

CUSTOMS

EXTERNAL POLICY

STATE WAREHOUSE

TABLE OF CONTENTS

1	SCOPE	3
2	POLICY	3
3	KEEPING RECORDS	7
4	PENALTIES	7
5	APPEALS AGAINST DECISIONS	7
6	REFERENCES	7
6.1	Legislation	7
6.2	Cross References	8
7	DEFINITIONS AND ACRONYMS	8
8	DOCUMENT MANAGEMENT	11

1 SCOPE

- a) This document governs the following procedures in the State warehouse:
- i) Governance;
 - ii) Removal of goods;
 - iii) Acceptance of goods;
 - iv) Release of goods from; and
 - v) Disposal of goods.
- b) This policy provides for the use of State warehouses for the deposit:
- i) of uncleared imported goods therein, for the safekeeping of such goods, the security thereof and for the duties due thereon;
 - ii) of goods detained subject to compliance with the Act;
 - iii) of goods seized, dealt with in contravention of the Act; and
 - iv) of goods pending compliance with the provisions of any law which are enforced on behalf of other legislative authorities, pending compliance and the clearance thereof subject to the payment of rent or disposal of the goods condemned and forfeited to the State.

2 POLICY

- a) This policy must be read in conjunction with the Sections of the Act and the Rules thereto as well as of all legislation referred to and is to be regarded as the official policy and procedure of SARS Customs with regards to all matters pertaining to the removal, storage and disposal of goods to and from the State warehouse.
- b) Legislation with regards to the State warehouse can primarily be found in Sections 17 and 43 and the Rules thereto. It is important to take cognisance of the fact that Section 17 deals with the payment of State warehouse rent and Section 43 with the removal and disposal of goods to and from the warehouse.
- c) Other Sections of the Act and the Rules thereto which apply directly to the State warehouse are also summarised hereunder.
- d) **Section 1 – Definitions** - The definition of State warehouse provides for the establishment of a premise by the State for the deposit of goods for the purpose of safeguarding the duties due thereon and compliance with legislative requirements.
- e) **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.

- f) **Section 42 – Entry by bill of sight**
- i) 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.
 - ii) 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.
- g) **Section 43 – Disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods**
- i) 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.
 - ii) 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.
 - iii) Section 43(3) alludes to the inclusion of State warehouse rent in charges due to the Commissioner when allocations from the proceeds of sale are made.
 - iv) 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.
- h) **Section 87 – Goods irregularly dealt with liable to forfeiture** provides for the circumstances in which goods become liable to forfeiture.
- i) **Section 88 - Seizure**
- i) Section 88(1)(a) provides for the detention of goods and Section 88(1)(b) provides that goods may be detained where they are found or removed to a place determined by an officer.
 - ii) Section 88(1)(d) provides for the seizure of goods.
- j) **Section 89 - Notice of claim by owner in respect of seized goods** provides for the circumstances under which seized goods are considered to be condemned and forfeited and may be disposed of in terms of Section 43.
- k) **Section 90 – Disposal of seized goods** provides that goods seized must be delivered to the nearest office (State warehouse) or secured where it is found.
- l) **Section 93 – 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.

- m) **Section 96 – Notice of action and period for bringing action** provides for the prescriptive period within which notice of action must be given in respect of inter alia goods seized in terms of the Act.
- n) **Section 107 – Expenses of landing, examination, weighing, analysis, etc.** provides that goods remaining in the custody or under the control of the Commissioner after 28 days from the date of entry may be removed to the State warehouse or other place indicated and disposed of in terms of Section 43(3).
- o) **Section 113 – Prohibitions and restrictions** provides for the detention of goods for purposes of any other law while goods are under Customs control and Section 113(8)(b) provides that such goods may be detained where they are found or removed to a place determined by an officer.
- p) **Section 113A – Powers and duties of officers in connection with counterfeit goods**
 - i) Section 113A(1) provides for the detention and seizure of counterfeit goods Customs officers.
 - ii) Section 113A(3) prohibits the storing of counterfeit goods in a State warehouse unless it is detained or seized for the purpose of Act.
- q) **Section 114 – Duty constitute a debt to the State** provides that whenever a debt arises from the payment of any duty, interest, fine or forfeiture the Commissioner may detain goods mentioned in the Section and such goods shall be subject to a lien until such debt is paid. In terms of Subsection 114(2)(a) such goods may be detained where they are found or be removed to a place of security determined by the Commissioner.
- r) **Rule 17 – Rent to be paid on goods in the State warehouse**
 - i) In terms of Rule 17.01(a)(i) the Rules apply to goods taken to and secured in a State warehouse.
 - ii) The definitions stated in Rule 17.01(a)(ii) refers to a carrier mentioned in the Rules to Section 8, Customs and excise laws and procedures mentioned in Rule 59A.01(a), sold in terms of Section 43(3) [includes goods to which Sections 41(2) and 107(1)(b) relates] and uncleared goods, which includes goods detained in terms of Section 114 which are not required to be entered or declared.
 - iii) In terms of Rule 17.01(a)(iii) any fraction of a metric ton or a cubic metre shall be considered a whole metric ton or a cubic metre for the purposes of determining the freight tonnage of the consignment.
 - iv) 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.
 - v) 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.
 - vi) 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).
 - vii) 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.

- viii) 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.
- ix) 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.
- x) 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;
 - C) Goods on which a lien in terms of Section 114 has been placed are released to the party from whose control the goods were removed; or
 - D) When goods are moved between State warehouses. Goods are usually moved between State warehouses (including places deemed to be State warehouses) for purposes of space, auction, etc. Irrespective of such movement, rent which is due must be paid from the date of entry into the first State warehouse.
- xi) 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.
- xii) 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.
- xiii) 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
 - I) Three (3) official working days from the date after delivery is granted on the DA 68; or
 - II) Three (3) months from the date of sale, in respect of goods sold subject to compliance with specific conditions.
- xiv) In terms of Rule 17.04(b) a working day means the hours of attendance prescribed in the Rules.
- s) **Rule 43.02 – Claim for unpaid freight and charges** claims for charges must be supported by a letter of indemnity and documentary proof of the amount of the charges.
- t) **Rule 201.20 – Hours of business** provides for the hours of business for specific activities at specific Branch Offices.
- u) SARS Customs perform certain control functions on behalf of other authorities and institutions in ensuring compliance with other laws pertaining to prohibitions or restrictions imposed on the importation of goods. The requirements of such legislation are generally in the form of either a total prohibition or in the form of a permit or certificate allowing for the import of specific goods issued by a specific authority.
- v) Permits or certificates are either issued in hard copy or transmitted electronically onto the import permit system. For specific prohibitions and restriction **see** the list of prohibitions and restrictions.

However, specific restrictions such as Labelling (SC-IM-01-08) requirements are contained in internal and external policy documents.

- w) Most of such restrictions are inserted in the **Declaration** system which will either access the import permit system and deduct the required quantities or call for the permit or certificate to be submitted for writing off or for retention.
- x) Detention of goods for the purpose of ensuring compliance with other laws is done in terms of Sections 113(8) and 113A.

3 Keeping records

- a) Every client 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 client must produce such books, accounts and documents on demand.

4 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties;
 - ii) Criminal prosecution; and / or
 - iii) Suspension or cancellation of registration, license or accreditation.

5 Appeals against Decisions

- a) In cases where clients 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-CC-24 – Internal Administrative Appeal – External Policy.
- b) Should clients be unhappy 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 will 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 – Alternative Dispute Resolution – External Policy.

6 REFERENCES

6.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 1, 4, 17, 38, 42, 43, 88, 89, 90, 93, 96, 107, 113(8), 113A and 114 Customs and Excise Rules: Rule 17 and 43
Other Legislation:	Counterfeit Goods Act No. 37 of 1997: Section 1 Merchandise Marks Act No. 17 of 1941: Sections 10(1) and 11(1)
International Instruments:	None

6.2 Cross References

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
SC-CC-24	Internal Administrative Appeal – External Policy	All
SC-CC-26	Alternative Dispute Resolution – External Policy	All
SC-CF-10	Dangerous Goods - External Policy	All
SC-CW-01-04-S01	State Warehouse – External SOP	All
SC-DT-C-13	Refunds and Drawbacks – External Policy	All
SC-IM-01-08	Labelling requirements for specific imported goods – External Policy	All

7 DEFINITIONS AND ACRONYMS

A place deemed to be a State warehouse	An area or premises, within the Customs controlled area, which is officially appointed and deemed to be a State warehouse in terms of Section 43(2)(a). This may include an open area, a building or a safe under the direct control of the owner of the place deemed to be a State warehouse. Goods stored at such premises are considered to be in the State warehouse.
Abandonment	The act of relinquishing of all rights to any goods to the State.
Air waybill	A document being a contract between an airline and an importer / exporter for the conveyance of goods from a specified port of exit to a specified port of entry.
Appropriation	SARS Customs, in the role of an appropriator, duly empowered in terms of the Act to take possession of certain goods for specific purposes in appropriate circumstances.
Bill of lading	A document being a contract between the shipper and a shipping company for the conveyance of goods from a specified port of exit to a specified port of entry.
Cargo manifest	A listing of goods comprising cargo (freight) carried by a means of transport. The cargo manifest describes the particulars of the goods, e.g. transport document number, consignors, consignees, marks and numbers, number of packages etc.
Carrier	The person actually transporting, or in charge of, or responsible for the operation of the means of transport. Refer to Rule 8.02.
Clearance	The process of declaring goods and obtaining official release by correctly applying the administrative requirements of Customs by the adherence to the Act or, any other laws applicable to imported / exported goods. [Section 38 refers] Also referred to as entry of goods.
Cleared goods	Goods which have been entered or declared in terms of applicable Customs and excise laws and procedures relating to those goods, whether or not they have been validly so entered or declared.
Clearing agent	A person or company licensed in terms of Section 64B(1).
Common Customs area	The combined area of South Africa and territories with the Governments with whom Customs Union Agreements have been concluded under Section 51
Condemnation and forfeiture	Goods which are smuggled or, imported / exported contrary to any law and / or, are found unfit for use, and being liable to forfeiture. Forfeiture is defined as the act of being deprived of something as a punishment for failure to adhere to the provisions of the Act. Goods stored in the State warehouse which is determined illegal, illicit and / or goods which are not cleared within the time period as stipulated by law may become condemned and forfeited and thereafter disposed of by Customs in terms of Section 43.
Controller / Branch Manager	Is the officer designated by the Commissioner to be the Controller of Customs and Excise in respect of an area of Customs control. This person may also be referred to as the Branch Manager.
Counterfeit goods	Goods which are imported / exported in contravention of the Counterfeit Goods Act No. 37 of 1997 and for which Customs has received an indemnity from the trade mark holder indemnifying the Commissioner against any claims of any nature which may result from the detention / seizure of such goods.
Counterfeit Goods Act	Counterfeit Goods Act No. 37 of 1997
Cubic meters	The measurements of goods taken up or delivered from the State warehouse expressed in cubic meters, i.e. the total sum of the length multiply by the width multiplied by the length.

MMA	Merchandise Marks Act No. 17 of 1941
MOU	Memorandum of Understanding. A document, being an agreement between two (2) parties sharing a common interest in any specific activity.
Natural person	Refers legally to a private individual (human being) as opposed to a company or a corporate body.
Not subject to compliance with any Customs laws or procedures	Reference is made to the meaning assigned thereto in Rule 59A.01(a). This includes compliance with the provisions of the Customs and Excise Act, any instruction issued by the Commissioner or Controller / Branch Manager for the purposes of administering any activity regulated by the Act and any provision of any other law pertaining to goods administered under any provision of the Act.
Officer	A person employed on any duty relating to Customs and Excise by order or with the concurrence of the Commissioner, whether such order has been given or such concurrence has been expressed before or after the performance of any duty.
Over plus	Refers to "claimed" nett proceeds of uncleared goods which have been sold by auction, after all duties due to Customs, VAT, liens and charges claimed from other institutions have been subtracted from the selling price of the goods.
Package	Can be any outer packing material, wrapping, outer box / cover and its contents, or any bundle or, single piece, in the case of unpacked goods.
Perishable goods	Goods which may decay or, deteriorate thereby becoming worthless or, unsaleable.
Pilot	The person in charge of any aircraft. Refer to Section 1.
Prefix code	The code allocated on DA 322 (State warehouse register) for all goods received into the warehouse, e.g. PD = provisionally detained.
Release from the State warehouse	The procedure involving the removal / release of goods from the State warehouse and the acceptance and processing of a DA 68 – Application for Delivery of Goods Ex-State warehouse.
Rent	This pertains to State warehouse rent which is deemed a charge due to the Commissioner. The Commissioner is obliged in terms of the Act to pay certain rent amounts to the owner of a place deemed to be a State warehouse who becomes entitled to such rent. [Section 43(2)(b)(iii) refers]
Rent free	In specified circumstances where Controllers / Branch Managers are authorised to release goods from the State warehouses without payment of State warehouse rent [Rule 17.03(a)].
Rent free period	The period allowed for the removal of goods from the State warehouse after clearance or sale by auction or tender and the processing of the DA 68 – Application for Delivery of Goods Ex-State warehouse (Rule 17.04(a)).
SABS	The South African Bureau of Standards
SAPO	South African Ports Organisation
Sight bill of entry	A document submitted by the importer / exporter requesting an examination of the contents in order to obtain valid information for Customs clearance purposes. This is not an entry for home consumption.
Sold in terms of Section 43(3)	Goods in a State warehouse or a place deemed to be a State warehouse which has been sold by the Commissioner after the expiry of the prescriptive period, includes goods removed to the State warehouse in terms of Sections 42(2) and 107(1)(b).
State Warehouse	Premises provided by the State or appointed by the State, for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods. This does not include areas or safes not under the same roof or, not under the direct control of State warehouse Keepers. Refer to Section 1.
State warehouse Keeper	The person in charge of a State warehouse under whose authority goods are taken into and delivered from a State warehouse or a place deemed to be a State warehouse.
State Warehouse Register	A record consisting of DA 322, designed for the purpose of recording and classification (prefix codes) of goods accepted and removed from the State warehouse. May be in hard copy or electronic format.
Surplus	The nett proceeds of an auction after all duties and charges due to Customs and any other party have been deducted.
SWIMS	State Warehouse Inventory Management System

Taken in for any other reason	Goods taken into a State warehouse for reasons other than landed at a place where they were not consigned, delivered in terms of Section 93, i.e. goods liable to seizure, and sold in terms of Section 43(3).
The Act	The Customs and Excise Act No. 91 of 1964
Tariff	The Customs tariff book including Schedule 1 to 6, 8 and 10 which also include the Trade Agreements with Zimbabwe and Malawi.
Tender	The process of sale of goods, from the State warehouse which involves written notification or, offer in a formal manner for the purchase of such goods.
Uncleared goods	Uncleared goods refers to goods which must be entered or declared in terms of Customs and excise laws and procedures, which have not been so entered or declared or in the case of goods to which Section 114 relate, any goods which are detained in terms of that Section and are not required to be so entered or declared" [Rule 17.01(a)(ii)].
Value for duty / accounting purposes	This is the value "knocked down price" of all goods sold from the State warehouse and is the value on which Customs duties, VAT and other charges is calculated. This is not a Customs value in the sense of Customs valuation, as legislated in Sections 65 and 66.
VIN	Vehicle identification number
VAT	Value-Added Tax levied on goods in terms the Value-Added Tax Act No. 89 of 1991 as read with the Act
Walker	Natural persons who regularly cross land border posts on foot and may be in possession of dutiable accompanied baggage

8 DOCUMENT MANAGEMENT

Business Owner	Executive: Customs Operations
Document Owner	Executive: Process Solutions Customs & Support Services
Author	P Ntate
Detail of change from previous revision	Insertion of information on record keeping, penalties and appeals.
Template number and revision	ECS-TM-02 - Rev 12