the Board, fails without a reasonable excuse to appear;

(m) having appeared as a witness before the Board, refuses without a legal, medical or religious excuse to be sworn in, to make affirmation or to produce any document or answer any question which he or she may be lawfully required to produce or answer; or

(n) fails to comply with the provisions of section 21 or 22(2),

is guilty of an offence and liable on conviction in the case of a contravention under—

(aa) paragraph *(a)*, *(b)*, *(c)* or *(l)*, to a fine not exceeding ten per cent of business turnover or imprisonment for a period not exceeding five years or to both such fine and such imprisonment; and

(bb) paragraph *(d)*, *(e)*, *(f)*, *(g)* *(h)*, *(i)*, *(j)*, *(k)*, *(m)* or *(n)*, to a fine not exceeding five per cent of business turnover or imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) The court convicting any person of any offence under this Act, may, upon the application of the prosecutor, declare any product in respect of which the offence has been committed and all products of a similar nature to that in respect of which such person has been convicted, and of which such person is the owner, or which are in his or her possession, to be forfeited to the State.

(4) All products forfeited under this Act must be destroyed or otherwise disposed of, as the Registrar may direct, at the cost of the offender.

Jurisdiction in proceedings

46. Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

Defence

47. It is a sufficient defence for a person charged with the sale of any product in contravention of section 25(1) if he or she proves, to the satisfaction of the court that—

(a) he or she purchased such product under a registered name or mark as being the same in all respects as the article which he or she purported to sell;

(b) he or she had no reason to believe at the time of the sale that it was in any respect different from such article;

(c) he or she sold it in the original container and in the state in which it was when he or she purchased it; and

(d) the container thereof complied with the prescribed requirements and was sealed and labelled or marked in the prescribed manner with the prescribed particulars, unless it was marketed in bulk.

Omissions

48. (1) Whenever any manager, agent or employee of any manufacturer, importer or owner of a product acts or omits to do any act which would be an offence under this Act for such manufacturer, importer or owner to do or omit to do, and unless it is proved that—

(a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the manufacturer, importer or owner;

(b) all reasonable steps were taken by the manufacturer, importer or owner to prevent any act or omission of the kind in question; and

(c) it was not under any condition or in any circumstance within the scope of the authority, or in the course of the employment of the manager, agent or employee to do or to omit to do acts, whether lawful or unlawful, of the character of the act or omission charged,

such manufacturer, importer or owner, as the case may be, shall, in the absence of evidence to the contrary which raises a reasonable doubt, be presumed to have done or omitted to do that act in his or her capacity and is liable to be convicted and sentenced in respect thereof.

(2) The issuing of instructions by any person contemplated in subsection (1), forbidding any act or omission of the kind in question will not, in itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent the act or omission.

(3) Whenever any manager, agent or employee of any such manufacturer, importer or owner does or omits to do an act which would be an offence under this Act for the manufacturer, importer or owner to do or omit to do, he or she is liable to be committed and sentenced in respect thereof as if he or she were the manufacturer, importer or owner: Provided that such manager, agent or employee may be convicted and sentenced in addition to that manufacturer, importer or owner.

Regulations

49. (1) The Minister may make regulations that relate to—

(a) the manner in which—

(i) a product may be scientifically trialed and tested, including the institutions to conduct such scientific trials and tests;

(ii) products or home mixers may be registered, or facilities and rendering plants may be licensed;

(iii) registrations or licenses may be renewed, including the information to be furnished and the fees to be paid with any application for the registration of a product or home mixer or licensing of a facility or rendering plant and renewal of registrations or licenses; and

(iv) an institution may be approved in terms of this Act to conduct scientific trials and tests for the purpose of product registration;

(b) the description and conditions under which any substance may be registered, imported or sold as a feed additive, raw material, animal by-product, fertilizer, feed or pet food under any particular name or mark;

(c) the manner in which an appeal under section 31(2) must be noted and prosecuted;

(d) the particulars to be set forth in any invoice to be furnished under section 25(2);

(e) the composition, efficacy, chemical, physical or other property required in respect of any substance in order that it may be imported, sold or registered as a feed additive, raw material, animal by-product, fertilizer, feed or pet food, as the case may be;

(f) the limits within which any feed additives, raw material, animal by-product, fertilizers, feeds or pet food may be deficient in any of its ingredients and the proportion in which any preservative, antiseptic or other constituent may be present therein;

(g) the requirements as to the mass and volume of containers in which feed additives, raw material, animal by-product, fertilizers, feeds or pet food must be packed, the manner in which they must be packed into such containers, the manner in which such containers must be sealed and labelled or marked and the particulars which must appear on such labels and containers;

(h) the processes by which raw materials or animal by-products used in the manufacture of feed additives, fertilizers, feeds or pet food must be sterilized, processed and the manner of inspection and auditing of rendering plants;

(i) the requirements with which any facility, home mixer and rendering plants must comply, the practices which must be followed in the operation of any undertaking at any facility, home mixer or rendering plant, the facilities' equipment which must be available at any home mixer's premises or facility or rendering plant, and the records to be kept and the information to be furnished in respect of any home mixer, facility or rendering plant and the operation of any undertaking at any home mixer's premises, any facility or rendering plant;

(j) the records to be kept and the returns to be submitted in respect of feed additives, raw material, animal by-products, fertilizers, feeds or pet food; or facilities and rendering plants;

(k) the prevention of the adulteration and use of feed additives, raw material, animal by-product, fertilizers, feeds or pet food or the tampering with containers thereof, prescribing or preventing the use of feed additives, raw material, fertilizers, feeds or pet food containing undesirable substances or considered to be adulterated;

(l) the methods to be employed, the fees to be paid and the certificates to be issued in respect of the documentation, consultation, examination, analysis, inspection, audits, scientific trial or test of samples taken under this Act;

(m) the prevention of the use of false or misleading statements in advertisements, packaging inserts and labels of any product;

(n) the form and manner in which records must be kept and the period within which they must be submitted;

(o) the disposal, import, export, acquisition, sale or use of any product;

(p) the manner in which products must be labelled, and the approval procedure for feed additives and pet food labels;

(q) the manner in which products must be transported and the requirements that transporters must adhere to; and

(r) any other matter under this Act which must be prescribed, and generally for the efficient carrying out of the objects and purposes of this Act.

(2) Different regulations may be made under this section in respect of different classes or kinds of feed additives, raw material, animal by-products, fertilizers, feeds, pet foods; different kinds of home mixers, and in respect of different kinds of facilities or rendering plants and different classes or groups of persons.

(3) Any person who fails to comply with a regulation made under subsection (1)*(a)*(i), *(b)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)*, *(j)*, *(k)*, *(l)*, *(m)*, *(n)*, *(o)*, *(q)* or *(r)* is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(4) Before any regulations are made under this section, such regulations must be published by the Minister in the *Gazette* together with a notice—

(a) stating that he or she intends to issue such regulations under this section within a stated period, but not less than four weeks from the date of the said publication; and

(b) inviting interested persons to submit any objections to or representations concerning the proposed regulations.

(5) If the Minister amends any published regulations as a result of any objections or representations submitted after publication thereof in terms of subsection (4), the Minister is not required to publish such amendments before finally issuing the regulations in terms of subsection (1).

State liability

50. (1) Except where it is otherwise expressly provided for in this Act, no compensation is payable by the State, the Minister or the Registrar in respect of any act done in good faith under this Act.

(2) No person is liable for anything done or omitted in good faith when performing a function in terms of this Act.

Amendment of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act

51. The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act is hereby amended in the manner set out in Schedule 1.

Short title

52. This Act is called the Fertilizers and Feeds Act, 2012.

SCHEDULE 1

Amendment of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947

(Section 51)

Act No. and year	Short title	Extent of amendment
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	**1.** Amendment of section 1 by the deletion of the definitions of ''farm feed'', ''fertilizer'' and ''sterilizing plant''.
		2. Amendment of section 3 by the deletion in subsection (2) of paragraph *(b)*.
		3. Amendment of section 4 by the deletion of subsection (2).
		4. Amendment of section 4A by— *(a)* the deletion in subsection (1) of paragraph *(b)*; and *(b)* the deletion of subsection (2A).
		5. Repeal of section 8.
		6. Repeal of section 12.
		7. Amendment of section 16 by the deletion in subsection (1) of paragraph *(b)*.
		8. Amendment of section 18 by the deletion in subsection (1) of paragraph *(c)bis*.
		9. Amendment of section 23 by— *(a)* the substitution in subsection (1) for paragraph *(h)* of the following paragraph: ''prescribing the processes by which **[fertilizers, farm feeds,]** agricultural remedies or stock remedies, or substances used in the manufacture of **[fertilizers, farm feeds,]** agricultural remedies or stock remedies shall be sterilized **[, and the manner of inspection of sterilizing plants]**;''; *(b)* the deletion in subsection (1) of paragraph *(h*B*)*; and *(c)* the deletion in subsection (1) of paragraph *(m)*.
		10. Amendment of the Act by the deletion of the words ''farm feed'', ''fertilizer'' and ''sterilizing plant'', wherever they occur.

MEMORANDUM ON THE OBJECTS OF THE FERTILIZERS AND FEEDS BILL, 2012

1. INTRODUCTION

Fertilizers are generally used for improving soil nutrition and plant growth, and farm feeds are used to supply nutrients to livestock (cattle, sheep, goats, chickens and pigs), whilst pet food is used for feeding domesticated animals like dogs, cats, horses and other pets. Fertilizers encompass organic (sewage sludge, animal by-products, compost, etc) and inorganic products (Urea, NPK, etc), whilst animal feeds encompass livestock feeds, feed ingredients, feed additives and pet foods. Sterilizing plants refer to facilities where animal by-products are sterilized through a cooking or chemical process, either for later use as fertilizers or for animal feeds. There are other forms of commercial feeds that are manufactured specifically for wild animals, fresh-water fish, birds and ostriches. These agricultural production inputs have evolved from a period in the 1900's where the main regulatory focus was on the quality of the products to deliver the desired agricultural production enhancement effect for farmers, to the modern-day period, where the focus has shifted to include safety and efficacy of these products, especially on animal, human and environmental health. Fertilizers and animal feeds in South Africa are regulated by the Department of Agriculture, Forestry and Fisheries under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947) (''the Act''). There has been a general recognition of the direct impact of agricultural production inputs on food safety and this has highlighted shortfalls in the existing legislation to deal with modern-day realities of food safety.

2. BACKGROUND

The current fertilizers and farm feeds product registration system and enforcement involves an *ex post facto* control on finished products and is no longer satisfactory for a number of reasons, namely:

- If the product has already reached the market place, *ex post facto* control means taking remedial action after the harm from the unsafe product has already taken place. This is unacceptable as it can lead to greater costs in terms of animal, human and environmental health;

- end-product testing entails an enormous waste of resources. By the time an unsatisfactory product is discovered, most of the resources needed to produce and prepare it have been expended on its harvest, processing, preparation, packaging and labeling;

- *ex post facto* control creates an unfair administrative burden by placing the responsibility on government authorities rather than on the actors who actually produce and distribute the unsafe products;

- the current controls provided for under the Act make it difficult to establish strict product liability as liability lies with the last seller of the product within the supply chain;

- there is a ''feed-to-food'' safety gap in the current regulatory system that poses a public health threat. Farmers and feed manufacturers that manufacture their own feed according to their own specifications and feed users that buy custom-made feed, are exempted from the Act, irrespective of whether they sell their produce (meat, milk, eggs) to the general public or consume it within their own households;

- there is a grey area in the definition of fertilizers as it encompasses plant growth regulators that are supposed to be regulated as pesticides;

- the definition of ''farm feeds'' in the Act refers to feeds that are intended for domesticated animals or livestock. Other feeds are exempted, for example, feeds for fresh-water fish, sea food, wild game and predators;

- the Act does not make provision for the use of raw pet food, which is an internationally accepted practice;

- the Act does not recognise the use of chemicals as an effective means for rendering animal by-products. Recognising the chemical rendering process would allow products from such a process to be used as fertilizers or feeding stuffs;

- the current tariff system is not sensitive to different classes of registration holders; and

- the penalties provided for in the Act are too low and do not reflect modern day realities of issues around the use of fertilizers and animal feeds as agricultural production inputs. Since the penalties are too low, they no longer act as a deterrent to transgressors of the Act.

It is in recognition of the issues listed above that the Department of Agriculture, Forestry and Fisheries (''the Department'') drafted the Fertilizers and Feeds Bill, 2012 (''the Bill''), to repeal certain sections of the Act and to incorporate the sections of the Act that relate to fertilizers and feeds into a separate Bill.

3. OBJECTS OF BILL

The Bill seeks to align the regulation of fertilizers and animal feeds with the food safety objectives and introduce strict product liability which is aligned to the Consumer Protection Act, 2008 (Act No. 68 of 2008) (''the Consumer Protection Act''), by regulating all aspects of the fertilizers and animal feeds supply chain. The Bill provides for—

- a proper definition of ''fertilizers'' that removes ambiguity regarding the classification of plant growth regulators under fertilizers whilst they should be classified under pesticides;

- the broadening of the definition of ''animals'' to include the *phylum mollusca* and *phylum crustacea* as some of the animal protein products derived from these *phyla* are consumed by human beings as food;

- an environmentally friendly mechanism for handling environmental waste generated from the slaughter of animals through rendering plants in order for the waste to be used as fertilizers or feeding stuffs;

- a change in the focus of the enforcement system from a purely government-led inspection to a system of government oversight that monitors controls established and implemented by farmers, fertilizer and feed manufacturers and distributors themselves;

- the registration and classification of home mixers that manufacture products for their own use on their own farms and, in turn, sell the produce derived from those farms to the general public;

- the licensing of fertilizers, feeds and premixture manufacturing facilities;

- the provision of an export certification service;

- the introduction of a tariff system that will consider different classes of respective registration and licence holders;

- the modernisation of penalties in order to reflect modern-day economic realities and act as a deterrent to transgressors;

- an introduction of strict product liability in order to assign liability to the relevant person within the supply chain and support the objects of the Consumer Protection Act;

- the regulation of the evaluation, authorisation, labelling, sale and use of fertilizers and feeds across the entire supply chain;

- the establishment of a national database for all registered and licensed fertilizers and feeds producers, including rendering plants;

- the recognition of recent scientific and technological advancements in the area of animal feeds and animal by-products handling by permitting the use of raw pet foods and chemical-rendering methodologies for animal by-products; and

- the amendment of the Act, insofar as it relates to fertilizers, farm feeds and sterilizing plants.

4. EXPLANATORY NOTES

4.1 Chapter 1 deals with the definitions of certain words, terms and phrases used within the Bill.

4.2 Chapter 2 provides for—

- the establishment of the Technical Standards Advisory Council (''the Council'');

- the functions of the Council;

- the appointment and composition of the Council;

- the duration of the term of office of the members of the Council;

- the disqualification of members of the Council and the procedure for dissolving the Council;

- the conditions of appointment of members of the Council;

- the operational procedures for the Council;

- committees that may be established by the Council;

- conflict of interest amongst members of the Council; and

- the appointment of the Registrar.

4.3 Chapter 3 provides for—

- the licensing and registration procedure;

- the registration of feed additives, raw materials or animal by-products;

- the registration of imported fertilizers, feeds or pet foods;

- the registration of home mixers;

- the licensing of facilities;

- the licensing of rendering plants;

- the circumstances under which the Registrar may refuse the registration of a product or licensing of a facility or rendering plant;

- the registration or licensing period;

- the procedure for renewing the registration or licensing period;

- the procedure for handling registration certificates or licences;

- the circumstances under which registration certificates or licences lapse and provides that a lapsed registration certificate or license must be returned to the Registrar within the prescribed period;

- the exemption of certain home mixers and facility licence holders from registering raw materials; and

- the requirement for the Registrar to maintain a database of all registered products and home mixers, as well as all licensed facilities and rendering plants.

4.4 Chapter 4 provides for—

- the requirements and conditions for trading by any person who manufactures, distributes or sells any defined product;

- the circumstances under which the Registrar may prohibit the manufacture, import, export, acquisition, distribution, disposal, sale or use of certain defined products;

- the identification and manner of handling of adulterated and misbranded products;

- the procedure for administering, for payment, a product to any animal, land or crop; and

- the manner in which manufactured or administered products that contain veterinary medicines or animal by-products must be dealt with.

4.5 Chapter 5 provides for—

- the procedure for the cancellation, revocation or suspension of registration or a licence;

- the procedure to be followed by the Registrar upon refusing registration or licensing, determining conditions or cancelling any registration or licensing; and

- the procedure for the appointment of an Appeal Board by the Minister.

4.6 Chapter 6 provides for—

- the Minister to exclude, by notice in the *Gazette*, any home mixer, product, facility or rendering plant from the operation of any or all of the provisions of the envisaged Act;

- certain delegations and appointments by the Registrar;

- the powers of inspectors and auditors to enter, inspect, search and seize in order to monitor and enforce compliance with the envisaged new provisions;

- the procedure for identification prior to entry when conducting an inspection, and the cooperation required with inspectors or auditors;

- the powers for inspectors and auditors to question any person and examine any product, referred to in section 35(1);

- the sampling procedure and the information to be kept for examination purposes;

- the procedure to be followed by any person who imports or exports defined products;

- the requirements and procedure for products to be certified for export;

- the presumption that any person indicated on the documents concerning an import transaction, is the importer of that product, in the absence of evidence to the contrary which raises a reasonable doubt;

- criminal proceedings under the envisaged new Act;

- the prohibition of any person who is or was concerned with the performance of any functions in terms of the envisaged new Act, to disclose any information obtained during the performance of such functions, except under certain listed circumstances;

- the disclosure of information in the public interest by the Registrar under certain circumstances;

- offences and penalties;

- magistrate's courts to have jurisdiction to impose any penalty prescribed;

- sufficient defences for a person charged with the sale of any product in contravention of the trading conditions under clause 25(1);

- the presumption that acts or omissions by any manager, agent or employee of any manufacturer, importer or owner of a product, are the acts or omissions of those mentioned, unless certain listed circumstances are proven to exist;

- the Minister to make regulations in relation to a list of matters;

- the limitation of the State's liability;

- the amendment of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act; and

- the short title.

5. BODIES CONSULTED

In 2006 the then Department of Agriculture undertook a legislative review process of the Act. This process entailed a lengthy consultative process that resulted in the adoption of a South African policy for animal feeds which was published in *Gazette* No. 31005 of 2 February 2008. On 21 August 2009 the draft Bill on animal feeds was published in *Gazette* No. 32499 for public comment. This was followed by a host of consultative meetings resulting from a workshop held on 12 August 2010 with organs of state and the private sector, respectively. These stakeholders included—

- Fertilizers Society of Southern Africa;

- South African Renderers Association;

- Pet Food Institute of Southern Africa;

- Red Meat Industry Forum (representing Milk Producers Organisation, South African Feedlot Association, South African Pork Producers Organisation);

- Animal Feeds Manufacturers Association;

- South African Competition Commission;

- South African Ostrich Business Chamber;

- Department of Agriculture: Western Cape;

- Grain-SA; and

- independent farmers.

The workshop resolved that fertilizers and feeds share a lot of similar products like inorganic fertilizers and nutritional feed additives. These require a similar regulatory framework and in order to efficiently allocate scarce government resources which should be regulated under a single law.

6. FINANCIAL IMPLICATIONS

The implementation of the new Act will have financial implications for the Department of Agriculture, Forestry and Fisheries, in that it will be responsible for the establishment of the Council, appointment of additional registration administration officers, technical advisers, auditors, inspectors, analysts and the Registrar to administer the Act. Appointment of auditors and inspectors is already under way and funds have been made available for this exercise. The analyst function will be outsourced as is currently the practice. Costing has been conducted and in terms of this exercise an annual budget of R2, 5 million will have to be made available for the appointment of the Registrar, three additional technical advisers and four additional registration administration officers. This money will be recouped from the services rendered to the industry. Currently, the Department recoups approximately R4 million per annum from the fertilizers, animal feeds and rendering industry on services rendered. The fees for registering animal feeds have already been predetermined and the industry is aware of these fees as they are currently paying them. The new fees for registering home mixers have been estimated at R100 per home mixer for the financial year 2014/15.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Agriculture, Forestry and Fisheries are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers and the Department of Agriculture, Forestry and Fisheries are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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