



# agriculture, forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

<b>Document:</b>	A plan for the alignment of DAFF's internal tools for the implementation of the AgriBEE Sector Code: Enforcement measures
<b>Classification:</b>	Confidential
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## 1. Introduction

The AgriBEE Sector Code was approved in terms of Section 9 (1) of the Broad-Based Black Economic Empowerment (BBBEE) Act No 53 of 2003 by the Minister of Trade and Industry and published in the government gazette on the 28<sup>th</sup> of December 2012. The implementation of the sector code is effective from date of publication and is legally binding to all the enterprises in the agricultural sector, i.e. it enjoys the same status as the DTI's Generic Codes of Good Practice on BBBEE. Similarly, government departments and institutions are also required to comply with the provisions of the sector code when doing business with the sector stakeholders. The Generic Codes and the AgriBEE Sector Code consist of seven (7) elements as follows: Ownership, Management Control, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio Economic Development. These elements seek to measure the following:

- **Ownership:** Measures the effective ownership of enterprises by black people;
- **Management Control:** Measures the effective control of enterprises by black people;
- **Employment Equity:** Measures initiatives intended to achieve equity in the workplace;
- **Skills Development:** Measures the extent to which employers carry out initiatives designed to develop the competencies of black employees;
- **Preferential Procurement:** Measures the extent to which enterprises buy goods and services from suppliers with strong BBBEE procurement recognition level;
- **Enterprise Development:** Measures the extent to which enterprises carry out initiatives intended to assist and accelerate the development and sustainability of other enterprises; and

- **Socio-Economic Development:** Measures the extent to which enterprises carry out initiatives that contributes towards Socio-Economic Development or Sector Specific initiatives that promotes access to the economy for black people.

Through its seven elements, the AgriBEE Sector Code seeks to ensure that:

- ✓ *Partnerships* are created to increase black ownership and management of existing and new enterprises;
- ✓ Agricultural sector grows through *continuous investment in skills development & training; black and women entrepreneurs access procurement and enterprise development opportunities; and*
- ✓ Contributions are made for the *socio-economic upliftment* and benefit of people in the agricultural sector.

The objectives of the AgriBEE Sector Code are to facilitate Broad-based Black Economic Empowerment in the agricultural sector by implementing initiatives to include Black South Africans at all levels of agricultural activity and Enterprises by:

- Promoting equitable access and participation of Black People in the entire agricultural value chain;
- De-racialising land and Enterprise ownership, control, skilled occupations and management of existing and new agricultural Enterprises;
- Unlocking the full entrepreneurial skills and potential of Black People in the Sector;
- Facilitating structural changes in agricultural support systems and development initiatives to assist Black South Africans in owning, establishing, participating in and running agricultural Enterprises;
- Socially uplifting and restoring the dignity of Black South Africans within the Sector;

The AgriBEE Sector Code contributes to the implementation of DAFF's Strategic Goals of ensuring a transformed and united sector through the Strategic Objective of increased equity, ownership and participation of Previously Disadvantaged Individuals (PDI's). Similarly, one of the priorities of the Integrated Growth and Development Plan (IGDP) of Agriculture, Forestry and Fisheries is to speed up economic growth and transform the economy to create decent work and sustainable livelihoods. In terms of the IGDP the AgriBEE Sector Code encapsulates the agricultural sector's approach to Broad-Based Black Economic Empowerment. It is against this background that DAFF must play a leading role in ensuring the implementation of the agricultural sector transformation charter commitments, as captured in the AgriBEE Sector Code.

## **2. Problem Statement**

Socio-economic transformation is a priority agenda item of the Government's Programme of Action for ensuring a better life for all. As a result, Black Economic Empowerment (BEE) policies and legislative framework were developed in order to create an enabling environment for the implementation the Government's transformation agenda. However, despite 10 years of BEE legislation in force, there are general views and perceptions that the implementation of the BEE across all sectors of the economy is very slow. If these perceptions hold the truth, therefore it is necessary that government tools must be enforced in order to ensure that transformation takes place in all sectors of the economy.

In view of the above negativity reports regarding BEE implementation, the Department, in collaboration with the National Agricultural Marketing Council (NAMC), undertook a study to determine thresholds and the levels of BEE compliance in the agricultural sector. The findings of the study concurred with the above view as the BEE levels of the majority of the enterprises which participated in survey were significantly lower than the expectations as outlined in the AgriBEE Sector Code and the Generic Codes of Good Practice. In summary, the

results of the study showed that **88%** of primary and **46%** of secondary agricultural enterprises indicated that they do not have a verified scorecard. For those enterprises which have indicated that they do have a scorecard, only **34%** and **25%** of the primary and secondary agricultural enterprises respectively were on **BEE Level 4 status**. Given the 95% significant level of confidence on the data used, the results could be generalized and therefore suggest that only about **13588** enterprises representing the farming community and **112** enterprises representing the agri-business community are transformed. These extrapolations are respectively based on the Census of Commercial Agriculture Survey by Statistics South Africa which showed a total population of **39,966** active of commercial farms in 2006/07 financial year; as well as the internal agri-business database of the PricewaterhouseCoopers which showed a total population of **458** active agri-business enterprises during the period of the study.

Furthermore, the results also showed that 47% of the participants have indicated that they are not considering a BEE strategy for their businesses; 30% want to test the waters and see where things are heading before they can commit themselves to a BEE Strategy; 10% are considering the implementation of a BEE Strategy as soon as possible; and 13% have already developed a detailed BEE Strategy and have started to implement it in their core businesses. These results clearly indicate that the implementation of BEE is still low and therefore speeding up the implementation of the AgriBEE Sector Code is necessary in order to bring about substantial transformation in the agricultural sector.

If these findings hold the truth, it is clear that the DAFF might not achieve its constitutional mandate of ensuring food security for all because “**food security and socio-economic transformation of the agricultural sector are not mutually exclusive**”. The objective statement of the Department has always been centered around “*a transformed agricultural sector*” in order to support a Departmental constitutional mandate of ensuring food security for all. This objective culminated into AgriBEE Sector Code that has clearly defined what is expected from the agricultural sector stakeholders in as far as the sector

transformation is concerned. The question that needs to be answered is why the transformation of agricultural sector is still so slow? Has the Department done what it is supposed to do in order to create an enabling environment for the transformation to take place in the sector? Are the DAFF policies, legislative frameworks, programs and projects aligned to support the transformation mandate of the Department? Currently, there are no clear linkages between DAFF's business and the sector transformation agenda because the Departmental tools that could be used to enforce compliance of the sector stakeholders are not aligned to the agreed agricultural sector transformation plan, i.e. AgriBEE Sector Code.

In view of both the study's scientific findings and the perceptions regarding the overall BEE implementation, there is necessity that DAFF should play a leading role towards the implementation of the sector transformation agenda by aligning its policies, legislative frameworks, programs and projects to the AgriBEE Sector Code. The Departmental internal tools are inevitable to speed-up the implementation of the socio-economic transformation in the agricultural sector, as they could be used to enforce compliance of sector stakeholders to the transformation programme of the government and in particular the agreed agricultural sector transformation plan, i.e. AgriBEE Sector Code.

### **3. Objectives of the Plan**

The overall objective of this plan is fast-track and speed-up up the implementation of the AgriBEE Sector Code. The specific objectives of the plan are as follows:

- 3.1. To identify the internal Departmental policies, legislative frameworks, programs and projects that can be used to enforce the implementation of AgriBEE Sector Code.

- 3.2 To align the identified Departmental policies, legislative frameworks, programs and projects to the AgriBEE Sector Code.
- 3.3 To develop models for the enforcement of AgriBEE Sector Code to the agricultural sector stakeholders.
- 3.4 To ensure that the line function directorates enforce compliance to AgriBEE Sector Code when servicing the agricultural sector stakeholders.

#### **4. Motivation**

The Government's Programme of Action as outlined in the "2014 Election Manifesto" of the Ruling Party (African National Congress) has emphasized that the implementation of the BBEE is one of the vehicles that will contribute towards ensuring **a better life for all**. Due to the slow progress in the implementation of the BEE across all sectors of the economy, it means government departments will have to do much more in order to make a meaningful impact in terms of its BBEE legislation implementation. In this regard, for instance, a government department's functions and sector support measures (tools) have to be aligned with specific BBEE legislation applicable to that sector.

While taking cognizance of voluntary nature of BEE implementation that the stakeholders cannot be forced to comply with BEE legislative frameworks, government enforcement to such frameworks is allowed. In this case, **government can enforce BEE compliance to stakeholders who want government services to do their businesses**. This is in line with Section 217 (1); (2); and (3) of the Constitution of South Africa and Section 10 of the BBEE Act No 53, which are quoted as follows:



*“Section 217 (1); (2); and (3) of the Constitution of South Africa states that: (1) When an organ of the state in the national, provincial or local spheres of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost- effective. (2) Subsection (1) does not prevent the organs of the state or institution referred to in that subsection from implementing a procurement policy providing for: (a) Categories of preference in the allocation of contracts; and (b) The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. (3) National legislation must prescribe a framework within which the policy referred to subsection (2) may be implemented”.*

*“Section 10 of the BBBEE Act No 53 states that: Every organ of the state and public entity must take into account and, as far is reasonably possible, apply any relevant code of good practice issued in terms of this Act in: a) Determining qualification criteria for the issuing of licenses, concessions or other authorizations in terms of any law; b) Developing and implementation a preferential procurement policy; c) Determining qualification criteria for the sale of state- owned enterprises and; d) Developing criteria for entering into partnership with private sector”.*

Given the above regulatory frameworks in support of BEE enforcement by government, it is therefore necessary that DAFF’s functions and support measures must be aligned to the AgriBEE Sector Code in order to play a leading of ensuring that the agricultural sector stakeholders comply with their obligations as outlined in the AgriBEE Sector Code. This will ensure that the Department contributes significantly to the Government’s socio-economic transformation agenda. Due to the fact that DAFF’s services span across the entire sector, then compliance to the AgriBEE Sector Code will be across the whole agricultural value chain. This will in turn assist the Department in achieving its strategic goal of *“a transformed agricultural sector”*.

## 5. Implementation Plan Principles

The line function directorates of the Department which their services involve the administration and issuing of licenses, permits, grants, subsidies and concessions should enforce compliance to the AgriBEE Sector Code. This means that before applicants or clients receive a service from the line function directorates, they must first be subjected to the pre-determined compliance criteria that is aligned to the AgriBEE Sector Code. This approach is supported by the Constitution of South Africa and the BBEE Act No 53. As a result, a strong market force that leads to successful “*trickle-down effect*” will be created. In the case where services and products procured by the Department fall outside the scope of AgriBEE Sector Code, the Department must apply the aligned PPPFA and BBEE Regulations and accept valid BEE certificates based on the Generic Codes of Good Practice. When enforcing compliance to the AgriBEE Sector Code, this plan proposes that DAFF’s line function directorates are required to adhere to the following principles:

- The national legislation, policies and regulations such as PPPFA will take preference.
- The fundamental principle for measuring B-BBEE Compliance is that **substances takes precedence over legal form**, for example in cases where services are provided in response to emergency situations, diseases control, etc.
- Where the AgriBEE Sector Code aligned tools can’t be enforced, it is proposed that enforcement be based on recognition - either by enforcing a favorable level (BEE Status Level 4) or by developing a point system policy as it is the case with the PPPFA.

## 6. Analysis of DAFF's Services: Identification Internal Tools

The Directorate: BBBEE Charters Compliance undertook consultation with the selected DAFF's directorates, which have the potential services that could be utilized when enforcing compliance of agricultural sector stakeholders to the AgriBEE Sector Code. The directorates were selected based on the services that were documented in the DAFF's Services Catalogue. The main findings of the consultations are as follows:

1. Some of the directorates mandates are drawn from primary legislations.
2. Some of the certificates or permits are issued for health purposes (prevention of diseases) and protection of agriculture land;
3. The client base for the service-offering directorates is anyone, i.e. individuals and legal entities.
4. Some of the key functions lie with the Provinces, for example CASP.
5. Some of the directorates duties are based on facilitating the application process to ensure norms and standards are adhered to.

The services of DAFF that could be aligned to ensure proper enforcement of the AgriBEE Sector Code are summarized as follows:

- Agricultural trade permits allocation for import & export;
- Statutory levies administered for transformation & development initiatives;
- Support incentives such as infrastructure funding;
- Financial assistance to the sector in the form grants and loans;
- Preferential procurement through supply chain management; and
- Inspection and registration services.

The following matrix presents detailed services of the selected DAFF directorates with an objective of identifying the specific services, which could be aligned to the AgriBEE Sector Code:

Directorates	Services Rendered	BEE Compliance Enforcement Tool
Plant Production	<ul style="list-style-type: none"> <li>✓ Information and advisory services</li> <li>✓ Production guidelines</li> <li>✓ Seed testing services</li> <li>✓ Awareness programmes on production and related matters</li> <li>✓ Training programmes on seed testing</li> <li>✓ Certification schemes</li> <li>✓ <b>Registration of premises</b> (nurseries, seed cleaners, packers, sellers and test laboratories)</li> <li>✓ <b>Issuing of authorisations for the import</b> of unlisted varieties of plants and propagating material</li> <li>✓ Variety listing</li> <li>✓ International proteaceae cultivar registration</li> </ul>	Yes
Plant Health	<ul style="list-style-type: none"> <li>✓ Import permits for plant propagation material and crops grown in the Western Cape</li> <li>✓ Pest information package (PIP)</li> <li>✓ Phytosanitary registration and approval of production units, packhouses and inspection</li> <li>✓ Pest incursion responses</li> <li>✓ Quarantine pest incursion responses</li> <li>✓ Plant health information material</li> <li>✓ Plant health diagnostic services</li> <li>✓ Plant quarantine</li> </ul>	Yes

Genetic Resources	<ul style="list-style-type: none"> <li>✓ Issuing of variety descriptions and DUS reports</li> <li>✓ <b>Certificates issued under Plant Breeders' Rights Act</b></li> <li>✓ Provide stored germplasm</li> <li>✓ <b>Issue import/export permits</b> of genetically modified organisms (GMOs)</li> <li>✓ <b>Issue permit</b> for use of genetically modified organisms (contained use, trial release, commodity clearance, general release)</li> <li>✓ Registration of GMO research facilities</li> <li>✓ GMO status certificates</li> </ul>	<b>Yes</b>
Animal Production	<ul style="list-style-type: none"> <li>✓ Animal production advisory services</li> <li>✓ Authorize import and export of animals and related genetic material</li> <li>✓ Registration of animals as semen and embryo donors</li> <li>✓ Registration of artificial insemination and embryo collection centres</li> <li>✓ Registration of import and export agents</li> <li>✓ Registration of reproduction operators</li> </ul>	<b>Yes</b>
Veterinary Public Health	<ul style="list-style-type: none"> <li>✓ <b>Registration of import and export facilities</b></li> <li>✓ <b>Register animal identification marks</b></li> <li>✓ Veterinary awareness</li> </ul>	<b>Yes</b>
Animal Health	<ul style="list-style-type: none"> <li>✓ Facilitating exports of animals and animal products</li> <li>✓ Coordinating the prevention and control of animal diseases (such as foot-and-mouth disease, avian influenza, etc)</li> <li>✓ <b>Registration of import and export facilities</b></li> </ul>	<b>Yes</b>
Food Safety and	<ul style="list-style-type: none"> <li>✓ <b>Issue export certificates</b> for liquor products</li> </ul>	<b>Yes</b>

Quality Assurance.	<ul style="list-style-type: none"> <li>✓ <b>Issue export exemption certificates</b></li> <li>✓ <b>Issue import certificates</b> for liquor products</li> </ul>	
Agriculture Inputs Control.	<ul style="list-style-type: none"> <li>✓ <b>Registration of agricultural production inputs</b> (fertilisers, farm feeds, agricultural remedies and stock remedies) and pest control operators and sterilising plants.</li> <li>✓ <b>Monitor compliance and enforcement</b> of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No.36 of 1947</li> </ul>	<b>Yes</b>
Food Import and Export Standards	<ul style="list-style-type: none"> <li>✓ Provide food safety information and / or technical advisory service to clients</li> <li>✓ Provide phytosanitary information and / or technical advisory service to clients</li> <li>✓ Provide sanitary information and or technical advisory service to clients</li> <li>✓ Distribution of WTO-SPS Notifications</li> <li>✓ Issuing of import permits for plants, plant products and other regulated articles</li> <li>✓ Issuing of import permits for animal and animal products and other regulated articles</li> </ul>	<b>Yes</b>
Directorate Inspection Services.	<ul style="list-style-type: none"> <li>✓ Conduct inspections at official ports of entry/exit and regional offices</li> <li>✓ Provide plant health diagnostic services</li> <li>✓ Provide plant quarantine services</li> <li>✓ Provide animal quarantine services</li> <li>✓ Inspection of import and export facilities</li> </ul>	<b>Yes</b>
Marketing	<ul style="list-style-type: none"> <li>✓ <b>Issuing Export and import permits</b></li> <li>✓ <b>Develop guidelines for APAC</b></li> </ul>	<b>Yes</b>
Agro-processing Support	<ul style="list-style-type: none"> <li>✓ Provision of incentives for agro-processing enterprise development</li> <li>✓ Provision of regular information on the agro-processing industry</li> </ul>	<b>Yes</b>

Cooperative and Enterprise Development.	<ul style="list-style-type: none"> <li>✓ <b>Managing the AgriBEE Fund</b></li> <li>✓ Mobilise farmers into self-help groups or cooperatives</li> <li>✓ Savings mobilisation for sustainable development</li> </ul>	<b>Yes</b>
International Trade	<ul style="list-style-type: none"> <li>✓ Provide information regarding trade matters</li> </ul>	<b>No</b>
Subsistence Farming	<ul style="list-style-type: none"> <li>✓ Provide food security status report</li> </ul>	<b>No</b>
Infrastructure Support	<ul style="list-style-type: none"> <li>✓ Construction services</li> <li>✓ Advisory agricultural engineering services</li> <li>✓ Siting, drilling and testing of boreholes</li> </ul>	<b>No</b>
Sector Education and Training.	<ul style="list-style-type: none"> <li>✓ Guidance on appropriate skills development within the agricultural sector (AET)</li> <li>✓ Provision external bursary scheme</li> <li>✓ Provision of a master mentorship programme</li> </ul>	<b>No</b>
Grootfontein Agricultural Development Institute	<ul style="list-style-type: none"> <li>✓ Training for emerging farmers</li> </ul>	<b>No</b>
Water use and Irrigation Development	<ul style="list-style-type: none"> <li>✓ Support for irrigation development and revitalisation of irrigation schemes</li> <li>✓ Information and advisory services on irrigation</li> </ul>	<b>Yes</b>
Climate Change and Disaster Management.	<ul style="list-style-type: none"> <li>✓ Natural disaster early warning system agro-meteorological monthly advisories</li> <li>✓ Natural disaster early warning—extreme weather warnings</li> <li>✓ Control of migratory pests i.t.o. Act No. 36 of 1983 (Agricultural Pests Act)</li> </ul>	<b>No</b>
Land use and Soil Management	<ul style="list-style-type: none"> <li>✓ <b>Permits and directives</b> i.t.o. Act No. 43 of 1983</li> <li>✓ Control of invasive plants and weeds</li> <li>✓ Regulate change of land use, rezoning and subdivision of agricultural land</li> </ul>	<b>Yes</b>

	✓ Land Care Programme	
Supply Chain Management	<b>Supply Chain Management</b>	<b>Yes</b>

In addition the Directorate Marketing has developed a point system aligning the policy on the allocation of agricultural trade permits to the AgriBEE Sector Code. This could be used “**as an example**” by other directorate when aligning their services to the AgriBEE Sector Code. The point system for the allocation of agricultural trade permits is as follows:

Hundred (100) points attached to initiatives that are aimed at advancing the objectives of the Act and the Sector Code must be allocated according to the following table:

<b>AgriBEE Status</b>	<b>Number of Points</b>
Level One Contributor	22
Level Two Contributor	19
Level Three Contributor	17
Level Four Contributor	15
Level Five Contributor	12
Level Six Contributor	8
Level Seven Contributor	5
Level Eight Contributor	2
Non-Compliant Contributor	0
<b>Total</b>	<b>100% or Points</b>

The AgriBEE Status or level of contribution should be as reflected in a verified BEE Certificate which is in line with the AgriBEE Sector Code as published on the 28<sup>th</sup> of December 2012.

**Important Principles:**

1. Black Economic Empowerment is the primary requirement for the allocation of marketing permits – **i.e. first round**.
2. After the points have been allocated in accordance with the point system in section 2 above, the surplus quota can therefore be allocated starting with companies in level 1 to 8 up to the limit of the average historical market share for each company – **Second round**
3. The average market share system will only apply after the BEE point system has been applied and the market share system will be applied in terms of section 3.2 above.
4. If after the first and the second round there is still a surplus (i.e. surplus of surplus), the **third round** would be to take the surplus of surplus and divide it by the number of all non-compliant companies.



## 7. Conclusions and Recommendations

This plan has outlined the services offered by DAFF, which could be aligned to the AgriBEE Sector Code in order to enforce compliance of the agricultural sector stakeholders. **Therefore this plan recommends that the identified internal DAFF directorates should align their services to the AgriBEE Sector Code.** This will ensure that the compliance of the agricultural sector stakeholders to the AgriBEE Sector Code is fast-tracked. As a result, the objective of transforming the agricultural sector will be achieved.

The vastness and peculiarity of the agricultural sector requires that there should be a thorough consultation with state and its organs in order to identify their initiatives, services and instruments offered to entities in the agricultural sector. This is informed by the fact that most of the services that contribute significantly to the implementation of the AgriBEE Sector Code are administered outside DAFF by other Government Departments, Municipalities, State Owned Entities (SOEs), etc. These services include amongst others but not limited to water licenses, fresh produce agents licenses, statutory levies, etc.

Given the above predicament, **it is recommended that the second phase of this plan should focus on engaging strategic Government Institutions such as the other National Departments, Provincial Departments and Municipalities, State Owned Entities (SOEs) as well as major role players (such as Industry Bodies) with an effort of trying to align their services and programs to the AgriBEE Sector Code.** This proposal is informed by the fact that these institutions provide services to agricultural sector stakeholders who are covered in the scope of application of the AgriBEE Sector Code.

## 8. References

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