

Draft amendments to the rules under sections 21(3) and 60

11 Dec 2023

For external comment

GENERAL EXPLANATORY NOTE:

[] Words that are between square brackets and in bold typeface, indicate deletions from the existing rules

Words that are underlined with a solid line, indicate insertions in the existing rules

SOUTH AFRICAN REVENUE SERVICE

No. R.

2023

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF RULES

Under sections 21, 60 and 120 of the Customs and Excise Act, 1964 (Act 91 of 1964), the rules published in Government Notice R.1874 of 8 December 1995, are herewith amended to the extent set out in the Schedule hereto **with effect from.....**

EDWARD CHRISTIAN KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

Amendment of rule 60.01A

1. Rule 60.01A is hereby amended –

- (a) by the insertion in paragraph (a)(ii) of the following item after item (cc):
“(ccA) operating as a marine remover of fuel levy goods as contemplated in rule 64DA.02”;
- (b) by the insertion in paragraph (c)(i) of the following subitem after subitem (C):
“(D) imported fuel levy products as contemplated in rule 21.05A.02;” and
- (c) by the substitution in paragraph (c)(iii) for item (bb) of the following item:
“(bb) paragraphs (a)(ii)(ccA)[(dd)] to (gg) must be submitted in paper format as contemplated in paragraph (b)(ii).”.

Insertion of rules

2. The following rules are hereby inserted after rule 21.05.13:

“21.05A For the purposes of section 21(3)(a)(ii) the rules numbered 21.05A followed by further digits relate, unless the context otherwise indicates, to the storage of imported fuel levy goods in special customs and excise storage warehouses

Part 1: General

Definitions

21.05A.01 For the purposes of these rules and any form or other document to which these rules relate, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and unless otherwise specified or the context otherwise indicates –

“BELN” means the Republic of Botswana, the Kingdom of Eswatini, the Kingdom of Lesotho or the Republic of Namibia;

“blending” in relation to fuel levy goods in a fuel levy goods special storage warehouse, means to combine such fuel levy goods with any other fuel levy goods, mineral oil products, additives or other goods in a process which alters any standards or specifications of the constituent fuel levy goods causing it to deviate from its original class or kind or tariff classification;

“distillate fuel” means distillate fuel of tariff heading 2710.12.30, as defined in Additional Note 1(g)(ii) and (iii) of Chapter 27 of Part 1 of Schedule No. 1;

“bunkering” means supplying distillate fuel to a foreign-going or coasting vessel for use as ship stores;

“coasting vessel” means a vessel in the territorial waters of the Republic and engaged in the transportation of cargo between seaports within the Republic, but excludes a foreign-going vessel which—

- (a) whilst on a voyage to its end destination in the Republic engages in such transportation during that part of the voyage in the Republic; or
- (b) whilst on a voyage to a destination outside the Republic engages in such transportation during that part of the voyage in the Republic;

“foreign-going vessel” means—

- (a) a vessel at a port, harbour or other place in the Republic if that vessel—
 - (i) has arrived at that port, harbour or other place in the course of a voyage from outside the Republic to a destination or destinations inside the Republic, whether that port, harbour or other place is that destination or one of those destinations or a stopover on its way to that or any of those destinations; or
 - (ii) is scheduled to depart from that port, harbour or other place in the course of a voyage to a destination outside the Republic, whether that port, harbour or other place is its place of departure to that destination or a stopover or one of several stopovers in the Republic from where it departs in the course of that voyage;
- (b) a vessel in the territorial waters of the Republic on a voyage referred to in paragraph (a)(i) or (ii); or
- (c) a vessel on a voyage from a place outside the Republic to a destination outside the Republic—
 - (i) passing through the territorial waters of the Republic; or
 - (ii) making a stopover at any place in the Republic;

“fuel levy goods” in relation to –

- (a) a land-based fuel levy goods special storage warehouse, means fuel levy goods as defined in section 1 of the Act; and

(b) a sea-based fuel levy goods special storage warehouse, means distillate fuel as defined in these rules;

“fuel levy goods special storage warehouse” means a special customs and excise storage warehouse contemplated in section 21(3)(a)(ii) for the storage of imported fuel levy goods and includes –

(a) a land-based fuel levy goods special storage warehouse; and

(b) a sea-based fuel levy goods special storage warehouse;

“harbour” means a port in terms of section 1 of the National Ports Act 2005 (Act No. 5 of 2005);

“land-based fuel levy goods special storage warehouse” means a fuel levy goods special customs and excise storage warehouse contemplated in Part 2 of these rules, situated on land;

“licensed marine remover” means a licensed marine remover of fuel levy goods contemplated in rule 64DA.02;

“own transport” in relation to –

(a) the licensee of a land-based fuel levy goods special storage warehouse, means to transport fuel levy goods from such warehouse by means of a vehicle or vessel –

(i) owned by the licensee, including a vehicle or vessel –

(aa) in possession of that licensee in terms of a hire purchase or lease agreement; or

(bb) rented by that licensee for the purpose of such transport;

and

(ii) operated by a person under the direct instructions of the person permitted to transport; or

(b) the licensee of a sea-based fuel levy goods special storage warehouse, means to transport fuel levy goods from such warehouse by means of a vessel–

- (i) owned by the licensee, including a vessel –
 - (aa) in possession of that licensee in terms of a hire purchase or lease agreement; or
 - (bb) rented by that licensee for the purpose of such transport;
- and
- (ii) operated by a person under the direct instructions of the person permitted to transport;

“sea-based fuel levy goods special storage warehouse” means a fuel levy goods special customs and excise storage warehouse contemplated in Part 3 of these rules, consisting of a storage vessel on sea; and

“storage vessel” means a vessel located at a designated place in relation to a harbour precinct and which is used as a warehouse for the receipt, storage and transfer of bulk distillate fuel for purposes of bunkering.

Licensing of fuel levy goods special storage warehouses

21.05A.02 (a) No person may operate a fuel levy goods special storage warehouse unless such warehouse is licensed in accordance with paragraph (b).

(b) Any person who intends operating a special customs and excise storage warehouse, for the storage of imported fuel levy goods-must –

- (i) apply for a licence in accordance with rule 60.01A(c)(i) and comply with all the requirements specified on the electronic application or form DA 185 and the relevant annexure; and
- (ii) before a licence is issued, furnish any security the Commissioner may require, and if security is furnished in the form of a bond, such bond –
 - (aa) is subject to the provisions of rules 120.08 and 120.09; and
 - (bb) must be in the format determined by the Commissioner.

(c) The provisions of section 60(2) and the rules under that section apply with the necessary changes to any refusal of an application for a licence or the renewal, cancellation or suspension of the licence issued in respect of a fuel levy goods special storage warehouse.

Part 2: Land-based fuel levy goods special storage warehouses

Licensing requirements for land-based fuel levy goods special storage warehouses

21.05A.03 (a) The licensed premises of a land-based fuel levy goods special storage warehouse includes the storage infrastructure at the geographical site as well as any pipeline infrastructure on that site extending up to the location of the inlet and outlet flanges leading into and out of the site respectively.

(b) Flow meters and gauges must be installed to accurately monitor the volume of fuel levy goods received in, stored in and removed from the warehouse at any given time.

(c) Imported fuel levy goods may only be received into a land-based fuel levy goods special storage warehouse upon due entry for storage in such warehouse.

Removal of imported fuel levy goods from land-based fuel levy goods special storage warehouses

21.05A.04 (a) No fuel levy goods shall be removed from a land-based fuel levy goods special storage warehouse, except upon due entry by the importer or, in circumstances where transfer of ownership has taken place in accordance with section 26, the new owner of the goods, for purposes of –
(i) home consumption and upon payment of duty due thereon;

- (ii) export (including supply as ship stores for foreign-going vessels) and payment of duty due thereon;
- (iii) removal to a BELN country and payment of duty due thereon; or
- (iv) re-warehousing in–
 - (aa) a special customs and excise storage warehouse as contemplated in rule 19A4.01(b)(iii), for the storage of fuel levy goods to be marked or used as aviation kerosene as contemplated in section 37A and its rules, which when so marked or so used are free of duty as specified in Part 2A and Part 5 of Schedule No. 1; or
 - (bb) a customs and excise manufacturing warehouse licensed as contemplated in rule 19A4.01(b)(i) for the manufacture of fuel levy goods, for use of the imported fuel levy goods in further manufacture of fuel levy goods.
- (b) Only a licenced remover in bond as contemplated in section 64D, or the licensee of the land-based fuel levy goods special storage warehouse using own transport, may remove imported fuel levy goods by road for –
 - (i) export;
 - (ii) removal to a BELN country;
 - (iii) removal to a rail tanker, a vessel or an aircraft for onward removal for export; or
 - (iv) removal to another warehouse for re-warehousing as contemplated in paragraph (a)(iv).
- (c) Only a licensed marine remover, or the licensee of the land-based fuel levy goods special storage warehouse using own transport, may remove imported fuel

levy goods from a land-based fuel levy goods special storage warehouse located in a harbour area by sea for onward removal for export by sea.

(d) Imported fuel levy goods may only be removed from a land-based fuel levy goods special storage warehouse to any BELN country upon entry for home consumption and payment of duty.

(e) The provisions of rule 19A4.04(b) and (c) shall *mutatis mutandis* apply to such fuel levy goods.

Goods and activities in land-based fuel levy goods special storage warehouses

21.05A.05 (a) Only imported fuel levy goods may be stored in the fuel levy goods special storage warehouse for a six-month period referred to in section 21(3)(d)(i) read with subsection (3)(d)(ii): Provided that any agent referred to in paragraph (c)(i) and (ii) may be kept in the warehouse.

(b) No blending of imported fuel levy goods may take place in a land-based fuel levy goods special storage warehouse, subject to paragraph (c).

(c) Fuel levy goods in a land-based fuel levy goods special storage warehouse may be combined with equivalent fuel levy goods of the same class or kind to obtain a mixture of consistently acceptable quality and the following agents may be added:

(i) A lubricity agent; or

(ii) a distinguishing agent for identification of ownership.

Keeping of books, accounts and documents

21.05A.06 (a) The licensee of a land-based fuel levy goods special

storage warehouse shall keep at the warehouse, in a safe place accessible to the Controller, a record in a form approved by the Controller of all receipts into and deliveries or removals from the warehouse of imported fuel levy goods, with such particulars as will make it possible for all such receipts and deliveries or removals to be readily identified with the fuel levy goods warehoused, and with clear references to the relative bills of entry passed in connection therewith.

(b) For the purposes of section 101 and notwithstanding anything to the contrary in any rule contained, every licensee of a fuel levy goods special storage warehouse must, as required in terms of rule 60.08(2) –

(i) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the storage of imported fuel levy goods and any agent contemplated in rule 21.05A.05(c), for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any customs and excise procedure;

(ii) include in such books, accounts, documents and data any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued; and

(iii) produce such books, accounts, documents and data as the Commissioner may require and submit such particulars in connection with the transactions and activities relating to the licensed premises –

(aa) on demand at any reasonable time; or

(bb) at intervals as may be determined by the Commissioner.

(c) Books, accounts, documents and data contemplated in

paragraph (b) must include any specific records or documents set out in the Oil Industry External Policy as published on the SARS website.

- (d) For purposes of any records kept in terms of this rule any quantity of fuel levy goods must be expressed in litres at 20°C, utilising the IP 60 (B) measurement tables, jointly published by the Institute of Petroleum and the American Society for Testing of Materials.

Part 3: Sea-based fuel levy goods special storage warehouses

Licensing requirements for sea-based fuel levy goods special storage warehouses

- 21.05A.07** (a) Only storage vessels that are self-propelled are eligible for licensing as sea-based fuel levy goods special storage warehouses.
- (b) The licensed premises of a sea-based fuel levy goods special storage warehouse includes the storage vessel and any storage facility that forms and integral part of the structure of that vessel.
- (c) Flow meters and gauges must be installed to accurately monitor the volume of fuel levy goods received in, stored in and removed from the warehouse at any given time.
- (d) A storage vessel operating as a sea-based fuel levy goods special storage warehouse may only operate within a geographical area in relation to a port approved by the Commissioner, and expressed by global positioning system (GPS) co-ordinates.
- (e) A licence dealt with in this rule is issued subject to compliance with all relevant requirements relating to approvals, licences or certificates of whatever nature by the relevant regulatory and other bodies in relation to the

importation and receiving, storage or supply of bunkering fuel.

(f) Imported fuel levy goods may only be received into a sea-based fuel levy goods special storage warehouse upon due entry for storage in such warehouse.

(g) Only a licensed marine remover or the licensee of a sea-based fuel levy goods special storage warehouse using own transport, may remove fuel levy goods from a sea-based fuel levy goods special storage warehouse: Provided that transfers may be effected by pipeline directly from the warehouse to another vessel.

Removal of imported fuel levy goods from sea-based fuel levy goods special storage warehouses

21.05A.08 (a) Imported fuel levy goods in a sea-based fuel levy goods special storage warehouse shall only be removed from such a warehouse upon due entry by the importer or, in circumstances where transfer of ownership has taken place in accordance with section 26, the new owner of the goods, for purposes of –

(i) home consumption (exclusively supply as ship stores for coasting vessels) and upon payment of duty due thereon; or

(ii) export (including supply as ship stores for foreign-going vessels) and payment of duty due thereon; or

(iii) removal to a BELN country and payment of duty due thereon.

(b) No fuel levy goods shall be removed from a sea-based fuel levy goods special storage warehouse for re-warehousing.

Goods and activities in sea-based fuel levy goods special storage warehouses

- 21.05A.09** (a) Only imported fuel levy goods may be stored in a sea-based fuel levy goods special storage warehouse for a six-month period referred to in section 21(3)(d)(i) read with subsection (3)(d)(ii).
- (b) No blending of imported fuel levy goods may take place in a sea-based fuel levy goods special storage warehouse, but such goods may be combined with equivalent fuel levy goods of the same class or kind to obtain a mixture of consistently acceptable quality.
- (c) Fuel levy goods stored in a sea-based fuel levy goods special storage warehouse must be separated from any supplies to be used for purposes of the operation and maintenance of the warehouse.

Application of section 75(18)(d) in relation to imported fuel levy goods entered for storage in sea-based fuel levy goods special storage warehouses

21.05A.10 For purposes of the application of section 75(18)(d) to fuel levy goods entered for storage in a sea-based fuel levy goods special storage warehouse, “landed” means off-loading onto the relevant storage vessel situated within the operational area approved by the Commissioner as contemplated in rule 21.05A.07(d).

Keeping of books, accounts and documents

21.05A.11 (a) The licensee of a sea-based fuel levy goods special storage warehouse shall keep in a safe place on land, approved by the Commissioner and accessible to the Controller, a record in a form approved by the Controller of all receipts into and deliveries or removals from the warehouse of imported fuel levy goods, with such

particulars as will make it possible for all such receipts and deliveries or removals to be readily identified with the fuel levy goods warehoused, and with clear references to the relative bills of entry passed in connection therewith.

(b) Approval contemplated in paragraph (a) is subject to a condition that the licensee of the sea-based fuel levy goods special storage warehouse or the person in physical control of the premises where the records are to be kept, must provide a standing consent that such premises will be accessible to officers without a warrant at any reasonable time for inspecting the relevant records.

(c) For the purposes of section 101 and notwithstanding anything to the contrary in any rule contained, every licensee of a fuel levy goods special storage warehouse must, as required in terms of rule 60.08(2) –

(i) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the storage of imported fuel levy goods for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any customs and excise procedure;

(ii) include in such books, accounts, documents and data any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued;

(iii) produce such books, accounts, documents and data as the Commissioner may require and render such returns or submit such particulars in connection with the transactions and activities relating to the licensed premises –

(aa) on demand at any reasonable time; or

(bb) at intervals as may be determined by the Commissioner.

- (d) Books, accounts, documents and data contemplated in paragraph (c) must include any specific records or documents set out in the Oil Industry External Policy as published on the SARS website.
- (e) For purposes of any records kept in terms of this rule any quantity of fuel levy goods must be expressed in litres at 20°C, utilising the IP 60 (B) measurement tables, jointly published by the Institute of Petroleum and the American Society for Testing of Materials.

Part 4: Miscellaneous

Interpretation of “remover of goods in bond” for purposes of application of drawback items 522.07 and 541.01

21.05A.12 For purposes of the application of drawback items 522.07 and 541.01 in relation to exports of fuel levy goods contemplated in these rules, a reference to a “remover of goods in bond” in those items must be interpreted to include a licensed marine remover.”.

Insertion of rules

3. The following heading and rules are hereby inserted before rule 64E.01:

“Rules numbered 64DA followed by further digits relate, unless the context otherwise indicates, to the licensing of marine removers of fuel levy goods

Definitions

64DA.01 For purposes of these rules and any form to which these rules relate, unless otherwise specified or the context otherwise indicates –

“bunkering”, “coasting vessel”, “foreign-going vessel”, “fuel levy goods”, “land-based fuel levy goods special storage warehouse”, “own transport”, and “sea-based fuel levy goods special storage warehouse” respectively, has the meaning assigned to it in rule 21.05A.01;

“licensed marine remover” means a remover of fuel levy goods contemplated in rule 64DA.02; and

“these rules” means the rules numbered 64DA.

“Licensing of marine removers of fuel levy goods

- 64DA.02** (a) All movements of fuel levy goods on sea between shore and vessels, sea-based fuel levy goods special storage warehouse and vessels. or between respective vessels must be done by a licensed marine remover, except for transfers by pipeline and movements by the licensee of either a land-based or sea-based fuel levy goods special storage warehouse using own transport.
- (b) Any person who intends to operate a vessel for purposes of a movement of fuel levy goods as contemplated in paragraph (a), must –
- (i) apply for a licence in accordance with rule 60.01A(c)(iii)(bb); and
 - (ii) comply with all the requirements specified on form DA 185 and the relevant annexure.
- (c) An applicant must, before a licence is issued, furnish any security the Commissioner may require, and if security is furnished in the form of a bond, such bond –
- (i) is subject to the provisions of rules 120.08 and 120.09; and
 - (ii) must be in the format determined by the Commissioner.
- (d) The provisions of section 60(2) and the rules under that section apply with the necessary changes to any refusal of an application for a licence or the renewal, cancellation or suspension of the licence issued in respect of a marine remover of fuel levy goods.

Licensing requirements

- 64DA.03** (a) A licence contemplated in rule 64DA.02 is issued subject to compliance with all relevant requirements relating to approvals, licences or certificates of whatever nature by the relevant regulatory and other bodies in relation to bunkering operations.
- (b) A vessel operated by a licensed marine remover for purposes described in rule 64DA.02(a) –
- (i) may not be used as a storage facility for fuel levy goods and no fuel levy goods may remain on the vessel for a period longer than what is reasonable to complete the movement of the relevant goods to its delivery point;
 - (ii) must be fitted with flow meters and gauges to accurately monitor the volume of fuel levy goods received and delivered; and
 - (iii) must be made available for inspection by an officer at any reasonable time required.

Permissible activities in relation to licensed marine removers

64DA.04 A licensed marine remover may operate a vessel for any movement contemplated in rule 64DA.02(a).

Commissioner to be notified of any accident, breakdown or other act or omission affecting the security of the fuel levy goods on board

- 64DA.05** The licensed marine remover must without delay notify the Commissioner of any of the following events occurring during the transportation of the relevant fuel levy goods:
- (a) An accident involving or resulting in the contamination, destruction or diminution of such goods;
 - (b) a breakdown of the vessel operated by the licensed marine remover or other unforeseen circumstances

- necessitating the transfer of such goods on to another vessel; or
- (c) any other act or omission of whatever nature affecting in any manner the security of such goods.

Keeping of books, accounts and documents

64DA.06 (a) A licensed marine remover shall –

- (i) keep an up to date list of the vessels used for any movement of fuel levy goods contemplated in rule 64DA.02(a), indicating the date of any deletion or addition;
- (ii) for purposes of section 101 and as required in terms of rule 60.08(2) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to any movement of fuel levy goods contemplated in rule 64DA.02(a) for a period of five years calculated from the end of the calendar year in which any such document was created or lodged;
- (iii) include in such books, accounts and documents any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued;
and
- (iv) produce such books, accounts, documents and data on demand at any reasonable time and submit such particulars in connection with the transactions relating to the removal of distillate fuel as the Commissioner may require.
- (b) The books, accounts and documents referred to in subparagraph (a) must include any specific records or documents set out in the Oil Industry External Policy as published on the SARS website.

Amendment of forms

4. Item 202.00 of the Schedule to the rules is hereby amended by the substitution of the following forms:

- “DA 185 Application form – Registration/Licensing of Customs and Excise Clients

- DA 185.4B4 Licensing client type 4B4: Special storage warehouse”

Insertion of form

5. Item 202.00 of the Schedule to the rules is hereby amended by the insertion of the following form:

- “DA 185.B17 Licensing client type 4B17: Marine remover of fuel levy goods”

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