

Agriculture Marketing Authority (Command Agriculture Scheme for Domestic Crop, Livestock and Fisheries Production) Regulations, 2017

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IT is hereby notified that the Minister of Agriculture, Mechanisation and Irrigation Development has, in terms of section 50 of the Agricultural Marketing Authority Act [*Chapter 18:24*], made the following regulations: —

Title

1. These regulations may be cited as the Agriculture Marketing Authority (Command Agriculture Scheme for Domestic Crop, Livestock and Fisheries Production) Regulations, 2017.

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.

Definitions

3. In these regulations—

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- “agricultural inputs” means primary agricultural inputs and farm equipment inputs or both;
- “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;
- “Command Agriculture Scheme” or “Scheme” is a Government programme to promote food security through domestic agricultural production that was initiated in the 2016 agricultural season and continues in force for future agricultural seasons;
- “contract farmer” means a farmer who enters into a Scheme contract;
- “contract produce” means any agricultural produce that the contract farmer has produced or undertaken to produce pursuant to a Scheme contract;
- “misappropriate,” in relation to agricultural inputs, means to use, trade, barter, donate, securitise, encumber or sell agriculture inputs in contravention of a Scheme contract;
- “Scheme contract” means a contract between a contract farmer and the Government of Zimbabwe whereunder the Government of Zimbabwe supplies agricultural inputs in return for the contract farmer delivering the contract produce to the designated delivery points or 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 of for valuable consideration.

Statutory hypothec over agricultural inputs and contract produce

4. (1) Subject to subsection (3), in order to secure the contracted obligations to use agricultural inputs or deliver contract produce in accordance with a Scheme contract, or to secure the monetary value

of inputs supplied, but not consumed in accordance with a Scheme contract, the Government by these regulations hereby creates a hypothec (hereinafter called a “statutory hypothec”) in its favour—

- (a) over all agriculture inputs supplied to contract farmers; and
- (b) over all contract produce produced by contract farmers; and
- (c) over all identifiable proceeds from the sale or misappropriation of agricultural inputs, including cash; and
- (d) any movable chattel on the land or premises of the contract farmer in the absence of the inputs, produce or proceeds specified in paragraph (a), (b) or (c) to the extent that those hypothecated items do not cover the monetary value of inputs supplied but not consumed in accordance with a Scheme contract.

(2) The Government or an authorised agency on behalf of Government may assert the statutory hypothec against any contract farmer or other person in possession of agriculture inputs, the proceeds of such inputs or contract produce.

(3) Any inspector or other person executing the statutory hypothec on behalf of the Government or an authorised agency must—

- (a) show on demand their identification as an inspector or other written authority to execute the hypothec; and
- (b) be accompanied by a police officer or peace officer; and
- (c) issue a full receipt for inputs, proceeds or produce seized to the contract farmer or occupier of the land or premises whereon the hypothecated inputs, proceeds or produce are located.

(4) Under no circumstances must an inspector or other person execute the hypothec if the contract farmer furnishes sufficient reasons to show the inspector or person that *force majeure* prevented compliance with the Scheme contract.

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(5) The Government or an authorised agency executing the statutory hypothec may—

- (a) in the case where the property presumed to be subject to the statutory hypothec is in the possession of a contract farmer, do either or both of the following—
 - (i) store and preserve the property pending the institution of provisional sentence proceedings to confirm the attachment of the property as soon as possible after seizure of the property and in any event no later than one month after such seizure; or
 - (ii) if there is a reasonable suspicion that the contract farmer in possession of the property presumed to be subject to the statutory hypothec committed any offence referred to in section 5 or 7, seize the property as an exhibit in the contemplated prosecution of the offence, in accordance with section 8;

or

- (b) in the case where the property presumed to be subject to the statutory hypothec is in the possession of a person other than a contract farmer, and—
 - (i) the person questions the validity of the statutory hypothec in his or her case; and
 - (ii) there is a reasonable suspicion that the person has committed an offence referred to in section 6;

seize the property as an exhibit in the contemplated prosecution of the offence, in accordance with section 8.

Misappropriation of agricultural inputs

5. (1) Any contract farmer who—
- (a) misappropriates any agricultural inputs; or
 - (b) being in possession of any agricultural input in excess of what he or she needs to produce the contracted produce, fails to return the same to the authorised agency no later

than seven days from the date of delivery of the contract produce or if no such date is stated, no later than thirty days after the end of the agricultural season applicable to the contract produce;

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

(2) At the request of the contract farmer, an inspector or authorised agency may extend the periods referred to in subsection (1)(b).

Unlawful, sale, purchase and possession of agricultural inputs and contract produce

6. Any person, whether or not a party to a Scheme contract who deals in or possess agricultural inputs or contract produce in contravention of a Scheme contract, that is to say—

- (a) purchases, receives, stores, sells, obtains, possesses or otherwise disposes of such agricultural inputs; or
- (b) purchases, receives, stores, sells, obtains, possesses or otherwise disposes such agricultural produce;

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

Misuse of agricultural inputs and contract produce

7. Any contract farmer who—

- (a) applies any agricultural inputs for any purpose other than in accordance with the Scheme contract; or
- (b) hoards or stores or fails to deliver contract produce in breach of the Scheme contract provisions requiring him or her to deliver the produce to the Government or an authorised agency by a specified date;

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

Seizure

8. (1) Any property seized in contemplation of a prosecution for a contravention of section 5, 6 or 7—

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

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

- (b) 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 they 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.

Powers of inspectors

9. (1) An inspector may, upon not less than twenty-four hours verbal or written notice to the contract farmer, enter upon 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) An inspector must produce on demand a certificate of identification and authority as such before entering any contract farmer's land.