



South African Revenue Service

**RULES WORKSHOP : CHAPTERS 21- 23, 25 - 31
11 DECEMBER 2014**

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1. Opening and welcome

2. Draft rules - Main comments and concerns raised

- Access to and sampling of goods
- Damaged, destroyed, lost or unaccounted goods
- Abandonment of goods to Commissioner and destruction of goods under customs supervision
- State warehouses
- Registration
- Licensing
- Accreditation
- Security for payment of tax and other money owed to Commissioner

3. Other comments

4. Questions

ACCESS TO AND SAMPLING OF GOODS

APPLICATION FOR PERMISSION TO ACCESS GOODS

- Comments were received to shorten the timeframe for submitting an application from two working days to one working day
 - Accepted
- A recommendation was received to use the customs code instead of the ID number on the application
 - Accepted
- A recommendation was received to define “indication” in rule 23(1)(2)(b) and to clarify if a clearing instruction can be used for that purpose
 - The reference “indication” will be deleted
 - A clearing instruction is not acceptable
 - Sampling is not a regular occurrence and therefore authorisation is required
- Clarification was sought on whether the customs code of the customs controlled area should be the facility code
 - Yes. See the definition of customs code
- Comments were received that the rules should provide for the liquid bulk industry to remove samples from vessels
 - Accepted

ACCESS TO AND SAMPLING OF GOODS

- **TIMELINES FOR GRANTING APPROVAL** – Recommendations were received to define the timelines within which SARS will grant approval
 - Not accepted
 - If the time is unreasonable the applicant has recourse to the Ombudsman
- **RECORD-KEEPING BY LICENSEES IN RELATION TO SAMPLES TAKEN OR OTHER ACTIONS** – Recommendations were received that due to the nature of the product, liquid bulk warehouses be exempted from keeping sample registers
 - Not accepted
 - Tax is payable on samples

DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

- **NOTIFICATIONS BY PERSONS REFERRED TO IN SECTION 542(2) OF GOODS DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR** – Proposals were received that the 3 working days referred to in the draft rule be extended to 7 working days as the information and documentation that must be submitted will take longer to obtain
 - Accepted
 - The rule will be amended to provide for a two phased notification: immediate notification reflecting minimum information, and within 10 working days submission of full information and supporting documents
- **LOST GOODS IN LIQUID BULK INDUSTRY** – Proposals were received to incorporate “allowances” similar to section 78(18) of the 1964 Act in the rules for the liquid bulk industry
 - Not accepted, actual losses are allowed

DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

- **LOST GOODS IN LIQUID BULK INDUSTRY**

- Comments were received that contaminated products/slops could occur at any time and that reporting cannot be confined to a specific time
 - Not accepted
 - The two-phase notification will apply from the time the licensee became aware of the loss
- A proposal was made that evaporations, etc. must be provided for in a similar manner as the provisions under section 447(3)(a) – (d) (conversion rates)
 - Not accepted
 - Losses should not be compared to rates of yield in the processing context

DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

DOCUMENTARY EVIDENCE TO PROVE THAT GOODS BECAME DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR

- A proposal was made that rule 25.3 be amended to read “include, but not limited to”
 - Not accepted
 - The word “include” that appears in the rule is indicating that the list that follows is not exhaustive
- A proposal was made for SARS to provide guidelines/requirements as to who would be considered an acceptable independent appraiser
 - Noted
- A proposal was made that the term “hostile act” should be defined
 - The ordinary dictionary meaning would apply
 - Hijacking could result in goods being damaged or destroyed but not lost unless it can be proved that the goods have not gone into home use
- A comment was made that in the case of losses due to the inherent characteristics of the goods, no credit note or replacement will be issued by the supplier
 - It should be noted that the introductory part of rule 25.3 contains the words “as may be appropriate”

DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

- Recommendations were received that the Liquid bulk industry be permitted to record a shortage on imports without the goods being considered to be damaged, destroyed, lost or unaccounted for
 - Provisional / incomplete declarations in terms of Chapter 24 would apply
- Comments were received that the 3 working day requirement for purposes of complying with section 544(2)(d)(i), (ii) or (iii) (for clearance, abandonment or destruction) is unattainable or impossible
 - Not accepted
 - This timeframe is after Customs has **accepted** the documentary proof that the goods were damaged that was submitted
 - An extension in terms of section 908 could be applied for
- Clarification was sought if a NVOCC who charters a vessel or aircraft is considered a “carrier operating” that vessel or aircraft in terms of the definition of “carrier” and therefore have the obligation to report the incident
 - No
 - See definition of “carrier”

DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

- **REPORTING OF ACCIDENTS INVOLVING VESSELS, AIRCRAFT OR TRAINS** – Recommendations were received that the term “immediately upon becoming aware” be more clearly defined to a specific period, e.g. 3 working days
 - Not accepted
- **INVENTORY OF WRECK ORIGINATING FROM STRANDED VESSELS OR CRASHED AIRCRAFT** – A comment was received that the 3 calendar days in rule 25.17(4)(a) be aligned to 3 working days
 - Accepted
 - The rule will be amended to incorporate the general principle of the two-phased notification
 - Notification in first phase to be immediately with minimum information and the second phase for submission of full information and supporting documents, in this case the inventory, within 10 working days

ABANDONMENT/DESTRUCTION

- **APPLICATION FOR PERMISSION TO ABANDON GOODS TO THE COMMISSIONER** – Comments were received proposing that the “person authorised to act on behalf of the owner” be defined to include the warehouse licensee since if the owner absconds, the warehouse licensee will have no recourse to abandon the goods to the Commissioner
 - Not accepted
 - Licensee should mitigate this risk through his/her contractual relationship
 - After the two year period the goods must be removed to the state warehouse in terms of Chapter 13 (Warehousing)
- **APPLICATION TO CUSTOMS AUTHORITY IN PAPER** – Comments were received that the necessary forms be published
 - The forms will be published as a rule on the SARS website
 - Manual communication will be the exception – See section 913 (4) of the Act
- **REQUIREMENTS FOR DESTRUCTION UNDER CUSTOMS SUPERVISION** – Comments were received that the facility where destruction must take place may not be available and that a mutually agreed timeframe within the stipulated period for destruction be agreed upon
 - Not accepted
 - Extension in terms of section 908 may be applied for if necessary

ABANDONMENT/DESTRUCTION

CLEARANCE OF WASTE OR SCRAP REMAINING AFTER THE DESTRUCTION OF GOODS

- A proposal was made that applicants must have the option of abandoning any remaining waste or scrap without the need to lodge another application
 - In terms of section 567(4) the goods are by implication abandoned unless the owner intends to utilize the waste or scrap remaining in which case the goods must be cleared
- A proposal was made that an application for destruction must reflect the client's intention with the remaining waste or scrap
 - Accepted

STATE WAREHOUSES (SWH)

REMOVAL OF GOODS TO SWH

- Clarification was sought regarding who has physical control of goods where no clearance declaration has been presented within 3 working days of arrival
 - The licensee of the terminal or depot
 - An amendment will be done to clarify
- Clarification was sought as to the time when goods must be removed to a SWH
 - Section 570(1) is clear
 - It is the day following the expiry of the 3 working days for submission of a clearance declaration
- Clarification was sought on who must remove the goods to the SWH or licensed premises
 - The licensee of the terminal or depot where the goods are
- Clarification was sought if only licensed carriers may transport goods to a SWH
 - The licensee must transport the goods or get a contractor who **must** be a licensed carrier

STATE WAREHOUSES (SWH)

CONTENT OF REMOVAL NOTICES

- A concern was raised relating to the requirement that a removal notice must reflect the date on and time at which the goods are expected to arrive at the state warehouse
 - “Expected” is not exact and has the same effect as “estimated”
 - There is no obligation to give the exact time

- A concern was raised that the person submitting a removal notice would not know whether there are any charges outstanding or whether the goods are the subject of any legal proceedings if such goods have not been cleared for import or export and it was proposed that this requirement should be removed
 - Not accepted
 - The introduction to subrule 27.2(2)(m) reads “to the knowledge of the person”

STATE WAREHOUSES (SWH)

STATE WAREHOUSE RENT

- Recommendations were received that in rule 27.28 after the reference to “...final judgement” it be inserted “by agreement between SARS and the party involved”, since SARS may make a favourable decision before it reaches appeal level or at any other stage before or after instituting appeal or Court action, but before a judgement or finding is made
 - Not accepted
 - An error referred to in rule 27.28(a) or the circumstances set out in paragraph (b) is subject to the provisions of Chapter 37

- A proposal was received that if the proceeds of sale are insufficient to cover “virtual state warehouse” rental then the “virtual state warehouse” as a commercial enterprise has a claim against the Commissioner for SARS
 - Not accepted

STATE WAREHOUSES (SWH)

- **UNPACKING OF CONTAINERS CONTAINING GOODS OF DIFFERENT CONSIGNORS OR CONSIGNEES**
 - A comment was made proposing that the affected consignment must be removed to a container depot for unpacking and not at terminal
 - Accepted
 - Reference to terminal will be deleted
 - A request was received for the reinstatement of the 28 day period for clearance of containerised cargo
 - Not accepted
- **HOURS FOR DELIVERY OF GOODS TO STATE WAREHOUSES**
 - Clarification was sought as to what the specific hours of attendance are and a recommendation made that it should be stated in a policy document
 - State warehouses operated by the Commissioner and their hours of attendance will be published
 - Clarification was sought regarding an assumption that once goods are cleared they are no longer under the control of Customs, but rather under the control of the shipping line
 - Not accepted. Goods cleared for a procedure remain under customs control

STATE WAREHOUSES (SWH)

- **SUBMISSION OF REMOVAL NOTICES** - Comments were received questioning who is responsible for submission of removal notices – the terminal or the shipping line
 - The person in physical control of the goods i.e. the licensee of the licensed premises where the goods are
- **DIRECTIVE BY CUSTOMS TO REMOVE GOODS TO ANY OTHER LICENSED PREMISES OTHER THAN THE STATE WAREHOUSE** – Comments were received that this must be subject to the acceptance by such licensed premises
 - Not accepted
 - It should be noted that it is an offence in terms of section 601(1)(b) to not comply with a direction in terms of section 580(1)
- **NOTIFICATION OF RECEIPT OF GOODS REMOVED TO LICENSED PREMISES OTHER THAN STATE WAREHOUSE**
 - A proposal was received that the notification period of three hours of receipt of the goods to customs be extended to 24 hours
 - Not accepted
 - A question was raised whether the time of receipt that must be reflected on a notification is relevant.
 - It is required for control purposes

STATE WAREHOUSES (SWH)

- **TIMEFRAME FOR RECLAIMING OF GOODS IN OR ACCOUNTED FOR IN STATE WAREHOUSES –**
A proposal was made for the reinstatement of the 60 day period as per the 1964 Act
 - Not accepted
- **PERSONS BY WHOM STORAGE FEES ARE PAYABLE –** Comments were received that Customs should be obliged to disclose proceeds of sale and in the case where insufficient proceeds from sale have been realised to cover rental, then commercial enterprises housing the goods should have a claim against the Commissioner
 - Not accepted
 - Licensee has been elevated in the order of preference in the list of application of proceeds of sale. See section 595

STATE WAREHOUSES (SWH)

- **CIRCUMSTANCES IN WHICH STORAGE FEES MAY NOT BE RECOVERED FROM PERSONS ENTITLED TO CLAIM** – A proposal was received that a commercial enterprise acting as a “virtual state warehouse” should be compensated for rental in circumstances where the goods were removed in error
 - Not accepted
 - The claim will be subject to section 923
- **STATE WAREHOUSE INVENTORY REGISTERS**
 - Comments were received proposing that EDI and eFiling methods be employed
 - Noted
 - State warehouse register must be computer based. See rule 27.32(2)
 - Concern was raised as to the frequency of list provided by the state
 - Noted
 - Comments were received that Customs should be obliged to record a breakdown of the proceeds and how they were apportioned to each claim and disclosure of this to all claimants should be obligatory
 - Not accepted

STATE WAREHOUSES (SWH)

- **TIMEFRAME FOR COMPLIANCE WITH CONDITIONS OF SALE** – A comment was received that the timeframe for compliance with conditions of sale should be five working days and not calendar days as indicated in the rule
 - Not accepted
 - Extension may be applied for in terms of section 908

REGISTRATION/LICENSING

PROFESSIONAL CUSTOMS REGISTRATION/LICENSING EXAMINATION

- Clarification was sought whether everyone will be required to pass the exam
 - Yes
 - All prescribed registrants/licensees are required to pass the exam

- Recommendation was received to recognise prior learning and experience
 - Not accepted
 - New legislation requires new interpretation and application

- Recommendation was received that the examination should be at a basic level and not a professional customs registration/license examination
 - Accepted
 - Will re-name the examination to “customs sufficient knowledge test”

- Recommendation was received that the pass rate for the examination be prescribed by rule
 - Accepted
 - The rule will be amended to reflect a 60% pass mark.

REGISTRATION

- **SIMPLIFIED REGISTRATION FOR CASUAL IMPORTERS** – Recommendation was received to increase the value threshold of R50 000
 - Not accepted
 - A client can register (not simplified) before the limitations are exceeded
- **ELECTRONIC USERS** – Clarification was sought whether the person submitting documents through an electronic user also have to be registered as an electronic user
 - If an importer uses a customs broker to submit documents on his or her behalf the importer does not have to be registered as an electronic user
- **ALTERNATIVE SUPPORTING DOCUMENTS TO APPLICATION** – Recommendation was received that an alternative document or an affidavit be accepted in exceptional circumstances where the required document is not available
 - Partially accepted
 - The rule will be amended to accept alternative documents proving the same information
- **CURRENT REGISTRATIONS** – Clarification was sought whether current registrations will remain “active” until 3 years after the Customs Control Act has been enacted
 - Section 931 applies. Current registration will lapse 30 days after effective date of the Acts unless the holder has submitted an application for registration in terms of the Customs Control Act

REGISTRATION

- **APPLICATION ON BEHALF OF ANOTHER PERSON** – Recommendation was received to allow agents to submit applications on behalf of clients
 - There is no prohibition on an agent to submit an application on behalf of his/her principal
 - The prohibition in rule 28.8(2)(b) is that a customs broker or registered agent may not make an application on behalf of another person in their capacity as a customs broker or registered agent
- **TRANSMISSION LINES** – Clarification was sought –
 - About the requirement in relation to an application for registration as a CTC importer or exporter to list all the transmission lines where the electricity is imported and exported at the time of application for registration
 - Yes. All transmission lines that cross the borders of the Republic must be listed and licensed individually
 - Whether transmission lines includes distribution lines
 - The Act does not distinguish between transmission or distribution lines
 - The issue is whether the lines cross the borders of the Republic

REGISTRATION

- **TIMELINES FOR GRANTING REGISTRATION** – Recommendation was received to stipulate the timelines within which SARS will issue registrations
 - Not accepted
 - If the time is unreasonable the applicant have recourse to the Ombudsman
- **STATUS OF REGISTRATION** – Recommendation was received to add “cancellation” in addition to suspension and withdrawal
 - Not accepted
 - Withdrawal have the same effect as cancelation
- **NOTIFICATION OF CHANGE IN CIRCUMSTANCES** – Recommendation was received to allow clients 10 or more working days within which to notify SARS of a change material to granting of registration
 - Not accepted
 - The person may apply for an extension of the period in terms of section 908

LICENSING

- **TIMELINES FOR RENEWAL OF LICENCE** – Recommendation was received for SARS to allow licensees to submit renewal applications no later than 30 days before the expiry of a licence
 - Noted
 - Section 648 provides for the obligation to submit it within 30 days before the expiry of a license
- **COURIER** – Recommendation was received to make a clear distinction between a “courier business” and “customs broker” and to limit a “courier” either in terms of value or weight of packages in order to distinguish the “courier business” from a “customs broker”
 - Partially accepted
 - Definition of “courier” will be aligned to the Postal Services Act
- **LICENSING AS CARRIER** – Clarification was sought regarding whether certain carriers have a choice to licence or not
 - No
 - All carriers transporting goods not in free circulation must licence

LICENSING

- **SUBMISSION OF IDENTITY DOCUMENTS OF ALL DIRECTORS** – Recommendation was received to provide only for the CEO/MD and CFO/FD and the public officer to submit certified copies of their identity documents
 - Not accepted
 - SARS will verify the criminal records of all directors
- **INFORMATION SECURITY POLICY AND SECURITY PROCEDURES** – Recommendation was received to provide that a security procedure will suffice and that it not be necessary for a company to provide evidence of both a security procedure and policy
 - Not accepted
 - The rule provides for either a policy or other mechanisms
- **SECURITY REQUIREMENTS** – Recommendation was received to relax the security requirements for liquid bulk warehouses with reference to rule 29.12(c)(i)-(v)
 - Not accepted
 - Rule 29.12(c) requires the submission of a layout plan showing the location of items (i) to (v) and only where applicable

LICENSING

- **DEDICATED SPACE FOR CUSTOMS** – Recommendation was received to provide for an exception for small business to provide dedicated space to a SARS officer and to delete these requirements from the rules
 - Partially accepted
 - An exception will be created for small business
 - International benchmarking has showed that this is the accepted practise in the UK, US and Australia
- **MOTIVATION FOR THE NEED OF LICENSING OF A SPECIFIC PREMISES IN AN AREA** – Recommendation was received to delete the requirement for an applicant to motivate the need for licensing a specific premises in an area
 - Accepted
- **LICENSING FEES** – Recommendation was received for a nominal licence fee and that the validity period of the licence be indefinite
 - Not accepted
 - A license fee has not been prescribed

LICENSING

- **COMMON USER BASIS** – Clarification was sought regarding the term “common user basis”
 - This rule will be deleted
- **RECEIPT NOTIFICATION** – Recommendation was received to exclude the liquid bulk industry from compliance with the receipt notification requirements in rule 29.24(f) and (g)
 - Not accepted.
 - These rules relate to terminals and not storage warehouses
- **BUILDING REQUIREMENTS** – Recommendation was received to delete the requirement in rule 29.27(1) : “...and have walls of brick, stone or concrete.”
 - Partially accepted
 - This rule will be amended to provide for a more flexible approach
- **ADDITIONAL GENERAL CONDITIONS FOR STORAGE WAREHOUSES** – Recommendation was received to provide for an exception for the liquid bulk industry in respect of the conditions listed in rule 29.27(2)
 - Partially accepted
 - The rule will be amended to provide for applicability/relevance

ACCREDITATION

- **ELIGIBILITY FOR ACCREDITATION** – Anybody who is licensed or registered should be eligible for accreditation
 - The goal is to design a program that includes all entities in the supply chain
 - However, the scope of roll out is dependent on *inter alia* operational capability, systems development and development of operational policy and procedure
- **TAX CLEARANCE CERTIFICATE AND AUDITED FINANCIAL STATEMENTS** – A proposal was received to remove the requirement that these supporting documents may not be older than 3 months
 - Accepted
 - Audited financial statements for the preceding financial year will be required
 - The reference to tax clearance certificate will be deleted from the rule

SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

- **GUARANTEES** – A proposal was received that “...the client” be added in rules 31.14 and 31.15 to read: “... by written agreement between the financial institution that issued the guarantee, the client and the Commissioner”
 - Not accepted
 - The client is not a party to the guarantee

OTHER COMMENTS

COMMENT	RESPONSE
No comments were received in respect of Chapter 21 Customs processing of persons entering or leaving the Republic	
Request to delete “personally” in rule 28.8(2)(a).	Accepted
Proposal that the word “licensee” be deleted and replaced with the words “ registered person”	Accepted
Recordkeeping: A proposal was received to substitute in rule 28.20(1)(a) “... from the end of the calendar year in which such record was created” with “ ...from date of registration”	Not Accepted. This rule will be amended to align with policy and will read: “...five years calculated from the date of transaction”. Clients may keep records for longer if they so wish.
A proposal was received for SARS to allow the storage of records at offsite storages	Accepted. Rules will be amended to provide for off-site record keeping in and outside the Republic
Comment received that rule 29.12 (a) appears to be a duplication of rule 29.11(1)(b)	This is not a duplication. Rule 29.11(1)(b) relates to the requirement of the applicant’s address and rule 29.12(a) to the address of the premises to be licensed.
Recommendation was received to delete the requirement to show the location of adjoining licensed premises	Accepted

OTHER COMMENTS

COMMENT	RESPONSE
Clarification was sought regarding the location where the licence should be displayed	Accepted. The rule requiring the display of licences will be deleted
Clarification was sought whether the off-site records storage premises must be licensed	No
Recommendations was received to define "cross-border facility" referenced in rule 29.39(3)(c)	Not accepted. The rule will be amended to explicitly reference cross-border transmission lines, pipelines, cable-cars and conveyor belts
Clarification was sought regarding the difference between a "combination sea cargo terminal" and a "multi-purpose sea cargo terminal"	See the definitions in section 1 of the Control Act
Comments were received recommending that the definition : "goods of South African origin" be more accurately defined	Not accepted. The Duty Act is currently the only tax levying Act that contains origin provisions. If in future amendments are proposed that would create a conflict between tax levying Acts comments can be submitted at that point

THANK YOU
Questions?