

CUSTOMS

EXTERNAL POLICY

STATE WAREHOUSE

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1 SUMMARY OF MAIN POINTS

- a) Goods liable to forfeiture and pending compliance to any condition of the Act may be removed and stored in the State warehouse or a place deemed to be a State warehouse.
- b) Goods may only be released from the State warehouse after Customs clearance has been made.
- c) Customs disposes of goods that are abandoned, prohibited or remain unentered after sixty (60) days.

2 POLICY

2.1 Deposit goods in the State warehouse

- a) Unentered, detained, seized and abandoned goods must be removed and stored in the State warehouse or a place deemed to be a State warehouse.
- b) A place deemed to be a State warehouse is premises such as a depot, airline transit shed, degrouping depot or port authority which:
 - i) The State warehouse Officer appoints as a place deemed to be a State warehouse by emailing a letter of appointment (SC-CW-01-02-A02) to that premises' employee (depositor); and
 - ii) Has consented to store the goods by signing SC-CW-01-02-A02 and emailing it to the State warehouse Officer.
- c) If unentered goods are at a place deemed to be a State warehouse and remain uncleared after a period of fourteen (14) days for break-bulk and 28 days for containerised goods, that premises' employee must notify the State warehouse of such goods and remove them to the State warehouse.
- d) The goods deposit note (SC-CW-01-02-A12) must be completed and signed by the depositor of the goods.
- e) The depositor must hand deliver or email SC-CW-01-02-A12 and all the required documents such as transport documents, Customs Clearance Declaration (CCD), detention notice and other supporting documents to the State warehouse Officer.

2.2 Release of goods

- a) Section 17 – State warehouse
 - i) Section 17(1)(a) provides that goods are taken to and secured in State warehouses. The Commissioner may require rent to be paid for the period that the goods remain therein at the rates fixed by Rule. These rates are fixed in Rule 17.02.
 - ii) Section 17(1)(b) states that goods removed from the State warehouse shall be subject to the payment of the rent in force at the time of removal thereof.
 - iii) Section 17(2) provides that delivery of such goods may be refused until proof is furnished that the person claiming the goods is lawfully entitled to such goods, all relevant provisions of the Act or any other law relating to the import or removal of such goods have been complied with and that freight and other charges and rent due have been paid.
 - iv) Section 17(3) states that the State or any officer shall not be liable for loss, diminution, or damage to the goods in the State warehouse or loss or damage as a result of wrong delivery.
 - v) Section 17(4) provides that if delivery of the goods has been granted and the goods are not immediately removed, they may be dealt with as if entry has not been made. No State warehouse rent shall be payable on goods stored at a place deemed to be a State warehouse. When goods stored at a place deemed to be a State warehouse are disposed of by auction or tender, the owner may lodge a claim against the proceeds of the sale. Such claims shall be limited to the outstanding amount due in respect of the goods at the time of sale. Storage charges shall not be recovered from the purchaser of the goods on a sale.
- b) Section 42(2)(a) provides that the place where goods are examined is considered to be a special State warehouse until it is dealt with in accordance with the Act. Due entry must be made within three (3) days of the date on which the goods were delivered to such premises.

- c) Section 42(2)(b) provides that if due entry on such goods is not made within three (3) months from the date of receipt thereof it may be disposed of in terms of Section 43.
- d) Section 93 provides that remission or mitigation of penalties and forfeiture provides for the delivery of the goods to the owner subject to payment of duty, charges (including State warehouse rent) and other conditions which may include payment of an amount not exceeding the value of the goods plus any unpaid duty thereon.
- e) A list of unentered goods in the State warehouse is published weekly on the SARS website for clients to identify their goods and make due clearance.
- f) Rule 17 – Rent to be paid on goods in the State warehouse:
- i) In terms of Rule 17.01(a)(iv) rent must be charged inclusive of the day the goods are received and the day the goods are delivered and any part of such day must be regarded as a full day. The rent-free period allowed for the removal of the goods must be calculated as contemplated in Rule 17.04.
 - ii) In terms of Rule 17.01(b) delivery of the goods from a State warehouse or any other place deemed to be a State warehouse may be obtained on application on a DA 68 and payment of the rent due to the Controller / Branch Manager in whose area of control the State warehouse is situated. Although rent will not be payable on goods stored in a place deemed to be a State warehouse, it must be entered into the State warehouse register and released on a DA 68. Delivery of such goods shall be authorised by the Controller / Branch Manager on a DA 68 or in terms of any other document. Goods may only be received into or taken from a State warehouse during the hours prescribe for the State warehouse or that of general attendance prescribed for the office in Rule 201.20.
 - iii) In terms of Rule 17.02(a) rent shall be charged on goods for the period it remains in the State warehouse at the prescribed rates. The rules distinguish between three (3) categories of goods on which rent is charged, i.e.
 - A) Goods imported or exported by travellers;
 - B) Uncleared goods (excluding goods imported or exported by travellers); and
 - C) Cleared goods (excluding goods imported or exported by travellers).
 - iv) In terms of Rule 17.02(b) (goods imported or exported, cleared or uncleared, by travellers) a distinction is made between goods, delivered in terms of Section 93, sold in terms of Section 43(3), detained in terms of Section 113(8) or taken in for any other reason. The rate of rent provided for each category shall be calculated per kilogram or part thereof per day or part thereof.
 - v) In terms of Rule 17.02(c) (uncleared goods (excluding goods imported or exported by travellers)) a distinction is made between the rates payable per kilogram or part thereof per day or part thereof, depending on the duration of stay in the warehouse, for the following categories of goods:
 - A) Landed at a place where they were not consigned;
 - B) Delivered in terms of Section 93;
 - C) Sold in terms of Section 43(3); and
 - D) Taken in for any other reason.
 - vi) In terms of Rule 17.02(d) [cleared goods (excluding goods imported or exported by travellers)] a distinction is made between the rates payable per kilogram or part thereof per day or part thereof, depending on the duration of stay in the warehouse, for the following categories of goods:
 - A) Landed at a place where they were not consigned;
 - B) Not subject to compliance with any Customs laws or procedures; and
 - C) Taken in for any other reason.
 - vii) In terms of Rule 17.03(a) rent is not charged when:
 - A) Detained or seized goods are released without legal compliance conditions to the release, i.e. the goods are released without any changes to the processed clearance;
 - B) Goods are taken into and secured in a State warehouse in error;
 - viii) In terms of Rule 17.03(b) delivery of the goods must be taken within three (3) working days from the processing of the DA 68. If not, rent is again charged from the fifth day. The exception to this rule will be:
 - A) Where the Commissioner undertakes delivery of goods;

- B) Detained or seized which are released without legal compliance conditions attached to the release; and
- C) Goods on which a lien in terms of Section 114 has been placed are released and delivered to the party from whose control the goods were removed.
- ix) In terms of Rule 17.03(c) the Commissioner may exempt goods from the payment of rent when considering an application for the release of goods in terms of Section 93.
- x) Rule 17.04(a) makes provision for a rent-free period for the removal of goods from the State warehouse which is –
 - A) Three (3) official working days after the date on the DA 68 and receipt issued in the case where rent is paid under normal circumstances and
 - B) When goods are sold by auction within:
 - C) Three (3) official working days from the date after delivery is granted on the DA 68; or
 - D) Three (3) months from the date of sale, in respect of goods sold subject to compliance with specific conditions.
- xi) In terms of Rule 17.04(b) a working day means the hours of attendance prescribed in the Rules.

2.3 Disposal of goods

- a) Section 43 provides that disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods.
- b) Section 43(1) requires that if imported goods have not been cleared in terms of Section 38, in the case of goods in a container depot within 28 days and in any other case in the time prescribed by any Rule to Section 38, any person who has control over such goods must furnish a list thereof and all available documents to the Controller / Branch Manager and remove the goods to the State warehouse or such other place indicated by the Controller / Branch Manager. The Controller / Branch Manager may, where a person fails to remove such goods, do so at the risk and expense of such a person or allow such goods to remain under the control of such a person.
- c) Section 43(2)(a) states that if goods are removed to a place other than the State warehouse or are remaining at any other place, such a place shall be deemed to be a State warehouse for the purposes of the Act. Subsection 2(b) places the responsibility for such goods on the person having control of thereof as if the goods were in a State warehouse from the date so indicated by the Controller / Branch Manager and places the liability for such goods on such a person. It also provides that such a person shall be entitled to collect his or her full storage charges from the owner / importer / exporter. No State warehouse rent shall be payable on goods stored at a place deemed to be a State warehouse. When goods stored at a place deemed to be a State warehouse are disposed of by auction or tender, the owner may lodge a claim against the proceeds of the sale. Such claims shall be limited to the outstanding amount due in respect of the goods at the time of sale. Storage charges shall not be recovered from the purchaser of the goods on a sale.
- d) **Section 43(3) provides that the client has sixty (60) days to clear unentered goods in terms of SC-CF-55. Failure to do so will lead to the goods being disposed of.**
- e) **Section 43(5)(a) provides that detained goods pending investigation or subject to any outstanding legal proceedings are not disposed of until such proceedings are finalised.**
- f) Section 43(6)(b) provides that whenever goods seized and detained in terms of Section 113A remains in a Counterfeit Goods Depot and the importer is not known and no action is taken or instructions given in terms of the Counterfeit Goods Act, such goods shall be removed for detention to the State warehouse.
- g) **Section 43(10) provides that the client must apply for abandonment of goods in terms of the conditions specified in Rebate Item 412.07 of Schedule 4 or Rebate Item 522.02 of Schedule 5 on condition that a Customs declaration together with a valid indemnity is submitted to Customs.**

2.4 Keeping of records

- a) **Every declarant must keep for record purposes for a period of five (5) years:**
 - i) **Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and**

- ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).
- c) Every declarant must produce such books, accounts and documents on demand.

2.5 Penalties

- a) Failure to adhere to the provisions of the Act is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties (SC-CO-01-02);
 - ii) Criminal prosecution; or
 - iii) Suspension or cancellation of registration, license or accreditation.

2.6 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
 - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action, which significantly and unfavourably affects the rights or valid expectations of any person, must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
 - i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
 - i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within thirty (30) days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within forty five (45) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

2.7 Appeals against decisions

- a) In cases where applicants are not satisfied with any decision taken in terms of the Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CA-02.
- b) If clients disagree with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee must add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-26.

3 RELATED INFORMATION

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 4, 17, 38, 43, 88, 90, 93, 96, 107 and 113(8) Customs and Excise Rules: Rule 17 and 43
Other Legislation:	None
International Instruments:	None

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CA-02	Internal Administrative Appeal – External Policy
SC-CC-28	Counterfeit Goods – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-55	Clearance Declaration – External Policy
SC-CO-01-02	Offences and Penalties – External Policy

3.3 Quality Records

Number	Title
DA 68	Application for delivery of goods from the State warehouse
P1.154	Destruction certificate

4 DEFINITIONS AND ACRONYMS

State Warehouse	Premises appointed or provided by the State for the deposit of goods and security thereof pending compliance with the provisions of any law in respect of such goods.
PAJA	Promotion of Administrative Justice Act

5 DOCUMENT MANAGEMENT

Policy Owner	Director: Customs: Border Operations, Ports of Entry & Customs Compliance
Detail of change from previous revision	<ol style="list-style-type: none"> a) Added summary of main points b) Clarified what a place deemed to be a State warehouse is and how Customs appoints such premises to be a place deemed to be a State warehouse c) Merged the relevant items from the Standard Operating Procedure with the policy d) Removed the following because the information is: <ol style="list-style-type: none"> i) Available in the Act: <ol style="list-style-type: none"> A) Rule 201.20 regarding hours of business; and B) Section 1 regarding definitions ii) Not relevant to this document: <ol style="list-style-type: none"> A) Section 87 regarding goods liable to forfeiture;

	<ul style="list-style-type: none"> B) Section 96 regarding the notice of action for seized goods; C) Section 113A regarding the detention and seizure of counterfeit goods as covered in SC-CC-28; D) Section 114 regarding detained goods subject to a lien until the debt is paid; and E) Counterfeit Goods Act No. 37 of 1997 and Merchandise Marks Act No. 17 of 1941 <p>e) Included the following sections:</p> <ul style="list-style-type: none"> i) Section 43(3) providing for the disposal of goods kept in the State warehouse for more than sixty (60) days; ii) Section 43(5)(a) providing that detained goods pending investigation may not disposed of; and iii) Section 43(10) providing that clients must apply for abandonment of goods <p>f) Added the following standard paragraphs:</p> <ul style="list-style-type: none"> i) Keeping of records and appeals against decisions; ii) Penalties; iii) Promotion of Administrative Justice Act; and iv) Appeals against decisions
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