

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

NO. R. 1260

27 SEPTEMBER 2019

AGRICULTURAL PRODUCT STANDARDS ACT, 1990
(ACT No. 119 OF 1990)

REGULATIONS REGARDING APPEAL PROCEDURES

The Minister of Agriculture, Land Reform and Rural Development has, under section 15 of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) -

- (a) made the regulations in the Schedule;
- (b) determined that the said regulations shall come into operation on the date of publication; and
- (c) repealed the regulations published by Government Notice Nos. R. 1979 of 23 August 1991 and R. 1980 of 23 August 1991, as well as the amendments thereto published by Government Notices Nos. R. 773 of 7 May 1993, R. 1834 of 1 October 1993, R. 1835 of 1 October 1993, R. 684 of 15 April 1994, R. 1216 of 26 July 1996 (as corrected by Government Notice No. R. 2014 of 6 December 1996), R. 1217 of 26 July 1996, R. 30 of 9 January 1998, R. 20 of 8 January 1999, R. 21 of 8 January 1999, R. 701 of 4 June 1999, R. 702 of 4 June 1999, R. 798 of 11 August 2000, R. 799 of 11 August 2000, R. 542 of 15 June 2001, R. 543 of 15 June 2001, R. 686 of 17 May 2002 (as corrected by Government Notice No. R. 1095 of 30 August 2002), R. 701 of 17 May 2002, (as corrected by Government Notice No. R. 1095 of 30 August 2002), R. 563 of 25 April 2003, R. 564 of 25 April 2003, R. 245 of 27 February 2004, R. 246 of 27 February 2004 (as corrected by Government Notice No. R. 487 of 16 April 2004), R. 204 of 18 March 2005, R. 211 of 18 March 2005, R. 271 of 31 March 2006, R. 272 of 31 March 2006 (as corrected by Government Notice No. R. 424 of 12 May 2006), R. 163 of 2 March 2007, R. 164 of 2 March 2007, R. 168 of 15 February 2008, R. 169 of 15 February 2008, R. 259 of 13 March 2009, R. 260 of 13 March 2009, R. 154 of 5 March 2010, R. 155 of 5 March 2010, R. 448 of 27 May 2011, R. 449 of 27 May 2011, R. 324 of 26 April 2012, R. 325 of 26 April 2012, R. 199 of 22 March 2013, R. 200 of 22 March 2013, R. 130 of 28 February 2014, R. 131 of 28 February 2014, R. 123 of 27 February 2015, R. 124 of 27 February 2015, R. 441 of 15 April 2016, R. 442 of 15 April 2016, R. 257 of 24 March 2017, R. 258 of 24 March 2017, R. 204 of 9 March 2018, R. 205 of 9 March 2018, R. 277 of 1 March 2019 and R. 278 of 1 March 2019 with effect from the said date of commencement.

SCHEDULE

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning, and –

"accredited laboratory" means a laboratory that is fit for purpose and nominated by the Executive Officer in writing for the purpose of testing compliance of products;

"appeal" means an action taken to review a decision or direction of the Executive Officer or an assignee affecting any persons' interest;

"appellant" means any person who lodges an appeal to the Director-General against a decision or direction of the Executive Officer or an assignee;

"assignee" means a person, undertaking body, institution, association or board designated as such under section 2(3) of the Act;

"Department" means the Department of Agriculture, Forestry and Fisheries;

"direction" means an official written notice issued to the owner or "the principal" referred to under section 14 of the Act, for a product by an inspector in terms of section 3A(1)(b) of the Act for any non-

compliances found during inspection, requiring that the product's owners rectify any non-conformances;

"Director-General" means the Director-General: Agriculture, Forestry and Fisheries;

"Executive Officer" means the officer designated under section 2(1) of the Act;

"inspector" means an officer under the control of the Executive Officer, or an assignee or an employee of an assignee; and

"the Act" means the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990).

Lodging of an appeal

2. (1) Any person may lodge an appeal against a decision or direction of the Executive Officer or an assignee in terms of section 10 of the Act, to the Director-General.

(2) An appeal referred to in sub-regulation (1) shall --

(a) be submitted in the format set out in Annexure A, specifying, --

(i) details about the appellant (i.e. name, address, contact details);

(ii) details about the product and consignment concerned (where applicable);

(iii) the decision or direction which is being appealed against;

(iv) the grounds on which the appeal is based; and

(v) any other pertinent information which may assist the appeal board in their decision;

(b) be lodged to the office of the Director-General and/or the Executive Officer;

(c) after obtaining the relevant banking details from the Executive Officer, be accompanied by proof that the prescribed appeal fee has been paid; and

(d) be lodged to reach the office of the Director-General and/or the Executive Officer within the period specified in sub-regulation (3).

(3) The appeal procedure shall be subject to the following prescribed periods, unless otherwise agreed upon:

Prescribed periods (weekends and public holidays excluded):	
Any decision or direction related to products presented for export	24 hours
Any other decision or direction	10 days

(4) An appellant shall forfeit his/her right to lodge an appeal if the written notice of appeal has not been submitted within the period specified in sub-regulation (3) above, and proof that the prescribed fee has been paid did not accompany the appeal application.

(5) An appellant shall allow an inspector to apply any mark or marks which he/she may deem necessary for identification purposes to the products in respect of which an appeal has been lodged, or to the containers thereof, and such product shall not without his/her consent, be removed from the place where they were inspected or where they are stored.

Payment of appeal fees

3. (1) An appellant shall pay the applicable prescribed appeal fee concerned as published in the Government Gazette.

- (2) The prescribed fee shall be paid –
 - (a) either at any office of the Department or at the office of the Executive Officer; or
 - (b) by electronic funds transfer (EFT) to the Department's bank account.

Appointment of an appeal board

- 4. (1) The Director-General shall –
 - (a) constitute an appeal board to assist in dispensing or adjudicating the appeal lodged;
 - (b) designate at least three persons to serve as an appeal board; and
 - (c) designate one of the members as chairperson of the appeal board.
- (2) Appeal board members shall –
 - (a) not have any direct or indirect personal interest in the outcome of the appeal;
 - (b) where the situation so dictates, possess the necessary technical knowledge, skills and experience regarding the appeal concerned;
 - (c) be familiar with the applicable local regulations or export standards and requirements; and
 - (d) have the capability to investigate matters related to the appeal.

Proceedings on appeals

- 5. (1) An appeal board shall --
 - (a) notify the appellant concerned at least 24 hours in advance of the date, venue and time when the board of appeal will convene;
 - (b) allow the appellant to present his/her case to the appeal board by prior arrangement; and
 - (c) where applicable, notify the warehouse/packhouse/cold store of the date, venue and time of the appeal and arrange for the product concerned to be available as well as for labour if necessary.
- (2) An appeal board may (where applicable) –
 - (a) draw in the presence of the appellant a sample of the product to which the appeal concerned relates, in accordance with the relevant methods and procedures;
 - (b) direct the appellant concerned to render all reasonable assistance required by the appeal board in order to draw and inspect a sample referred to in paragraph (a) above: Provided that the appellant may not influence any member of the appeal board;
 - (c) examine, analyse or submit for analysis, grade or classify such sample or the product concerned in accordance with the prescribed methods and procedures: Provided that if the accredited laboratory used for analysis is the same laboratory that did the original analysis, written approval must be given by the appellant to use the same accredited laboratory;
 - (d) hear and question the appellant and inspector concerned and any other person present at such proceedings, and such appellant may be assisted or represented by another person;

- (e) request that the appellant sign a declaration (see example attached as Annexure B) before the board of appeal that he/she will be responsible for the payment of the courier and analysis costs; and
- (f) after inquiry and consideration of an appeal, confirm or set aside or alter the decision or action which has been appealed against, or issue such order in connection therewith as it may deem necessary.
- (3) Once all interested parties have been heard, an appeal board shall instruct all persons to leave the place where the appeal is being held.
- (4) An appeal board may decide on an appeal under the following conditions:
- (a) All the members of the appeal board in question shall constitute a quorum for a meeting of that appeal board.
- (b) The decision of the majority of the members of the appeal board shall be the decision of that appeal board.
- (c) The chairperson of the appeal board shall, in the case of an equality of votes, have a casting vote in addition to his or her deliberative vote.
- (5) An appeal board may upon hearing all representations --
- (a) confirm, set aside or amend the decision or direction concerned; and/or
- (b) issue any order in connection with the decision or direction as deem fit.
- (6) If an appeal board sets aside or amends a decision or direction, or issues an order in connection therewith, it shall be implemented by the Executive Officer or an officer under his control, or an assignee or an employee of an assignee.
- (7) The chairperson of the appeal board shall notify the Director-General via the office of the Executive Officer, the appellant and assignee (where applicable) in writing and with reasons of the final decision of the appeal board, and this notification shall be in the format and with the required information attached as Annexure C.
- (8) An appeal board shall decide on an appeal within the period specified below, unless otherwise arranged and agreed with the appellant in writing, and its decision shall be final:

	Period within which an appeal board shall decide on an appeal after been lodged, weekends and public holidays excluded:
For all imported and locally manufactured or packed products	(i) 21 days in the case of perishable products. (ii) 30 days in the case of non-perishable products.
For all products presented for export	48 hours
For any other decision or direction	21 days

- (9) The appeal board shall ensure that the proceedings of an appeal are conducted in a professional and confidential manner, with due diligence: Provided that the appellant and/or board may require of the appeal board members to sign a confidentiality declaration form.

ANNEXURE A

**NOTICE OF APPEAL IN TERMS OF SECTION 10 OF THE AGRICULTURAL PRODUCT
STANDARDS ACT, 1990 (ACT NO. 119 OF 1990)
[Reg. 2(2)]**

1. Name of Appellant:	2. Physical address of Appellant:
3. Telephone or Cell phone number:	4. E-mail address:
5. Product type and description (cultivar, style, grade/ class, etc.): Please also tick \checkmark : Destined for <input type="checkbox"/> Export Imported <input type="checkbox"/> Products Local <input type="checkbox"/> Products	6. Number of containers/ packages:
7. Point of inspection:	8. Date of inspection:
9. Name of assignee or other authority responsible:	10. Name of inspector:
11. Decision or direction being appealed against:	
12. Grounds for appeal:	
13. Any other remarks or comments:	
14. Applicable appeal fees has been paid and proof of payment is attached (please tick \checkmark): YES <input type="checkbox"/> NO <input type="checkbox"/> (Relevant banking details obtainable from Executive Officer)	
_____ Signature of Appellant	_____ Date

(Electronic version of this Annexure is available from the office of the Executive Officer)

ANNEXURE B**EXAMPLE OF A DECLARATION TO BE COMPLETED IN CASE OF APPEALS
[Reg. 5(2)(e)]**

Appeal (1) _____

I, (2) _____

Id No. _____ hereby declare that:

- (a) I am aware that the analysis of the samples by the (3) _____
 _____ laboratory is part of my
 obligation to discharge myself of my onus of proof in this appeal;
- (b) I undertake to bear all costs incidental to and connected with such analysis; and
- (c) I indemnify the Department of Agriculture, Forestry and Fisheries and the Directorate:
 Food Safety and Quality Assurance, their employees and appointed assignees of any
 costs in this respect.

SIGNATURE OF APPELLANT

DATE

WITNESS

DATE

EXPLANATORY NOTES:

- (1) Complete description of appeal
 (2) Full names of appellant
 (3) Name of laboratory

(Electronic version of this Annexure is available from the office of the Executive Officer)

ANNEXURE C

FINAL DECISION OF THE APPEAL BOARD REGARDING THE APPEAL LODGED BY (Name of Appellant) IN TERMS OF SECTION 10 OF THE AGRICULTURAL PRODUCTS STANDARDS ACT, 1990 (ACT NO. 119 OF 1990) [Reg. 5(7)]

1. MEMBERS OF THE APPEAL BOARD

An appeal board was constituted in terms of Section 10(3) of the APS Act, and the following persons were appointed by the Director-General to serve as members of the board:

Duty on board	Name	Company and job title
Chairperson		
Member		
Member		
Member		

2. BACKGROUND

The following information shall at least be included:

- 2.1 *Details about the nature of the appeal, when the appeal was lodged, etc.*
- 2.2 *Details about the appellant.*

3. FINDINGS BY THE APPEAL BOARD

The following information shall at least be included

- 3.1 *Details about the date, time and venue where the appeal board met.*
- 3.2 *Confirmation that the appellant were informed when, where and at what time he/she could come and present his/her case to the board (if so preferred).*
- 3.3 *Details about the basis on which the appeal was considered.*
- 3.4 *Final decision and reason(s) for final decision.*
- 3.5 *Did the majority of the members agree with the decision? YES / NO*

4. RECOMMENDATION(S) TO THE DIRECTOR-GENERAL

.....
Chairperson:
Date

.....
(member of appeal board)
Date

.....
(member of appeal board)
Date

.....
(member of appeal board)
Date

(Electronic version of this Annexure is available from the office of the Executive Officer)