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GENERAL NOTICE

NOTICE 1529 OF 2006 DEPARTMENT OF TRADE AND INDUSTRY

NOTICE OF INTENTION TO AMEND THE REGULATIONS PUBLISHED BY GOVERNMENT NOTICE NO. R 2362 OF 18 NOVEMBER 1977

Notice is hereby given that the Minister of Trade and Industry intends to amend the Regulations published by Government Notice No. R 2362 of 18 November 1977, by substituting Part 1 thereof with the Schedule to the accompanying Notice.

Interested persons are invited to make written comments regarding this amendment within a period of sixty (60) days from date of publication of this notice to:

Address: The Department of Trade and Industry
 Block A, 3rd Floor
 77 Meintjies Street
 Sunnyside
 Pretoria

Postal Address: Private Bag X84
 Pretoria
 0001

For Attention : Ms T. Tsotetsi

Fax: (012) 394 2421

SCHEDULE

PART I

Sale of Goods

Definitions

1. In these Regulations "the Regulations" shall mean the regulations published by Government Gazette No. R2362 of 18 November 1977, as amended by Government Notices Nos. R.2025 of 13 October 1978, R.527 of 21 March 1980, R.1805 of 27 August 1982, 192 of 10 February 1984, 1739 of 9 August 1985, 2110 of 20 September 1985, R.1868 of 12 September 1986, R.125 of 16 January 1987, R.861 of 5 May 1989, R.2255 of 28 September 1999, R.360 of 1 March 1991, R.3250 of 4 December 1992 and R.169 of 28 January 1994.

"accredited laboratory" shall mean a laboratory accredited by an organisation recognised by the Minister of Trade and Industry in terms of the Measuring Units and National Measuring Standards Act, 1973 (Act 76 of 1973) as an organisation that formally recognises the competence of calibration laboratories;

"authorised officer" shall mean any duly appointed inspector or examiner or any employee of a statutory body furnished with written inspection or examination authority issued by the director in terms of section 13 of the Trade Metrology Act 1973, (Act 77 of 1973) or any police officer;

"consumer" shall mean any person who purchases a product or service for his or her own use through retail sales agencies or other means but does not include a person purchasing a product for further processing or other industrial or institutional use;

"delivery note" shall mean any separate piece of paper of such colour and size as readily to permit of a clear and legible statement being made thereon and actually bearing such a statement of all information required by the Act and these regulations to be furnished in respect of any goods actually being delivered to a purchaser;

"Director" shall mean the Director of Trade Metrology appointed or deemed to be appointed in terms of section 2 of the Trade Metrology Act 1973, (Act 77 of 1973);

"meat" shall mean meat of any description whether fresh, pickled, marinated, salted, chilled, frozen, cooked or processed, and shall include all dressed or undressed carcasses;

"milk" without limiting its ordinary meaning, shall include fresh, pasteurised, sterilised, homogenised or skimmed milk;

"retail" with reference to any selling transaction shall mean any sale to a consumer and includes a transaction whereby a consumer purchases directly from a wholesaler, manufacturer or some other sales outlet;

"SANS 289" shall mean the South African National Standard entitled "Labelling requirements for prepackaged products (prepackages) and general requirements for the sale of goods subject to legal metrology control", as amended from time to time;

"SANS 458" shall mean the South African National Standard entitled "Tolerances permitted for the accuracy of measurements in terms of legal metrology legislation including prepackaged products", as amended from time to time;

“**SANS 1840**” shall mean the South African National Standard entitled “Manufacture of measuring container bottles”, as amended from time to time;

“**SANS 1841**” shall mean the South African National Standard entitled “Control of the quantity of contents in pre-packed packages within the legal prescriptions of the Trade Metrology Act and Regulations”, as amended from time to time;

“**the Act**” shall mean the Trade Metrology Act, 1973 (Act No. 77 of 1973).

For the purposes of these regulations the definitions under the headings “Terminology” in SANS 289 and SANS 458 apply.

Scope

2. These regulations specify requirements for the measurement, labelling, prescribed quantities in prepackages and general rules for the delivery and sale of goods.

Goods destined for export

3. The provisions of these regulations shall apply to prepacked goods destined for sale outside the Republic unless they conform to any written requirements specified by the foreign purchaser.

Seller or importer to take precaution regarding the quantity of goods purchased for resale

4. Any person who:

- (a) has purchased any prepacked goods for resale; or
- (b) imports any such goods for resale,
 - (i) which bears a statement of quantity; or
 - (ii) is deemed to be of a certain quantity in terms of any provision of these regulations,

shall take such precaution as will ensure that the actual quantity of the goods is the quantity represented, subject to any applicable tolerance permitted in terms of these regulations or any other regulation in terms of the Act, irrespective of the origin of such goods

Delivery note, invoice or other writing to accompany goods delivered

5. Except where otherwise provided in this regulation any goods transmitted, conveyed or delivered to any purchaser in pursuance of a sale by measure or by number shall be accompanied by a correctly dated delivery note, invoice or other writing.

General requirements for issuing a delivery note, invoice or other writing

6.(1) The delivery note, invoice or other writing must state the following:

- (a) the names and addresses of the seller and the purchaser; and

- (b) a clear and legible statement of the quantity of such goods unless,
- (i) the quantity of such goods is indicated on the goods in the manner prescribed in SANS 289; or
 - (ii) such delivery note is accompanied by a cash register slip which contains a list of separate prices respectively corresponding to each selling price marked on each separate item or quantity of goods.
- (2) A delivery note, invoice or other writing need not accompany the goods where:
- (a) the goods are unprocessed or unmanufactured agricultural produce, cream or milk which have been produced in the Republic and where such goods are transmitted, conveyed or delivered in pursuance of a sale in bulk by or on behalf of the producer thereof;
 - (b) the goods, after having been taken from bulk, are measured or counted, as the case may be, in the presence of the purchaser or his agent at the time of sale and such goods are delivered to the purchaser or his agent on the same occasion and on the premises of the seller;
 - (c) a purchaser or his agent in person orders the goods at the premises of the seller, stating the quantity of the goods to be supplied, and such goods, after having been taken from bulk and made up in prepacked form at the time of sale without having been measured or counted in the presence of the purchaser or his agent, as the case may be, are delivered to the purchaser or his agent on the same occasion and on those premises;
 - (d) the quantity of the goods supplied as contemplated in paragraph (c) shall be in accordance with that ordered or when of some other quantity, such other quantity is made known to the purchaser or his agent by the seller when being delivered; or
 - (e) the purchaser or his agent specifies the quantity of the goods to be supplied in a transaction by retail, either explicitly or by implication, at the premises of the purchaser such goods are delivered to the purchaser or his agent on the same occasion on those premises and:
 - (i) the quantity of the goods supplied is the quantity specified explicitly or by implication by the purchaser or his agent; or
 - (ii) where the goods are of a different quantity, such other quantity is made known to the purchaser or his agent by the seller when being delivered.

Goods to be measured after despatching

(3) Where the quantity of goods, which have been despatched to a purchaser in pursuance of a sale in bulk, is to be measured en route to or at the place of delivery:

- (a) the delivery note, invoice or other writing accompanying such goods shall be endorsed to that effect; and
- (b) the statement of quantity shall be inserted or attached immediately after the quantity of the goods has been determined.

(4) In cases where the statement of quantity is in the form of a printed ticket obtained from a person in charge of the instrument used for determining the quantity of the goods, such ticket shall be attached to the delivery note, invoice or other writing:

- (a) immediately after the quantity of the goods has been determined; and
- (b) before the delivery note, invoice or other writing is handed over to the purchaser or his agent.

Manner of indicating quantity of anthracite, charcoal, coal and coke

(5) A delivery note, invoice or other writing accompanying prepacked quantities of anthracite, charcoal, coal and coke that are permitted in terms of Annexure E of SANS 289 to be unmarked as to quantity, shall contain:

- (a) a statement of the number of prepacked units of each prescribed quantity to be delivered; and
- (b) the mass of the respective prescribed quantities being delivered.

Goods dispatched in bulk by rail

(6) Where bagged unmanufactured cereals are despatched by rail to a purchaser in pursuance of a sale in bulk without the quantity being specified on the bag, the delivery note, invoice or other writing accompanying such goods may indicate:

- (a) the name and address of the agent of the seller instead of the name and address of the seller; and
- (b) a statement of the quantity by gross mass instead of by net mass.

Liquid products in vehicle tanks and bulk containers

(7)(a) A delivery note, invoice or other writing issued in connection with liquid goods that vapourise at ambient atmospheric pressure and which are kept at a temperature below 0 °C to maintain their liquid state and are prepacked in a bulk delivery vehicle or bulk container intended for sale as a non consumer package and sold by volume, shall clearly show the temperature of the liquid product at the temperature at which it is maintained in order to maintain its liquid state.

(b) A delivery note, invoice or other writing issued in connection with liquid goods, other than those in 6(7)(a), which are prepacked in a bulk delivery vehicle or bulk container intended for sale as a non consumer package and sold by volume, shall clearly show the temperature of the liquid product at the time of packing, its coefficient of expansion and the quantity thereof at 20 °C.

(c) Any measuring instrument used to determine the quantity of the liquid and convert its volume to 20 °C shall be verified in terms of any regulation pertaining to such instrument.

(d) For the purposes of this regulation any thermometer used for the determination of temperature shall be calibrated by an accredited laboratory and its accuracy shall be traceable to the national standard.

Duties of person conveying goods

(8) Any person in possession of a delivery note, invoice or other writing relating to any goods being transmitted, conveyed or delivered by him in pursuance of a sale shall:

- (a) produce such delivery note, invoice or other writing to any authorised officer when so requested by him;
- (b) hand over such delivery note, invoice or other writing to the purchaser or his agent before any part of the goods is off-loaded;
- (c) in any case where the quantity of the goods has been determined at the place of delivery, hand over such delivery note, invoice or other writing to the purchaser or his agent before leaving such place.

Dealers to retain delivery notes

(9) A delivery note, invoice or other writing issued in respect of any goods delivered in pursuance of a sale to a dealer and handed over to the dealer or his agent as prescribed in sub-regulation 6(8), shall be retained by him for a period of at least 48 hours after receipt, during which period it shall be kept at hand and be produced to an authorised officer on demand.

REQUIREMENTS FOR MARKING OF PREPACKAGES AND PRESCRIBED QUANTITIES***Markings on prepacked products and prescribed quantities***

7.(1) Prepackages made up prior to being offered for sale shall comply with all applicable requirements of SANS 289.

Goods or articles ordered by the purchaser in person

(2) Where purchaser or his agent in person orders goods or articles stating the quantity of the goods or articles to be supplied and such goods or articles, after having been taken from bulk and made up in prepacked form at the time of sale without having been measured or counted in the presence of the purchaser or his agent, are delivered to the purchaser or his agent on the same occasion and on those premises, the goods or

articles are not required to be marked with a statement of quantity, provided that:

- (a) the quantity of the goods or articles supplied is in accordance with that ordered; or
- (b) when of some other quantity, such other quantity is declared to the purchaser or his agent by the seller when being handed over.

(3) The requirement contemplated in sub-regulation (2) does not apply to beverages and other goods with special requirements contained in Annexure E of SANS 289 for measurement at the time of sale, that are supplied from bulk for consumption at the premises of the seller.

Non-consumer packages

(4)(a) Any goods or articles:

- (i) which are sold by quantity expressed in terms of a measuring unit; or
- (ii) by number; and
- (iii) which are required by a purchaser other than a person buying from the retail trade, for his own use and not for resale,

may be made up by the manufacturer or packer in non-consumer packages which do not bear a statement of quantity, provided that where such goods or articles are transmitted, conveyed or delivered in bulk to the purchaser and are enclosed in an outer container, such container shall bear a statement of the quantity in accordance with SANS 289 unless, when delivered, it is accompanied by a delivery note, invoice or other writing in accordance with the provisions of regulation 6.

(b) Non-consumer packages contemplated in sub-regulation (4) shall comply with all requirements pertaining to non-consumer packages contained in SANS 289.

(c) Any person who offers for sale in the retail, a non-consumer package that does not comply with all requirements for consumer packages contained in SANS 289 shall be guilty of an offence in terms of the Act.

Standard temperature for the sale of prepacked liquid products

(5)(a) The statement of quantity on prepackaged liquid products packed by volume, other than on the retail premises from which they are sold, shall make known the volume at a temperature of 20 °C unless otherwise prescribed in these regulations or SANS 289.

(b) The represented volume of a quantity of a liquid product packed by volume on the retail premises from which it is sold, shall be the volume at the ambient temperature at which it is measured.

Marking of equivalent statement of quantity on prepacked products

(6) A prepacked product may be marked with an equivalent quantity statement in an unauthorised measuring unit in addition to the required quantity statement provided that the equivalent quantity statement may not be more prominent or appear more times than the required quantity statement.

Qualification of statement of quantity on prepacked products

(7) A statement of quantity shall be unambiguous and without a qualification that renders it misleading or without meaning.

(8) The following qualifications are allowed:

- (a) the "drained mass" shall be indicated in addition to the total net mass on the products required by SANS 289 to bear a drained mass;
- (b) the quantity of a liquid product may be qualified by a statement of content at 20 °C;

- (c) the mass of a beef, sheep, lamb, calf, goat or pig carcass may be indicated as "cold mass";
- (d) the words "contents", "net mass" or "net" may be used with a statement of quantity; and
- (e) the "stretched" length may be indicated in addition to the "unstretched" length in the case of elastic materials provided that both such lengths are shown simultaneously. In the case of cotton crepe bandage and conforming bandage the stretched length only may be shown.

Tare marking

(9)(a) Tare masses shall be marked on the following products in the manner prescribed below:

- (i) "Tare-g" or "T-g": In accordance with the relevant provisions of SANS 289 on every container used for the sale by mass of an aerosol. The mass of any removable cap or cover not forming an integral part of the spray nozzle shall not form part of the tare mass;
- (ii) "Tare-kg", "T-kg, Tare-g" or "T-g: Indelibly marked on any cylinder or on a metal or other durable tag securely attached to any cylinder used for the sale by mass of any industrial and medical gas, including dissolved gas and liquid petroleum gas consisting of propane or butane or mixtures thereof. The valve and all items permanently mounted on the cylinder shall be included in the tare mass.

(b) The marked tare mass may not be less than the actual tare mass of the container by more than 20% of the maximum permissible error, in units of mass, of the product packaged therein but may exceed the actual tare mass of the container by not more than 0.5% of the actual tare mass of the container.

Prepacked products sold other than by measuring unit

(10) Prepacked goods or articles which may be sold other than by reference to a measuring unit shall bear no direct or indirect reference alluding to quantity in terms of any measuring unit or number, including numbers which might be construed as such a reference either—

- (a) on the goods, package or container;
- (b) on the label attached thereto or inserted in a transparent container;
- (c) on any invoice, delivery note or other writing.

SPECIAL REQUIREMENTS FOR THE SALE OF GOODS SOLD OTHER THAN IN PREPACKED FORM

Price descriptions

8.(1)(a) When any articles or goods are offered for sale by means of a price description displayed on or near retail premises for the purpose of drawing the attention of prospective purchasers:

- (i) the quantity of such articles or goods when actually sold to a purchaser shall, subject to any tolerance that may be prescribed for the measurement of such goods or articles, not be less than that quantity which the purchaser should receive for the amount paid by him or demanded from him and should be calculated at the price per measuring unit or by number shown on the price description which has been so displayed; unless
- (ii) the seller has made known to the prospective purchaser before concluding the sale that the price description which has been so displayed will not apply to the prospective transaction.

(b) Any price description displayed or advertised in connection with any article or goods sold by volume, mass, length or area and making reference to quantity shall be expressed in terms of a permissible measuring unit only and unless such price description refers to an available prepacked quantity of such article or goods, it shall be in the form of a unit price expressed in rands or cents:

- (i) per millilitre;
- (ii) litre, kilolitre;
- (iii) cubic metre;
- (iv) per milligram;
- (v) gram;
- (vi) kilogram;
- (vii) ton;
- (viii) per millimetre;
- (ix) metre;
- (x) per square metre; or
- (xi) hectare,

as the case may be.

(c) In the case of articles or goods sold by mass or volume such unit price may also be expressed in rands or cents per 100 g or 100 ml respectively.

(d) Unwrapped cuts or pieces of meat and meat carcasses shall when displayed for sale on the premises of a retail butcher and having the price thereof marked or displayed thereon have the net mass as clearly marked or displayed thereon as the price in characters and figures not less than half the height of the characters and figures used for the price.

Standard temperature for liquid products measured at the time of sale

(2) The represented volume of a quantity of a liquid product sold by volume and measured, at the time of sale shall be the volume at the ambient temperature at which it is measured: provided that a quantity of liquid product which has been artificially heated and which has a temperature above 20 °C when being measured, shall be the volume of the said product at a temperature of 20 °C.

Purchase of milk by mass

(3) A factory, dairy or milk depot may purchase a quantity of milk from a producer thereof by mass: provided that where the equivalent of the volume of a quantity of milk is to be determined from the mass of that quantity, the density of milk shall be taken as 1,03 kg/L.

Measuring units in which the quantity of certain goods shall be expressed

9.(1) For the purpose of complying with the relevant provisions of section 38 of the Act in respect of:

- (a) goods or articles sold by quantity expressed in terms of a measuring unit; or
- (b) any service rendered, the quantity of which is expressed in any measuring unit,

only an appropriate measuring unit, specified in the First Schedule and in Tables 1 to 4 inclusive in the Second Schedule to Government Notice R.1146 of 5 July 1974, issued under the Measuring Units and National Measuring Standards Act, 1973 (Act 76 of 1973), and the metric carat (CM) shall be used, unless:

- (i) exemption in writing for deviating from this has been granted by the Director; or
- (ii) it is used in connection with a purpose or an article exempted in the Schedule to Government Notice R.1791 of 4 October 1974 as amended.

(2) The use of any measuring unit or its symbol in connection with any contract, bargain, sale, purchase or transaction shall be:

- (a) in accordance with the rules specified in Government Notice R.1146 referred to in regulation 9(1); and
- (b) expressed in the manner prescribed in SANS 289,

unless permission in writing for deviating from this has been granted by the Director.

ACCURACY OF MEASUREMENT WHEN DETERMINING THE QUANTITY OF GOODS***Suitable instruments to be used and made available***

10.(1)(a) Any person who:

- (i) measures the quantity of goods or articles in the presence of a purchaser; or
- (ii) in the retail trade, prepacks goods or articles for sale,

shall use a measuring instrument suitable for the purpose and shall make such instrument available to:

- (i) an authorised officer who wishes to check the quantity of prepacked goods or articles; or
- (ii) a purchaser who wishes to measure the quantity of the goods or articles purchased by him.

(b) This requirement shall not apply when a vessel is used for the measurement of liquids in accordance with sub-regulation 10(3)(a).

(c) Any person, other than a person referred to in sub-regulation 10(1)(a) or a person packing goods in terms of a registration certificate issued under the quantity mark scheme in sub-regulation 12(1), who prepacks goods for sale shall:

- (i) keep a suitable certified measuring instrument for the purpose of checking the quantity of such goods; and
- (ii) make such measuring instrument available to an authorised officer who wishes to check the quantity of such goods.

(d) An instrument referred to in sub-regulation 10(1)(a) and (b) shall be deemed to be suitable if it fulfils the requirements of Item 4.4 of SANS 458.

(e) In addition to the requirements of Item 4(4)(c) of SANS 458 and where a deficiency error is not permitted for prepackages of the goods being measured, for example certain goods sold by number an instrument used in terms of:

- (i) Sub-regulation 10(1)(a) of these regulations shall have a permitted in-service maximum permissible error not exceeding 2 percent at the point of measurement of such goods; and
- (ii) Sub-regulation 10(1)(b) of these regulations shall have a permitted in-service maximum permissible error not exceeding 2 percent at the point of measurement of such goods

and shall be adjusted at the time of verification to have no negative error.

Tolerances permitted on the determination of the quantity of goods

(2) Tolerances and permissible differences between the represented or marked quantity of goods and the actual quantity of such goods permitted under sections 37 and 40 of the Act are those prescribed in SANS 458 unless the requirements of sub-regulation 9(3) apply.

Accuracy of vessels or containers used for the sale of liquids

(3)(a) A vessel or container used for the purpose of determining the quantity of a prepacked liquid sold therein shall be of a nominal volume not exceeding five litres, provided that:

- (i) such a vessel or container may only be used for the measuring off of any liquid in the retail trade at the time of sale of such liquid if it has a narrow neck and is presented to the retail dealer by the purchaser; and
- (ii) if the denomination of volume thereof is indelibly marked thereon.

(b) The volume of any container manufactured, supplied or used for the purpose of determining the quantity of beer or other alcoholic beverages that are supplied from bulk for consumption on the premises, shall be:

- (i) defined by an indelible line or indentation at least 25 mm in length, distant not less than 10 mm and not more than 35 mm from the brim; and
- (ii) when such container is filled up to the bottom of such line or indentation, it shall hold at least the volume which shall be indicated thereon in a position close to such line or indentation in clear and legible figures and letters not less than 5 mm in height.

Authorisation to deviate from requirements

11.(1) The Director of may:

(a) give written permission to deviate from the requirements of:

- (i) these regulations;
- (ii) SANS 289; or
- (iii) SANS 458

as he may deem fit and under any conditions that he may deem necessary, unless the requirements of paragraph (b) apply;

(b) not give permission for the sale of any prepacked products that are deficient of the quantity marked on the packages unless:

- (i) he receives a guarantee to the effect that the sale is to an end user and not for resale: and
- (ii) the purchaser and seller agree to such sale.

SCHEMES TO ENSURE THE MORE EFFECTUAL CARRYING OUT OF THE OBJECTS AND PURPOSES OF THE ACT***Quantity mark scheme***

12.(1)(a) A quantity mark shall only be applied or used in a manner authorized in paragraph (b).

(b) No person shall apply a quantity mark to prepackaged goods except under a registration certificate issued in terms of sub-regulation 13(2) and unless the prepackaged goods comply with the requirements of SANS 1841.

(c) For the purpose of paragraph (b) a person shall be deemed to have applied a quantity mark to prepackaged goods if he or she has:

- (i) applied that quantity mark to any container or covering of the goods concerned or to any label attached to the said goods or to any container or covering thereof;
- (ii) placed or enclosed the goods concerned in any container or covering to which the quantity mark has been applied or to which is attached any label to which the quantity mark has been applied; or
- (iii) in connection with sale of the goods concerned, directly or indirectly referred to the quantity mark in a manner or under circumstances likely to convey the impression that the quantity of goods comply with the requirements of SANS 1841.

(d) The quantity mark shall be the "e" mark as defined in SANS 1841.

Measurement mark scheme

13.(1)(a) A measurement mark shall only be applied or used in a manner authorized in paragraph (b).

(b) No person shall apply a measurement mark to measuring container bottles except under a registration certificate issued in terms of sub-regulation 13(2) and unless the measuring container bottles comply with the requirements of SANS 1840.

(c) For the purpose of paragraph (b) a person shall be deemed to have applied a measurement mark to measuring container bottles if he or she has:

- (i) applied that measurement mark to any measuring container bottle falling within the scope of SANS 1840;
- (ii) applied that measurement mark to any measuring container bottle that does not fall within the scope of SANS 1840; or
- (iii) in connection with the sale of any container, directly or indirectly referred to the measurement mark in a manner or under circumstances likely to convey the impression that the container complies with the requirements of SANS 1840.

(d) The measurement mark shall be the “ə” mark as defined in SANS 1840.

Registration certificates

(2)(a) An application for a registration certificate to apply the quantity mark or the measurement mark shall be made to the Director.

(b) The Director may:

- (i) issue a registration certificate for any indefinite period or for a fixed period on such conditions as he or she may deem necessary;
- (ii) withdraw or, subject to such condition as he or she may deem necessary, suspend a registration certificate or terminate suspension of such registration certificate.

(c) The holder of a registration certificate contemplated in paragraph (a) which has been withdrawn in terms of paragraph (b), or which has expired due to effluxion of time or for any other reason, shall, at the written request of the Director, immediately return that registration certificate to the Director.

Offences

(3) Any person who applies the marks contemplated in sub-regulation 12(1)(d) and 13(1)(d) without being in possession of a registration certificate issued in terms of 13(2) shall be guilty of an offence in terms of the Act.

Fees

(4) Any person may voluntarily apply to participate in the schemes contemplated in regulation 12 and 13 and such fees as may be agreed upon between the Director and such person, shall be levied by the Director for participation in the schemes.