FEEDS AND PET FOOD BILL

AFMA White Paper on Feeds and Pet Food Bill Issues, requested by Mr. Jonathan Mudzunga, Chief Director of Inspection and Quarantine Services

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1. INTRODUCTION

The Fertilizers, Farms Feeds, Agricultural Remedies, and Stock Remedies Act of 1947(known as Act 36 of 1947) has existed for over 77 years. Whilst the act has evolved over the years, it has failed to keep up with the development in the agricultural sector. This prompted the agricultural sector to request for an overhaul of the legislation to modernize the regulatory environment and keep up with best practices in the world. The legislative review process started in 2008 with the publication of the animal feed policy for South Africa. This process was followed by the drafting of the Feeds and Pet Food Bill. The bill has been workshopped with relevant stakeholders by the Department of Agriculture, Land Reform, and Rural Development (DALRRD). However, during these stakeholder workshops areas of concern and clarity-seeking questions arose. This prompted the Chief Director of Inspection and Quarantine Services to request the industry to clarify areas of concern and provide input on the proposed legislation and regulatory framework.

2. OBJECTIVE OF THIS WHITE PAPER

The purpose of this White Paper is to address the request from the Registrar of Act 36 of 1947 concerning the proposed regulatory framework for animal and pet food. The aim of the report is not to provide a review of the draft bill but rather to highlight key areas that have been identified by the Chief Director of Inspection and Quarantine Services for input from the animal feed manufacturing industry. These key focus areas include (1) the scope of the bill (Licensing & Registration), (2) the Advisory Committee, (3) the appeal process, (4) the roles of assignees versus inspections (including associated costs), and (5) the registration of (novel) raw materials versus product registration (including imported products).

The specific objectives are to:

- Address the Registrar's concerns regarding the scope of the bill, particularly in terms of Licensing & Registration.
- Provide inputs on the structure and role of the Registrar, the Advisory Committee, Technical Advisors, Analysts, Inspectors and Assignees as proposed in the bill.
- Explore the differences between assignees and inspectors, including the associated financial implications.
- Examine the appeal process outlined in the draft and offer insights from the animal feed industry’s perspective.
- Clarify the issues surrounding the registration of novel raw materials versus product registration, with a focus on imported products.

In support of this White Paper, a copy of the bill with proposed amendments will be submitted by AFMA in September, to provide context and reinforce the recommendations made herein. This document expands on these key issues as extracted from the draft bill and provides the recommendations for each point. Following this submission, it is anticipated that the Chief Director of Inspection and Quarantine Services and Registrar of Act 36 will proceed with the legislative process, ultimately leading to the enactment of the amended Feed and Pet Food bill.

3. WHITE PAPER PROCESS

The development of this White Paper involved the active participation of the Advisory Committee on the Feeds and Pet Food Bill (ADCOM-FPFB), which included 9 different representatives from the animal feed industry. This committee, along with an external group consisting of animal feed registration consulting firms, a lawyer with expertise in the farm feed regulatory framework, and an auditor knowledgeable in AFMA's Code of Conduct and with expertise in the farm feed regulatory framework, collaborated with expert consultant Mr. Siyabonga Mbambo to provide critical input and insights throughout the process. Established at the beginning of this year, the ADCOM-FPFB has played a crucial role in providing guidance and direction for the report. Additionally, the report was reviewed and discussed with AFMA members, and their recommendations were incorporated into the final version, reflecting their full support. This collaborative and responsive approach ensured that the report was validated by a diverse group of experts, all fully engaged in the development of the Feeds and Pet Food Bill.

4. DEFINITIONS

The definitions provided below are applicable to this White Paper. The Advisory Committee recommends the definitions highlighted in yellow for amendment according to the suggested text, while those highlighted in green are proposed for inclusion in the list of definitions in the Feeds and Pet Food Bill. Definitions highlighted in grey should reference the relevant section within the Feeds and Pet Food Bill once they are incorporated or amended, as recommended in this White Paper.

"animal" means any mammal, bird, fish, reptile or amphibian that is a member of the *phylum vertebrates* or any member of the *phylum mollusca*, *phylum crustacea*, *phylum echinodermate, phylum annelida and phylum arthropoda*;

"animal by-products" means the entire animal body, parts of animal, products of animal origin, or excreta, that are not intended for human consumption;

"analyst(s)" means a laboratory analyst as designated in terms of section (x)

"animal product" means any product originating from an animal;

"assignee" means an assignee designated in terms of section 4(2);

"buy" includes agreeing to purchase, or to purchase or to exchange for any consideration whatsoever, or accept delivery in pursuance of a sale;

"commercial feed" means any feed that is manufactured and sold for commercial purposes;

"commercial purpose" means any purpose for commercial gain, whether direct or indirect;

"companion animals" means any animal belonging to a species that is domesticated or domestic-bred and normally kept as a companion to humans;

"concentrates" means a semi-complete feed that has to be mixed further to make a complete feed

"department" means the National Department responsible for agriculture;

"establishment" means any premises in South Africa where raw materials, feed additives, animal by-products, feed, pet food, and premixtures, are manufactured, held, packed, marked, or labelled as feed ingredients, feed or pet food, including warehouses where products are stored or kept for distribution or sale;

"feed" means any solid or liquid substance or product constituted of feed ingredient(s) that is manufactured, which is intended for the feeding of animals;

"feed additive" means any substance in any form, as prescribed in the regulation;

"feed ingredient" means each of the constituent materials making up a feed or pet food, and includes raw materials, animal by-products, feed additives, and premixtures;

“herbal supplements” means herbs or botanicals which include phytonutrients;

“importer” means any person importing feed ingredients, feed or pet food into the Republic of South Africa;

“inspector” reference corrected as follows: means an inspector appointed in terms of section (2);

“manufacture” means any process whereby animal by-product, feed additive, raw material, feed, pet food or premixture is produced, including grinding, pressing, extracting, mixing, blending or cooking, and the addition of additives, animal by-products or premixtures to ingredients;

“Minister” means the Cabinet member responsible for agriculture;

“oral nutraceuticals” means a feed ingredient(s) that provides health benefits, including aid in the management of diseases.

“pet food” means any solid or liquid substance or product constituted of feed ingredients, which is intended for the feeding of companion animals

“premixture” means a mixture of one or more feed additives, with or without raw materials or water used as carriers, intended for inclusion in the manufacture of feed or pet food or as part of its formulation;

‘’prescribe” means prescribe by regulation;

“raw material” means organic or inorganic products in a solid or liquid form, as prescribed in the regulations;

“registrar” means the registrar designate in terms of section 2(1);

“regulation” means a regulation made in terms of this Act;

“rendering plant” means a facility where animals or carcasses, and animal by-products, either in an intermediary form, or as a final sterilized and safe product, which is intended for animal consumption;

"sell" includes agreeing to sell or to offer for sale, advertise, transmit, convey, deliver or manufacture for sale or to barter or to exchange or to dispose of to any person in any manner for any consideration whatsoever, or to transmit, convey or deliver in pursuance of a sale, barter, exchange or disposal as aforesaid;

"stock remedy" means a stock remedy as defined in the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947);

"Technical advisor" means a SACNASP registered advisor as designated in terms of section (x)

"veterinary medicine" means a veterinary medicine as defined in the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

5. SCOPE OF THE BILL

The scope of the act is proposed as follows **"To provide for the regulation of feed ingredients, feed, or pet food including their import and export; for the licensing of facilities used for the manufacturing of animal by-products, feed additives, feed, pet food, or premixtures; for the registration of feed ingredients, or imported feed ingredients, feed or pet food, for the appointment of a Registrar to administer the Act; for the appointment of advisory committees, technical advisers, analysts, inspectors, and assignees to assist the Registrar in the exercise of his or her powers in the regulation, compliance, monitoring, and enforcement of this Act, and for matters connected therewith".**

The Advisory Committee recommends amending the preamble of the Feeds and Pet Food Bill to include a statement, as suggested below, ensuring that animal feed placed on the market is fit for its intended purpose. This is important to guarantee that the feed meets the specific nutritional needs and safety standards required for different animal species, thereby protecting animal health, supporting food safety for human consumers, and maintaining the integrity and trust in the feed industry. Ensuring fitness for purpose also helps prevent potential adverse effects on the environment and animal welfare.

PREAMBLE

RECOGNISING -

- the need to ensure the manufacturing of safe feed for animals intended for human consumption;
- the need to ensure the manufacturing of safe pet food intended for companion animals;
- the critical role that feed play in food safety, nutrition and food security;
- the need for a traceability system within the feed and pet food industries.

AND IN ORDER TO -

- protect the consumers and users of feed and pet food;
- disseminate an efficient and effective traceability system;
- ensure compliance with food safety requirements;
- ensure that products are fit for their intended purpose.

6. FACILITY LISCENCING

The regulations will license facilities as follows:

LICENSED FACILITIES	CATEGORIES
Rendering facility	Wet processing
	Dry processing
Feed mill	Wet plant non-medicated
	Wet plant medicated
	Dry plant non-medicated
	Dry plant medicated
	Wet plant non-medicated, animal by-products
	Wet plant medicated, animal by-products
	Dry plant non-medicated, animal by-products
	Dry plant medicated, animal by-products
	Grain and seeds
Feed and pet food plant	Dedicated lines
Home/on-farm mixers	Food producing animals
	Game animals
	Breeders
Feed additives	Agricultural grade facility
Premixtures	Feed additives
Pet food	Wet

	Dry
Warehouses/distribution	

Products will be registered as follows:

REGISTRATION	CATEGORIES
Feed ingredients	
• Raw material	Animal and plant products, micro minerals
• Feed additives	Pharmaceutical and food grades
• Nutraceuticals	
• Herbal supplements	
All imported products	

It is proposed that the regulatory framework must register all ingredients including those that are generally regarded as safe (GRAS). However, the Registrar from time to time will be partitioned to exempt certain ingredients like maize and hominy chop. The rational behind this is that all raw materials that are imported must be registered or undergo through a risk assessment process before being allowed to be imported into the country. The following risk will persist with GRAS ingredients and must be mitigated:

- Adulteration and contamination (facilitate monitoring and compliance)
- Maximum residue limits (facilitate monitoring and compliance)
- Traceability (Create a state-owned traceability system for compliance with trading partners)
- Cross boarder litigation and liability (all traders must have a business address in South Africa

Based on the above a process of elimination shall be applied to exempt ingredients from registration through gazetting an exemption list.

7. LICENSING PROCESS

An applicant shall submit an application form with an application fee for establishment licensing. The Registrar shall assign the application to a technical advisor who will order an audit on the establishment to be licensed. Following receipt of a compliant audit report the Registrar shall license the establishment for a period determined in the regulations. After 12 months the Registrar shall order annual audits for the validity period of license. The auditor will conduct annual audits for the duration of the license until the license lapses.

8. LICENSING FEES

The licensee shall pay the application and inspection fee only. The fee will be calculated on a sliding scale based on the size (micro, small, medium, large) of the facility and its classification (i.e. warehouse, feed mill, pet food plant, etc).

9. ADVISORY COMMITTEE

It is recommended that Chapter 2 of the Feeds and Pet Food bill pertaining to the Registrar, Committees, Advisers and Assignees be divided into the following specific sections to ensure clarity and specificity in the roles and responsibilities of the different entities involved:

- Designation of registrar
- Appointment of advisory committee
- Appointment of technical advisors
- Appointment of analyst
- Appointment of inspectors
- Appointment of assignees

By separating these sections, the document can clearly outline the distinct functions and appointment processes for the advisory committee, technical advisors, analysts, inspectors and assignees. This approach helps maintain flexibility and ensures that each entity's scope of work is well-defined and understood.

Refer to the below changes that were made to the chapter:

Designation of Registrar

2 (1) The Minister shall designate an officer in the service of the department as Registrar, who shall exercise the powers and perform the duties and functions conferred upon the Registrar by or under this Act.

(2) The Registrar may, unless expressly provided for otherwise, in writing delegate transfer to any suitably qualified officer under his or her control a power, duty or function conferred upon or assigned to him or her under this Act, or in writing authorize or direct any such officer to exercise such power or perform such duty or function.

Appointment of advisory committees

3 (1) The Registrar may, when required, appoint one or more advisory committee -

(a) to advise the Registrar on feeds and pet food regulatory matters; or

(b) to provide advice to the Registrar on feed technical matters including, but not limited to, licensing of manufacturing facilities, registration of feed ingredients, imports and export of feed ingredients, feed or pet food, and auditing, inspection, monitoring and compliance programs, regulations, standards, or guidelines.

(2) The advisory committee shall consist of members appointed based on their knowledge and experience, as the situation may merit.

(3) The Registrar shall determine the mandate, scope, and envisaged duration of activities of an advisory committee, and shall provide administrative and secretarial services to facilitate its operations.

(4) The Registrar shall chair the advisory committee.

(5) The members of an advisory committee shall not be entitled to any remuneration or compensation from the State for the performance of their activities.

Designation of advisers, analysts and assignees

This section will be split as agreed by the AFMA Advisory Committee on the Feeds and Pet Food bill (ADCOM-FPFB).

10. ASSIGNEES

The following changes are to be effected this section:

(1) The Minister may designate any person, undertaking, body, institution, association or board -

(i) having a particular knowledge of feed ingredients, feed or pet food manufacture; or

(ii) having a particular knowledge of the relevant management control systems;

with no direct or indirect personal or financial interest as an assignee'

(2) The functions that are conferred upon the assignee under this Act, will include but not be limited to -

(a) the auditing of compliance by applicants or licensees to the conditions subject to which licenses are issued;

(3) An assignee designated under section 4(2) -

(a) must be selected –

(i) after publicly advertising for appropriately qualified legal entities interested in becoming assignees;

(ii) based on the proven qualifications and ability of the legal entity to perform the required powers, duties and functions;

(b) shall have no recourse against the State in respect of any expenses incurred in connection with the exercising of the powers or the performance of the duties or functions thus assigned;

shall be funded in connection with the exercise of powers or the performance of duties or functions by a levy imposed by the Minister by notice in the Gazette; and

(c) must be appointed for the period, as determined from time to time, and on such conditions as the Registrar may determine.

(4) The chief executive officer or other person in charge of an assignee designated under section 4(2) -

(a) shall act on behalf of that assignee in the exercise of its powers and the performance of its duties and functions; and

(b) may in writing delegate or transfer to an employee of that assignee any such power or duty which the assignee shall or may exercise or perform by or under this Act, or in writing authorize or direct any such employee to exercise such power or perform such duty.

(c) A power exercised or duty performed by an officer other than the executive officer shall be deemed to have been exercised or performed by the executive officer: Provided that· the executive officer may at any time amend or withdraw any decision made or order given by such other officer.

Funding of assignees

(5) (1) An assignee designated under section 4(2) shall every 24 months, submit a business plan and budget to the Registrar, setting out the costs and expenses associated with the duties of the assignee.

(2) The Registrar shall –

(a) provide a summary of the business plan and budget contemplated in paragraph (a) to any person that it believes has a direct interest therein and invite such person to comment thereon in writing within 30 days; or

(b) if the Registrar so determines, publish the summary of the business plan and budget contemplated in paragraph (a) for general comment in the Gazette and invite written comment thereon within 30 days from the date of publication.

(3) Comments in terms of subsection (2) shall be provided directly to the Registrar, who shall on receipt thereof provide a copy to the assignee, who may provide the Registrar with its response to such comments within 14 working days.

(4) The Registrar shall within a reasonable period from the due date for comments determined in subsection (2), provide the Minister with copies of all comments received under that paragraph, as well as any response by the assignee under subsection (3), and the Minister must take such comments and response into consideration in determining a levy imposed under section 4(c).

(5) A levy imposed by notice in the Gazette under section 4(c) shall -

(a) be applicable to the persons stated in the notice; and

(b) be payable for the performance of those duties and functions by the assignee, as described in the notice.

11. APPEAL PROCESS

The appeal process will be setup in three phases as follows.

- Internal appeal to the Registrar: The Registrar may set up an appeals committee to investigate and advise on all matters for his/her final decision.
- Escalation to the Director General and the Minister
- Litigation through courts of law

It is proposed that the appeals process should be changed as follows:

Appeal against the Decisions of the Registrar (Act 36 of 1947)

(1) A person who feels aggrieved by the decision taken by the Registrar may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal

to the Minister against such decision, with the understanding that the status quo be preserved for the appellant to continue with its' operations while the matter is under appeal.

(2) The procedurally fair, review and appeal processes required under subsection (1) shall be as prescribed and must comply to the requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(3) The Minister shall refer the appeal for consideration and decision to a board of which the members shall be appointed by him, and which shall consist of –
   (a) one person designated as chairman on account of his knowledge of law; and
   (b) two persons who in the opinion of the Minister command sufficient knowledge regarding the matters which will probably be in issue when the appeal is considered.

(4) Any appeal noted in terms of subsection (1) shall be heard on the date and at the time and place fixed by the chairman of the board and he shall advise the appellant and the registrar in writing thereof.

(5) The chairman of the board may for the purposes of the decision of an appeal-
   (a) summon any person who, in his opinion, may give relevant information concerning the issues in the appeal or who has or is suspected to have in his possession or custody or under his control any document which has any bearing upon the issues in the appeal, to appear before the board at a time and place specified in the summons, to be interrogated or to produce that document, and the chairman may retain for examination any document so produced;
   (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing of the appeal;
   (c) call any person present at the hearing of the appeal as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

(6) The procedure at the hearing of an appeal shall be determined by the chairman of the board in question.

(7) Any person appealing in terms of this section and the registrar may be represented at the hearing of such appeal by an advocate or an attorney.

(8) If a person appointed under subsection (2) –

(a) dies during the hearing of the appeal or so soon before the commencement of such hearing that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the hearing has commenced, unable to continue therewith, the appellant and the registrar may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to act as chairman.

(9) (a) If the parties do not agree under subsection (8), the hearing shall be adjourned in order that the Minister may appoint a member, in accordance with the requirement of subsection (3), in the place of the member who has died or has become incapacitated.
(b) Where an appointment has been made in terms of paragraph (a), the hearing shall, if the parties so agree, be continued as from the stage at which the hearing was interrupted by the death or incapacitation of the member in question, or shall, if the parties do not so agree, be commenced de novo.

(10) The board may after hearing and considering the appeal -

(a) confirm, set aside or vary the relevant decision of the registrar;

(b) order the registrar to execute the decision of the board in connection therewith.

(11) The chairperson of the board shall notify the appellant and the registrar in writing of the decision of the board.

(12) If the board sets aside any decision by the registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him or, if the board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

(13) A member of the board who is not in the full-time service of the State may be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

12. ASSIGNEES VS INSPECTIONS

For this document, the assignees will refer auditors and analysts. The function of the inspectors, the auditors and analysts shall be distinct and defined as follows:

INSPECTORS	AUDITORS	ANALYSTS
Market surveillance	Conduct audits	Sampling
Investigations	Expert advisory services	Analyses
Prosecutions	Witnesses in court processes	Advisory services
Sampling	Refer transgressions to inspection services	Witnesses in court processes
	Sampling	

13. LICENSING OF FACILITIES OUTSIDE SOUTH AFRICA

No facility outside the republic shall be licensed as South Africa does not have a common market legislation that is comparable to the European Union. All products imported into South Africa must be registered, except for specific GRAS (Generally Recognized as Safe) ingredients exempted by the Registrar.

14. REGULATION OF EXPORTS

The registrar shall license exports based on the following criteria:

- Compliance with standards such as ISO, GMP, or relevant industry standards.
- Issuance of free sale certificates.
- Certification of export facilities in collaboration with veterinary services.

15. RURAL SMALLSCALE FARMERS

Farmers who keep backyard livestock for their own consumption or ceremonial consumption are exempted from the Feeds and Pet Food bill. It should be noted that these farmers are also exempted from the Meat and Safety Act of 2000. Regulating them will be an overreach and will serve no purpose from a feed to a food chain supply chain. Moreover, most of these farmers use veld and pasture to raise their animals and will rarely buy commercial feed.

16. AKNOWLEDGEMENTS

Sincere appreciation is extended to all participants involved in the development of this White Paper. Their invaluable contributions, insights, and expertise were instrumental in shaping the final report. Special thanks are given to the members of the Advisory Committee on the Feeds and Pet Food Bill (ADCOM-FPFB), the external consultants, and AFMA members for their

unwavering support and collaboration throughout this process. Their dedication and commitment have ensured the creation of a comprehensive and well-informed document.