

Zambia

Food Reserve Act, 1995

Chapter 225

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Food Reserve Act, 1995

Contents

Part I – Preliminary	1
1. Short title	1
2. Interpretation	1
Part II – The Food Reserve Agency	2
3. Establishment of the Agency	2
4. Functions of the Agency	2
Part III – The national food reserve	3
5. National food reserve	3
6. Designation of commodities	3
7. Purchase and importation of designated commodities	3
8. Sale of designated commodities	4
9. Receipt of designated commodity and non-designated commodity	4
Part IV – Market information system for designated commodities	4
10. Market information system	4
11. Collection and dissemination of market information	4
Part V – Weighing and grading standards for designated commodities	5
12. Standard of designated commodity	5
13. Offence and penalty for misrepresenting grade	5
Part VI – Registration of traders and processors	5
14. Registration as a dealer	5
15. Registration fees	5
16. Standards of conduct of traders and processors	5
17. Reports by traders and processors	5
18. Penalty for failing to register or comply with standards of conduct	6
19. Power to inspect records	6
20. Penalties for disregarding registered charge or lien	6
Part VII – National food emergency	6
21. Declaration of national food emergency	6
22. Vesting of Agency functions	6
Part VIII – General	6
23. Transitional period	6
24. Vesting of assets and transfer of liabilities	7
25. Registration of property to be transferred	7
26. Legal proceedings	7

27. Regulations	7
28. Repeal of Act No. 19 of 1989	8
Schedule (Section 3(2))	8

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Food Reserve Act, 1995

Chapter 225

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[Act No. 12 of 1995; Statutory Instrument 105 of 1995]

An Act to establish the Food Reserve Agency and define its powers and functions; to establish a national food reserve; to transfer to the Government certain assets, rights, liabilities and obligations of Nitrogen Chemicals of Zambia Limited and Zambia Co-operative Federation Limited; to repeal the National Agricultural Marketing Act 1989; and to provide for matters connected with or incidental to the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Food Reserve Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**Agency**" means the Food Reserve Agency established by section three;

"**Chairperson**" means the person elected as Chairperson of the Agency under paragraph two of the Schedule;

"**Committee**" means a committee established under paragraph five of the Schedule;

"**Company**" means Nitrogen Chemicals of Zambia Limited, a company registered under the Companies Act;

[Cap. 388]

"**Director**" means the person appointed as Director under paragraph eight of the Schedule;

"**designated commodity**" means any cereal, oilseed, stockfeed and other agricultural food commodity designated under section six as essential for the food security of the country;

"**Federation**" means Zambia Co-operative Federation Limited registered under the Co-operative Societies Act;

"**marketing season**" means the period from the 1st May in one year to the 30th April of the succeeding year;

"**member**" means a member of the Agency, or a committee;

"**national food reserve**" means the national food reserve established under section five;

"**Processor**" means a person who converts or transforms, on a commercial scale, any designated commodity into a finished or semi-finished product;

"**producer**" means a person who grows a designated commodity;

"**property**" means movable or immovable assets;

"**purchaser**" means a person who directly or indirectly purchases for himself, or for another person a designated commodity;

"**repealed act**" means the National Agricultural Marketing Act;

[Act *No. 19 of 1989*]

"**trader**" means a person who, as broker, dealer, marketing company, or other purchaser, acquires any designated commodity from a producer or any other person through purchases or otherwise, for the purpose of resale;

"**Vice Chairperson**" means the person elected as Vice-Chairperson of the Agency under paragraph two of the Schedule.

Part II – The Food Reserve Agency

3. Establishment of the Agency

- (1) There is hereby established the Food Reserve Agency, which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and shall, subject to the provisions of this Act, have power to do all such acts and things as a body corporate may by law do or perform.
- (2) The provisions of the Schedule shall apply to the Agency.

4. Functions of the Agency

- (1) The functions of the Agency shall be to do all such things as are necessary for the administration of this Act.
- (2) Notwithstanding the generality of subsection (1) the Agency shall—
 - (a) administer the national food reserve;
 - (b) establish and operate a market information system for agricultural food commodities and agricultural inputs;
 - (c) promote the use of the weighing and grading standards approved under the Weights and Measures Act and the Standards Act for designated commodities;

[Cap. 403; Cap. 404]

 - (d) establish and conduct a programme under which storage facilities owned by the Government may be leased or sold;
 - (e) establish a programme under which traders and processors shall register and report, for statistical purposes, information on the stocks of agricultural commodities handled or held by them;
 - (f) assess storage requirements for marketing a designated commodity and plan for their establishment as needed; and
 - (g) undertake such other functions as the Minister may assign to the Agency.
- (3) The Agency may by resolution delegate any of the powers and functions of the Agency to any person in the Agency or to any committee established by the Agency or, with the consent of the Minister, to any other person.

- (4) Except for such actions as may be necessary to administer the national food reserve, the Agency shall not purchase, import, sell, or trade in any agricultural commodity.
- (5) Notwithstanding any provision of any other law, the Agency may enter into a contract with any person for the purpose of performing any of its functions under this Act.

Part III – The national food reserve

5. National food reserve

- (1) There shall be a national food reserve which shall, subject to this Act, be administered by the Agency.
- (2) The purpose of the national food reserve shall be to—
 - (a) ensure a reliable supply of designated commodities for the country;
 - (b) meet local shortfalls in the supply of a designated commodity;
 - (c) meet such other food emergencies caused by drought or flood, or by such other natural disaster, for the purposes of this Act, as may be declared by the President;
 - (d) correct problems relating to the supply of designated commodities which result from the manipulation of prices or monopolistic trading practices.

6. Designation of commodities

- (1) The Minister shall designate, prior to October 31st of each year, any cereal, oilseed, stockfeed and any other agricultural food commodity that he considers essential for the food security of the country.
- (2) In the case of the marketing season in which this Act comes into force, the Minister shall make the designation referred to in subsection (1), not later than thirty days after the coming into force of this Act.

7. Purchase and importation of designated commodities

- (1) Subject to subsection (2), the Agency may purchase from the domestic market or import any designated commodity for the purposes of the national food reserve.
- (2) The Agency shall not purchase any designated commodity unless it announces in the *Gazette* and the print media, prior to the 1st of May of each year, its plan for purchases of each designated commodity in the following marketing year.
- (3) The plan referred to in subsection (2) shall include the—
 - (a) quantity of the designated commodity the Agency plans to purchase;
 - (b) method of procurement and payment for the designated commodity by the Agency; and
 - (c) places at which the Agency plans to make such purchases.
- (4) The Agency shall announce and publish in the *Gazette* and the print media prior to the 31st of October of each year, the procedure to be followed in buying a designated commodity which it needs to import or when buying locally for the next twelve months; and different procedures may be published for different areas.

8. Sale of designated commodities

- (1) Subject to subsection (2), the Agency may sell any designated commodity in the national food reserve to meet—
 - (a) local shortfalls in the supply of the commodity;
 - (b) other food emergencies caused by drought, flood, or other natural disaster.
- (2) Subject to subsection (3), the Agency shall not sell any designated commodity in the national food reserve unless it publishes in the *Gazette* and in the print media, prior to the 31st of October of each year, the procedure to be followed during the following twelve months in selling any designated commodity held in the national food reserve; and different procedures may be published for different areas.
- (3) Whenever a designated commodity is stored as part of the national food reserve, the Agency may sell, quantities of the designated commodity in different places to the extent necessary to properly handle, rotate, distribute, and position the designated commodity as part of the national food reserve.
- (4) Subject to subsection (3) any purchase to offset a sale of a designated commodity shall be made as soon as possible following the sale.

9. Receipt of designated commodity and non-designated commodity

The Agency may receive any designated commodity or any commodity not designated under this Act as part of the national food reserve donated by any person, body, Government or institution:

Provided that the Agency may sell any commodity not designated under this Act as a designated commodity and shall purchase quantities of the designated commodity to properly rotate, distribute and position the designated commodity as part of the national food reserve.

Part IV – Market information system for designated commodities

10. Market information system

- (1) There shall be a market information system for each designated commodity operated by the Agency for the benefit of the consumer and any person engaged in the production, marketing, and processing of that commodity.
- (2) The Agency in establishing the market information system, shall consult with and obtain the advice of, a representative of the consumer, producer, trader, processor, and any person, engaged in the production, marketing and processing of a designated commodity.

11. Collection and dissemination of market information

The Agency shall collect and disseminate marketing information, including information on domestic and export sales of a designated commodity, for the purpose of meeting the requirements of the consumer, producer, trader, processor and any other person engaged in the production, marketing and processing of such commodity.

Part V – Weighing and grading standards for designated commodities

12. Standard of designated commodity

The Agency shall consult the Zambia Bureau of Standards, as provided for under the Weights and Measures Act and Standards Act, in developing and improving standards of quality, condition, quantity and grade of a designated commodity, so as to encourage uniformity and consistency.

[Cap. 403; Cap. 404]

13. Offence and penalty for misrepresenting grade

- (1) Any person who knowingly misrepresents the grade of a designated commodity contrary to established standards shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten penalty units.
- (2) Any person who fails to pay the fine under subsection (1) shall in addition to that penalty be prohibited from participating in the marketing or processing of any designated commodity for a period not exceeding three years.

Part VI – Registration of traders and processors

14. Registration as a dealer

- (1) Every trader and processor shall register annually as a dealer in a designated commodity.
- (2) The Agency shall keep a register of traders and processors.

15. Registration fees

- (1) A trader and a processor shall pay such annual registration fees as the Minister may, by statutory instrument, prescribe.
- (2) Notwithstanding any other law to the contrary, the registration fees collected by the Agency shall form part of the revenue of the Agency.

16. Standards of conduct of traders and processors

The Minister may, by statutory instrument, and after consultation with the Agency, establish rules and regulations regarding the standards of conduct of every registered trader and processor in relation to the trade in any designated commodity.

17. Reports by traders and processors

- (1) A trader or a processor registered as a dealer in a designated commodity shall provide to the Agency information regarding the price and stock of a designated commodity handled or held by him during the period designated by the Agency.
- (2) A report under this section shall be—
 - (a) in such form as may be prescribed by the Agency;
 - (b) approved by the Minister; and
 - (c) submitted by a trader or a processor within such time as may be prescribed by the Agency.

18. Penalty for failing to register or comply with standards of conduct

- (1) A trader or a processor who fails to register, or who, if registered, fails to comply with the standards of conduct established by the Minister shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten penalty units.
- (2) Any person who fails to pay the fine under subsection (1) shall in addition to that penalty be prohibited from participating in the marketing or processing of any designated commodity for a period not exceeding three years.

19. Power to inspect records

Subject to the Agricultural Credits Act, the Agency shall, prior to purchasing a designated commodity, inspect all relevant records to determine if the trader or processor selling the designated commodity has previously pledged the commodity as security or whether a charge or lien has been registered under that Act.

[Cap. 224]

20. Penalties for disregarding registered charge or lien

Any registered trader and processor who sells any designated commodity in disregard of a registered charge or lien on the designated commodity referred to in section nineteen shall be guilty of an offence and shall be liable to a penalty under the Agriculture Credits Act.

[Cap. 224]

Part VII – National food emergency**21. Declaration of national food emergency**

The President may declare a national food emergency if, in his opinion, there is a major shortfall in the domestic production or availability of a designated commodity.

22. Vesting of Agency functions

- (1) Subject to subsection (2), whenever the President declares a national food emergency under section twenty-one, the powers of the Agency under this Act shall vest in the Minister.
- (2) The Minister shall exercise the powers of the Agency, during the existence of the national food emergency and for not more than thirty days after the end of the emergency as declared by the President, and shall consult the Agency in the selection of bidders for the supply of a designated commodity purchased for the national food reserve.
- (3) Where the Minister exercises the powers referred to in subsection (2), the Agency shall, after the appointed date be an advisory committee to the Minister.

Part VIII – General**23. Transitional period**

The Minister may exercise the powers of the Agency under this Act until such time as the members of the Agency are appointed.

24. Vesting of assets and transfer of liabilities

- (1) On the appointed date, there shall be transferred to, and shall vest in and be owned by the Government without further assurance all property, rights, liabilities and obligations, excluding fertilizer, transferred under the repealed Act which, immediately before the appointed date, were the property, rights, liabilities and obligations of the Company or Federation by virtue of the repealed Act.
- (2) The Minister shall by statutory instrument provide for the transfer of any property, right, liability or obligation to the Agency without further assurance on such terms and conditions as may be specified in the statutory instrument.
- (3) The property, rights, liability or obligation specified in the statutory instrument made under subsection (2) shall, on the coming into force of the statutory instrument, vest in or, as the case may be, subsists against the Agency.
- (4) The provisions of section twenty-five shall apply, with the necessary modifications, to the Agency on the coming into force of the statutory instrument.

25. Registration of property to be transferred

- (1) Whenever in pursuance of this Act any property, right, liabilities or obligations, of the Federation or Company are transferred to the Government in respect of which transfer a written law provides for registration, the Government shall make an application in writing to the proper officer or the appropriate registration authority for the registration of the transfer.
- (2) The officer referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to the transfer and, where appropriate, issue the transferee concerned with a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned.
- (3) No registration fees or duty shall be payable in respect of any transfer effected under this Part.

26. Legal proceedings

- (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the company or Federation by virtue of the repealed Act, the Government or Agency, as the case may be, and all other persons shall, as from the commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing those rights, liabilities or obligations as they would have had if it had at all times been a right, liability or obligation of the Government or the Agency under the repealed Act.
- (2) Any legal proceedings or application to any authority pending immediately before the commencement of this Act by or against the Federation or Company in relation to the assets transferred to the Government or the Agency, as the case may be, may be continued by or against the Government or Agency.
- (3) After the commencement of this Act proceedings in respect of any right or obligation which was vested in, held, enjoyed, incurred or suffered by the Federation or Company may be instituted by, or against the Government or Agency.

27. Regulations

The Minister may, by statutory instrument, and in consultation with the Agency, prescribe—

- (a) anything which by this Act is required or permitted to be prescribed;
- (b) any forms for the purposes of this Act;

- (c) any fees payable in respect of any service provided by the Agency;
- (d) any other matters as are necessary or conducive to the better carrying out of the purposes of this Act.
- (e) to describe different procedures for different areas.

28. Repeal of Act No. 19 of 1989

The National Agricultural Marketing Act is hereby repealed.

Schedule (Section 3(2))

Part I – Administration of Agency

1. Seal of the Agency

- (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson or any other person authorised in that behalf by a resolution of the Agency.
- (3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person authorised by the Agency in that behalf.
- (4) Any document purporting to be under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further

2. Composition of the Agency

- (1) The Agency shall consist of the following members who shall be appointed the Minister:
 - (a) a senior official from the Ministry responsible for—
 - (i) agriculture;
 - (ii) commerce; and
 - (iii) finance.
 - (b) a representative of—
 - (i) small-scale farmers;
 - (ii) commercial farmers;
 - (iii) persons engaged in the processing of agricultural food commodities; and
 - (iv) the Bankers' Association of Zambia;
 - (c) one person associated with the transportation and haulage of agricultural commodities; and
 - (d) two other persons from the private sector.
- (2) The members referred to in clause (b) of subparagraph (1) shall be nominated by their respective organisations.

- (3) The Chairperson and the Vice-Chairperson shall be elected by the Agency from amongst its members:

Provided that the members referred to in clause (a) of subparagraph (1) shall not be elected as Chairperson or Vice-Chairperson.

3. Tenure of office and vacancy

- (1) A member of the Agency, except a member referred to in clause (a) of subparagraph (1) of paragraph 2—
- (a) shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment for a further term of three years;
 - (b) may resign upon giving one month's notice, in writing, to the organisation which nominated him and to the Minister.
- (2) The office of a member, shall become vacant—
- (a) upon his death;
 - (b) if he is absent, without reasonable excuse, from three consecutive meetings of the Agency of which he has had notice;
 - (c) on ceasing to be a representative of the organisation which nominated him; or
 - (d) if he is an undischarged bankrupt.

4. Proceedings of the Agency

- (1) Subject to the other provisions of this Act, the Agency may regulate its own procedure.
- (2) The Agency shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.
- (3) The Chairperson may at any time call a meeting of the Agency and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to him by at least five members of the Agency.
- (4) If the urgency of any particular matter does not permit the giving of such notice as is required under subparagraph (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.
- (5) Two-thirds of the members shall form a quorum at any meeting of the Agency.
- (6) There shall preside at any meeting of the Agency—
- (a) the Chairperson;
 - (b) in the absence of the Chairperson the Vice-Chairperson the Vice-Chairperson; or
 - (c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.
- (7) A decision of the Agency on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (8) The Agency may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Agency, but such person shall have no vote.
- (9) The validity of any proceedings, acts or decisions of the Agency shall not be affected by any vacancy in the membership of the Agency or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

5. Committees of the Agency

- (1) The Agency may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.
- (2) Subject to sub-paragraph (3), the Agency may appoint as members of a committee, persons who are, or are not, members of the Agency, except that at least one member of a committee shall be a member of the Agency.
- (3) A committee established for the purpose of purchasing designated commodities for the national food reserve under Part III of the Act shall be composed entirely of members of the Agency.
- (4) A person serving as a member of a committee shall hold office for such period as the Agency may determine.
- (5) Subject to any specific or general direction of the Agency, a committee may regulate its own procedure.
- (6) A member of a committee shall be paid such allowances for the member's necessary travel and other expenses when actually engaged in the performance of such duties as the Agency may determine with the approval of the Minister.

6. Disclosure of interest

- (1) If any person is present at a meeting of the Agency or any committee at which any matter is the subject of consideration and in which matter that person or his spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Agency or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.
- (2) A declaration of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

7. Financial disclosure report

- (1) A member shall within thirty days of becoming a member submit a financial disclosure report to the Minister.
- (2) The report referred to in subsection (1) shall disclose—
 - (a) the income earned by the member from crop production, marketing, processing or financing, during the year before his appointment;
 - (b) the personal liabilities owned by the member in relation to crop production, marketing, processing or financing before his appointment; and
 - (c) such other information as the Minister may require.
- (3) A member shall file a supplementary financial disclosure report with the Minister if during any calendar year there is any change in the member's financial interests or personal liabilities.
- (4) The Minister may grant such extension of time for the submitting of reports under this section as he considers appropriate.
- (5) The Minister shall within fifteen days after a report is submitted under this section, make the report available for inspection by members of the public at reasonable hours.

- (6) A person who knowingly falsifies any information or fails to submit a report as required under this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten penalty units.

8. Staff of Agency

- (1) The Agency shall, on such terms and conditions as it may determine, appoint a Director who shall be the Chief Executive Officer of the Agency, and who shall be responsible for the administration of the Agency and the implementation of the decisions of the Agency.
- (2) There shall be a Secretary to the Agency who shall be appointed on such terms and conditions as the Agency may determine.
- (3) The Secretary shall be responsible for the day-to-day affairs of the Agency under the general supervision of the Director.
- (4) The Agency may appoint on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.
- (5) Notwithstanding any other law, the Director or the employees of the Agency shall not be considered as public officers.

9. Prohibition of disclose of information

- (1) A person shall not, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any person otherwise than in the course of his duties, the, contents of any documents, communication, or information which relates to, and which has come to his knowledge in the course of his duties under this Act.
- (2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred penalty units.

Part II – Financial provisions

10. Funds of the Agency

- (1) The funds of the Agency shall consist of such moneys as may—
 - (a) be appropriated by the National Assembly for the purposes of administering the national food reserve;
 - (b) be paid to the Agency by way of grants or donations; and
 - (c) vest in or accrue to the Agency.
- (2) The Agency may—
 - (a) accept money by way of grants or donations;
 - (b) raise by way of loans or otherwise from any source in Zambia, and subject to the approval of the Minister, from any source outside Zambia, such money as it may require for the discharge of its functions;
 - (c) charge and collect fees in respect of programmes, publications, seminars, consultancy and other services provided by the Agency.
- (3) There shall be paid from the funds of the Agency—
 - (a) salaries, allowances, loans, gratuities and pensions of staff of the Agency and other payments for the recruitment and retention of staff;

- (b) such reasonable travelling and subsistence allowances for members of any committee of the Agency when engaged on the business of the Agency and at such rates as the Agency may determine; and
 - (c) any other expenses incurred by the Agency in the performance of its functions.
- (4) The Agency may after the approval of the Minister invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

11. Financial year

The financial year of the Agency shall be the period of twelve months ending on 31st March in each year.

12. Accounts

- (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The books and the records referred to in sub-paragraph (1) shall contain three separate accounts of —
 - (a) the Agency's administration of the national food reserve;
 - (b) the Agency's administration of the lease or sale of storage facilities and the maintenance, repair, rehabilitation or construction of any storage facility; and
 - (c) the Agency's other operations.
- (3) The accounts of the Agency shall be audited annually by independent auditors appointed by the Agency, subject to the approval of the Minister.
- (4) The Auditor's fees shall be paid by the Agency.

13. Annual report

- (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Agency and there shall be appended to the report—
 - (a) an audited balance sheet;
 - (b) an audited statement of the income and expenditure;
 - (c) information on the marketing of any designated commodity; and
 - (d) such other information as the Minister may require.
- (3) The Minister shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in sub-paragraph (1), lay the report before the National Assembly.