

Grain Marketing (Control of Sale of Cotton) Regulations, 2021

ARRANGEMENT OF SECTIONS

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IT is hereby notified that the Minister of Lands, Agriculture, Fisheries, Water, and Rural Resettlement has, in terms of section 39 of the Grain Marketing Act [*Chapter 18:14*], made the following regulations:—

Title

1. These regulations may be cited as the Grain Marketing (Control of Sale of Cotton) Regulations, 2021.

Application

2. These regulations are additional to any contractual obligations agreed to by a contract farmer and to the extent of any inconsistency with the contracted obligations, these regulations shall prevail.

Interpretation

3. In these regulations—
“agricultural produce” means seasonal or perennial crops, livestock and fisheries produce;

“authorised agency” means any Government parastatal or entity acting on behalf of the government that is involved in the collection, storing, distribution or marketing of agricultural produce and “authorised person” shall be construed accordingly;

“contract farmer” means a farmer who enters into a scheme contract with either the Government or any registered entity or person;

“contract produce” means any agricultural produce that the contract farmer has produced or undertaken to produce to a scheme contract;

“contractor” is any person; company or entity, registered in terms of section 32 of the Act, that enters into a scheme contract with a producer to grow cotton;

“cotton” for the purpose of these regulations means unmanufactured, unprocessed harvested cotton before the removal of seed;

“Grain Marketing Board” means the Grain Marketing Board established by section 3 of the Grain Marketing Act [*Chapter 18:14*];

“Minister” means the Minister responsible for Lands and Agriculture or any other Minister to whom the President may from time to time assign the administration of the Grain Marketing Act;

“producer” means any person registered in terms of section 32 of the Act who, by himself or herself or his or her agents, grows cotton;

“scheme contract” means a contract between—

- (a) a contract farmer and the Government of Zimbabwe;
or
- (b) contract farmer and a registered entity or person
contract;

to produce cotton where under the contractor supplies agricultural inputs in return for the contract farmer delivering the contract produce to the designated delivery points or GMB depots specified in the scheme contract;

“sell” includes to keep, offer, expose, transmit, convey, prepare for sale, barter, exchange or hawk, display or advertise for sale, exchange or dispose for valuable consideration.

Control of cotton

4. (1) Subject to these regulations cotton is a controlled product in terms of section 29 of the Act.

(2) The area within which the product shall be controlled is all the provinces of Zimbabwe.

Sale or delivery of cotton

5. (1) No person or statutory body or company or entity under a contractual obligation to sell to a contractor or to the Grain Marketing Board or any authorised agency shall sell or otherwise dispose of any cotton except to such contractor or to the Grain Marketing Board or any authorised agency.

(2) Any cotton which is required to be sold to the Grain Marketing Board or any authorised agency in terms of this section shall be delivered at such time, place, and quantities as the Board or authorised agency may direct and under such terms and conditions as may be provided by the Board or authorised agency.

(3) The Grain Marketing Board or authorised agency shall not acquire cotton from any person other than a contract farmer, producer or contractor.

Acquisition and disposal of cotton

6. (1) No person, statutory body, company or entity shall buy or otherwise acquire any cotton from a contract farmer or producer without a prior contractual obligation to do so.

(2) No person shall use or dispose of cotton seed acquired through the Government otherwise than for such purpose except with the written permission of the Government.

(3) With effect from the date of commencement of these regulations, no person other than the Grain Marketing Board or authorised agency shall export from Zimbabwe cotton of any quantity or any description until such a date that shall be specified by the Minister by way of notice in the *Gazette*.

(4) In order to secure the contracted obligations, a contracted farmer or producer shall deliver contract produce in accordance with the agreed provisions of a scheme contract, or to the nearest Grain Marketing Board or authorised agency.

(5) Where there is reasonable suspicion that cotton is being sold in contravention of these regulations—

- (a) an authorised person; or
- (b) police officer;

may seize the cotton in question or seize any vehicle, container, or other property used in connection with the storage or transportation of cotton in question as an exhibit in the contemplated prosecution of the offence, in accordance with the provisions of these regulations.

Seizure

7. Subject to section 8 any property seized in contemplation of a prosecution for a contravention of these regulations—

- (a) shall be taken forthwith and delivered to a place of security under the control of a police officer or authorised person:

Provided that fungible property such as cotton may be stored by comingling it with other fungible property of the same kind;

- (b) shall be held in custody at the former possessor's risk until—
 - (i) the criminal proceedings in connection with which the property has been seized are abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore such items to the person from whom were seized or to whom they belong, as may be appropriate; or
 - (ii) the criminal proceedings have resulted in the conviction of the accused person, in which event the convicting court may order any such property to be forfeited to the State.

Compensation for cotton wrongly seized

8. (1) Where cotton has been wrongly seized, the person to whom the cotton belong may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months from the date of seizure of such cotton.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

- (a) the applicant has suffered loss as a result of the seizure;
- (b) there has been a serious default on the part of the authorised agency or person or police officer that made the seizure;
- (c) the seizure would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

- (a) the compensation is payable by the authorised agency that made the seizure;
- (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any relevant circumstances.

Powers of police officers and authorised persons

9. (1) Subject to section 38 of the Act, a police officer or a person generally or specifically authorised thereto by the Minister may upon giving not less than 24 hours verbal or written notice to the contract farmer, enter and inspect the land or premises of the contract farmer for the purposes of ensuring that the contract produce is being produced in compliance with standards specified in or under the scheme contract.

(2) A police officer, authorised person or inspector must produce on demand a certificate of identification and authority as such before entering any contract farmer's land:

Provided that, if any cotton seized under these regulations is of such a nature that it cannot reasonably be removed by the person seizing it, he or she shall declare it as having been secured in the

place where he or she found it and the provisions of subsection (4) in so far as they apply to the return of the seized cotton to persons from whose custody they were taken shall apply, *mutatis mutandis*.

(3) A police officer or an authorised person in terms of subsection (1) may obtain a warrant to enter or search any dwelling or house he or she believes on reasonable grounds that evidence relating to a contravention of these regulations is to be found in that dwelling or house.

Unlawful, sale, purchase and possession of cotton

10. Any person, whether or not a party to a scheme contract who deals in or possess cotton in contravention of these regulations; that is to say purchases, receives, stores, sells, obtains, possesses, exports, transports or otherwise disposes of such cotton, in contravention of these regulations, shall in terms of section 40(2) of the Act be guilty of an offence and liable to a fine not exceeding three times the value of such controlled product, calculated on the current selling price of the Grain Marketing Board within Zimbabwe of the highest grade or class of that controlled product or eight hundred dollars, whichever is greater, or in default of payment, to imprisonment for a period not exceeding two years.

