

FEDERALPRODUCE INSPECTION SERVICE BILL, 2022
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**A BILL
FOR**

AN ACT TO REPEAL THE PRODUCE (ENFORCEMENT OF EXPORT STANDARDS) ACT, CAP. P32 LFN, 2004 AND ENACT THE FEDERAL PRODUCE INSPECTION SERVICE (ESTABLISHMENT, ENFORCEMENT OF EXPORT STANDARDS) ACT, TO PROVIDE FOR THE INSPECTION AND ENFORCEMENT OF GRADES AND QUALITY STANDARDS OF PRODUCE AND COMMODITIES INTENDED FOR IMPORT INTO OR EXPORT FROM NIGERIA AT PORTS OF SHIPMENT AND FOR RELATED MATTERS

Executive Bill

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

PART I - OBJECTIVES AND APPLICATION

1. Objectives

The objectives of this Act are to-

- (a) enforce grades and quality standards of produce and commodities for shipment;
- (b) monitor and inspect produce and commodities for export before shipment;
- (c) boost international trade to generate revenue for government through commodity exportation and payment of requisite taxes and rates;
- (d) ensure that produce and commodities to be exported from Nigeria complies with produce global standard requirement;
- (e) ensure that any person that violates the provisions of this Act is punished in accordance with this Act; and
- (f) ensure that effective coordination of produce activities is maintained and sustained.

2. Application of this Act

- (1) This Act shall apply to produce intended for export as described in the First Schedule to this Act.
- (2) The Minister may by an Order published in the Official Gazette of Government, and to or delete from the First Schedule to this Act any description of produce.

PART II - ESTABLISHMENT OF THE FEDERAL PRODUCE INSPECTION SERVICE

3. Establishment of the Federal Produce Inspection Service

- (1) There is established the Federal Produce Inspection Service (“the Service”).
- (2) The Service-
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue or be sued in its corporate name;
 - (c) may acquire, purchase, mortgage, hold or dispose of property, whether movable or immovable; and
 - (d) shall be independent in carrying out its functions and duties under this Act.

4. Functions of the Service

The functions of the Service shall include-

- (a) inspection and quality control of 'agricultural produce to ensure compliance with global prescribed grades and standards pre-condition for export or processing;
- (b) arrival check test on produce delivered at a registered produce store, warehouse or processing factory;
- (c) pest control on produce, through pre-shipment fumigation or prior to processing at the agro-processing mills;
- (d) spraying and disinfestation of produce store, warehouse, ship holds, hatches and container in order to control pest;
- (e) monitoring of produce movement at the nation's border posts;
- (f) enforcement of commodity export levy collection;
- (g) ensuring that produce weight complies with approved standard weight;
- (h) inspection of packaging to ensure proper marking, sewing and sealing of graded produce are adhered to;
- (i) identification and rejection of poor-quality and deteriorated produce in storage;
- (j) conducting laboratory examination on produce for the detection and control of mycotoxins, aflatoxins and arsenic;
- (k) issuance of Certificate of Inspection on quality, weight, fumigation and packaging for export-bound produce to facilitate repatriation of foreign exchange on sale of exported produce and generate data on export of agricultural produce; .
- (l) monitoring of agricultural export at the nation's ports to ensure compliance with export regulations and statistical data collection;
- (m) organising training and enlightenment workshops, seminars and conferences for relevant stakeholders;
- (n) rendering of statistical data for the Export Commodity Coordinating Committee (ECCC), to ascertain whether payment of mandatory levies on produce exported from Nigeria are complied with;
- (o) advising the Government and other stakeholders on produce quality control and fumigation matters;
- (p) representing the Federal Government of Nigeria in international meeting of CODEX Alimentarius, where international commodity standards are determined; and
- (q) any other functions as may be necessary for the attainment of the objectives of this Act.

5. Establishment and Composition of the Governing Board

-(1) The Service shall have a Governing Board ("the Board"), consisting of the following members-

- (a) a Chairperson, appointed by the President on the recommendation of the Minister, with not less than 10 years experience in produce and commodity matters;
- (b) the Director-General of the Service;
- (c) a representative of the Minister;
- (d) two representatives of each geopolitical zone of the federation from within the State Civil Service workforce, who shall not be below the rank of a Director, having technical experience in produce inspection for export; and
- (e) the Director Produce Inspection and Quality in the service.

(2) The supplementary provisions contained in the Second Schedule to this Act, shall have effect with respect to the proceedings of the Board and other matters mentioned therein.

6. Functions of the Board of the Service

The functions of the Board shall be to-

- (a) ensure compliance with the objectives of this Act by the stakeholders;
- (b) advise the Minister and other stakeholders on issues connected to the enforcement of export standards;
- (c) encourage states to key into national programmes with a view to jointly boost international trade to generate revenue for government;
- (d) make recommendations to the Minister when required on matters relating to produce inspection and Regulations under the various State Produce Inspection Laws;
- (e) promote domestic and international collaboration to ensure compliance with global prescribed grades and standards; and
- (f) perform such other functions as may be relevant to realisation and performance of its functions under this Act.

7. Tenure of the Board

-(1) The Chairperson and other members of the Board shall hold office-

- (a) for a period of four years in the first instance and may be re-appointed for a further period of four years and no more; and
- (b) on such terms and conditions as may be specified in the instrument of appointment.

(2) Notwithstanding subsection (1) of this section, the President may remove the Chairperson or a member of the Board for inability to discharge the functions or purpose of appointment, arising from infirmity of mind, body, any other cause or misconduct or is in the public interest for the President to do so.

8. Cessation of membership of the Board

Notwithstanding the provisions of section -; of this Act, a member of the Board shall cease to hold office, where the member-

- (a) resigns his appointment as a member of the Board by notice in writing addressed to the President;
- (b) becomes bankrupt;
- (c) is convicted of a felony or any other offence involving dishonesty or corruption;
- (d) becomes incapable of discharging the functions of his office either arising from an infirmity of mind or body;
- (e) the President is satisfied that it is not in the interest of the Service and the public for such member to continue in office;
- (f) has been found guilty under the Code of Conduct or serious misconduct in relation to his duties; or
- (g) in the case of a person who becomes a member by virtue of the office the person occupies, cease to hold such office.

9. Removal of the chairperson or member of the Board of the Service

-(1) Where it appears that the Chairperson or a member of the Board, other than an ex-officio member should be removed from office on the grounds of misconduct or inability to perform the functions of such an office, the Board shall make recommendation through the Minister to the President for approval.

(2) Where the President, after making such inquiries as may be necessary, approve or decline the recommendation made through the Minister by the Board and the Secretary to the Government of the Federation shall in writing communicate the decision of the President to the Board.

10. Appointment of the Director-General of the Service

(1) There shall be appointed for the Service, a Director-General, who shall be the Chief Executive and Accounting Officer of the Service.

(2) The Director-General shall have requisite qualification, knowledge and not less than 15 years experience in produce management and inspection matters.

(3) The Director-General shall-

(a) be appointed by the President on the recommendation of the Minister;

(b) be responsible to the Board for the management of the affairs of the Service;

(c) be responsible for the execution of the policy and the day-to-day administration of the affairs of the Service;

(d) be entitled to earn a remuneration and allowances as may be specified in the instrument of appointment;

(e) hold office for a period of four years at the first instance and may be eligible for re-appointment for another period of four years on such terms and conditions as may be specified in the letter of appointment and no more;

(f) keep proper books, records of the proceedings of the Board and Committee of the Board;

(g) exercise control over employees of the Service, subject to the supervision of the Board; and

(h) Appoints the Secretary to the Board whose remuneration shall not be below that of a Deputy Director in the Service and whose tenure shall be same with members of the Board and renewable once.

11. Removal of the Director-General of the Service

Notwithstanding the provisions of section 10 (3)(e) of this Act, the Director-General of the Service shall cease to hold office, where the Director-General-

(a) resigns his appointment;

(b) becomes of unsound mind;

(c) becomes bankrupt;

(d) is convicted of a felony or an offence involving fraud, dishonesty or corruption;

(e) has been found guilty by the Code of Conduct Tribunal for any serious misconduct in relation to his duties;

(f) becomes incapable of carrying out the functions of the office, whether arising from infirmity of mind or body;

(g) is certified by the President that it is not in the best interest of the Service or the public for the Director-General to continue in office; and

(h) is holding such an office by virtue of having professional qualification and where the Director-General is disqualified or suspended from practising his profession in any part of the world, by an order of competent authority or court.

12. Appointment of other staff of the Service

-(1) The Service may appoint such other staff, as may be necessary to assist the Service in the performance of its functions under this Act.

(2) The staff of the Service, shall under this section be appointed on such terms and conditions of service as the Service may in collaboration with the National Salaries, Income and Wages Commission and Federal Civil Service Commission may determine.

(3) The staff of the Service shall be public officers as defined in the Constitution of the Federal Republic of Nigeria, 1999 (as altered).

13. Application of the Pensions Reform Act

-(1) Service in the employment of the Service shall be as approved service under the Pensions Reform Act, accordingly, employees of the Service shall, in respect of their service be entitled to pension and other retirement benefits as are prescribed in the Pensions Reform Act.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms, which preclude the grant of a pension in respect of the office.

(3) For the purposes of the application of the Pensions Reform Act, any power exercisable thereunder by the President or authority other than the Federal Government, not being the power to make Regulations under this Act, shall be vested in and exercisable by the Service.

(4) Subject to subsection (2) of this section, the Pensions Reform Act, shall in its application by virtue of subsection (3) of this section, have effect as if, the office is in the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria, 1999 (as altered).

14. Structure of the Service

The Service shall have power to create such departments and units as may be necessary for its operation.

15. Operational areas of the Service

-(1) The Service may have offices in all the states of the federation and at every port of shipment in Nigeria, with its headquarter in Abuja.

(2) The states offices shall be for the purposes of enforcement of export standards in bonded warehouses, land borders and processing mills, with each zonal headquarter to coordinate the activities of the number of states under its zone and report to the head office.

(3) The Service at every port of shipment, including seaports and airports, shall be for the purpose of-

(a) conducting quality test on imported agricultural commodities, to ensure they conform with prescribed quality standards before they are allowed to be loaded out of the ports to the hinterland;

(b) boarding vessel to inspect ship holds, barges and hatches for imported pests or rodents and fumigate such receptacles to eliminate pests and prevent them from escaping into Nigeria;

(c) examining export containers entering into the ports at the port gates so as to ensure that all export containers have been subjected to the Service's quality test before agricultural produce are allowed into the ports;

- (d) fumigating empty containers belonging to shipping lines or terminal operators at various terminals as required by law before they are loaded with already fumigated agricultural produce for exports;
- (e) issuance of certificate of fumigation to ships after fumigating their ship holds, barges and hatches as evidence that they are fit to load pest free agricultural produce out of Nigeria;
- (f) impounding poor-quality produce sited either at the port gate, inside a vessel or inside whatever receptacle to ensure no bad quality produce is exported out of Nigeria;
- (g) prosecuting any person found to have violated any of the provisions or Regulations made under this Act for export or import of agricultural produce; and
- (h) ensuring that all statutory export and fumigation levies are accurately paid by exporters of agricultural commodities before the produce are released for export.

16. Emergency orders for pest control

- (1) The Minister shall have the power to make an Emergency order, which shall be published in the Official Gazette of Government in the event of any outbreak of serious pest infestation to provide for immediate steps as may be necessary to combat and contain the spread of the infestation.
- (2) The Minister may without prejudice to this section, order for the prohibition of movement or for the destruction of infested produce.
- (3) An order made under this section may prescribe a penalty for offences against violation of any of the provisions of the order, which shall, not exceed a fine of N500,000 or imprisonment for six months or to both.
- (4) Where an order is made subject to this section, the Minister shall within 21 days of the order, convene a meeting of the Board, to deliberate and seek the advice of the Board as may be necessary in the circumstance.
- (5) The Minister may in addition to an order made under this section, make Regulations subject to the order, which shall without prejudice to anything lawfully done under the Regulations shall expire unless it has expired under the provisions of the order itself.

17. Exportation of damaged produce

- (1) Notwithstanding the provisions of this Act as to exportation of produce, where produce which has been inspected and passed for export, but later suffered damage or deteriorated in quality to such an extent that it can no longer be made to conform to exportable standard, the Minister or officer designated in writing, may grant a special permit to allow the export of the produce on such conditions and purpose as may be specified in the special permit.
- (2) Where produce suffered damage or deterioration in quality to conform with an exportable standard, the Minister or officer designated in writing may, if satisfied that the damage or deterioration was due to circumstances beyond the control of the owner of the produce, grant a special permit to allow the produce on such conditions and purpose as may be specified in the permit.
- (3) Where produce is exported under the authority of a special permit granted under this section, any seal or mark to indicate that such produce has been graded for export shall be removed or destroyed by the person exporting the produce to the satisfaction of appropriate authority and in the presence of a produce officer of the Service at the port of shipment.

18. Pest infestation

Where produce is found to be infested or reasonably suspected to be infested with any pest-

(a) a produce officer may make such order as may be necessary for the treatment of such pest; and

(b) where the owner of produce fails to comply with the order of the officer, any person authorised by the officer in that behalf in writing, may enter upon any land or premises and carry out such measures as may be necessary to prevent the spread of the pest, at the owner's expense.

19. Power to enter and seize

(1) A produce officer shall when carrying out his duties under this Act, be in uniform and have power to-

(a) enter at a reasonable time, having regard to religious beliefs, social customs and norms prevailing in the area to a building or place, which is reasonably believed to harbor produce, which is subject to Regulations made under this Act, to inspect and take samples of any of such produce stored, notwithstanding that such produce has been previously inspected or graded;

(b) stop a person carrying or believed to be carrying produce, examine such produce, search any vehicle, boat, canoe or animal carrying or believed to be carrying produce and may call the person in charge of such vehicle, boat, canoe or animal and where the person cannot be ascertained, the person appearing to be in charge of the vehicle, boat, canoe or animal and may require the person in charge of such produce to unload the produce for examination;

(c) direct the person in charge of a vehicle, boat, canoe or animal and the person in charge of produce seized under paragraph (d) of this subsection, to convey the 'produce to the nearest suitable place to deposit the seized produce;

(d) seize and detain any produce reasonably suspected to have been adulterated or in respect of which an offence under this Act has been committed, together with any receptacle in which such produce is contained and shall seize and detain any article, register or document believed to be connected with the offence;

(e) take possession of building or place in which produce regulated under this Act is stored by counter-locking and affixing Federal Produce Inspection Service sealing authority;

(f) call upon a person to make available any information as may reasonably required for the purpose of investigation of an offence committed under this Act; and

(g) release to the owner of a produce previously seized and detained under the provisions of paragraph (d) of this subsection, where the produce officer is satisfied that the owner did not know that the produce was adulterated, so as to permit the owner to clean the produce and after cleaning, release the produce and its receptacle in which the produce was contained.

(2) A person who obtains information by virtue of this section otherwise than in the execution of his duties under this Act, shall not disclose the information except with the permission of the Director-General of the Service.

(3) Except as provided in paragraph (f) of subsection (1) of this section, any person who seizes and detains any producer's receptacle under subsection (1) of this section shall report the matter to the nearest magistrate for prosecution.

20. Treatment of detained produce

(1) Where the produce seized and detained is not packed in a receptacle, a produce officer may order that it shall be so packed and the owner of the produce and the person in charge of the produce at the time of seizure shall be responsible for the provision of suitable receptacles and the labour that is required to carry out the order.

(2) Save as is provided to the contrary in this section, every produce seized and detained shall be sealed in receptacles to the satisfaction of a Produce Officer and shall not be removed or cleaned except with the written permission of the Service or until a charge is preferred against the person for an offence in respect of the produce or complaint laid for the purpose of forfeiture under this Act has been determined.

(3) Where a person charged for an offence under this Act has been acquitted or discharged, the court shall not order the release of the produce until 4 days from the date of the judgment of acquittal or discharge, during which period a Produce Officer shall notify the Court in writing of its intention to institute further proceedings in respect of the produce.

(4) Where a Produce Officer notifies the Court in writing within 4 days of its intention to institute further proceedings in respect of the produce or to appeal against the judgment, the Court shall not order the release of the produce pending the determination or withdrawal of such proceedings or appeal.

(5) Notwithstanding the provisions of subsection (2) of this section, where a Produce Officer deems it appropriate, may order produce under seizure and detention to be removed and be kept in an approved premises.

(6) Where the owner of the produce or the person in charge of the produce considers that the storage condition of the produce in detention may result in further damage or deterioration to the produce, may make application in writing to the Service for the purpose of obtaining permission to clean the produce.

(7) Where approval is given by the Service to application made under subsection (6) of this section, the produce officer may permit the owner or the person in charge of the produce to clean it and after cleaning, the produce shall be dealt with in accordance with the provisions of subsections (2) or (3) of this section.

(8) Where an approval is granted to application made under subsection (6) of this section, there shall be prepared in the presence of the applicant and the produce officer or before an officer delegated by the produce officer, a document showing the net weight of the produce, the number of receptacles in which the produce is packed and the gross weight of sample taken and such document when signed by applicant and produce officer or officer delegated by the produce officer, shall be conclusive evidence of the particulars stated in it.

(9) Notwithstanding the provisions of this section, the Service may order a person in charge of seized or detained produce or person claiming to be owner to clean it and may permit temporary release of the produce for the purpose of cleaning and where such order is given, the provisions of subsection (8) shall apply.

21. Power to re-examine produce

(1) A produce officer may, after obtaining approval from the Service, re-examine any produce earlier inspected, passed or graded, for such purpose as may be deemed necessary.

(2) Where the Service discovers during such re-examination that produce has not been properly passed or graded or has deteriorated not to conform to the quality or grade

assigned to it on previous examination, such produce shall not be exported until it has been properly graded, passed and marked in accordance with the provisions of this Act or Regulations made under this Act or until a special permit for its export has been granted by the Minister or officer designated in writing, in accordance with the provisions of this Act.

(3) Where a produce officer in the course of re-examination discovers that the produce being re-examined has been adulterated or an offence relating to the produce has been committed, the produce officer shall deal with the produce in accordance with the provisions of section 20 of this Act.

(4) Where the produce officer re-examines the produce and find out that the produce has been properly passed or graded, shall cause the produce to be re-packaged, sealed and marked in accordance with this Act or Regulations made under this Act.

(5) The owner of the produce re-examined under this section may appeal within seven days to the Director-General of the Service or his representative against the decision made on either the examination or the re-examination.

22. Duty to provide labour for inspection

Where a produce officer is to examine or re-examine a produce for any of the purposes under this Act, the owner of the produce shall provide necessary labour to enable such examination or re-examination to be made.

23. Produce expert

-(1) The Minister may by notice in the Official Gazette declare a person as Produce Expert in respect of a particular produce.

(2) In any proceedings of an offence under this Act in which the quality or condition of a produce is in issue, the Court may, direct produce expert to examine the produce or sample of it and report to the Court on its quality or condition and the written report of such produce expert shall be sufficient evidence of the facts stated in the report unless the person charged requires the produce expert to be called as a witness.

PART III - FINANCIAL PROVISIONS

24. Funds of the Service

-(1) The Service shall establish and maintain an account to which shall be paid-

(a) all subventions and annual budgetary allocation from the Government of the Federation;

(b) such monies as may, from time to time, be provided to the Service by the Federal Government, a state government or a Local Government Council;

(c) foreign aid and assistance;

(d) any other fund as may be approved for the development of produce safety in Nigeria; and

(e) all other sums or assets that may from time to time be vested in or accrue to the Service in the course of performing its duties under this Act.

(2) The Service funds shall be managed in accordance with extant Financial Regulations applicable in the Public Service of the Federation and Regulations made pursuant to this Act.

25. Expenditure of the Service

The Service may apply the proceeds of the fund established pursuant to this Act-

- (a) for the payment of salaries, fees and other remunerations or allowances, payable to employees, experts or professionals appointed by the Service;
- (b) to pay overhead, benefits and other administrative costs of the Board;
- (c) for the reimbursement of members of any committee set up by the Board or such expenses as may be authorised in accordance with the rates approved by the Government of the Federation;
- (d) to publicise and promote the activities of the Service;
- (e) for the maintenance of any property acquired or vested in the Service; and
- (f) to undertake any other activity, programmes or matter connected with or any of the functions of the Service under this Act.

26. Accounts and audit

(1) The Service shall keep proper accounts and records of its funds and shall prepare in respect of each financial year, a statement of accounts in such form as may be required and in conformity with best practice and Financial Regulations.

(2) The Service shall within six months after the end of each year to which the accounts relate, cause its accounts to be audited by auditors appointed from the list of auditors and in accordance with guidelines supplied by the Auditor-General of the Federation.

(3) The auditors shall, on the completion of the audit of the accounts of the Service for each year, prepare and submit to the Board reports setting out-

- (a) general observations and recommendations of the auditors on the financial affairs of the Service for the year and on any important matter which the auditors desire to bring to the notice of the Board; and
- (b) detailed observations and recommendations of the auditors on all aspects of the operations of the Service for the year under review.

27. Annual reports

The Service shall, not later than 30th September of every year, prepare and submit to the Minister through the Board, a report on the activities and administration of the Service during the preceding year and shall include in the report a copy of the Audited Financial Statement of the Service for the immediate preceding year and the auditor's report.

28. Power to accept gifts

(1) The Service may accept a gift of land, money or other property on such terms and conditions, if any; as may be specified by the person or organisation making the gift.

(2) The Service shall not accept any gift where the conditions attached by the person or organisation making the gift are inconsistent with the functions and objectives of the Service.

29. Borrowing and investment powers of the Service

(1) The Service may, with the consent or in accordance with any general authority given by the Board, borrow by way of loan or overdraft from any source, specified amount of money required by the Service for its obligations and functions under this Act.

(2) The Service may, subject to the provisions of this Act and the conditions of a trust created in respect of a property, invest any of its funds with the consent or general authority of the Board and Minister responsible for finance.

(3) The Service may invest any of its surplus funds in such securities as the Board may, from time to time, approve.

PART IV - OFFENCES AND PENALTY

30. Presumption as to intention to export

In a proceeding against a person for an offence committed under this Act, it shall not be necessary to prove that the produce, which is the subject of the charge, was intended for export and such produce shall be presumed to have been intended for export unless the contrary is proved.

31. Effect of inspection, passing or grading

In any action relating to the quality or purity of a produce inspected and passed or graded under this Act, the inspection, passing or grading of such produce shall not be conclusive as to the quality or purity of the produce.

32. Wrongful grading as an offence

(1) A produce officer who knowingly passes or clears produce for export, which is not of exportable standard and quality shall be guilty of an offence of gross misconduct punishable in line with the extant provisions of the Public Service Rules.

(2) Where a person charged alleges unauthorised use of his seal, press, punch-die or other sealing or marking appliance used for sealing produce or for marking containers was used without his consent, the onus of proving such unauthorised usage shall be on the person.

(3) In any prosecution under this section, it shall be sufficient for the prosecution to prove the person charged is a produce officer who passed or cleared the produce in question for export and that the produce was not of exportable standard and the onus of defending that the wrong clearance was not done knowingly shall be upon the person charged.

33. Unauthorised use or possession of seals, etc. of the Service

(1) A person, other than delegated officer of the Service, who-

(a) make unauthorised use of prescribed types of seal, press, punch-die or other sealing or marking appliance used for sealing produce or for marking containers or any apparatus for sampling or testing produce or for extracting contents of bags of produce intended for export or detained under the provisions of this Act;

(b) is found in possession of any of such article or any article so closely resembling that of the Service, which may be mistaken for that of the Service, without lawful excuse, the onus of proving such lawful excuse shall be upon the person charged, shall be guilty of an offence under this Act and is liable to a fine of not less than N150,000 or imprisonment for one year or to both.

(2) Where the offence is committed by an employee of the Service, the disciplinary procedure provided for in the Public Service Rules shall apply.

34. General offences

(1) A person who at any port of shipment, without lawful excuse-

- (a) hinders or molests a produce officer or person charged with the duty or power under this Act or Regulations made under this Act in the exercise of his duty or power;
- (b) fails to comply with lawful order given under this Act or Regulations made under this Act;
- (c) remove, clean or tamper with produce or receptacle, seized or detained by the Service in accordance with the provisions of this Act or Regulations made under this Act;
- (d) break or remove a seal placed upon a receptacle containing produce by the produce officer, either after grading, seizure or detention of the produce and receptacle in accordance with the provisions of this Act or break the twine, wire or other means of securing such receptacle or seal;
- (e) substitutes for a produce already inspected and passed or graded another produce or add extraneous matter or any uninspected produce to a produce, which has been inspected and passed or graded;
- (f) fails to furnish any information lawfully demanded under this Act or knowingly furnish false information in a material particular or does not believe to be true;
- (g) possess or has in his custody or under his control, whether for sale or other purpose, for the use or his benefit or any other person or whether as agent or employee of any other person, produce which has been-
 - (i) inspected, passed or graded and of which the containers have been tampered with as described in this section, or
 - (ii) substituted for produce which has been passed or graded; or
- (h) ships, exports or attempts to ship or export or delivers or cause to be delivered for shipment or export any produce, which is not of exportable standard, Is guilty of an offence and shall be liable to a fine of not less than N1,000,000 or imprisonment for one year, or to both.

(2) In prosecution of offences under this section, the onus of proving the existence of lawful excuse shall lie on the defendant.

(3) A person shall not be convicted for an offence in paragraph (g) of subsection (1) of this section, where the person proves to the satisfaction of the court-

- (a) not to know and could not with reasonable diligence have known that the produce or its containers had been tampered with or suffered substitution;
- (b) to have taken all reasonable precautions against the commission of the offence;
- (c) that as soon as it became clear that an offence had been or was being committed, made immediate report in writing to the Service; and
- (d) that when the Service demanded for an explanation, gave all the information at his disposal with respect to the produce and the containers.

35. Offence in relation to samples of produce

A person authorized to take samples under this Act, but employs or disposes of such samples or any part of it for his own gain or use it for any purpose other than for the purpose for which it was meant, commits an offence of misconduct and is liable to be punished under the extant provisions of the Public Service Rules.

36. Offences in relation to inspection and grading of produce

Any produce officer, who without reasonable excuse, delays, detains, or refuses to inspect, pass or grade produce for export commits an offence and is guilty of misconduct punishable under the extant provisions of the Public Service Rules.

37. Offences by public officer

Where a proceeding, either civil or criminal is brought against a public officer in respect of an act done pursuant to the provisions of this Act, it shall be a good defense for the officer to show that there was reasonable and probable cause for the act in respect of which such proceeding is brought.

38. Forfeiture of produce

(1) Where a person is convicted of an offence' under this Act, of which the owner of the produce is a beneficial owner, the Court may, in addition to the penalty imposed, order that the produce and the receptacles in respect of which the offence was committed, be destroyed or forfeited to the Service.

(2) Produce forfeited under this section shall be cleaned by the Service and released for sale or for export.

(3) Where a produce or a receptacle is seized and detained under this Act and the-

(a) owner of such produce or receptacle is unknown or cannot be found; or

(b) produce is adulterated or is of such inferior quality that-

(i) it cannot be cleaned to an exportable standard,

(ii) its retention in its present condition may endanger the quality of other produce, which may come into contact with it, or

(iii) produce expert by reason of its inferiority standard suggest that it should be destroyed; a complaint shall be made after seven days from the day of seizure of the produce and receptacle, before a magistrate having jurisdiction over the area where the produce or receptacle is detained for the purpose of enforcing forfeiture of such produce or receptacle.

(4) The magistrate shall cause notice to be given in such manner as may be required or necessary, for cause to be shown to the contrary at a place and time stated in the notice why the produce or receptacle shall not be forfeited.

(5) The magistrate shall, unless cause is shown to the contrary, order that the produce or receptacle be forfeited and disposed of in such manner as may be requested by the Service.

PART V - MISCELLANEOUS PROVISIONS

39. Powers of the Minister to make Regulations

The Service, in the exercise of its powers under this Act, may in consultation and approval of the Minister, make Regulations and orders in accordance with the provisions of this Act.

40. Delegation

The Minister may delegate any of his powers under this Act to the Service except the power to make Regulations.

41. Limitation of suits against the Service

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act, shall apply to a suit instituted against the Service, an officer or employee of the Service.

(2) A suit shall not lie or be instituted in a court against the Service, a MEMBER OF THE Board or any principal officer or employee of the Service for action carried out in pursuance to the execution of this Act or any enactment or of any public duty in respect of an alleged neglect or default in the execution of this Act or any other enactment or law, duty or authority, unless it is commenced-

(a) within three months of such act, neglect or default complained of; or

(b) in the case of a continuation of damages or injury, within six months after the ceasing of the act, neglect or default.

(3) A suit shall not be commenced against the Service, a member of the Board or any principal officer or employee of the Service before the expiration of a period of one month after written notice of the intention to commence a suit has been served on the Service by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly state the cause of action, particulars of the claim, the name and place of abode of the intending plaintiff and the relief sought.

42. Power to sue for fees•

(1) The Service shall have power to institute a court proceeding against a person for the recovery of a civil debt under this Act or Regulations made under this Act.

(2) Fees recovered for and by the Service shall be paid into the Federation Account.

43. Repeal and transitional provisions

(1) The Produce (Enforcement of Export Standards) Act, Cap. P.32 LFN, 2004 is repealed.

(2) Notwithstanding the repeal of the Produce (Enforcement of Export Standards) Act, Cap. P.32 LFN, 2004 ("the repealed Act")-

(a) the rights, interests, obligations and liabilities in the repealed Act existing under this Act, under any contract, instrument either in law or equity, apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Service established by this Act;

(b) a document referring to a provision of the repealed Act shall be construed as a reference to the corresponding provision of this Act; and

(c) where an offence, being an offence for the continuance of which penalty was provided, has been committed under the repealed Act, in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(3) A proceeding pending or existing immediately before the commencement of this Act against a member of the Service, shall be continued or commenced, as the case may be and a determination of a court or other authority or person may be enforced against the Service to the same extent that the proceeding or other action or determination could have been continued, commenced or enforced against such member.

(4) A forfeiture having effect under the repealed Act immediately before the commencement of this Act, shall continue to have the same effect notwithstanding the repealed Act.

(5) Any document made before the commencement of this Act, which would have been admissible in evidence under the provisions of the repealed Act, shall be admissible to the extent and in the same proceedings notwithstanding that the repealed Act has ceased to have effect.

(6) Nothing in this Act shall invalidate any act or things done by a person, authority or by the Service before the commencement of this Act and the act or the thing done shall be considered to have been duly executed and shall continue to be in force in accordance with the provisions of this Act.

44. Interpretation

In this Act-

"Board" means the Produce Inspection Board for the Federation established under this Act;

"Buy" includes exchange or barter, whether for goods or services and any agreement or contract to buy, exchange or barter;

"Buyer" means the person who conducts the transaction of buying, whether personally or for another person;

"Chief Produce Officer" subject to the provision of subsection (2) of this section, means an officer of that rank in the Federal Produce Inspection Service;

"Clean" means to free produce from any foreign, superfluous or inferior matter by picking, boiling or using other means and includes the extraction of excessive moisture from produce;

"Export" with its grammatical variations and cognate expressions, means to take or cause to be taken out of Nigeria;

"Exportable standard" means a standard which is not lower than that prescribed for produce intended for export, under the provisions of the Export of Nigerian Produce Act or any other law;

"Expose for sale" includes to place any produce on premises on which produce is habitually bought by, or for eventual delivery, to any exporter, produce or licensed buying agent, whether the person placing such produce intends to offer it for sale or not;

"Government" means the Government of the Federation or of a State;

"Inspector", means a produce officer of the Federal Produce Inspection Service, and includes a person appointed as an inspector or examiner for the purposes of this Act;

"Licence" means a licence issued in accordance with the provisions of this Act;

"Licensed buying Agent" means a person or firm or an employee of such person or firm holding a holding license in that behalf issued by an appropriate licensing authority;

"Licensing Authority" means an authority empowered to grant a license for buying produce;

"Minister" mean the Minister charged with responsibility for matters relating to Industry, Trade and Investment;

"Pest Control Inspector" means any officer of that rank in the Federal Produce Inspection Service;

"Pest" means any vermin, insect, parasite, fungus, bacterium or disease harmful to produce;

"Port of Shipment" means the place from which produce is exported by any means;

"Possess for sale" includes constructive possession of produce, which is exposed for sale, or of produce which is found upon the premises of any store in respect of which there is

"in force a certificate of registration issued in accordance with provisions of any Regulations made under this Act;

"Produce Officer" means an officer of that rank in the Federal Produce Inspection Service;

"Sell" includes exchange of barker, whether for goods or services, and any agreement or contract to sell, exchange or barter; and

"Senior Produce Officer" means an officer of that rank in the Federal Produce Inspection Service;

45. Short title

This Bill may be cited as the Federal Produce Inspection Service (Establishment and Enforcement of Export Standards) Bill, 2022.

FIRST SCHEDULE

SECOND SCHEDULE

[Section 5(3)]

Meeting and Proceedings of the Board

(1) Subject to the provisions of this paragraph, the Board may make standing orders to provide for the proper conduct of its business.

(2) Meetings of the Board shall be convened by the chairman, but four members may by notice in writing signed by them, request the chairman to convene a special meeting of the Board for the purposes specified in such notice and upon receipt of such notice, the chairman shall convene a special meeting for such purposes at the earliest convenient date.

(3) The Board may constitute committee to carry out, on behalf of the Board, such functions as the Board may determine.

(4) A committee appointed under this paragraph shall consist of such number of persons {not necessarily members of the Board} as may be determined by the Board and a person other than a member of the Board; shall hold office on the committee in accordance with the terms of his appointment.

(5) A decision of a committee shall be of no effect until it is confirmed by the Board.

(6) Where upon any special occasion the Board desires obtain the advice of any person upon any matter, may co-opt such person to be a member of such meeting as may be required and the person shall, whilst so co-opted, have all the rights and privileges of a member of the Board, save that the person shall not be entitled to vote on any question.

(7) Issues and questions proposed for decision of the Board shall be determined by the majority of the votes of the members present and voting.

(8) The chairman shall have an original vote and also, if upon any question the votes are equally divided, a casting vote.

(9) At a meeting of the Board the chairman and ten other members shall form a quorum.

(10) The Board shall not be disqualified for the transaction of business by reason only of any vacancy among the members and in case of the absence of the chairman or his representative from any meeting of the Board} the Director General or the Controller of Produce Inspection and Quality, shall serve as temporary chairman.

Explanatory Memorandum

This Bill seeks to repeal the Produce (Enforcement of Export Standards) Act, Cap. P32 LFN, 2004 and Enact the Federal Produce Inspection Service (Establishment, Enforcement of Export Standards) Act, to provide for the Inspection and Enforcement of grades and quality standards of Produce and Commodities intended for Import into or Export from Nigeria at Ports of shipment.