

Agricultural Marketing Authority (Macadamia Nuts) Regulations,
2019

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Agricultural Marketing Authority (Macadamia Nuts) Regulations,
2019

IT is hereby notified that the Minister of Lands, Agriculture, Water, Climate and Rural Resettlement, in terms of section 50 of the Agricultural Marketing Authority Act [*Chapter 18:24*], has made the following regulations:—

Title

1. These regulations may be cited as the Agricultural Marketing Authority (Macadamia Nuts) Regulations, 2019.

Interpretation

2. In these regulations—

“association” means the Macadamia Producers’ Association of Zimbabwe, representing growers of macadamia nuts in a particular area of areas of Zimbabwe;

“authority” means the Agricultural Marketing Authority established in terms of the Act;

“buyer” means a natural person or company that buys macadamia nuts for resale or processing, or any other lawful purpose locally or on international markets;

“deal”, in relation to macadamia nuts, means to buy, sell, barter, pledge, exchange, give or receive, offer or expose for sale, or have any other dealing or transaction whatever;

“grower” means a natural person or company that grows macadamia nuts for sale in their shell or processed and such activity is for commercial purposes;

“inspector” means a police officer, agricultural inspector or any other such person appointed by the Minister for the purposes of enforcing these regulations;

“macadamia nuts” means a nut in shell of the species *Macadamia integrifolia* or *Macadamia tetraphylla* or a hybrid of those species or a hybrid of those species;

“licence” means a licence issued in terms of these regulations;

“permit” means a permit issued in terms of these regulations;

“Secretary” means the secretary of the Ministry for which the Minister is responsible;

“Minister” means the Minister of Lands, Agriculture, Water, Climate and Rural Resettlement or any other Minister

to whom the President may, from time to time, assign the administration of these regulations.

Objects

3. (1) The objects of these regulations are to—
- (a) control and regulate the marketing of macadamia nuts;
 - (b) promote, protect and maintain the sale of macadamia nuts;
 - (c) institute effective systems to control theft of macadamia nuts;
 - (d) collate statistics relating to the production, marketing, export and consumption or use of macadamia nuts;
 - (e) distribute market studies and information relating to the marketing, production and use of macadamia nuts;
 - (f) advise the Minister on all matters relating to the production, marketing and processing of macadamia nuts;
 - (g) do all things which this or any other Act or any other enactment requires shall be done by the Authority.

Registration of growers, processors or buyers

4. (1) Every person who is, or intends to become a commercial grower, buyer or processor of macadamia nuts shall register as such with the Authority under the terms provided in these regulations.

(2) Applications for registration shall be made either individually, or through associations of stakeholders who shall be representing the interests of growers, processors or buyers.

(3) An application for registration as a grower, processor or buyer shall be made to the Authority in the manner approved by the Authority and shall be accompanied by the fee specified in the Schedule.

Buyers to be licensed

5. (1) No person shall deal in macadamia nuts for commercial purposes unless he or she is—

- (a) licensed as a buyer of macadamia nuts; or
- (b) registered as a grower; or
- (c) the holder of a permit issued in terms of section 10.

(2) No licensed buyer whose licence has been suspended and no person registered as an authorised buyer on behalf of such a licensed buyer shall buy macadamia nuts whilst the license is suspended.

(3) A licensed buyer may only—

- (a) possess macadamia nuts received by him or her as a result of his or her lawful trading; or
 - (b) deal in macadamia nuts in his or her possession only to the extent to which he or she is licenced in terms of these regulations or any other enactment relating to dealing in macadamia nuts; or
 - (c) export macadamia nuts referred to in paragraph (a) subject to these regulations or any other enactment relating to the export of macadamia nuts.
- (4) A holder of any permit or license from the Authority may only—
- (a) possess macadamia nuts in accordance with the terms of his or her permit or license; or
 - (b) deal in macadamia nuts with any other lawfully authorised person to the extent to which he or she and such other person are permitted in terms of these regulations, the terms of his or her permit or license or any other enactment relating to dealing in macadamia nuts.

Register of growers, processors or buyers

6. (1) The Authority shall keep an annual register of all growers, processors or buyers and may keep separate registers for different classes of growers.

(2) Every association shall keep registers of all growers, processors or buyers that are members to it and shall deposit a copy thereof to the Authority.

Allotment of registration numbers

7. (1) The Authority shall allot to each registered grower, processor or buyer a registration number.

(2) The Authority may allot registration numbers to Associations of growers, processors or buyers, after filling in the form approved by the Authority.

(3) No person shall transfer to any other person the registration number which has been allotted to him or her and any purported transfer of such registered number shall be invalid.

(4) Any person who unlawfully transfers to any other person his or her registration number shall have such registration number invalidated by the Authority.

(5) A person who uses or transacts under an invalidated registration number shall be guilty of an offence and be liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Records

8. Every grower, processor or buyer of macadamia nuts and or macadamia products shall keep records of size of orchards, quantity of nuts produced, processed, traded, bought, sold or received, exported or imported by him or her in the course of production, marketing or processing.

Use of registration number when transacting

9. (1) No registered grower shall deliver a bale, sack, pocket or other container of macadamia nuts which—

- (a) was grown by him or her and is marked with a number other than his or her registration number; or
- (b) was not grown by him or her and is marked with his or her registration number without having obtained written permission from the Authority.

(2) A registered grower of macadamia nuts shall mark his or her registration number or cause such registration number to be marked on each bag of macadamia nuts which is delivered by him or her, or, on his or her behalf for sale, trade, processing or export.

Issuer of licences and permits

10. (1) The Authority shall issue all licences and permits.

(2) The Minister or Secretary may direct the Authority to issue a permit authorising a person to possess, buy, process or export macadamia nuts.

Alteration and cancellation of licences and permits

11. (1) The Minister may—

- (a) subject to subsection (2), direct the Authority, through the Secretary to alter the conditions of any licence or permit;
- (b) on the breach of any conditions of the licence or permit, or upon the conviction of the holder of a licence or permit for any offence in terms of these regulations, or

for any other good sufficient reason, at any time direct the Authority through the Secretary to cancel the licence or permit.

(2) Before giving a direction in terms of subsection (1)(a), the Minister, through the Secretary, shall give notice in writing of his or her intention to the holder of the licence or permit and afford such holder a reasonable opportunity to make representations thereupon.

(3) The Secretary, through the Authority, shall keep a register in which shall be recorded full particulars of every licence or permit issued by him or her in terms of this or any other section and of every renewal, alteration or cancellation of such licence or permit.

(4) A holder of a licence or permit shall keep a duplicate original of each permit issued to him or her and note thereon any renewal, alteration or cancellation of such permit or licence.

Licence fees

12. There shall be paid for the application, issue or renewal of a licence or permit, the fee as specified in the Schedule.

Levies

13. (1) All buyers of macadamia nuts shall pay a levy at a rate of 1.5 *per centum* of the value of macadamia nuts purchased, which shall be deposited by the Authority into the Agricultural Marketing Fund established in terms of the Act.

(2) The levy paid shall be used for the development of macadamia nuts industry in accordance with Part IV of the Act, specifically to support—

- (a) farmers access to information on macadamia nuts production, marketing and processing;
- (b) the provision of research, training and extension services;
- (c) pest and disease control;
- (d) production and marketing and processing of macadamia nuts; and
- (e) the institution of effective systems to control theft of macadamia nuts.

Miscellaneous provisions relating to licences and permits

14. (1) A licence or permit shall be in the form approved by the Authority.

(2) An application for a licence or permit shall be accompanied by the fee specified in the Schedule.

(3) A licence or permit shall have endorsed upon it any conditions imposed in terms of these regulations.

(4) Unless previously cancelled, every licence or permit which—

(a) is issued shall expire on the 31st December next succeeding the date of issue:

Provided that, if such licence is issued on or after the 1st December in any year, it shall expire on the 31st December of the next following year;

(b) is renewed shall expire on the 31st December of the year for which it is renewed.

Authorised person may only deal with another authorised person

15. Any person authorised by these regulations to deal in macadamia nuts may only deal in such with a person authorised by these regulations to deal in macadamia nuts, and then only to the extent to which such other person is authorised.

Register of transactions

16. (1) Every registered grower, holder of a permit, license or authority to deal in, process, receive or export macadamia nuts shall keep a register in which he or she shall keep a true and correct record relating to all macadamia nuts deposited with or received or dispatched or otherwise disposed of by him or her, and shall enter or cause to be entered in such register, within a reasonable time after every such transaction—

(a) the date of the transaction;

(b) the names of the parties to the transaction;

(c) the nature and weight of the macadamia nuts which were the subject of the transaction;

(d) the price, if any, received or paid by him or her;

(e) moisture content, where applicable;

(f) size, where applicable.

(2) A grower or holder of a licence or permit shall, on the written demand of an inspector, produce and exhibit such register to that inspector and, if so required, shall permit him or her to make a copy of any entry therein.

(3) If any grower or holder of a licence or permit is in possession of macadamia nuts in excess of the amount shown to be in his or her possession by his or her register, he or she shall be deemed to be in unlawful possession of such excess, unless he or she can account satisfactorily for such possession.

Fixing of prices

17. Where it appears to the Minister that there are unfair practices in the pricing model of macadamia nuts, the Minister may, after consultation with the Authority, the Minister responsible for Finance, and upon recommendations from associations of growers of macadamia nuts before the 31st of December in each year, by order published in the *Gazette*, fix the minimum prices for macadamia nuts to be traded in that year.

Effect given to fixed prices

18. (1) For the purpose of giving effect to prices fixed under section 17, in so far as macadamia nuts may be purchased by lawfully authorised holders of permits or licenses or their agents, the Minister shall issue orders to the permit holding dealers requiring them to purchase those crops or products at prices not less than those fixed or agreed.

Disabilities entailed by a trader on conviction

19. (1) If a person who is the holder of any licence or permit to carry on any trade, business or occupation involving macadamia nuts under any enactment other than these regulations is convicted of any offence under these regulations, the conviction shall have the effect of cancelling such licence, unless the convicting court for any reason thinks fit to order otherwise.

(2) Any person convicted as aforesaid shall not, during the period of one year from the date of his or her conviction, be entitled to obtain any such licence as aforesaid authorising him or her to carry on any trade, business or occupation in macadamia nuts, and if any such licence is issued to him or her during the said period, it shall be void.

Powers of entry, search and seizure by inspectors

20. (1) Any inspector may at all times —

- (a) enter and search the premises of any licensed dealer on which he or she conducts his or her trade or business as such or any location on which macadamia nuts are kept:

Provided that no such entry or search shall be made unless —

- (i) a written explanation has been given by the inspector for the need for entry and or search;
 - (ii) the person so entering has reasonable grounds for believing that the entry or search is necessary for the prevention, investigation or detection of an offence in terms of these regulations, for the seizure of any property that is the subject-matter of such an offence or evidence relating to such an offence or for the lawful arrest of any person in connection with such an offence;
 - (iii) in the case of an inspector other than a police officer, the entry or search is conducted during normal business hours;
- (b) require any person who is required in terms of these regulations to keep a register to produce such register and permit the inspection and copying thereof;
 - (c) require any licensed dealer or permit holder to produce and show his or her licence or permit to him or her and allow it to be read and a copy thereof to be taken.
 - (d) seize any such macadamia nuts and take them before a magistrate to be dealt with according to law.

(2) An inspector may at any reasonable time of business require any grower, processor, licensed dealer, buyer, trader or exporter to permit the inspection or search of orchards, industrial premises, documentary records, warehouses, storage facilities, transportation vehicles, or other premises or facilities or documents in relation to the production, marketing, processing or trading of macadamia nuts.

(3) In conducting search and inspection, the inspector has powers to seize, confiscate, retain, secure, move, detain or order the removal of documents, materials products, macadamia nuts, equipment, and any other material for purposes of investigations, prosecution or legal proceedings.

(4) Any person who—

- (a) resists, hinders disturbs any inspector in the execution of his or her powers in terms of subsection (1); or
- (b) fails to comply with any requirement in terms of subsection 1(a),(b) or (c);

shall be guilty of an offence and liable to a fine not exceeding level 4 or imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

False statements

21. If any person makes any statement which he or she knows to be false for the purpose of procuring, whether for themselves of any other person, the grant of a licence or permit or any other authorisation, he or she shall be guilty of an offence and liable to a fine not exceeding level 4 or to imprisonment for three months or to both such fine and such imprisonment.

Procedure on confiscation of macadamia nuts

22. (1) If in the terms of these regulations any court declares any macadamia nuts to be forfeited to the State, such court shall cause such macadamia nuts to be delivered to the Authority, or such person as he or she may designate.

(2) The Authority shall publish a notice in the *Gazette*, which shall state that the macadamia nuts so confiscated, are in the possession of the Authority.

(3) At any time within 60 days of the date of publication of such notice any person claiming a legal right to such macadamia nuts may apply to the Authority for the delivery to him or her of such macadamia nuts and the Authority, if satisfied as to the legality of such claim, shall deliver the macadamia nuts to such person.

(4) If the Authority declines to recognise such claim made in terms of subsection (3), the applicant may, within 21 days thereof, apply to the High Court for such delivery.

(5) Any expense incurred by the Authority in connection with the retention and custody of such macadamia nuts shall be paid to the Authority by the person, if any, to whom the macadamia nuts are delivered.

(6) If on the expiration of the 60-day period specified in subsection (2), no person has established a legal right to the said macadamia nuts, the Authority may dispose of such macadamia nuts in such manner as the Minister may direct and may authorise, in writing, the sale of such macadamia nuts.

Offences and penalties

23. (1) Any person who—

- (a) buys, trades, receives, processes or grows macadamia nuts without a valid registration number or licence or permit; or
- (b) buys, receives, transports, processes, possesses or trades macadamia nuts—
 - (i) knowing that such macadamia nuts have been unlawfully acquired; or
 - (ii) realising that there is a real risk or possibility that such macadamia nuts have not been lawfully acquired by the other transacting party;
- (c) contravenes any of the provisions in sections 4, 5, 9 and 18;

shall be guilty of an offence and liable to a fine not exceeding level 4 or imprisonment not exceeding three months or to both such fine and such imprisonment.

SCHEDULE (Sections 4(3), 12 and 14(2))

LIST OF FEES

Item	Amount (RTG\$)
Application fee (non refundable)	50,00
Registration as grower only	10,00
Issue fee (for processors and buyers)	500,00
Renewal fee	100,00

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Item	Amount (RTGSS\$)
Late submission for renewal of processor and buyer licence/ permit	10,00 (per day)
Levy	1.5 Per centum of macadamia nuts purchased
Permit/ Licence fee	1 000,00

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