

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

NO. R. 447

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AGRICULTURAL PRODUCT STANDARDS ACT, 1990 (ACT No. 119 OF 1990)

REGULATIONS RELATING TO THE PROTECTION OF GEOGRAPHICAL INDICATIONS USED ON AGRICULTURAL PRODUCTS INTENDED FOR SALE IN THE REPUBLIC OF SOUTH AFRICA

The Minister of Agriculture, Forestry and Fisheries has under section 15 of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) --

- (a) made the regulations in the Schedule; and
- (b) determined that the said regulations shall come into operation 6 months after the date of publication thereof.

SCHEDULE

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Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning, and --

"Act" means the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990);

"agricultural product" means any primary or processed product regulated in terms of sections 3(1) and 15 of the Act, but does not include a liquor product as defined under the Liquor Products Act, 1989 (Act No. 60 of 1989);

"assignee" means a person, undertaking, body, institution, association or board designated as such under section 2(3)(a) of the Act, which does not have direct or indirect interest in the product concerned;

"certification body" means, where used in relation to foreign geographical indications, a body or organisation in the foreign country concerned which is accredited in accordance with international standards (e.g. ISO/IEC Guide 65 - General requirements for bodies operating product certification systems; etc.) and that is able to certify that the provisions of the product specifications of a registered foreign GI are complied with;

"competent authority" means a specific Government department or other entity designated by such Government department in a foreign country that is responsible for the registration and protection of geographical indications;

"days" means calendar days;

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

"Executive Officer" means the officer designated under section 2(1) of the Act;

"foreign geographical indication" or **"foreign GI"** means a geographical indication that identifies an agricultural product intended for sale on the local market as originating in a country other than the Republic of South Africa;

"generic" means that the name of an agricultural product which, although it relates to the territory, region or place where the agricultural product concerned was originally produced or marketed, has become the common or general name used for such agricultural product in the Republic of South Africa (e.g. *French fried potatoes*, *Brussels sprouts*, etc.);

"geographical indication" (GI) means an indication (name) that identifies an agricultural product --

- (a) as originating in the territory of the Republic of South Africa or in another country, or in a region or locality in that territory; and
- (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin (refer to TRIPS Agreement, Article 22(1));

"group" means any association, body or entity, irrespective of its legal form, mainly composed of producers or processors that represent the same agricultural product for which protection is sought and that can demonstrate that it is organised on the basis of democratic principles;

"homonymous" means a word or name or an indication that has the same spelling or sounds the same as a registered geographical indication;

"international agreement" means any bilateral or multilateral treaty, convention, or agreement to which the Republic of South Africa is a party/ signatory, and any arrangement between the Republic of South Africa and another country, concerning the protection of geographical indications;

"processing" means that the agricultural product concerned have been subjected to a series of actions

which changes its nature;

"producer" means a person or group of persons who produces, exploits or processes agricultural products and/or exercises control over the use of a geographical indication, standards of production and other product specifications;

"qualified South African auditor" means a person in the Republic of South Africa, either in his/her private capacity or as an employee of a private entity, who –

- (a) has successfully complete a recognised auditor/ inspector training course in a food technology related subject (e.g. SANS 10049, SANS 10330, SANS 22000, etc.);
- (b) is registered with a SANAS (South African National Accreditation System) accredited body responsible for the certification of persons in accordance with SANS 17024 (ISO/IEC 17024), such as but not limited to the Southern African Auditor and Training Certification Authority (SAATCA); and
- (c) is able to provide written or equivalent assurance that a product, process or service is in conformity with certain standards or specifications;

"Register" means an electronic record of registered geographical indications established in terms of regulation 13;

"registered foreign geographical indication" or "registered foreign GI" means a foreign geographical indication, including a geographical indication that forms part of an international agreement that has been registered in terms of these regulations by entering it in a Register;

"registered geographical indication" or "registered GI" means a South African or foreign geographical indication that has been registered in terms of these regulations by entering it in a Register;

"registered South African geographical indication" or "registered South African GI" means a South African geographical indication that has been registered in terms of these regulations by entering it in a Register;

"South African geographical indication" or "South African GI" means a geographical indication that identifies an agricultural product as originating in the Republic of South Africa;

"trade mark" means a trade mark as defined by the Trade Marks Act, 1993 (Act No. 194 of 1993), and in the context of these regulations also includes a registered trade mark as defined in the same Act;

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property set out in Annex 1C to the WTO Agreement; and

"WTO Agreement" means the World Trade Organization Agreement adopted at Marrakesh on 15 April 1994, as revised or amended from time to time.

Scope of regulations

2. (1) These regulations shall –

- (a) apply to the use of registered geographical indications on agricultural products as defined in regulation 1 only, and that are intended for sale in the Republic of South Africa; and
- (b) take into account international agreements regarding the protection of foreign geographical indications in the Republic of South Africa.

Prohibition on the use of registered geographical indications

3. (1) Any direct or indirect commercial use of a registered GI in the Republic of South Africa is prohibited on –

- (a) similar agricultural products which are not covered by the registration; and
- (b) dissimilar agricultural products where such use exploits the reputation of the protected name.

(2) The prohibition referred to in sub-regulation (1) shall --

(a) apply in particular where --

- (i) the registered name is imitated or alluded to;
- (ii) the registered name is translated;
- (iii) the registered name is accompanied by words or expressions such as "kind", "type", "style", "imitation", "method", "as produced in", or any similar words or expressions: Provided that the use of these words or expressions together with the registered name is permissible when specifically allowed for in an international agreement; and
- (iv) the agricultural product is used as an ingredient in the manufacture of another foodstuff, unless the conditions in regulation 17 have been met; and

(b) also apply to --

- (i) any false or misleading indication or depiction as to the agricultural product's true origin, provenance, manufacturing process, nature or essential characteristics on a container, an outer container, a notice board and/or in an advertisement thereof;
- (ii) any illicit use of a specific or unique shape of the agricultural product referred to in regulation 4(3)(b);
- (iii) any use of a container or packaging which could create a false impression regarding the origin of the agricultural product; and
- (iv) any illicit use of a GI symbol, the designation "Protected Geographical Indication" or "Registered Geographical Indication" or "RSA Geographical Indication", or the corresponding acronym "PGI" or "RGI" or "RSA-GI", or any similar designations or acronyms.

(3) The Executive Officer may grant written exemption, either entirely or partially, from the provisions of sub-regulation (2) on such conditions as he/she may deem necessary.

Application for registration as a South African geographical indication

4. (1) An application for registration as a South African GI by a group from within the Republic of South Africa shall be submitted electronically to the Executive Officer and at least in English: Provided that an application for registration shall not be considered in instances where the proposed name –

- (a) is identical to an existing registered GI for the same agricultural product originating from the same or similar geographical origin;
- (b) is identical to a term customary in common language in the Republic of South Africa as the common name for the agricultural product concerned;

- (c) falsely communicates to the consumer that the agricultural product concerned originates from a certain territory, or region or locality in that territory, although its quality, reputation or other characteristic is attributable to another territory from which it truly originates;
 - (d) is generic and cannot identify the place of production and given quality, reputation or other characteristics attributable to the place of production: Provided that account shall be taken of all relevant factors, and in particular the opinion of producers and consumers, especially those in the region from which the name originates, when deciding whether a name has become generic or not;
 - (e) is identical to a customary name of a plant variety or an animal breed existing in the Republic of South Africa and is likely to mislead the consumer as to the true origin of the agricultural product;
 - (f) is wholly or partially homonymous with an existing registered GI and is likely to mislead consumers: Provided that the Executive Officer may consider the registration of a homonymous name as a GI by taking into account the need to ensure –
 - (i) the equitable treatment of the producers of the agricultural product(s) concerned to which the GI relates;
 - (ii) that there is a clear distinction between the use of the homonymous name registered subsequently and the use of the name already entered in the Register; and
 - (iii) that consumers are not misled about to the true origin of the agricultural product concerned;
 - (g) is identical or similar to the name of a trade mark used in the Republic of South Africa on the same or similar agricultural product(s): Provided that the Executive Officer may register a GI that is identical or similar to a trade mark if –
 - (i) the owner of the trade mark has consented to its registration as a GI; or
 - (ii) he/she has considered that the GI may co-exist with the trade mark, taking into account at least the following factors:
 - (aa) the proposed GI's history of use in good faith in the Republic of South Africa; and
 - (bb) the legitimate interests of the owner of the trade mark and of third parties; and
 - (h) is intended to be used in translation, or is accompanied by words or expressions such as "kind", "type", "style", "imitation", "method", "as produced in", or any similar words or expressions.
- (2) An application referred to in sub-regulation (1) shall at least include the information specified below:
- (a) The following information regarding the applicant group:
 - (i) Name of the group and contact details, i.e. physical address, e-mail address and telephone number.
 - (ii) Composition of the group, as well as the necessary proof that the group is representative of the agricultural product for which protection is sought: Provided that a group is deemed to be representative where –

- (aa) its members produce and/or process at least 50% of the production volume of the agricultural product concerned; and
 - (bb) they can show that the group is organised based on democratic principles.
 - (b) The name of the proposed GI to be registered: Provided that a translation of the proposed GI into English shall be provided if in a language other than English.
 - (c) Proof that the proposed GI --
 - (i) is not a generic name;
 - (ii) does not correspond with the customary name of a plant variety or an animal breed in the Republic of South Africa that is likely to mislead the consumer as to the true origin of the agricultural product; and
 - (iii) is not identical or similar to the name of a trade mark used in the Republic of South Africa on the same or similar agricultural products: Provided that if the group has obtained prior written consent from the owner of the trade mark for its co-existence with a GI on the same or similar agricultural products, the necessary proof shall be included in the application.
 - (d) The following specifications regarding the agricultural product:
 - (i) The type of agricultural product.
 - (ii) A description of the product's main physical, chemical, microbiological and organoleptic (where applicable) characteristics: Provided that existing quality and/or compositional requirements prescribed in the regulations published under the Act for the agricultural product concerned shall be taken into consideration at all times.
 - (iii) A description of the production process/ method, and any processing or refining that takes place in the defined geographical area.
 - (iv) Proof that the agricultural product originates in the geographical area which shall include the history of the product and its traceability.
 - (e) A definition of the geographical area.
 - (f) Details demonstrating --
 - (i) the link between the quality or characteristics of the agricultural product and the geographical environment; or
 - (ii) where appropriate, the link between a given quality, the reputation or other characteristics of the agricultural product and its geographical origin.
- (3) information: An application referred to in sub-regulation (1) may in addition also include the following
 - (a) Specific elements about the labelling and/or rules regarding the use of the proposed GI: Provided that the existing labelling requirements and restrictions prescribed in the regulations published under the Act for the agricultural product concerned shall still be complied with.
 - (b) A description of any specific or unique shape of the agricultural product concerned.
 - (c) Specific elements of the packaging, where the applicant group is able to justify that

the packaging is necessary in order to ensure product quality, as well as to guarantee traceability or control in the defined geographical area.

- (4) Each group applying for registration as a South African GI shall –
 - (a) nominate a qualified South African auditor to audit the GI as intended in regulation 19(1); and
 - (b) provide a summary of the critical elements of control (i.e. minimum product specifications and any other information deemed necessary) that will be used by the nominated qualified South African auditor to verify compliance during audits.
- (5) A joint application for registration as a GI for the same agricultural product may be submitted by several groups in instances where the proposed name –
 - (a) designates a trans-border geographical area; or
 - (b) is a traditional name connected to a trans-border geographical area.

(E.g. 'Kalahari Lamb' where the Kalahari covers parts of the RSA, Namibia & Botswana)

Application for registration as a foreign geographical indication

5. (1) An application for registration as a foreign GI, excluding foreign GIs that form part of international agreements, by a group from outside the Republic of South Africa shall be submitted electronically to the Executive Officer and at least in English via the competent authority in the country concerned: Provided that an application for registration shall not be considered in instances where the proposed name –

- (a) is not protected, or has ceased to be protected or has fallen into disuse in its country of origin;
- (b) is identical to an existing registered South African GI for the same agricultural product;
- (c) is identical to a term customary in common language in the Republic of South Africa as the common name for the agricultural product concerned;
- (d) is generic and cannot identify the place of production and given quality, reputation or other characteristics attributable to the place of production;
- (e) is identical to a customary name of a plant variety or an animal breed existing in the Republic of South Africa and is likely to mislead the consumer as to the true origin of the agricultural product;
- (f) is wholly or partially homonymous with an existing registered GI and is likely to mislead consumers;
- (g) is identical or similar to the name of a trade mark used in the Republic of South Africa on the same or similar agricultural product(s); or
- (h) is intended to be used in translation, or is accompanied by words or expressions such as "kind", "type", "style", "imitation", "method", "as produced in", or any similar words or expressions.

(2) An application referred to in sub-regulation (1) shall include at least the following information:

- (a) The same information required in regulation 4(2)(a) to (f).

- (b) Proof that the GI is still in use and is protected in the country of origin.
- (c) The name and contact details of the certification body nominated to verify compliance with the provisions of the product specification: Provided that the Executive Officer shall be informed in writing whenever the nominated certification body changes.
- (d) If in use, an example of the GI symbol, designation and/or acronym that will appear with the geographical indication –
 - (i) on the container and/or outer container of the agricultural product; or
 - (ii) in an advertisement related to the agricultural product concerned.

(3) A joint application for registration as a foreign GI may be submitted by several groups in instances where the proposed name --

- (a) designates a trans-border geographical area; or
- (b) is a traditional name connected to a trans-border geographical area.

Registration of foreign geographical indications that form part of international agreements

6. (1) Foreign GIs that form part of international agreements and which fall within the scope of these regulations shall --

- (a) not be subject to the procedure for application for registration as a foreign GI set out in regulation 5: Provided that the Executive Officer shall prior to the action taken under paragraph (b) be satisfied that --
 - (i) such foreign GIs are in use and protected in the foreign country concerned;
 - (ii) such foreign GIs are subject to regular audits by a certification body in the foreign country concerned;
 - (iii) such foreign GIs do not contravene any of the restrictions set out in regulation 5(1); and
 - (iv) the latest product specifications registered for the name concerned are accessible in electronic format.
- (b) be entered in a Register as set out in regulation 12(2): Provided that where necessary, the Executive Officer may request the competent authority in the country concerned to furnish him/her with additional information required for the Register as set out in regulation 13(2).

(2) The competent authority in the country concerned shall inform the Executive Officer in writing and within reasonable time of any change in status of a registered foreign GI that forms part of an international agreement.

(3) Any addition of a name to the list of registered foreign GIs that form part of an international agreement and which fall within the scope of these regulations shall be done in accordance with the procedure provided for in such international agreement, or as otherwise mutually agreed between the Republic of South Africa and the country concerned.

Date of application for registration and priority

7. (1) The date of application for registration as a GI shall be regarded as the date upon which the Executive Officer receives the application.

(2) The first application for the registration of a GI received by the Executive Officer shall have priority over any subsequent application for registration of an identical GI –

- (a) in respect of the same agricultural product; and
- (b) having the same or similar geographical origin.

Processing of applications received and verification of information

8. (1) Upon receipt of an application for registration as either a South African GI or a foreign GI, excluding foreign GIs that form part of international agreements, the Executive Officer shall within a period not exceeding sixty (60) days from the date of application evaluate the information submitted in terms of regulation 4(2) or 5(2), as the case may be, to determine whether the following conditions have been met:

- (a) All the required information has been included in the application.
- (b) The proposed GI is not excluded from registration by virtue of the restrictions set out in regulation 4(1) or 5(1) respectively.
- (c) The proposed GI meets the definition for 'geographical indication' in regulation 1.
- (d) The group that applied –
 - (i) is carrying on an activity in the geographical area specified in the application with respect to the agricultural product so specified; and
 - (ii) is representative of the agricultural product for which protection is sought

(2) The Executive Officer may –

- (a) correct any error of translation, or any obvious spelling error observed in the application filed with him/her, and shall notify the applicant group in writing to remedy the same;
- (b) where deemed necessary, request the applicant group in writing to submit additional information: Provided that any request and subsequent submission shall be done within reasonable time and the process completed within the sixty (60) day period specified in sub-regulation (1);
- (c) in the case where an application for registration as a South African GI was received –
 - (i) visit the group of producers in the geographical area concerned to confirm that the information submitted is true and complete within the period specified in sub-regulation (1); and
 - (ii) request the qualified South African auditor nominated in terms of regulation 4(4)(a) and/or the Assignee designated for the agricultural product concerned to accompany him/her on the visit referred to in sub-paragraph (i); and
- (d) consult persons with specialised knowledge and experience about any matter relating to the application received within the period specified in sub-regulation (1).

Notice of registration and invitation for objections

9. (1) Once the Executive Officer is satisfied that all the conditions of regulation 8(1) have been met, where necessary the additional information requested in regulation 8(2)(b) have been submitted, and that the information submitted is true and complete, he/she shall publish a Notice in the Government Gazette to –

- (a) inform all interested parties of his/her intention to register the proposed GI;
- (b) inform all interested parties that information regarding the most important elements of the product specification and its linkage to the geographical area concerned are available on request; and
- (c) invite any written objections to the proposed registration of the GI.

(2) The time allowed for objections referred to in sub-regulation 1(c) shall not exceed a period of sixty (60) days from the date of publication of such Notice in the Government Gazette: Provide that any interested party may request the Executive Officer in writing, which shall be duly motivated, to consider an extension of the time allowed for a period not exceeding thirty (30) days.

Objection to the registration

10. (1) Any person or group asserting a legitimate interest in the proposed GI may, within the period allowed for under regulation 9(2), give written notice of his/her/their objection to the registration on any of the following grounds:

- (a) The proposed GI does not meet the definition for 'geographical indication' in regulation 1.
- (b) The proposed GI is a generic name.
- (c) The group that applied is not representative.
- (d) The proposed registration would be disadvantageous to a long-standing trade mark, or a wholly or partially homonymous name in use.

(2) Any grounds for objection referred to in sub-regulation (1) shall be accompanied by the necessary scientific and/or any other supporting evidence.

(3) The Executive Officer shall –

- (a) upon receipt of the objection, inform the applicant group in writing who in turn shall, within a period not exceeding thirty (30) days, furnish the Executive Officer with a counter-statement of the grounds on which the group relies for the application;
- (b) upon receipt of the counter-statement referred to in paragraph (a) furnish the objector with a copy thereof; and
- (c) if so requested, give both the applicant group and the objector the opportunity to be heard.

(4) If deemed necessary, the Executive Officer may consult persons with specialised knowledge and experience about any matter relating to the objection received to the registration of the proposed name.

(5) The Executive Officer shall, after considering all information, counter-statements, arguments and any other relevant information presented to him/her, take a decision within a period not exceeding thirty (30) days whether to reject or register the proposed GI.

Rejection of application for registration

11. (1) The Executive Officer shall reject an application for registration as a South African GI or foreign GI, excluding foreign GIs that form part of international agreements, if –

- (a) the additional information requested in terms of regulation 8(2)(b) was not submitted, or only submitted after the sixty (60) day period had lapsed;
- (b) no counter-statement was received within the prescribed period referred to in regulation 10(3)(a); or
- (c) the application for registration has been opposed and the objection has not been resolved in the applicant group's favour.

Registration

12. (1) The Executive Officer shall register a South African GI or foreign GI, excluding foreign GIs that form part of international agreements, –

- (a) if the application for registration has not been opposed within the period allowed for under regulation 9(2); or
- (b) if the application for registration has been opposed, but the objection has been resolved in the applicant group's favour; and
- (c) by entering the name in a Register.

(2) Foreign GIs that form part of international agreements shall be registered by the Executive Officer by entering such names in a Register.

(3) Once a GI has been registered in accordance with sub-regulation (1) or (2), the Executive Officer shall –

- (a) in the case of a South African GI inform the applicant group in writing of the registration; or
- (b) in the case of a foreign GI, excluding a foreign GI that forms part of an international agreement, inform the competent authority in writing of the registration; and
- (c) publish a Notice in the Government Gazette of such registration.

Keeping of a Register

13. (1) The Executive Officer shall establish and maintain an electronic Register of all South African GIs and foreign GIs, including foreign GIs that form part of international agreements, registered by him/her in terms of regulation 12.

(2) The Register shall contain at least the following information:

- (a) The name of the registered GI.
- (b) The name of the group.
- (c) The type of agricultural product.
- (d) The product specification or a summary of the critical elements of control (i.e. minimum product specifications and any other information deemed necessary) that will be used to verify compliance during audits.
- (e) The name of the country from which the registered GI originates.

- (f) The name of the certification body nominated to verify compliance.
- (g) The date of registration.
- (3) The Register shall be open for inspection to the public on the Department's website.
- (4) The Executive Officer may correct any obvious error in, or omission from, the Register.

Application to amend the product specification

14. (1) (a) Any group submitting an application to amend the product specification, excluding the information referred to in sub-regulation (2), related to their registered GI shall follow the same procedure as described in these regulations for application to register a GI.
- (b) Any application to amend the product specification of a registered foreign GI that forms part of an international agreement shall be done in accordance with the procedure provided for in such international agreement, or as otherwise mutually agreed between the Republic of South Africa and the country concerned.
- (c) The existing quality and/or compositional requirements prescribed in the regulations published under the Act for the agricultural product concerned shall be taken into consideration at all times.

(2) Applications from a group to amend the following information related to their registered GI shall not be subject to the procedure referred to in sub-regulation (1)(a):

- (a) Nomination of a new qualified South African auditor (RSA GIs) or certification body (foreign GIs).
- (b) Any labelling and packaging changes: Provided that the existing labelling requirements and restrictions, as well as the packaging requirements prescribed in the regulations published under the Act for the agricultural product concerned shall still be complied with.

(3) Once written confirmation has been received from the Executive Officer that the proposed amendment to the product specification has been accepted and that the Register was amended, the group shall within reasonable time –

- (a) amend their product specification accordingly;
- (b) ensure that all members of the group implement the amendment; and
- (c) inform their nominated qualified South African auditor (RSA GIs) or certification body (foreign GIs) of such amendment.

(4) The Executive Officer shall inform the Assignee designated for the agricultural product concerned of any changes in the status of the product specification, nominated qualified South African auditor (RSA GIs) and/or any labelling and packaging changes.

Cancellation of registration

15. (1) The Executive Officer shall cancel the registration of a registered GI in the following instances:
- (a) On request of the group where the registered GI is no longer used or where the majority of members of such group are no longer interested in maintaining the registration.
 - (b) If it is established during audits referred to in regulation 19(1) that compliance with

the product specification of the registered GI is no longer ensured by the group.

- (c) If the Executive Officer was informed by the competent authority in the country concerned that a foreign GI, including a foreign GI that forms part of an international agreement, is no longer protected, or has ceased to be protected, or has fallen into disuse in its country of origin.

(2) In instances where the registration of a GI is cancelled, the Executive Officer shall remove the name and other related details from the Register.

Use of GI symbols, designations and acronyms

16. (1) A registered South African GI may in addition show the following designation or corresponding acronym in the immediate vicinity thereof:

- (a) "Protected Geographical Indication" or "Registered Geographical Indication" or "RSA Geographical Indication"; or
- (b) "PGI" or "RGI" or "RSA-GI".

(2) Imported agricultural products presented for sale under a registered foreign GI, including a registered foreign GI that forms part of an international agreement, that enjoys protection in terms of these regulations may show any GI symbol(s), designations and acronyms approved for use for such purpose by the competent authority in the country of origin concerned.

Labelling of foodstuffs using registered geographical indications as ingredients

17. (1) A name registered as a South African GI or foreign GI, including a registered foreign GI that forms part of an international agreement, may be indicated as part of or in close proximity to the product name/ designation of a foodstuff incorporating agricultural products benefiting from such registered name, as well as in the labelling, presentation and advertising relating to that foodstuff: Provided that the following conditions are met:

- (a) The foodstuff in question should not contain any other 'comparable ingredient', i.e. any other ingredient which may partially or totally replace the ingredient benefiting from the registered GI: Provided that if an ingredient comparable to a registered GI has been incorporated in a foodstuff, the registered name of the GI may appear in the list of ingredients only.
- (b) Where possible, the ingredient should preferably be used in sufficient quantities to impart an essential characteristic to the foodstuff concerned.
- (c) Any emphasis regarding the presence of the ingredient should be subject the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfects Act, 1972 (Act No. 54 of 1972). (Optional)

Agricultural products which fail to meet the product specification

18. (1) An agricultural product which fails to meet the requirements for the use of a registered GI, but which has been legally presented for sale (marketed) under such name for at least five (5) years prior to the publication of a Notice of application for registration in the Government Gazette, may continue to be

- (a) produced, packaged and labelled under such name for a period not exceeding two (2) years following the afore-mentioned publication; and
- (b) presented for sale (marketed) for a period not exceeding three (3) years following the afore-mentioned publication.

(2) When the product specification of a registered GI has been amended in accordance with regulation 14, the agricultural product in question may continue to be produced, packaged, labelled and presented for sale (marketed) under the previous specification for a period not exceeding twelve (12) months following the publication of a Notice of such amendment in the Government Gazette.

Auditing of groups and trade control of registered geographical indications

19. (1) (a) All members of a group using a registered South African GI shall be subject to audits by the qualified South African auditor nominated under regulation 4(4)(a) to establish compliance with the critical elements of control (i.e. minimum product specifications and any other information deemed necessary) submitted in terms of regulation 4(4)(b).
- (b) The audits referred to in paragraph (a), shall be conducted --
- (i) at least on a biannual basis, or in accordance with the frequency as mutually agreed between the Executive Officer and the group for which the GI was registered; and
- (ii) at the expense of each member of the group for which the GI was registered.
- (c) The nominated qualified South African auditor shall, within a period not exceeding thirty (30) days of completing an audit, submit a final report of its findings in writing to the Executive Officer and the group for which the GI was registered.
- (d) If during an audit it is found that a member of the group does not meet the product specifications registered for the GI concerned, the member shall --
- (i) cease using the registered GI on the particular agricultural product;
- (ii) introduce the remedial measures necessary to ensure compliance with the registered product specifications; and
- (iii) be subject to a follow-up audit by the nominated qualified South African auditor to confirm compliance before being allowed to use the registered GI again.
- (e) The Assignees designated for the agricultural product(s) concerned may, either at their own discretion or on request of the Executive Officer, visit members of the group and/or the qualified South African auditor nominated by such group from time-to-time to confirm that the registered product specifications are complied with and audits are conducted as intended in paragraph (b) above.

(2) In the case of registered foreign GIs, excluding registered foreign GIs that form part of international agreements, the Executive Officer shall accept audits carried out by the certifying body nominated under regulation 5(2)(c).

(3) Assignees shall during the course of exercising their mandate in the trade for the agricultural product(s) they were designated --

- (a) ensure that all registered South African GIs and foreign GIs, including registered foreign GIs that form part of international agreements, enjoys the scope of protection as set out in regulation 3(1) and (2); and
- (b) take the appropriate action against any transgressions found as permitted for under the Act.

Updating of related regulations under the Act

20. As and when it becomes necessary, the Department shall ensure that the applicable product specific regulations published under the Act are revised to accommodate the GIs registered in terms of these regulations.

Offences and penalties

21. Any person who contravenes or fails to comply with the provisions of these regulations shall be guilty of an offence, and upon conviction be liable to a fine not exceeding the amount prescribed under the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to imprisonment for a period not exceeding the time set out in section 11(2) of the Act, or to both such fine and imprisonment.