

**TO: MINISTER FOR AGRICULTURE AND LAND AFFAIRS
DEPUTY MINISTER FOR AGRICULTURE AND LAND AFFAIRS**
FROM: CHAIRPERSON: NATIONAL AGRICULTURAL MARKETING COUNCIL
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APPLICATION FOR THE AMENDMENT OF STATUTORY MEASURES IN THE RED MEAT INDUSTRY

1. The Minister's decision dated 25 August 2006 to refer the application for the proposed amendment of the statutory measures in the red meat industry to the NAMC for investigation refers.

SUMMARY

On 3 August 2005 the Minister approved statutory measures (levies, records & returns and registration) in the red meat industry for a two-year period.

In November 2005 the Red Meat Industry Forum (RMIF), the initial applicant for the red meat statutory measures, obtained a legal opinion which indicated that the promulgated regulations have to be amended to "remove ambiguities and uncertainties".

In February 2006 the RMIF requested the Minister to amend the statutory measures in the red meat industry and on 25 August 2006 the Minister referred the application to the NAMC for investigation. In terms of the Marketing of Agricultural Products Act, 1996 (MAP Act), the NAMC has 60 days or such longer period as may be approved by the Minister, to investigate an application and to make a recommendation to the Minister.

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In order to give the NAMC more time to do the investigation, the NAMC requested the Minister's approval on 18 October 2006 to grant 40 days extension, in other words until 5 December 2006, to formulate its recommendation to the Minister.

As the proposed amendments to the existing statutory measures intend to clarify uncertainties and do not place an additional statutory burden on role-players in the red meat industry, the NAMC hereby recommends that the Minister approve the amendments for promulgation in the Government Gazette.

2. PURPOSE OF SUBMISSION

The purpose of this submission is to request the Minister to approve the request from the RMIF to amend the statutory measures in the red meat industry.

3. BACKGROUND

3.1 On 3 August 2005 the Minister approved statutory measures for the red meat industry. The statutory measures were promulgated on 5 August 2005. It was approved that the statutory measures regarding levies and records & returns only came into operation 90 days after its publication and will lapse two years later. The purpose of the arrangement was to provide the RMIF sufficient time to put in place the necessary organizational structures for the effective administration of the statutory measures.

3.2 In November 2005 the RMIF obtained a legal opinion which indicated that Notice No. R 809 dated 5 August 2005 (the Notice for statutory levies), and specifically paragraph 5 (a) (ii) of the Notice, "is void for vagueness and reviewable in terms of the Promotion of Administrative Justice Act, Act 3 of 2000". Paragraph 5 (a) (ii) of the Notice states that a levy of R5 / head of cattle is to be deducted "by the abattoir at slaughter from the person presenting such animal for slaughter and paid over to the levy administrator". This stipulation was regarded as vague. An extract from Notice No R 809 dated 5 August 2005 (paragraph 5(a)) is as follows:

a. Beef:

	Levy	Description
i	R3.00 per head	Deducted and retained from the selling price of each animal by any buyer of such animal

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ii	R5.00 per head	Deducted by the abattoir at slaughter from the person presenting such animal for slaughter and paid over to the levy administrator
iii	R 300 per year	Payable by each meat retail outlet and paid over to the levy administrator
iv	R0.03 per kg	Payable by the importer of beef products at point of entry and paid over to the levy administrator
v	R5.00 per head	Payable by the exporter of live animals at the point of exit and paid over to the levy administrator
vi	0.07% of the commission	Payable by the livestock agent per head sold and paid over to the levy administrator
vii	R0.01 per kg	Payable by the processor of locally produced hides and paid over to the levy administrator. The same amount will also be collected for every unprocessed hide exported, paid by the exporter to the levy administrator

- 3.3 On 25 August 2006 the Minister referred the application for the amendment of the existing statutory measures in the red meat industry to the NAMC for investigation. In terms of section 11 (2) of the MAP Act, the NAMC has “60 days or such longer period as may be approved by the Minister”, to investigate an application and to make a recommendation to the Minister. It means that the NAMC had time until 25 October 2006 to finalise its investigation and to make a recommendation to the Minister. Due to the fact that the NAMC was only notified on 21 September 2006 about the Minister’s decision to refer the application for the amendment of the red meat statutory measures to the NAMC for investigation, the Council did not has sufficient time to complete it investigation before 25 October 2006. On 18 October 2006 the NAMC requested the Minister’s approval to grant 40 days extension, in other words until 5 December 2006, to complete its investigation and to formulate its recommendation to the Minister.
- 3.4 Section 11(3) of the MAP Act stipulates that the NAMC may, upon receipt of a request to amend a statutory measure, determine on reasonable grounds that the proposed amendment is not significant and that it is not necessary to act in terms of section 11(2) of the MAP Act (in other words not necessary to publish the proposed amendments in the *Government Gazette*, magazines or newspapers, not necessary to determine the level of support amongst directly affected groups, etc). A determination under section 11(3) could only be made if the proposed amendment places no additional statutory burden on any directly affected group. The purpose of the proposed amendments requested by the Red Meat Industry Forum is to clarify certain uncertainties in the promulgated Notices. The level of statutory levies and the Business Plan as was submitted with the original application, remain exactly the same.
- 3.5 Notwithstanding the above-mentioned and to obtain comments from directly affected groups in the red meat industry on the proposed amendments to the existing statutory measures in the red meat industry, the NAMC published a

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Notice in the Government *Gazette* of 27 October 2006 (Notice No. 29319), sent a fax / e-mail to all directly affected groups that are registered with the NAMC, and also contacted various magazines with a request to carry an article with particulars of the proposed amendments in order to inform role-players. Seven institutions responded on the NAMC's invitation to submit comments on the proposed amendments of which -

- five institutions (South African Feedlot Association - SAFA, National Emerging Red Meat Producers' Organisation – NERPO, Red Meat Producers' Organisation - RPO, South African Pork Producers' Association – SAPPA and South African Meat Industry Company - SAMIC) supported the amendments,
- one institution (Red Meat Abattoir Association - RMAA) supported all the amendments except for the inclusion of the definition for “owner”, and
- one institution (Woolworths) does not support the general principle of food levies.

Paragraph 4 will elaborate on the comments received by the NAMC.

4. DELIBERATION

4.1 The proposed amendments to the existing statutory measures in the red meat industry include *inter alia* the following:

4.1.1 **To change the existing levy administrator from a “private company with a single shareholder and director” to a “Section 21 Company”**

On 13 July 2005, the Working Group which was appointed by the Council to investigate the original application for statutory measures in the red meat industry reported as follows regarding the administration of the statutory measures:

“In this latest application the RMIF appointed an existing organisation, SAMIC, to be responsible for the administering of the proposed statutory measures. SAMIC will be allowed to outsource some of the functions related to the administering of the proposed statutory measures which must be sanctioned by the RMIF at all times”.

Due to the fact that SAMIC is also a beneficiary of statutory levies, the RMIF eventually decided to appoint “Red Meat Levy Admin (Pty) Ltd”, a private company with one director, to administer the statutory levies. Although this company is successful in collecting and administering the statutory levies, the RMIF decided to register a Section 21 Company to administer the statutory measures in future. In other words the Red Meat Levy Admin (Pty) Ltd is

absorbed in the Section 21 Company.

4.1.2 To exempt imported hides and skins from the payment of a statutory levy

The RMIF wants to encourage the importation of hides and skins for value-adding and job creation and therefore decided to exempt imported hides and skins from statutory levies.

4.1.3 To change the definition of the word “abattoir” to be in line with the definition in the Meat Safety Act, 2002

The purpose of the proposed amendment to the definition of the word “abattoir” is to bring it in line with the definition in the Meat Safety Act, Act 40 of 2000.

4.1.4 The substitution of the definition of “meat retail outlet” with a definition of “meat trader” to cover all the market participants

The definition for “meat trader” refers to any person selling red meat, whether operating independently or as part of a group or chain of wholesale or retail outlets.

4.1.5 To insert the definition “owner” of designated animals

Currently, some directly affected groups in the red meat industry interpret the phrase *“that a levy be deducted by the abattoir at slaughter from the person presenting such animal for slaughter and paid over to the levy administrator”*, differently. This resulted that there is an uncertainty of who is responsible for the payment / collection of the levy. The words “at slaughter” indicate that the levy is deducted by the abattoir at the point of slaughter. The words “from the person presenting such animal for slaughter” could be interpreted that the levy be deduced from the person presenting such animal for slaughter (but not necessarily at an abattoir). In this context one should keep in mind that some abattoir owners are going to auctions to buy animals with the sole purpose to slaughter the animals. In this case it could be argued that the person that sells the animal at the auction is presenting such animal for slaughter. With this argument in mind, some abattoir owners deducted the R5 / head of cattle from the presenter / seller of the animal and not R3 / head as was the original intension.

Although a small percentage (approximately 2%) of total levies is affected by the proposed amendment, the amendment could clarify the situation and could eventually result in a better collection rate.

4.2 Comments received by the NAMC

Supporters

As indicated earlier, the following national representative organisations expressed their full support for the proposed amendments:

- SAFA
- NERPO
- RPO
- SAPPO
- SAMIC

Supporter, except for the definition of “owner”

The RMAA objected to the inclusion of the definition of the word “owner” but agreed that the “current problems in the wording of the existing statutory measures affect only a small section of the meat industry”.

The viewpoint of the NAMC is as follows:

The primary function of abattoirs is to slaughter animals and for that they are charging a slaughter fee.

Sometimes abattoirs owners want to increase the throughput through their abattoirs (to slaughter more animals) and to do that, abattoir owners go to auctions to buy animals. Sometimes abattoir owners see the buying of animals and the selling of meat as a business opportunity (to make a profit) and for this reason they could also be motivated to buy animals and slaughter it in their own abattoirs. These two examples could not be seen as the primary function of abattoirs. In these examples abattoir owners fulfill a “secondary function” or they put a different “hat” on. Then they become traders, owners or speculators of animals.

The physical venue of an auction (where the animals are traded) is in rural areas (not at abattoirs or close to abattoirs). From the seller’s point of view, the purpose of an auction is to sell animals for cash. The animals sold at auctions could be used for speculation, breeding, stocking, feedlotting, etc. The purpose of an auction is definitely not to serve as a vehicle to get animals through an abattoir. For abattoir owners to argue that animals presented at auctions, are presented for slaughter, is therefore questionable.

It is the abattoir owners own choice to buy animals at auctions (like any other buyers at auctions e.g feedlot owners), bearing in mind that they, at slaughter stage, will become the presenter / owner of the animal and have to pay an

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additional R2 levy per head of cattle, after R3 was deducted from the seller at the auction. Currently, some abattoir owners are deducting R5 from the seller at auctions, because they argue that the animals (at auctions), are presented for slaughter.

It is important to understand and to accept that when abattoir owners are buying animals at auctions, they become a trader, the owner or even a speculator of animals.

The same argument for abattoir owners as with the original application for the statutory levies in 2005, still remains valid, namely that abattoirs owners per se still do not pay the levy (when they are performing their primary function), but when they become traders / speculators / owners of animals, then they have to pay the levy like any other participants at auctions.

Objectors

Woolworths mentioned in their response that regulations that protect and benefit the public are absolutely essential and that they will support and ensure correct implementation of regulations that will benefit consumers. They objected “to the proposed statutory measures on the grounds of the principle” that it does not benefit consumers.

The viewpoint of the NAMC:

Woolworths objected to statutory measures in general and not to the proposed amendments per se.

Statutory levies are a well established manner to collect funds for generic functions. To argue that these functions (e.g research, information, consumer education, etc) do not benefit consumers could start an open-ended debate.

On the other hand, the Board of RMIF has 13 Board members, representing all the role-players in the red meat value chain. Consumers are also represented on the Board of the RMIF and the relevant consumer representative supported statutory measures in the red meat industry as well as the proposed amendments.

- 4.3 The proposed amendments to the existing statutory measures in the red meat industry do not affect the business plan as was originally submitted by the RMIF and approved by the Minister on 3 August 2005. The different levies to be paid by the role-players in the red meat industry as well as the allocation of funds to the relevant functions, also remain the same. In 2005, the RMIF requested that seven functions be funded through statutory levies. The amount allocated to each function was as follows:

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	Rand
<input type="checkbox"/> Customer assurance	1 493 000
<input type="checkbox"/> Consumer communication and education	10 145 000
<input type="checkbox"/> Development of the developing sector	2 920 000
<input type="checkbox"/> Livestock product research and development	3 433 000
<input type="checkbox"/> Industry liaison	3 604 000
<input type="checkbox"/> Industry projects	350 000
<input type="checkbox"/> Production development	3 100 000
TOTAL BUDGET PER ANNUM	25 345 000

4.4 After the NAMC scrutinised the contents of the proposed amendments of the red meat statutory measures and after considering the support for the proposed amendments, the Council came to the conclusion that the proposed amendments will enhance the efficiency in the administration of the statutory measures and that it should be supported.

5. PERSONNEL IMPLICATIONS

None

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

None

8. COMMUNICATION IMPLICATIONS

None

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9. RECOMMENDATION

The NAMC recommends that the Minister approve the proposed amendments of the red meat statutory measures and that the Minister sign the attached draft Notices for publication in the *Government Gazette*.

Mr TR Ramabulana

**CHIEF EXECUTIVE OFFICER:
NATIONAL AGRICULTURAL MARKETING COUNCIL**

Cc.: Director-General: Agriculture

Chairpersons: Parliamentary Committees

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RECOMMENDATION:

That approval been granted for the proposed amendments of the red meat statutory measures and that the Minister sign the attached draft Notices for publication in the *Government Gazette*.

Recommendation supported / not supported

Comments:

DEPUTY MINISTER FOR AGRICULTURE AND LAND AFFAIRS
DATE:

Recommendation approved / not approved

Comments:

MINISTER FOR AGRICULTURE AND LAND AFFAIRS
DATE: