

## RULES IN TERMS OF THE CUSTOMS CONTROL ACT, 2014

Explanatory note on rule numbering: Please note that the Chapters into which these Rules are divided correspond with the Chapter numbers in the Control Act. Each rule is numbered with a combination of two numbers. The first number indicates the number of the Chapter of the Control Act under which the Rule is made which is also the Chapter number of this document in which the rule appears. The second number indicates the serial number of the Rule itself.

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### CHAPTER 1

#### MATTERS RELATING TO INTERPRETATION, APPLICATION AND ADMINISTRATION OF CONTROL ACT AND THESE RULES

##### *Part 1: Interpretational matters*

##### **Definitions for purposes of these Rules**

**1.1** (1) In these rules, unless the context otherwise indicates—

“**abandoned**”, in relation to wreck, means when the owner and all other parties having a pecuniary interest in a wreck have relinquished their rights to search for or salvage the wreck;

“**accounting period**”, in relation to a CTC, means the period for which imports or exports of a CTC must be accounted for, which period starts at 00:00 on the first day of a calendar month and ends at 24:00 on the last day of that month;

“**accredited client**” means a person on whom accredited client status has been conferred in terms of Chapter 30 of the Control Act;

“**AGOA**” means the African Growth and Opportunity Act, 2000, of the United States of America;

“**air cargo details**” means the following information in relation to each consignment of air cargo:

- (a) The port of loading;
- (b) the port of discharge;
- (c) in the case of an inbound consignment, an indication of whether the consignment is destined—
  - (i) for the Republic;
  - (ii) for transshipment;
  - (iii) for international transit; or
  - (iv) to remain on board the aircraft without off-loading until it leaves the Republic;
- (d) in the case of an outbound consignment, an indication of whether the consignment is destined for export under—
  - (i) the export procedure;<sup>1</sup> or
  - (ii) another customs procedure that allows the export of goods under that procedure;<sup>2</sup>
- (e) the number of the master air waybill issued in respect of or covering the consignment, and the identity of the party who issued it;
- (f) if the consignment is part of consolidated cargo—
  - (i) an indication that the consignment is part of such cargo;
  - (ii) the number of any house air waybill issued in respect of the consignment; and
  - (iii) the identity of the party who issued it;
- (g) the full name and physical and postal address of the consignor;
- (h) the full name and physical and postal address of the consignee;
- (i) a precise description of the goods in the consignment, or the six digit Harmonised Commodity Description and Coding System number under which the goods are classified;

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<sup>1</sup> This could be any goods exported under the export procedure, whether for outright export or under a customs procedure that relies on the export procedure for the clearance of goods for export, such as goods exported for outward processing or inward processed compensating products exported under inward processing.

<sup>2</sup> Such as transshipment or international transit.

- (j) the number of packages, based on the smallest packing unit, covered by the air waybill issued in respect of the consignment;
- (k) the type of packages;
- (l) the gross mass of the packages;
- (m) the unit of measure; and
- (n) the relevant international dangerous goods code as may be applicable to the goods in terms of the International Air Transport Association (IATA) Dangerous Goods Regulations (DGR) , if the goods are hazardous goods;

**“air carrier”** means a person referred to in paragraph (a) of the definition of “carrier” in section 1(1) of the Control Act;

**“authorised officer”**, in relation to a juristic entity, means a director, employee or other official of the entity—

- (a) who is the public officer of the entity within the meaning of the Tax Administration Act; or
- (b) if the entity does not have a public officer, any director, employee or other official of the entity authorised in writing by resolution of the entity to act on its behalf to give effect to any of the entity’s rights and obligations in terms of this Act or a tax levying Act;<sup>3</sup>

**“banking details”** in relation to a person holding a bank account, means—

- (a) the name of the bank;
- (b) the account holder’s name;
- (c) the account type and number; and
- (d) the branch code;

**“banking details confirmation document”** means any of the following documents containing the banking details of a person:

- (a) A bank certified original bank statement or a legible bank certified copy of an original bank statement;
- (b) a bank certified original auto bank statement; or

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<sup>3</sup> This definition excludes customs brokers, registered agents or ordinary representatives acting on behalf of juristic entity.

- (c) an original letter from the bank on an official bank letterhead;

“**biometric information**” has the meaning assigned to it in section 1 of the Tax Administration Act;

“**boarding pass**” means a document issued during check-in by a carrier to a traveller—

- (a) indicating that a traveller has the permission of the carrier to board the vessel, aircraft or train for a particular voyage, flight or trip; and
- (b) reflecting –
  - (i) the name of the traveller;
  - (ii) the voyage, flight or trip number;
  - (iii) the date and scheduled time of departure of the vessel, aircraft or train; and
  - (iv) in the case of air travel, the flight destination;

“**break bulk cargo details**”<sup>4</sup> means the following information in relation to each consignment of break bulk cargo:

- (a) In the case of a consignment transported by sea—
  - (i) the port of loading; and
  - (ii) the port of discharge;
- (b) in the case of a consignment transported by rail or road—
  - (i) the place of loading; and
  - (ii) the place of discharge;
- (c) in the case of an inbound consignment by sea, rail or road, an indication of whether the consignment is destined—
  - (i) for the Republic;
  - (ii) for transshipment, if the consignment is transported by sea;
  - (iii) for international transit; or
  - (iv) to remain on board the vessel or railway carriage without off-loading until it leaves the Republic;

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<sup>4</sup> Note definition of “break bulk cargo” in section 1 of Control Act which excludes air cargo from the definition.

- (d) in the case of an outbound consignment by sea, rail or road, an indication of whether the consignment is destined for export under—
  - (i) the export procedure;<sup>5</sup> or
  - (ii) another customs procedure that allows the export of goods under that procedure;<sup>6</sup>
- (e) the number of the transport document issued in respect of the goods, and the identity of the party who issued it;
- (f) the full name and physical and postal address of the consignor;
- (g) the full name, and physical and postal address, of the consignee;
- (h) a precise description of the goods in the consignment or the six digit Harmonised Commodity Description and Coding System number under which the goods are classified;
- (i) the number of packages;
- (j) the type of packages;
- (k) the gross mass of the packages;
- (l) the unit of measure;
- (m) in the case of a consignment consisting of a vehicle or vehicles, the VIN number of the vehicle or of each vehicle;
- (n) the marks and numbers on the packages (optional for a consignment transported by rail and road); and
- (o) the relevant dangerous goods code as may be applicable to the goods, if the goods are hazardous goods;

**“bulk cargo details”** means the following information in relation to each consignment of bulk cargo:

- (a) In the case of a consignment of bulk cargo transported by sea—
  - (i) the port of loading; and
  - (ii) the port of discharge;
- (b) in the case of a consignment of bulk cargo transported by rail or road—
  - (i) the place of loading; and
  - (ii) the place of discharge;

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<sup>5</sup> This could be any goods exported under the export procedure, whether for outright export or under a customs procedure that relies on the export procedure for the clearance of goods for export, such as goods exported for outward processing or inward processed compensating products exported under inward processing.

<sup>6</sup> Such as transshipment (for exports by sea or air) or international transit.

- (c) in the case of an inbound consignment, an indication of whether the consignment is destined—
  - (i) for the Republic;
  - (ii) for transshipment, if the consignment is transported by sea;
  - (iii) for international transit; or
  - (iv) to remain on board the vessel or railway carriage without off-loading until it leaves the Republic;
- (d) in the case of an outbound consignment, an indication of whether the consignment is destined for export under—
  - (i) the export procedure;<sup>7</sup> or
  - (ii) another customs procedure that allows the export of goods under that procedure;<sup>8</sup>
- (e) the number of the transport document issued in respect of the goods, and the identity of the party who issued it;
- (f) the full name and physical and postal address of the consignor;
- (g) the full name and physical and postal address of the consignee;
- (h) a precise description of the goods in the consignment or the six digit Harmonised Commodity Description and Coding System number under which the goods are classified;
- (i) the gross mass of the goods;
- (j) the unit of measure; and
- (k) the relevant dangerous goods code as may be applicable to the goods, if the goods are hazardous goods;

**“cargo type”** means the type of cargo distinguishing between—

- (a) dry bulk cargo;
- (b) liquid bulk cargo;
- (c) break bulk cargo;
- (d) containerised cargo;
- (e) mixed cargo; or
- (f) no cargo;

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<sup>7</sup> This could be any goods exported under the export procedure, whether for outright export or under a customs procedure that relies on the export procedure for the clearance of goods for export, such as goods exported for outward processing or inward processed compensating products exported under inward processing.

<sup>8</sup> Such as transshipment (for exports by sea or air) or international transit.

**“casual exporter”** means a person who exports goods from the Republic on not more than three occasions in any calendar year where the customs value of the goods on none of those occasions exceeds R50 000, but excludes such an exporter who—

- (a) as a traveller or crew member exports goods as part of his or her accompanied or unaccompanied baggage when leaving the Republic:<sup>9</sup> Provided that this exclusion does not apply to a traveller or crew member in respect of baggage items that are commercial goods; or
- (b) exports through the South African Post Office an international postal article with a customs value not exceeding an upper value determined in terms of section 494(2) of the Control Act;<sup>10</sup>

**“casual importer”** means a person who imports goods on not more than three occasions in any calendar year where the customs value of the goods imported on none of those occasions exceeds R50 000, but excludes such an importer who—

- (a) as a traveller or crew member imports goods as part of his or her accompanied or unaccompanied baggage when entering the Republic:<sup>11</sup> Provided that this exclusion does not apply to a traveller or crew member in respect of baggage items that are commercial goods; or
- (b) imports through the South African Post Office an international postal article with a customs value not exceeding an upper value determined in terms of section 493(2) of the Control Act;<sup>12</sup>

**“computer-based record keeping system”** means a record keeping system referred to in section 919 of the Control Act capable of—

- (a) creating, receiving, keeping and storing electronic records; or
- (b) converting information and documents into electronic records;

**“consolidated cargo”** means different consignments—

- (a) packed into the same container; or

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<sup>9</sup> Rule **28.22** applies to baggage items other than commercial goods exported by travellers and crew.

<sup>10</sup> Rule **28.23** applies to international postal articles exported through the South African Post Office.

<sup>11</sup> Rule **28.22** applies to baggage items other than commercial goods imported by travellers and crew.

<sup>12</sup> Rule **28.23** applies to international postal articles imported through the South African Post Office.

- (b) consolidated in any way other than by packing the consignments into the same container;<sup>13</sup>

**“contact details”**, in relation to a person, means the following information in relation to a person:

- (a) Business telephone number; and
- (b) if available—
  - (i) cell phone number;
  - (ii) e-mail address; and
  - (iii) fax number;

**“containerised cargo details”** means the following information in relation to each consignment of containerised cargo:

- (a) In the case of a consignment transported by sea —
  - (i) the port of loading; and
  - (ii) the port of discharge;
- (b) in the case of a consignment transported by rail or road—
  - (i) the place of loading; and
  - (ii) the place of discharge;
- (c) in the case of an inbound consignment, an indication of whether the consignment is destined—
  - (i) for the Republic;
  - (ii) for transshipment, if the consignment is transported by sea;
  - (iii) for international transit; or
  - (iv) to remain on board the vessel or railway carriage without off-loading until it leaves the Republic;
- (d) in the case of an outbound consignment, an indication of whether the consignment is destined for export under—
  - (i) the export procedure;<sup>14</sup> or
  - (ii) another customs procedure that allows the export of goods under that procedure;<sup>15</sup>

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<sup>13</sup> Such as goods consolidated in an air cargo container or on a pallet.

<sup>14</sup> This could be any goods exported under the export procedure, whether for outright export or under a customs procedure that relies on the export procedure for the clearance of goods for export, such as goods exported for outward processing or inward processed compensating products exported under inward processing.



- (e) the number of the transport document issued in respect of or covering the consignment and the identity of the party who issued it, and also, if the consignment is part of consolidated cargo transported by sea,<sup>16</sup> the number of any house bill of lading issued in respect of the consignment and the identity of the party who issued it;
- (f) the full name and physical and postal address of the consignor;
- (g) the full name and physical and postal address of the consignee;
- (h) a precise description of the goods in the consignment or the relevant Harmonised Commodity Description and Coding System number, to the six digit level, under which the goods are classified;
- (i) the gross mass of the goods in the consignment, including packaging;
- (j) the unit of measure;
- (k) the number of packages in the consignment;
- (l) the type of packages; and
- (m) the relevant dangerous goods number as may be applicable to the goods, if a consignment contains hazardous goods;

**“container details”** means the following information in relation to each container:

- (a) The service type;
- (b) the container status;
- (c) the container size;
- (d) the container type;
- (e) the container number; and
- (f) the seal number;

**“container status”** means the purpose for which a container is used, distinguishing between—

- (a) international transit;
- (b) export;
- (c) import; or
- (d) transshipment;

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<sup>15</sup> Such as transshipment (for exports by sea or air) or international transit.

<sup>16</sup> See definition of “consolidated cargo” in relation to containers.

**“continuous transmission commodity”** or **“CTC”** means—

- (a) a liquid or gas, including a natural gas and a derivative thereof, transported through a cross-border pipeline; or
- (b) electricity transmitted through a cross-border transmission line;

**“Control Act”** means the Customs Control Act, 2014 (Act No. 31 of 2014), and includes the instruments referred to in paragraphs (a), (b) and (c) of the definition of “this Act” in section 1 of the Customs Control Act, 2014;

**“conveyance number”** means—

- (a) the voyage number, in the case of a vessel;
- (b) the flight number, in the case of an aircraft; or
- (c) the trip number, in the case of a cross-border train;

**“courier”** means a person conducting a courier business in terms of rule **29.8** who, for the purpose of clearing, handling or transporting courier articles in the course of conducting such a business, may also be the holder of any or all of the following licences:

- (a) A carrier licence;
- (b) a customs broker licence;
- (c) a registration as an importer or exporter; or
- (d) an air cargo depot licence;

**“courier article”** means an article handled by a person conducting a courier business in the course of conducting that business;

**“courier business”** means a business service provided by a person in the international transportation of goods on an express door to door delivery basis, either by—

- (a) transporting goods into the Republic for express delivery to consignees inside the Republic and delivering the goods to those consignees;
- (b) receiving in the Republic goods imported for express delivery to consignees inside the Republic and delivering those goods to those consignees;

- (c) collecting goods in the Republic for express delivery outside the Republic, transporting the goods out of the Republic and delivering the goods to consignees outside the Republic; or
- (d) collecting goods in the Republic for express delivery outside the Republic and arranging the export and the delivery of the goods to consignees outside the Republic;

**“credit push”** means a payment transaction initiated through eFiling, presented as a payment request to the bank of the person making payment, for which an authorisation by that person is required;

**“crew details”** means—

- (a) full name, date of birth, gender and nationality in respect of each crew member; and
- (b) the number and type of that crew member’s identification document and the country or organisation that issued the document;

**“crew identification card”** means a card issued by the carrier operating a foreign-going vessel or aircraft or cross-border train indicating that the person identified on the card is employed by the carrier as a member of the crew of a foreign-going vessel or aircraft or cross-border train operated by the carrier;

**“customs code”** means a customs code referred to in section 612(c) or 641(1)(d) allocated to a registered person or licensee;

**“customs relationship”** means a business relationship which involves an activity regulated by the Control Act, the Customs Duty Act or the Excise Duty Act which a registered person or licensee happens to have with another person who is also a registered person or licensee;

**“Customs Sufficient Knowledge Test”** means the test referred to in rules 28.24 and rule 29.47 to establish whether a person has sufficient knowledge of applicable customs laws, guides, interpretive notes, operational manuals and practices

administered by the customs authority, the details of which are available on the SARS website;

**“digital signature”**, in relation to a registered electronic user communicating with the customs authority through EDI, means an electronic signature allocated by the customs authority to a registered electronic user—

- (a) intended by the user using it and the customs authority accepting it to have the same force and effect as a manual signature; and
- (b) which is—
  - (i) unique to that user;
  - (ii) capable of verification;
  - (iii) linked or attached to electronically transmitted data in such a manner as to authenticate the attachment of the signature to particular data and the integrity of the data transmitted so that if the data is changed the signature is invalidated;
  - (iv) under the exclusive control of that user; and
  - (v) in compliance with any further requirements contained in the user agreement;

**“EDI”** or **“electronic data interchange”** means an electronic communication system for the electronic transfer of information from computer to computer, using a predetermined message standard, as determined by the customs authority, to structure such information;

**“eFiling”** means a SARS software application available on the SARS website which enables SARS and registered electronic users to generate and deliver electronic filing transactions;<sup>17</sup>

**“EFTA”** means the European Free Trade Association consisting of—

- (a) the Republic of Iceland;
- (b) the Principality of Liechtenstein;
- (c) the Kingdom of Norway; and

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<sup>17</sup> See rule 41.11(2)(c).

(d) the Swiss Confederation;

**“electronic record”** means a record that is kept or stored in electronic form on a computer or on another electronic storage media device, whether that record was originally created in an electronic form or converted from any non-electronic form into an electronic form;

**“electronic user agreement”** means the agreement which a registered electronic user must conclude with the Commissioner in terms of rule **41.6(a)(ii)**;

**“equipment qualifier”** means the type of transport equipment used, distinguishing between a—

- (a) container;
- (b) rail carriage; or
- (c) truck;

**“general mandatory reporting information”** means—

- (a) the type of reporting document;
- (b) the reporting document number;
- (c) the message sender identity;
- (d) the message function;
- (e) the transport mode;
- (f) the identity of the carrier;
- (g) the transport ID, in the case of a vessel or aircraft;
- (h) the transport name, in the case of a vessel; and
- (i) the conveyance number;

**“goods of South African origin”** means goods that qualify in terms of a tax levying Act as goods of South African origin;

**“GSP”** means a non-reciprocal generalised system of preferences referred to in Chapter 9 of the Customs Duty Act implemented by a country in relation to goods of South African origin exported to that country;

**“identification document”**, in relation to a person who is—

- (a) a South African citizen, means a South African Identity Document issued to that person; or
- (b) not a South African citizen, means—
  - (i) a document issued to that person by the government of the country of which that person is a citizen for purposes of the identification of that person; or
  - (ii) a travel document referred to in paragraph (b) of the definition of “travel document” issued to that person;

**“importer for SEZ CCA development”** means a person who—

- (a) is the holder of a special economic zone operator permit issued in terms of the Special Economic Zones Act; and
- (b) imports goods for purposes of developing an area within the special economic zone that is or is to become a customs controlled area;

**“inbound tax free shop”** means a tax free shop located at a place of entry before the checkpoint in a travellers terminal where inbound travellers are processed for purposes of customs control;

**“inbound traveller or crew member”** means a person arriving in the Republic on—

- (a) an inbound foreign-going aircraft; or
- (b) an inbound foreign-going vessel;

**“instalment payment agreement”** means an agreement entered into between a person liable for a debt referred to in section 695 of the Control Act and the Commissioner for payment of the debt in instalments as envisaged in section 702 of that Act;

**“intermediary”** means a service provider managing—

- (a) a gateway for an EDI application through which EDI registered electronic users submit and receive electronic messages to and from the customs authority; or

- (b) an internet-based server through which registered electronic users log onto the SARS website for the submission and receipt of electronic messages to and from the customs authority through eFiling or another system referred to in rule **41.6(c)**;

“**licence details**”, in relation to a licensee, means the information provided by the licensee in—

- (a) a licensing application referred to in rule **29.11**; or
- (b) a subsequent update of that information in terms of rule **29.48**;

“**licence type**”, in relation to—

- (a) premises that must be licensed in terms of section 630 of the Control Act, means a type of licence that may in terms of rule **29.2** be issued in respect of the different categories of those premises;
- (b) cross-border transmission lines, pipelines, cable-cars or conveyor belts that must be licensed in terms of section 631, means a type of licence that may in terms of rule **29.3** be issued in respect of such transmission lines, pipelines, cable-cars or conveyor belts;
- (c) carriers that may or must be licensed in terms of section 632, means a type of licence that may in terms of rule **29.4** be issued to the different categories of those carriers;
- (d) customs brokers that must be licensed in terms of section 633, means a type of licence that may in terms of rule **29.5** be issued to customs brokers;
- (e) stores suppliers that must be licensed in terms of section 634(1), means a type of licence that may in terms of rule **29.6** be issued to stores suppliers;
- (f) importers and exporters involved in the processing procedures that must be licensed in terms of section 634(2), means a type of licence that may be in terms of rule **29.7** be issued to the different categories of such persons; or
- (g) persons searching for abandoned wreck that must be licensed in terms of rule **29.9(1)**, means a type of licence that may in terms of rule **29.9(3)** be issued to such persons;

“**listed non-prosecutable breach**” means a breach of the Control Act listed in a notice issued by the Minister in terms of section 876(1) of that Act;

**“local”**, in relation to a person, means a person located in the Republic within the meaning of section 1(3)(a) of the Control Act;

**“message function”**, in relation to—

- (a) a reporting document contemplated in Chapter 3, means an indicator whether the reporting document is—
  - (i) an original document;
  - (ii) an amended document; or
  - (iii) a replaced document; or
- (b) a clearance declaration, means an indicator whether the declaration is—
  - (i) an original clearance declaration;
  - (ii) an amended clearance declaration;
  - (iii) a clearance declaration substituted after release; or
  - (iv) a clearance declaration in respect of a subsequent clearance for home use or a customs procedure;

**“message sender identity”**, in relation to a reporting document, means the identity<sup>18</sup> of the person who submits the reporting document;

**“movement reference number”** or **“MRN”** means a unique reference number assigned by the customs authority to a clearance declaration;

**“non-lethal weapon”** includes a defensive baton, oleoresin capsicum (OC) spray or a tazer;

**“non-local”**, in relation to a person, means a person not located in the Republic within the meaning of section 1(3)(a) of the Control Act;

**“on-board operator details”** means—

- (a) full name, date of birth, gender and nationality of the on-board operator; and

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<sup>18</sup> See rule 1.9



- (b) the number and type of that on-board operator's identification document and the country or organisation that issued the document;

**“ordinary representative”** means a representative referred to in section 920 of the Control Act authorised by a client to submit a declaration,<sup>19</sup> report, statement, return, notice, notification, application, request or other document or communication in terms of that section on behalf of the client<sup>20</sup> otherwise than as—

- (a) an employee, officer, director, authorised officer or other official of the client;
- (b) a licensed customs broker;
- (c) the registered agent of the client; or
- (d) an intermediary;

**“outbound tax free shop”** means a tax free shop located beyond the checkpoint in a travellers terminal where outbound travellers are processed for purposes of customs control;

**“outbound traveller or crew member”** means a person who is about to depart from the Republic on—

- (a) an outbound foreign-going aircraft; or
- (b) an outbound foreign-going vessel;

**“own goods carrier”** means a person referred to in paragraph (d) of the definition of “carrier” in section 1(1) of the Control Act;

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<sup>19</sup> Note that although section 920 is an enabling provision that applies generally to the submission of documents to Customs, its application is subject to the other provisions of the Control Act. This means that where the Act contains specific provisions on the submission of documents, the specific provisions will override section 920 to the extent of any inconsistency. For instance, section 165 specifically limits the persons entitled to submit clearance declarations, and this provision will accordingly override the general wording of section 920 and disallow a representative who is not a licensed customs broker or another authorised person contemplated in that section to submit clearance declarations. It follows that section 920 does not allow representatives to submit clearance declarations on behalf of clients.

<sup>20</sup> The representative envisaged here is limited to attorneys, auditors, etc., authorised by their clients *to submit* documents to Customs. Because of the casual nature of the the function performed, there is no special regulatory relationship between this representative and Customs, such as where a customs broker or registered agent acts on behalf of a client in a customs matter. The role of the ordinary representative is limited to that of “submitter” of documents and is not entitled to perform legal acts in the name or on behalf of clients when complying with their legal obligations in terms of customs legislation. But note that an ordinary representative must be registered as an electronic user when submitting documents on behalf of clients through EDI or eFiling.

**“pallet”** means a type of reusable transport equipment consisting of a specially designed flat device—

- (a) on the deck of which goods are assembled to form a unit load for the purpose of transporting, handling or stacking the goods with the assistance of mechanical appliances; and
- (b) which is of a durable nature and manufactured for repeated use;

**“passenger processing system”** means the electronic system used for the customs processing of—

- (a) travellers and crew when entering or leaving the Republic at a place of entry or exit or, in the case of rail travellers and crew, at a rail travellers terminal;
- (b) the accompanied or unaccompanied baggage of those travellers and crew; and
- (c) a truck, bus, taxi, vehicle, small vessel or light aircraft that is cleared by means of the traveller declaration of the on-board operator;

**“payment advice notice”** means a notice generated by the customs authority upon request by a person liable for a debt, in respect of a payment to be made by that person, that reflects—

- (a) the name of the person making payment;
- (b) the relevant payment reference number;
- (c) the transaction or transactions being settled; and
- (d) the amount to be paid;

**“payment reference number”** means a unique reference number allocated by the customs authority to identify a payment and ensure the correct allocation of the payment—

- (a) in a notice demanding payment of an amount owed to the Commissioner, or
- (b) in an instalment payment agreement;

**“place of discharge”**, in relation to—

- (a) inbound rail or road cargo, means the rail cargo terminal or place in the Republic where the cargo is to be off-loaded from the cross-border railway carriage or truck transporting the cargo into the Republic; or

(b) outbound rail or road cargo, means the foreign destination of the cargo;

**“place of dispatch”**, in relation to—

(a) inbound cargo, means—

(i) in the case of containerised cargo, the place where the container was packed outside the Republic for exportation to the Republic; or

(ii) in the case of bulk or break bulk cargo, the place from where the cargo was originally dispatched from a supplier’s premises outside the Republic for exportation to the Republic; or

(b) outbound cargo, means—

(i) in the case of containerised cargo, the place where the container was packed inside the Republic for exportation from the Republic; or

(ii) in the case of bulk or break bulk cargo, the place from where the cargo was originally dispatched from a supplier’s premises inside the Republic for exportation from the Republic;

**“place of loading”**, in relation to—

(a) inbound rail or road cargo, means the foreign railway station or place where the cargo is loaded on board a cross-border railway carriage or truck for transport to the Republic; or

(b) outbound rail or road cargo, means the rail cargo terminal or place in the Republic where the cargo is loaded on board a cross-border railway carriage or truck for transport out of the Republic;

**“port of discharge”**, in relation to—

(a) inbound sea or air cargo, means the customs seaport or airport where cargo is to be off-loaded from the foreign-going vessel or aircraft transporting the cargo into the Republic; or

(b) outbound sea or air cargo, means the foreign seaport or airport where cargo is to be off-loaded from the foreign-going vessel or aircraft transporting the cargo out of the Republic;

**“port of loading”**, in relation to—

- (a) inbound sea or air cargo, means the foreign seaport or airport where cargo is loaded on board a foreign-going vessel or aircraft for transport to the Republic; or
- (b) outbound sea or air cargo, means the customs seaport or airport where cargo is loaded on board a foreign-going vessel or aircraft for transport out of the Republic;

**“preferential tariff treatment”**, in relation to the export of goods of South African origin, means the preferential treatment which goods of South African origin receive when exported to a country which—

- (a) is a party to an international trade agreement in terms of which goods of South African origin may be exported to that country duty free or under preferential tariffs; or
- (b) implements a GSP in terms of which goods of South African origin may be exported to that country duty free or under preferential tariffs;

**“prescribed courier article”** means a courier article which is required to be cleared in terms of section 89 or 93 of the Control Act<sup>21</sup> but which falls within a category of courier articles that may in terms of rule **24.16(a)** be cleared in accordance with simplified clearance procedures;

**“pro-forma invoice”** means an abridged, estimated or preliminary invoice issued by a supplier to a buyer in advance of a delivery of goods otherwise than for purposes of payment, specifying relevant information, such as—

- (a) the names of the parties;
- (b) the class or kind of goods;
- (c) the purchase price or value; and
- (d) transportation and other charges;

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<sup>21</sup> Note that not all courier articles are required to be cleared. Certain courier articles are altogether excluded from clearance requirements, such as ordinary letters, postcards, printed papers not liable to tax, literature for the blind, trade samples with no commercial value, goods of a customs value below R500, etc. See sections 91(1)(g), (h) and (i) and 95(1)(h), (i) and (j) of the Control Act. These courier articles, however, require permission to be removed in terms of rule **4.8** or a permission to load in terms of rule **4.12**, as may be appropriate.

**“protective and defensive equipment”** includes shields, protective vests, helmets, handcuffs, cuff strips, holsters, leg holsters, tactical belts, tactical gloves, knee pads or elbow pads;

**“rail carrier”** means a person referred to in paragraph (b) of the definition of “carrier” in section 1(1) of the Control Act transporting goods or travellers by rail for reward;

**“record”** means any document or information that must be kept in terms of the Control Act or these Rules;

**“registered electronic user”** means a person registered in terms of section 606 of the Control Act as an electronic user;

**“registration details”**, in relation to a registered person, means the information provided by the registered person in—

- (a) a registration application referred to in rule **28.9**; or
- (b) a subsequent update of that information in terms of rule **28.25**.

**“registration type”**, in relation to—

- (a) importers that may or must register in terms of section 603 of the Control Act, means a type of registration that may in terms of rule **28.2** be issued to the different categories of those importers;
- (b) exporters that may or must register in terms of section 603, means a type of registration that may in terms of rule **28.3** be issued to the different categories of those exporters;
- (c) persons acquiring ownership of goods under a customs procedure that must register in terms of section 604, means a type of registration that may in terms of rule **28.4** be issued to those persons;
- (d) agents for persons not located in Republic that must register in terms of section 605, means a type of registration that may in terms of rule **28.5** be issued to those persons;
- (e) electronic users that must register in terms of section 606, means a type of registration that may in terms of rule **28.6** be issued to those electronic users;  
or

(f) producers of goods of South African origin that must register in terms of **28.7(1)**, means a type of registration that may in terms of rule **28.7(2)** be issued to those producers;

**“reporting document”** means any advance notice, update of an advance notice, arrival or departure report, manifest or outturn report, or any amendment or replacement of such a document, referred to in Chapter 3 of the Control Act;

**“reporting document number”** means a unique reference number assigned to a reporting document by the message sender;

**“road carrier”** means a person referred to in paragraph (c) of the definition of “carrier” in section 1(1) of the Control Act transporting goods by truck or travellers by bus for reward;

**“road manifest information”** means—

- (a) the manifest number;
- (b) the identity of the carrier;
- (c) the transport name in relation to the vehicle;
- (d) the container number in respect of each container, in respect of containerised goods;
- (e) the identification number of any seal used on—
  - (i) any container on the vehicle; or
  - (ii) the loading compartment of the vehicle;
- (f) a description of the goods;
- (g) the number of packages, if applicable;
- (h) the mass of the goods;
- (i) the unit of measure; and
- (j) on-board operator details and crew details in respect of any other crew on board;

**“SACU-EFTA”** means the trade agreement between SACU and EFTA;

**“SACU – MERCOSUR Agreement”** means the preferential trade agreement between the Southern African Customs Union and the Common Market of the South (MERCOSUR);

**“SADC EPA”** means the Economic Partnership Agreement between the European Union and the Southern African Development Community;

**“SARS tax reference number”** means a unique reference number issued by SARS upon registration for any of the SARS tax types, excluding a customs code;

**“sea carrier”** means a person referred to in paragraph (a) of the definition of “carrier” in section 1 of the Control Act transporting goods or travellers by sea for reward;

**“self-service facility for trusted or frequent travellers”** means a facility for travellers at a place of entry or exit or, in the case of rail travellers, at a rail travellers terminal, where travellers who are holders of trusted or frequent traveller permits can expeditiously be processed for customs purposes through self-service technological devices and other expediting methods;

**“service type”**, in relation to a container, means the type of container, distinguishing between—

- (a) an empty container;
- (b) a full FCL (groupage) container;
- (c) an LCL container; and
- (d) a full FCL container;

**“special economic zone”** means a special economic zone within the meaning of the Special Economic Zones Act;

**“special customs service”** means customs attendance provided—

- (a) at a place other than a Customs Office, a place of entry or exit or any licensed

premises;<sup>22</sup> or

- (b) at a Customs Office, a place of entry or exit or any licensed premises at a time outside the office hours determined by the Commissioner in terms of section 14(1)(c) of the Control Act<sup>23</sup> for that Customs Office or for the Customs Office serving the area in which that place of entry or exit or those licensed premises are situated;

and includes customs supervision as contemplated in sections 477(3)(a)(ii) and (3)(b)(ii), 513(5); 544(2)(d)(iii), 545(2)(d)(iii), 551(2)(a)(iii), 552(2)(a)(iii), 567 and 732 of the Control Act when performed at a place referred to in paragraph (a) or at a place and time referred to in paragraph (b);

**“stock inventory code”**, in relation to goods in a storage warehouse or tax free shop, means a unique identifying code assigned by the licensee of the storage warehouse or tax free shop to goods received in that warehouse or tax free shop, for purposes of—

- (a) inventory control; and
- (b) facilitating the keeping and retrieval of records in respect of the goods to which it relates;

**“sufficient knowledge”**, in relation to customs laws, guides, interpretive notes, operational manuals and practices, means the level of knowledge to achieve a score of at least 60 per cent in the—

- (a) Customs Sufficient Knowledge Test; or
- (b) Customs Competency Assessment for Accreditation;

**“SWIFT message”** means a secure and standardised payment message sent electronically by one financial institution to another through the Society for Worldwide Inter-bank Financial Telecommunication (SWIFT) network;

**“tax free shop”** means an inbound or outbound tax free shop, but excludes a special shop for diplomats;

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<sup>22</sup> Note the list of Customs Offices published on the SARS Website.

<sup>23</sup> The list of Customs Offices published on the SARS website contains offices hours in respect of each Office.



**“TDCA”** means the Agreement on Trade, Development and Cooperation between the European Community and their Member States and the Republic;

**“transhipment depot”** means any premises at a customs seaport or airport contemplated in section 254(1)(a) of the Control Act;

**“transhipment details”** means the following information in relation to both the vessel or aircraft that transported the inbound transhipment cargo and the vessel or aircraft that is to transport the outbound transhipment cargo:

- (a) The conveyance number;
- (b) the identity of the carrier;
- (c) the transport name;
- (d) the transport ID; and
- (e) the estimated time of arrival or departure, as the case may be;

**“transport document number”** means a unique reference number assigned to a transport document;

**“transport ID”**, in relation to—

- (a) a vessel, means the radio call sign of the vessel; or
- (b) an aircraft, means the registration number of the aircraft;

**“transport mode”** means the mode of transport distinguishing between—

- (a) sea transport;
- (b) air transport
- (c) rail transport;
- (d) road transport;
- (e) transport through a postal service provided by the South African Post Office; and
- (f) transport through a cross-border transmission line or pipeline;

**“transport name”**, in relation to—

- (a) sea transport, means the name of the vessel;
- (b) air transport, means the name of the aircraft;

- (c) rail transport, means the registration number of the cross-border train;
- (d) road transport, means the registration number of—
  - (i) the load carrying vehicle or horse;
  - (ii) the trailer, in the case of a trailer; and
  - (iii) the additional trailer, in the case of an additional trailer; and
- (e) a bus, means the registration number of the bus;

**"travel document"**, in relation to a traveller who is—

- (a) a South African citizen, means a travel document issued to that person in terms of the South African Passport and Travel Documents Act, 1994 (Act No. 4 of 1994);<sup>24</sup> or
- (b) not a South African citizen, means a travel document identifying that person that has been issued to that person by another government or international treaty organisation to facilitate the movement of that person across international boundaries;

**"traveller declaration"**, in relation to a traveller or crew member entering or leaving the Republic, means a traveller declaration that a person entering or leaving the Republic must in terms of rule **21.3** or **21.4** submit to the customs authority;

**"traveller details"** means—

- (a) the full name, date of birth, gender and nationality of each traveller;
- (b) the traveller's passport or travel document number and the country or organisation that issued the passport or travel document; and
- (c) in the case of—
  - (i) inbound sea, air or rail travellers, the date on and the place where the traveller—
    - (aa) boarded the foreign-going vessel or aircraft or cross-border train; and
    - (bb) the customs sea- or airport or the railway terminal where the traveller is expected to disembark; or

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<sup>24</sup> This includes a South African passport.

- (ii) outbound sea, air or rail travellers, the date on and the customs sea- or airport or the railway terminal where the traveller boarded the foreign-going vessel or aircraft or cross-border train;

**“trusted or frequent traveller”** means a person to whom a trusted or frequent travellers permit has been issued in terms of Chapter 21 of the Customs Control Rules.

**“trusted or frequent traveller permit”** means a permit issued by the customs authority in terms of rule 21.11(2);

**“unit load device” or “ULD”** means an aircraft container—

- (a) specially designed and equipped for containing goods for transport in the hold of an aircraft; and
- (b) which is of a durable nature and manufactured for repeated use;

**“using own transport”**, in relation to a person permitted by rule in terms of section 122(c) of the Control Act to transport goods not in free circulation, means to transport such goods by means of a vehicle—

- (a) owned or leased by the person permitted to transport in terms of that section; and
- (b) driven by a person—
  - (i) who is in the employ of the person permitted to transport in terms of that section; or
  - (ii) whose services are contracted by the person permitted to transport for the purpose of driving a vehicle referred to in paragraph (a).

**Criteria for determining small vessels, light aircraft or vehicles as private means of transport (section 903(1)(n))<sup>25</sup>**

**1.2 (1)** A vessel entering or leaving the Republic qualifies for purposes of the Control Act as a small vessel used as a private means of transport if it—

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<sup>25</sup> Note that these criteria for small vessels, light aircraft and vehicles used as a private means of transport is only significant for purposes of sections 272, 278, 383 and 391 of the Control Act, and are not meant to define the terms for wider purposes.

- (a) has an overall hull length, measured parallel to the waterline, not exceeding 24 meters; and
- (b) is used by a traveller as a private means of transport and not for the transport of goods or persons for reward.

(2) An aircraft entering or leaving the Republic qualifies for purposes of the Control Act as a light aircraft if it—

- (a) has a gross take-off weight not exceeding 5,6 tons; and
- (b) is used by a traveller for the purpose of private transport and not for the transport of goods or travellers for reward.

(3) A vehicle entering or leaving the Republic qualifies for purposes of the Control Act as a vehicle used as a private means of transport if it is—

- (a) a vehicle excluding a bus, truck or taxi; and
- (b) used by a traveller for the purpose of private transport and not for the transport of goods or travellers for reward.

**Criteria for determining when interests in goods or businesses are material**  
(section 903(1)(m)(i))

**1.3** (1) Whenever it is necessary to determine for purposes of the Control Act whether the interest that a person has in goods or a business is a material interest,<sup>26</sup> the interest must be regarded to be a material interest if it—

- (a) consists of an ownership or equity interest in the goods or business exceeding five per cent;
- (b) entitles that person, either directly or indirectly, to take or control final decisions on managing, using, selling or disposing of the goods or business;
- (c) entitles that person, either directly or indirectly, to control at least 30 per cent of the voting power in a juristic entity that has a material interest in the goods or business in terms of paragraph (a) or (b); or
- (d) consists of a close family or business relationship with another person who has a material interest in the goods or business in terms of paragraph (a) or (b).

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<sup>26</sup> See for instance the definition of “private storage warehouse” in section 1 and sections 10(2)(b), 301(1)(a), 542(3)(d), 549(3)(d) and 726(a)(ii) of the Control Act.

- (2) For purposes of subrule (1)(d)—
- (a) a close family relationship means a relationship as—
- (i) partners in a marriage or a domestic partnership;
  - (ii) parent and child;
  - (iii) siblings; or
  - (iv) grandparent and grandchild; and
- (b) a close business relationship means a relationship as—
- (i) employer and employee;
  - (ii) directors in the same firm;
  - (iii) director in the other's firm;
  - (iv) director and employee in the same firm;
  - (v) partners in the same firm;
  - (vi) companies in the same group of companies; or
  - (vii) companies directly or indirectly controlled by the same person.

**Criteria for determining when benefits received by persons are material**  
*(section 903(1)(m)(ii))*

**1.4** Whenever it is necessary to determine for purposes of the Control Act whether any particular person has benefitted in a material respect from a breach of the Control Act,<sup>27</sup> the person must be regarded to have benefitted from the breach in a material respect if the conduct constituting the breach resulted in that person unjustly—

- (a) gaining a monetary advantage in excess of R10 000; or
- (b) being granted an exemption, authorisation, permission, approval, recognition or other special dispensation in terms of the Control Act.

**Criteria for determining when breaches are material** *(section 903(1)(m)(iii))*

**1.5** Whenever it is necessary to determine for purposes of the Control Act whether the Control Act has been breached by a person in a material respect,<sup>28</sup> the

<sup>27</sup> See for instance sections 618(3), 657(3) and 679(3) of the Control Act.

<sup>28</sup> See for instance sections 610(2)(a), 618(2)(a)(i) and (b)(i), 637(2)(a), 649(a), 657(2)(a)(i) and (b)(i) and 679(2)(a)(i) and (b)(i) of the Control Act.

Control Act must be regarded to have been breached in a material respect if the conduct that constituted the breach—

- (a) was an offence for which the perpetrator was sentenced to imprisonment of one month or more with or without the option of a fine;
- (b) was an offence referred to in section 878(2) or 885 and for which the perpetrator was sentenced to a fine of R10 000 or more;
- (c) was found by a court to have been committed by the perpetrator with the intention to deceive or mislead or to evade tax; or
- (d) resulted in the perpetrator gaining an unjust monetary advantage in excess of R10 000.

**Criteria for determining when information is material for consideration of applications** (*section 903(1)(m)(iv)*)

**1.6** Whenever it is necessary to determine for purposes of the Control Act whether any information is or was material to the consideration or granting of an application by the customs authority in terms of the Control Act,<sup>29</sup> that information must be regarded to be or to have been material to the consideration of the application if it deals with any of the following matters:

- (a) The legal status or legal identity of the person whose application is under consideration or has been granted;
- (b) the location of—
  - (i) the main place of business where or from where that person conducts or will conduct business in the Republic;
  - (ii) the premises applied for, if the application relates to premises; or
  - (iii) the place where that person is ordinarily resident in the Republic, if that person is an individual;
- (c) the solvency or financial soundness of that person;
- (d) that person's record of compliance<sup>30</sup> with customs legislation, or of that of an employee of that person in a managerial position, or, if that person is a juristic entity, of that of a director, administrator or trustee of the juristic entity;
- (e) whether the tax matters of that person are or were in order;

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<sup>29</sup> See for instance sections 610(1)(b)(ii), 637(1)(b)(ii), 670(2)(a)(iii) and 870(1) of the Control Act.

<sup>30</sup> See rule 1.8

- (f) the physical security of goods received, stored, handled, processed, transported or in any other way dealt with, managed or controlled by that person following approval of the application;
- (g) the physical facilities, plant, equipment and other infrastructure to be or that is used for the receipt, storage, handling, processing or transport of goods;
- (h) the system of record keeping and accountability for goods; or
- (i) any other matter that is or was of decisive significance in deciding the application.

**Criteria for determining when circumstances were material to granting of applications** (*section 903(1)(m)(v)*)

**1.7** (1) If any of the circumstances in which an application was approved or a registration, licence, accredited client status or other benefit was granted has changed and it is necessary for purposes of the Control Act to determine whether the circumstance that has changed was material to the initial approval of the application or the granting of the registration, licence, accredited client status or other benefit,<sup>31</sup> that circumstance must be regarded to have been material if its substance falls within or pertains to or affects any of the following:

- (a) The legal status, legal capacity or legal identity of the person whose application was approved or to whom the registration, licence, accredited client status or other benefit was granted, and—
  - (i) if that person is a juristic entity, also that person's incorporation, registration or recognition in terms of the legislation applicable to it; or
  - (ii) if that person is a partnership or close corporation, also the membership of the partnership or close corporation;
- (b) the location of—
  - (i) the main place of business where or from where that person conducts business in the Republic;
  - (ii) the premises that were licensed for the conduct of business; or
  - (iii) place where that person is ordinarily resident in the Republic, if that person is an individual;
- (c) the solvency or financial soundness of that person;

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<sup>31</sup> See for instance sections 623, 654(b), 657(2)(d), 661(1) or (2) and 830(5)(d) of the Control Act.

- (d) that person's record of compliance with customs legislation, or of that of an employee of that person in a managerial position, or, if that person is a juristic entity, of that of a director, administrator or trustee of the juristic entity;
- (e) a tax clearance from SARS that the tax matters of that person are in order;
- (f) the physical security of goods received, stored, handled, processed, transported or in any other way dealt with, managed or controlled by that person in terms of the registration, licence, accredited client status or other benefit;
- (g) the physical facilities, plant, equipment and other infrastructure used for the receipt, storage, handling, processing or transport of goods in terms of the registration, licence, accredited client status or other benefit;
- (h) the system of record keeping and accountability for such goods;
- (i) any other matter that was of decisive importance, either alone or together with other matters, in approving the application or granting the registration, licence, accredited client status or other benefit; or
- (j) that person's compliance with the requirement of sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices, where applicable.<sup>32</sup>

(2) Any reference in subrule (1) to a person whose application was approved or to whom a registration, licence or other benefit was granted must, if that person is not located in the Republic, be read as including a reference to the registered agent of that person in the Republic.

### **Criteria for determining a person's record of customs and excise compliance**

**1.8** (1) A person's record of compliance with the Control Act, the Customs and Excise Act, 1964, and the tax levying Acts must for purposes of these Rules be evidenced by the absence of—

- (a) any late<sup>33</sup> or non-payments of duty, levy, tax or interest by that person;
- (b) any breaches or contraventions of those Acts by that person which resulted in—

<sup>32</sup> See Chapters 28, 29 and 30 of the Customs Control Rules.

<sup>33</sup> Late payments exclude payments in respect to which section 830(2) of the Control Act applies.



- (i) an administrative penalty imposed on that person, excluding administrative penalties for—
  - (aa) unintentional errors or omissions on documents submitted to the customs authority; or
  - (bb) any other non-compliance which is a minor or mere technical breach committed without the intention to mislead;
- (ii) a seizure or confiscation of goods; or
- (iii) a conviction of that person; or
- (c) a withdrawal or suspension of any registration, licence, accredited client status certificate or deferment of duty benefit issued to that person.

(2) A person's record of compliance with an international agreement must for purposes of these Rules be evidenced by the absence of any breaches or contraventions of the agreement by that person which resulted in—

- (a) an administrative penalty imposed on that person, excluding administrative penalties for—
  - (i) unintentional errors or omissions on documents submitted to the customs authority; or
  - (ii) any other non-compliance which is a minor or mere technical breach committed without the intention to mislead;
- (b) a seizure or confiscation of goods;
- (c) a conviction of that person; or
- (d) a withdrawal or suspension of any registration, licence, accredited client status certificate or deferment of duty benefit issued to that person.

(3) A person's record of compliance with customs and excise requirements in other customs and excise jurisdictions must for purposes of these Rules be evidenced by the absence of any breaches or contraventions of those requirements by that person which resulted in—

- (a) an administrative penalty imposed on that person, excluding administrative penalties for—
  - (i) unintentional errors or omissions on documents submitted to the customs authority of that jurisdiction; or

- (ii) any other non-compliance which is a minor or mere technical breach committed without the intention to mislead;
- (b) a seizure or confiscation of goods;
- (c) a conviction of that person; or
- (d) a withdrawal or suspension of any registration, licence, accredited client status certificate or deferment of duty benefit issued to that person in that jurisdiction.

### **Manner of stating identity of persons**

**1.9** (1) Where a provision of these Rules requires a declaration, report, statement, return, notice, notification, application, request or other document or communication that must or may be submitted to the Commissioner, the customs authority or a customs officer, to state the identity of a person, that provision must be complied with by stating—

- (a) that person's name and customs code or SARS tax reference number; or
- (b) that person's name and the number and type of that person's identification document if—
  - (i) that person does not have a customs code or SARS tax reference number; or
  - (ii) the customs code or SARS tax reference number of that person is not available to the person submitting the document or communication.

(2) Subrule (1)(b)(i) does not apply in circumstances where compliance with rule **41.15** is a compulsory requirement in terms of these Rules.

## ***Part 2: Customs officers***

### **Performance of enforcement functions by customs officers** (*section 25*)

**1.10** When performing any enforcement function, customs officers must act in good faith and in a professional, reliable, competent and punctual manner, and may not—

- (a) use their position for private gain or to improperly benefit or prejudice another person;
- (b) act in a way that compromises the credibility or integrity of the customs authority; or

- (c) act contrary to the provisions of any applicable policy or code relating to the conduct or ethical behaviour of SARS employees.

***Part 3: Special customs services***<sup>34</sup> (section 17)

**Application for special customs services**

**1.11** (1) (a) A person requiring a special customs service must at least 24 hours before the service is required, submit to the customs authority an application for that service electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the service is required.

(2) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the applicant;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>35</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>36</sup>
- (c) the following information relating to the special customs service that is required:
- (i) The type of service;
  - (ii) the date and time when the service is required;
  - (iii) the approximate duration of the service; and
  - (iv) the place where the service is required; and
- (d) the number of customs officers required.

(3) An application referred to in subrule (1) must give reasons—

- (a) why the special customs service is required;
- (b) for urgency, if the provision of the special customs service is a matter of

<sup>34</sup> See definition of “special customs service” in rule 1.1.

<sup>35</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>36</sup> If the application is submitted on behalf of the applicant by a representative contemplated in section 920 of the Customs Control Act, submission of the application must comply with Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications in that capacity.

urgency; and

(c) if the attendance of more than one customs officer is required.

(4) Reasons referred to in subrule (3) may be motivated in a separate supporting document which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Charges for special services**

**1.12** (1) The charge for providing a special customs service is, subject to subrule (2)—

- (a) R300 per hour or part thereof per officer, if the service is provided during the office hours determined in terms of section 14(1)(c) of the Control Act for the Customs Office serving the area in which the service is provided; and
- (b) R400 per hour or part thereof per officer, if the service is provided outside those office hours.

(2) Charges for special customs services are not levied in respect of the following:

- (a) Services provided outside normal office hours in relation to an application for permission to remove or load human remains in accordance with rule **4.8** or **4.12**, respectively; and
- (b) services provided in relation to the clearance, inspection and release of goods imported or exported—
  - (i) as humanitarian aid, in the case of national or international disasters; or
  - (ii) for purposes of any international agreement to which the Republic is a party, including any technical assistance agreement.

(3) The person requiring a special customs service is liable for the reasonable costs of accommodation, calculated in accordance with guidelines determined by the National Treasury, if the duration of the service or the distance to the place where the service is provided, requires the officer providing the service to stay overnight.

### **Duration of special customs services**

**1.13** Charges for providing a special customs service are levied at the rate referred to in rule **1.12(1)** from the time—

- (a) when the service starts until its completion, if the service is performed at a Customs Office; or
- (b) of arrival of the customs officer at the place where the service is to be performed until the departure of the officer after completion of the service, if the service is performed at a place other than at a Customs Office.

### **Payment of charges for special customs services**

**1.14 (1)** Payment of charges for special customs services must be made in accordance with a payment method contemplated in rule **32.1** by the person who applied for the service.<sup>37</sup>

(2) Payment must be made—

- (a) by 12:00 on the first working day after completion of the special service; or
- (b) if the customs authority has approved in terms of subrule (3) a payment arrangement for the person liable for the payment, by 12:00 on the first working day following the end of the relevant payment cycle.

(3) (a) A person who on a regular basis requires special customs services may apply to the customs authority electronically through eFiling, subject to rule **41.13**, for approval of a payment arrangement whereby that person makes payments at the end of each cycle of 14 calendar days for all special customs services provided to that person during the relevant payment cycle.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the services are required.

(c) An application referred to in paragraph (a) must reflect—

- (i) the name and customs code of the applicant;

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<sup>37</sup> Payments for special customs services are for credit of SARS own account.

- (ii) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>38</sup> on behalf of the applicant, the information specified in rule 41.14;<sup>39</sup>and
- (iii) how frequently special customs services are required.

(4) An approval granted in terms of subrule (3) may at any time on good cause and after written notice be withdrawn by the customs authority.

#### ***Part 4: Requests for information in possession of Customs***

**Requests for disclosure of private and confidential information** (*sections 22 and 23, read with section 903(1)(v)*)

**1.15** (1) Disclosure of private or confidential information in terms of section 22 or 23 of the Control Act may only be made in accordance with this rule.

(2) An authorised recipient as contemplated in section 22(1) or a person contemplated in in section 23(3) must when disclosure of private or confidential information is required, direct a request for such disclosure in writing to the Commissioner.

- (3) A request referred to in subrule (2) must—
- (a) be on a letterhead of the relevant authorised recipient, party to the relevant international agreement or international agency, institution or organization; and
  - (b) reflect—
    - (i) a specific indication of the confidential information required;
    - (ii) the purpose for which the information is required, including the relevant legislation or international agreement;
    - (iii) a confirmation that the information requested will only be used for the purpose as stated in subparagraph (ii); and

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<sup>38</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>39</sup> If the application is submitted on behalf of the applicant by a representative contemplated in section 920 of the Customs Control Act, submission of the application must comply with Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications in that capacity.

- (iv) in the case of a person contemplated in section 23(3), the name and contact details and designation of that person.

**Requests for other information** (*section 24(2)*)

**1.16** (1) A person referred to in section 24(2)(a) of the Control Act who wishes to obtain information from the customs authority as contemplated in that section, must request such information in accordance with this rule.

(2) A request referred to in subrule (1) must be submitted to the customs authority by—

- (a) e-mail; or
- (b) any of the methods contemplated in section 912(2)(a) to (c).

(3) A request submitted in terms of subrule (2) must—

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) be submitted as follows:
  - (i) If sent through e-mail, the e-mail must be directed to the Office of the Commissioner at the e-mail address indicated on the SARS website for receipt of such requests;
  - (ii) if delivered by hand, the request must be delivered to the Office of the Commissioner at 229 Bronkhorst Street, Le Hae La SARS Block A, Nieuw Muckleneuk, Pretoria;
  - (iii) if sent by post, the request must be sent by registered post to the Office of the Commissioner of SARS Private Bag X923, Pretoria, 0001; and
  - (iv) if telefaxed, the fax must be directed to the Office of the Commissioner and sent to the fax number indicated on the SARS website for receipt of such requests.

(4) A request referred to in subrule (1) must reflect—

- (a) the name and customs code or SARS tax reference number of the person requesting the information or, if that person does not have a customs code or SARS tax reference number, the information specified in rule **41.15(1)**;

- (b) if the request is submitted by a customs broker, registered agent or ordinary representative<sup>40</sup> on behalf of a person referred to in paragraph (a), the information specified in rule **41.14**;<sup>41</sup>
- (c) a specific indication of the information required; and
- (d) the purpose for which the information is required, and a motivation why the information is required in the public interest.

(5) If a request referred to in subrule (1) is granted by the customs authority, the requested information will be provided upon payment of a fee of R150.

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<sup>40</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>41</sup> If the request is submitted on behalf of a person by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit such requests in that capacity.



**CHAPTER 2**  
**CUSTOMS CONTROL, PLACES OF ENTRY AND EXIT AND CUSTOMS**  
**CONTROLLED AREAS**

**To be published for comment at a later stage**

DRAFT

## CHAPTER 3

### REPORTING REQUIREMENTS FOR INBOUND AND OUTBOUND VESSELS, AIRCRAFT, TRAINS, BUSES, TRUCKS, PERSONS AND CARGO

#### *Part 1: General*

#### **Manner of submission of reporting documents**

**3.1** A reporting document that must be submitted to the customs authority in terms of Chapter 3 of the Control Act must—

- (a) if the document is to be submitted by a carrier or cargo reporter or the registered agent of a carrier, by a licensee, or by a port authority, be submitted to the customs authority—
  - (i) through the electronic data interchange system (EDI) operated by the Commissioner for such documents; and
  - (ii) in accordance with the conditions of that person's electronic user agreement and registration as an electronic user; or
- (b) if the document is to be submitted by an on-board operator of a vessel, aircraft, bus or truck, be submitted in paper format to the Customs Office that serves the relevant place of entry or exit.

#### **Transport document number not to be duplicated on more than one transport document**

**3.2** A carrier or cargo reporter who must submit an advance notice in terms of Chapter 3 of the Control Act must ensure that the transport document number used or assigned to the transport document for a consignment of goods is unique and is not duplicated on another transport document for a different consignment of goods for a period of twelve months or such other period as may be determined by the Commissioner in a specific case.

#### ***Part 2: Reporting requirements for arriving and departing foreign-going vessels***

### **Advance containerised cargo loading notices (sections 49 and 87)**

**3.3** (1) An advance loading notice of containerised cargo<sup>42</sup> must be submitted to the customs authority at least 24 hours before the first of those containers is loaded on board the vessel that will transport the cargo to the Republic.

(2) The notice must reflect the following information:

- (a) General mandatory reporting information;<sup>43</sup>
- (b) the estimated time of loading of the first of the containers to be loaded on board the vessel;
- (c) the scheduled date of arrival of the vessel at the first customs seaport where the vessel is scheduled to call after entering the Republic;
- (d) the total number of containers to be loaded for transport to the Republic;
- (e) container details<sup>44</sup> in respect of each container scheduled to be on board when the vessel enters the Republic;
- (f) containerised cargo details<sup>45</sup> in respect of each consignment, subject to subrule (3); and
- (g) if the notice will be used as a transshipment clearance declaration as contemplated in section 251 of the Control Act, read with rule 11.3(1)(a), an indicator that the notice will be used for that purpose.

(3) (a) An advance loading notice of containerised cargo submitted by a carrier need not contain all the containerised cargo details of any specific consignment if the cargo reporter or other person who made the transport arrangements for that consignment with that carrier submits the excluded details in a separate notice to the customs authority.<sup>46</sup>

(b) A notice referred to in paragraph (a) must be submitted in the same manner and within the same timeframe as the advance loading notice to which

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<sup>42</sup> See section 49(1)(a)(i) of the Control Act. It is to be noted that an advance cargo loading notice needs to be submitted in respect of containerised cargo only, excluding bulk cargo and break bulk cargo. An advance cargo arrival notice referred to in rule 3.5 must be submitted in respect of these other categories of cargo.

<sup>43</sup> See definition of "general mandatory reporting information" in rule 1.1.

<sup>44</sup> See definition of "container details" in rule 1.1.

<sup>45</sup> See definition of "containerised cargo details" in rule 1.1.

<sup>46</sup> This will give persons referred to in paragraph (b) of the definition of "customs broker" two options: Either to provide the house bill information to the carrier to report, or to report this information on their own in a separate notice.

it relates, and must in addition to the relevant containerised cargo details reflect the following information:

- (i) General mandatory reporting information;<sup>47</sup>
- (ii) the identity of the cargo reporter; and
- (iii) container details of all containers in the consignment.

**Advance vessel, crew and sea travellers arrival notices** (*sections 49 and 87*)

**3.4** (1) An advance vessel and crew arrival notice<sup>48</sup> and an advance sea travellers arrival notice<sup>49</sup> must be submitted to the customs authority as a combined notice.

(2) An advance vessel and crew arrival notice and an advance sea travellers arrival notice referred to in subrule (1) must be submitted at least—

- (a) 96 hours before the scheduled arrival of the vessel at the first customs seaport where the vessel is scheduled to call after entering the Republic, if the duration of the voyage to that customs seaport, calculated from the last place where cargo or travellers bound for the Republic were taken on board, is likely to be more than 96 hours; or
- (b) 6 hours before the arrival of the vessel at that customs seaport, if the duration of that voyage is likely to be less than 96 hours.

(3) An advance vessel and crew arrival notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) the vessel's port of departure and all the ports where the vessel will call during its voyage to and in the Republic;
- (c) the scheduled date and estimated time of arrival of the vessel at the first customs seaport where the vessel is scheduled to call after entering the Republic; and
- (d) crew details<sup>50</sup> in respect of each crew member scheduled to be on board when the vessel enters the Republic, except where these details are provided

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<sup>47</sup> See definition of "general mandatory reporting information" in rule 1.1.

<sup>48</sup> See section 49(1)(a)(ii) of the Control Act.

<sup>49</sup> See section 49(1)(a)(iii) of the Control Act.

<sup>50</sup> See definition of "crew details" in rule 1.1.

to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

(4) An advance sea travellers arrival notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) whether the vessel transports travellers; and
- (c) if so, traveller details<sup>51</sup> in respect of each traveller scheduled to be on board when the vessel enters the Republic, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

**Advance sea cargo arrival notices** (*sections 49 and 87*)

**3.5** (1) An advance sea cargo arrival notice<sup>52</sup> must be submitted to the customs authority—

- (a) in respect of—
  - (i) any containerised cargo on board the vessel for which the cargo reporter submitting the notice is responsible;
  - (ii) any break bulk cargo on board the vessel for which the cargo reporter submitting the notice is responsible;
  - (iii) any bulk cargo on board the vessel for which the cargo reporter submitting the notice is responsible; and
  - (iv) any empty containers on board the vessel for which the cargo reporter submitting the notice is responsible; and
- (b) no later than the timeframe prescribed for the submission of an advance vessel and crew arrival notice and an advance sea travellers arrival notice in terms of rule **3.4(2)**.

(2) An advance sea cargo arrival notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the identity of the cargo reporter;

<sup>51</sup> See definition of “traveller details” in rule 1.1.

<sup>52</sup> See section 49(2)(a) of the Control Act.

- (c) the scheduled date of arrival of the vessel at the first seaport where the vessel is scheduled to call after entering the Republic;
- (d) the cargo type;<sup>53</sup>
- (e) if the cargo for which the cargo reporter is responsible consists of—
  - (i) containerised cargo, container details and containerised cargo details in respect of each consignment scheduled to be on board when the vessel enters the Republic, but only to the extent that that information has not already been included in respect of that consignment in the advance loading notice of containerised cargo submitted in terms of rule 3.3(1);
  - (ii) break bulk cargo, break bulk cargo details in respect of each consignment of such cargo scheduled to be on board when the vessel enters the Republic;
  - (iii) bulk cargo, bulk cargo details in respect of each consignment of such cargo scheduled to be on board when the vessel enters the Republic; or
  - (iv) empty containers, container details in respect of each empty container scheduled to be on board the vessel when the vessel enters the Republic; and
- (f) if the notice will be used as a transshipment clearance declaration as contemplated in section 251 of the Control Act, read with rule 11.3(1)(b), an indicator that the notice will be used for that purpose.

### **Vessel arrival reports** (*sections 50 and 87*)

**3.6** (1) A vessel arrival report<sup>54</sup> must be submitted to the customs authority within 30 minutes after the arrival of the vessel at a customs seaport.

(2) A vessel arrival report must reflect the following information:

- (a) General mandatory reporting information; and
- (b) the date and time of arrival of the vessel.

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<sup>53</sup> See definition of “cargo type” in rule 1.1.

<sup>54</sup> In terms of section 50 of the Control Act vessel arrival reports must be submitted by port authorities and carriers or, if a vessel is not operated by a carrier, by the on-board operator of the vessel. As rule 3.52 exempts carriers from this section, carriers are not required to submit vessel arrival reports.

(3) A vessel arrival report submitted after arrival of the vessel at any subsequent customs seaport after entering the Republic must reflect—

- (a) general mandatory reporting information; and
- (b) the date and time of arrival of the vessel at the relevant customs seaport.

(4) A vessel arrival report submitted by the on-board operator of a vessel not operated by a carrier must—

- (a) be submitted on Form .....; and
- (b) reflect the following information:
  - (i) The on-board operator details;<sup>55</sup>
  - (ii) the name of the vessel;
  - (iii) the transport ID;<sup>56</sup>
  - (iv) the date and time of arrival of the vessel; and
  - (v) in the case of an arrival report submitted after arrival of the vessel at the first customs seaport after entering the Republic, crew and traveller details in respect of each crew member and traveller on board when the vessel entered the Republic.

**Advance vessel, crew and sea travellers departure notices** (sections 51 and 87)<sup>57</sup>

**3.7** (1) An advance vessel and crew departure notice<sup>58</sup> and an advance sea travellers departure notice<sup>59</sup> must be submitted to the customs authority as a combined notice.

(2) (a) An advance vessel and crew departure notice and an advance sea travellers departure notice referred to in subrule (1) must, subject to paragraph (b), be submitted to the customs authority at least 24 hours before the scheduled departure of the vessel from a customs seaport, whether to another customs seaport or to a foreign destination.

<sup>55</sup> See definition of “on-board operator details” in rule 1.1.

<sup>56</sup> See definition of “transport ID” in rule 1.1.

<sup>57</sup> Note that the implementation of section 51 of the Control Act has been suspended in terms of section 943 and that rule 3.7 will accordingly only become effective from the date of implementation of section 51.

<sup>58</sup> See section 51(1)(a)(i) of the Control Act.

<sup>59</sup> See section 51(1)(a)(ii) of the Control Act.

(b) In the case of a vessel docking at a customs seaport for less than 24 hours, the timeframe referred to in paragraph (a) does not apply and an advance vessel and crew departure notice and an advance sea travellers departure notice referred to in subrule (1) must be submitted at least six hours before departure of the vessel.

(3) An advance vessel and crew departure notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) the vessel's port of departure;
- (c) the date and scheduled time of departure of the vessel; and
- (d) crew details in respect of each crew member on board the vessel bound for a foreign destination, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

(4) An advance sea travellers departure notice must reflect the following information:

- (a) General reporting information;
- (b) whether the vessel transports travellers; and
- (c) if so, traveller details<sup>60</sup> in respect of each traveller scheduled to be on board when the vessel leaves the Republic, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

### **Advance sea cargo departure notices (sections 51 and 87)<sup>61</sup>**

**3.8** (1) An advance sea cargo departure notice<sup>62</sup> must be submitted to the customs authority—<sup>63</sup>

- (a) in respect of—

<sup>60</sup> See definition of "traveller details" in rule 1.1.

<sup>61</sup> Note that the implementation of section 51 of the Control Act has been suspended in terms of section 943 and that rule 3.8 will accordingly only become effective from the date of implementation of section 51.

<sup>62</sup> See section 51(2)(a) of the Control Act.

<sup>63</sup> See section 51(2)(c) of the Control Act for exemption from submission of advance cargo departure notices in the case of transshipment goods.



- (i) any containerised cargo on board the vessel for which the cargo reporter submitting the notice is responsible;
  - (ii) any break bulk cargo on board the vessel for which the cargo reporter submitting the notice is responsible;
  - (iii) any bulk cargo on board the vessel for which the cargo reporter submitting the notice is responsible; and
  - (iv) any empty containers on board the vessel for which the cargo reporter submitting the notice is responsible; and
- (b) no later than the timeframe prescribed in rule 3.7(2) for the submission of an advance vessel and crew departure notice and an advance sea travellers departure notice.

(2) An advance sea cargo departure notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the identity of the cargo reporter;
- (c) the cargo type; and
- (d) if the cargo for which the cargo reporter is responsible consists of—
  - (i) containerised cargo, container details and containerised cargo details in respect of each container;
  - (ii) break bulk cargo, break bulk cargo details in respect of each consignment of such cargo;
  - (iii) bulk cargo, bulk cargo details in respect of each consignment of such cargo; or
  - (iv) empty containers, container details in respect of each container.

**Applications for permission to depart** (*sections 52 and 87*)

**3.9** (1) (a) An application for permission to depart must be submitted to the customs authority electronically at least 12 hours before the scheduled departure of the vessel from a customs seaport to a foreign destination.

(b) In the case of a vessel docking at a customs seaport for less than 24 hours, the timeframe referred to in paragraph (a) does not apply and the application for permission to depart must be submitted at least six hours before departure of the vessel.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the vessel's port of departure; and
- (c) the date and scheduled time of departure of the vessel.

(3) An application referred to in subrule (1) must be supported by the following documents which must be submitted together with the application subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A certificate of clearance for a foreign destination;
- (b) a Transnet National Ports Authority clearance certificate;
- (c) a Department of Home Affairs certificate;<sup>64</sup>
- (d) an income tax certificate referred to in section 33(2)(d) of the Income Tax Act, 1962 (Act No. 58 of 1962), in respect of the carrier; and
- (e) any relevant safety certificate required in terms of Part 1 of Chapter V of the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

(4) A permission to depart issued in respect of a vessel in terms of section 52 of the Control Act, lapses if the vessel does not depart from the relevant customs seaport within 36 hours after the permission was issued.

(5) A foreign-going vessel that is not operated by a carrier is hereby in terms of section 86 excluded from the application of section 52, but such exclusion does not affect any obligation to comply with any other legislation.

### **Vessel departure reports (sections 53 and 87)**

**3.10** (1) A vessel departure report<sup>65</sup> must—

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<sup>64</sup> This is the certificate referred to in section 35 (8) of the Immigration Act 13 of 2002 read with Regulation 34(13) of the Immigration Regulations, 2014.

<sup>65</sup> In terms of section 53 of the Control Act vessel departure reports must be submitted by port authorities and carriers or, if a vessel is not operated by a carrier, by the on-board operator of the vessel. As rule 3.52 exempts carriers from this section, carriers are not required to submit vessel departure reports.

- (a) be submitted to the customs authority within 30 minutes after the departure of the vessel from a customs seaport, whether to another customs seaport or to a foreign destination; and
- (b) reflect the following information:
  - (i) General mandatory reporting information; and
  - (ii) the date and time of departure of the vessel.

(2) A vessel departure report submitted by the on-board operator of a vessel not operated by a carrier must—

- (a) be submitted to the customs authority on Form .....before the departure of the vessel; and
- (b) reflect—
  - (i) the on-board operator details;
  - (ii) the name of the vessel;
  - (iii) the transport ID;
  - (iv) crew and traveller details in respect of each crew member and traveller on board the vessel; and
  - (v) the date and expected time of departure of the vessel.

### **Sea cargo departure notices** (*section 87*)

**3.11** (1) Each cargo reporter responsible for cargo loaded on board a foreign-going vessel for export must, within three working days after the departure of the vessel from a customs seaport to a destination outside the Republic, submit to the customs authority a sea cargo departure notice in respect of the cargo for which that cargo reporter is responsible.

(2) A sea cargo departure notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the identity of the cargo reporter;
- (c) the cargo type; and
- (d) if the cargo for which the cargo reporter is responsible consists of—
  - (i) containerised cargo, container details and containerised cargo details in respect of each container;

- (ii) break bulk cargo, break bulk cargo details in respect of each consignment of such cargo;
- (iii) bulk cargo, bulk cargo details in respect of each consignment of such cargo; or
- (iv) empty containers, container details in respect of each container; and
- (e) the date of departure.

### ***Part 3: Reporting requirements for arriving and departing foreign-going aircraft***

#### **Advance aircraft, crew and air travellers arrival notices** *(sections 55 and 87)*

**3.12** (1) An advance aircraft and crew arrival notice<sup>66</sup> and an advance air travellers arrival notice<sup>67</sup> must be submitted to the customs authority as a combined notice.

(2) An advance aircraft and crew arrival notice and an advance air travellers arrival notice referred to in subrule (1) must be submitted at least—

- (a) two hours before the arrival of the aircraft at the first customs airport where the aircraft is scheduled to land after entering the Republic, if the duration of the flight to that customs airport, calculated from the last place where cargo or travellers bound for the Republic were taken on board, is likely to be more than six hours;
- (b) one hour before the arrival of the aircraft at that customs airport, if the duration of that flight is likely to be between six and two hours; or
- (c) 30 minutes before the arrival of the aircraft at that customs airport, if the duration of the flight is likely to take less than two hours.

(3) An advance aircraft and crew arrival notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) the airport of departure and all the airports where the aircraft will land during the flight to and in the Republic;
- (c) the date and time of departure of the aircraft from the airport of departure;

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<sup>66</sup> See section 55(1)(a)(i) of the Control Act.

<sup>67</sup> See section 55(1)(a)(ii) of the Control Act.

- (d) the date and scheduled time of arrival of the aircraft at the first customs airport where the aircraft is scheduled to land after entering the Republic; and
- (e) crew details in respect of each crew member scheduled to be on board when the aircraft enters the Republic, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

(4) An advance air travellers arrival notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) whether the aircraft transports travellers; and
- (c) if so, traveller details in respect of each traveller scheduled to be on board when the aircraft enters the Republic, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.<sup>68</sup>

#### **Advance air cargo arrival notices** (sections 55 and 87)

**3.13** (1) An advance air cargo arrival notice<sup>69</sup> must be submitted to the customs authority no later than the timeframe prescribed for submission of an advance aircraft and crew arrival notice and an advance air travellers arrival notice referred to in rule **3.12**.

(2) An advance air cargo arrival notice referred to in subrule (1) must reflect the following information:

- (a) The identity of the cargo reporter;
- (b) general mandatory reporting information;
- (c) air cargo details<sup>70</sup> in respect of each consignment scheduled to be on board when the aircraft enters the Republic;
- (d) the scheduled date and estimated time of arrival of the aircraft at the first airport where the aircraft is scheduled to call after entering the Republic; and

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<sup>68</sup> Note that this exemption does not affect section 24 of the Control Act which enables Customs to require a carrier to submit traveller information to any extent that such information is not provided by Home Affairs.

<sup>69</sup> See section 55(2) of the Control Act.

<sup>70</sup> See definition of "air cargo details" in rule 1.1.

- (e) if the notice will be used as a transshipment clearance declaration as contemplated in section 251 of the Control Act, read with rule 11.3(1)(c), an indicator that the notice will be used for that purpose.

**Aircraft arrival reports** (sections 56 and 87)

**3.14** (1) An aircraft arrival report<sup>71</sup> must be submitted to the customs authority within 30 minutes after the arrival of an aircraft at a customs airport.

(2) An aircraft arrival report must reflect the following information:

- (a) General mandatory reporting information, excluding the transport ID of the aircraft; and
- (b) the date and time of arrival of the aircraft.

(3) An aircraft arrival report submitted by the on-board operator of an aircraft not operated by a carrier must—

- (a) be submitted on Form.....; and
- (b) reflect the following information:
- (i) The on-board operator details;<sup>72</sup>
- (ii) the transport ID;
- (iii) the date and time of arrival of the aircraft at the relevant customs airport; and
- (iv) in the case of an arrival report submitted after arrival of the aircraft at the first customs airport after entering the Republic, crew and traveller details in respect of each crew member and traveller on board when the aircraft entered the Republic.

**Advance aircraft, crew and air travellers departure notices** (sections 57 and 87)<sup>73</sup>

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<sup>71</sup> In terms of section 56(1) of the Control Act aircraft arrival reports must be submitted by port authorities and carriers or, if an aircraft is not operated by a carrier, by the on-board operator of the aircraft. As rule 3.52 exempts carriers from this section, carriers are not required to submit aircraft arrival reports.

<sup>72</sup> See definition of “on-board operator details” in rule 1.1.

<sup>73</sup> Note that the implementation of section 57 of the Control Act has been suspended in terms of section 943 and that rule 3.15 will accordingly only become effective from the date of implementation of section 57.

**3.15** (1) An advance aircraft and crew departure notice<sup>74</sup> and an advance air travellers departure notice<sup>75</sup> must be submitted to the customs authority as a combined notice.

(2) An advance aircraft and crew departure notice and an advance air travellers departure notice referred to in subrule (1) must—

- (a) be submitted to the customs authority at least six hours before the scheduled departure of the aircraft from a customs airport, whether to another customs airport or to a foreign destination; and
- (b) reflect the following information:
  - (i) General mandatory reporting information;
  - (ii) the aircraft's port of departure;
  - (iii) the date and scheduled time of departure of the aircraft; and
  - (iv) crew details in respect of each crew member bound for a foreign destination, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.

(3) An advance air travellers departure notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) whether the aircraft transports travellers; and
- (c) if so, traveller details in respect of each air traveller scheduled to be on board when the aircraft leaves the Republic, except where these details are provided to the customs authority by the Department of Home Affairs in terms of an information sharing agreement referred to in section 35 of the Control Act.<sup>76</sup>

### **Advance air cargo departure notices (sections 57 and 87)<sup>77</sup>**

<sup>74</sup> See section 57(1)(a)(i) of the Control Act.

<sup>75</sup> See section 57(1)(a)(ii) of the Control Act.

<sup>76</sup> Note that this exemption does not affect section 24 of the Control Act which enables Customs to require a carrier to submit traveller information to any extent that such information is not provided by Home Affairs.

<sup>77</sup> Note that the implementation of section 57 of the Control Act has been suspended in terms of section 943 and that rule **3.16** will accordingly only become effective from the date of implementation of section 57.

**3.16** (1) An advance air cargo departure notice<sup>78</sup> must be submitted to the customs authority no later than 30 minutes before departure of the aircraft.

(2) An advance air cargo departure notice referred to in subrule (1) must reflect the following information:<sup>79</sup>

- (a) General mandatory reporting information;
- (b) the identity of the cargo reporter; and
- (c) air cargo details in respect of cargo for which the cargo reporter is responsible.

**Aircraft departure reports (sections 59 and 87)**

**3.17** (1) An aircraft departure report<sup>80</sup> must be submitted to the customs authority within 30 minutes after the departure of the aircraft from a customs airport, whether to another customs airport or to a foreign destination.

(2) An aircraft departure report must reflect the following information:

- (a) General mandatory reporting information, excluding the transport ID of the aircraft; and
- (b) the date and time of departure of the aircraft.

(3) An aircraft departure report submitted by the on-board operator of an aircraft not operated by a carrier must—

- (a) be submitted to the customs authority on Form .....before the departure of the aircraft; and
- (b) reflect the following information:
  - (i) The on-board operator details;
  - (ii) the transport ID;
  - (iii) crew and traveller details in respect of each crew member and traveller on board the aircraft; and
  - (iv) the date and expected time of departure of the aircraft.

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<sup>78</sup> See section 57(2)(a) of the Control Act.

<sup>79</sup> See section 57(2)(c) and (d) of the Control Act for exemption from submission of advance cargo departure notices in the case of transshipment goods.

<sup>80</sup> In terms of section 59 of the Control Act aircraft departure reports must be submitted by port authorities and carriers or, if an aircraft is not operated by a carrier, by the on-board operator of the aircraft. As rule 3.52 exempts carriers from this section, carriers are not required to submit aircraft departure reports.



### **Air cargo departure notice (section 87)**

**3.18** (1) Each cargo reporter responsible for cargo loaded on board a foreign-going aircraft for export must, within one working day after departure of the aircraft from a customs airport to a destination outside the Republic, submit to the customs authority an air cargo departure notice in respect of the cargo for which that cargo reporter is responsible.

(2) An air cargo departure notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) the identity of the cargo reporter;
- (c) air cargo details in respect of cargo for which the cargo reporter is responsible; and
- (d) the date of departure.

### **Part 4: Reporting requirements for arriving and departing cross-border trains**

#### **Advance train, crew, rail travellers and rail cargo arrival notices (sections 60 and 87)**

**3.19** (1) An advance train and crew arrival notice,<sup>81</sup> an advance rail travellers arrival notice<sup>82</sup> and an advance rail cargo arrival notice<sup>83</sup> must be submitted to the customs authority separately.

(2) An advance train and crew arrival notice, an advance rail travellers arrival notice and an advance rail cargo arrival notice referred to in subrule (1) must be submitted at least one hour before arrival of the train at the first railway station in the Republic.

(3) An advance train and rail crew arrival notice must reflect the following information:

- (a) General mandatory reporting information;

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<sup>81</sup> See section 60(1)(a) of the Control Act.

<sup>82</sup> See section 60(1)(b) of the Control Act.

<sup>83</sup> See section 60(1)(c) of the Control Act.

- (b) the train's country of departure;
- (c) the final destination of the train on the relevant voyage;
- (d) date and scheduled time of arrival of the train at the first railway station in the Republic;
- (e) the name of each railway station in the Republic where—
  - (i) travellers or crew will disembark;
  - (ii) cargo will be offloaded; or
  - (iii) a railway carriage will be detached;
- (f) the number of crew members scheduled to be on board the train when the train enters the Republic; and
- (g) crew details in respect of each crew member on board the train when the train enters the Republic.

(4) An advance rail travellers arrival notice must reflect the following information:

- (a) General mandatory reporting information, as may be applicable;
- (b) the number of rail travellers scheduled to be on board the train when the train enters the Republic; and
- (c) traveller details in respect of each rail traveller on board the train when the train enters the Republic.

(5) An advance rail cargo arrival notice must reflect the following information:

- (a) General mandatory reporting information; and
- (b) if the train is transporting—
  - (i) containerised cargo—
    - (aa) the total number of containers; and
    - (bb) containerised cargo details and container details in respect of each consignment;
  - (ii) bulk cargo—
    - (aa) bulk cargo details; and
    - (bb) the number of each railway carriage transporting bulk cargo; and
  - (iii) break bulk cargo—
    - (aa) the number of consignments;

- (bb) break bulk cargo details in respect of each consignment; and
- (cc) the number of each railway carriage transporting break bulk cargo.

### **Train arrival reports** (sections 61 and 87)

**3.20** A train arrival report<sup>84</sup> must—

- (a) be submitted to the customs authority within 30 minutes after the arrival of the train at each railway station in the Republic referred to in section 61 of the Control Act; and
- (b) reflect the following information:
  - (i) General mandatory reporting information;
  - (ii) the date and time of the train's arrival at that railway station; and
  - (iii) the name of that railway station.

### **Advance train and crew, rail travellers and rail cargo departure notices** (sections 62 and 87)<sup>85</sup>

**3.21** (1) An advance train and crew departure notice,<sup>86</sup> an advance rail travellers departure notice<sup>87</sup> and an advance rail cargo departure notice<sup>88</sup> must be submitted to the customs authority separately.

(2) An advance train and crew departure notice, an advance rail travellers departure notice and an advance rail cargo departure notice referred to in subrule (1) must be submitted at least one hour before the train is scheduled to depart from the first railway station on its voyage to a foreign destination.

(3) An advance train and rail crew departure notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) the country of destination;
- (c) the railway station from where the train will depart;

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<sup>84</sup> See section 61(1) of the Control Act.

<sup>85</sup> Note that the implementation of section 62 of the Control Act has been suspended in terms of section 943 and that rule 3.21 will accordingly only become effective from the date of implementation of section 62.

<sup>86</sup> See section 62(1)(a)(i) of the Control Act.

<sup>87</sup> See section 62(1)(a)(ii) of the Control Act.

<sup>88</sup> See section 62(1)(a)(iii) of the Control Act.

- (d) the date and scheduled time of departure;
- (e) details of the train's route to the place of exit; and
- (f) crew details in respect of each crew member on board the train destined for a foreign destination.

(4) An advance rail travellers departure notice must reflect the following information:

- (a) General mandatory reporting information; and
- (b) traveller details in respect of each rail traveller on board the train destined for a foreign destination.

(5) An advance rail cargo departure notice must reflect the following information:

- (a) General mandatory reporting information; and
- (b) if the train is to transport containerised cargo to a foreign destination—
  - (i) total number of containers on board; and
  - (ii) containerised cargo details and container details in respect of each consignment;
- (c) if the train is to transport bulk cargo to a foreign destination—
  - (i) bulk cargo details; and
  - (ii) the number of each railway carriage containing bulk cargo; and
- (d) if the train is to transport break bulk cargo to a foreign destination—
  - (i) the number of consignments;
  - (ii) the break bulk cargo details in respect of each consignment; and
  - (iii) the number of each railway carriage containing break bulk cargo.

### **Updates of advance train and crew, rail travellers and rail cargo departure notices (sections 62 and 87)<sup>89</sup>**

**3.22** (1) Any updates<sup>90</sup> of an advance departure notice referred to in rule **3.21** must be submitted to the customs authority within one hour after the train has departed from each railway station where—

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<sup>89</sup> Note that the implementation of section 62 of the Control Act has been suspended in terms of section 943 and that rule **3.22** will accordingly only become effective from the date of implementation of section 62.

<sup>90</sup> See section 62(1)(b) of the Control Act.

- (a) travellers or crew or cargo bound for a foreign destination were taken on board that train; or
- (b) a cross-border railway carriage transporting such travellers or crew or cargo was attached to that train.

(2) An update of an advance train and rail crew departure notice must reflect the following information:

- (a) General mandatory reporting information; and
- (b) crew details in respect of each crew member contemplated in subrule (1)(a) or (b).

(3) An update of an advance rail travellers departure notice must reflect the following information:

- (a) General mandatory reporting information; and
- (b) traveller details in respect of each traveller contemplated in subrule (1)(a) or (b).

(4) An update of an advance rail cargo departure notice must reflect the following information:

- (a) General mandatory reporting information;
- (b) containerised cargo details and container details in respect of each consignment of cargo contemplated in subrule (1)(a) or (b) consisting of containers;
- (c) bulk cargo details in respect of each consignment of cargo contemplated in subrule (1)(a) or (b) consisting of bulk cargo; and
- (d) break bulk cargo details in respect of each consignment of cargo contemplated in subrule (1)(a) or (b) consisting of break bulk cargo.

### **Train departure reports** (*sections 63 and 87*)

**3.23** (1) A train departure report<sup>91</sup> must be submitted to the customs authority within one hour after the departure of the train from the last railway station in the Republic before the train leaves the Republic.

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<sup>91</sup> See section 63(1) of the Control Act.

- (2) A departure report must reflect the following information:
- (a) General mandatory reporting information;
  - (b) the name of the railway station; and
  - (c) the date and time of departure.

**Rail cargo departure notice** (*section 87*)

**3.24** (1) The carrier operating a cross-border train in the Republic to a destination outside the Republic must submit to the customs authority a rail cargo departure notice within one working day after departure of the train from the last railway station in the Republic before the train leaves the Republic.

(2) A rail cargo departure notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information; and
- (b) in the case of containerised cargo transported to a foreign destination—
  - (i) the total number of containers on board; and
  - (ii) containerised cargo details and container details in respect of each consignment;
- (c) in the case of bulk cargo transported to a foreign destination—
  - (i) bulk cargo details; and
  - (ii) the number of each railway carriage containing bulk cargo;
- (d) in the case of break bulk cargo transported to a foreign destination—
  - (i) the number of consignments;
  - (ii) break bulk cargo details in respect of each consignment; and
  - (iii) the number of each railway carriage containing break bulk cargo; and
- (e) the date of departure.

***Part 5: Reporting requirements for arriving and departing buses***

**Advance bus, crew and travellers arrival notice** (*sections 64 and 87*)

**3.25** (1) An advance bus, crew and travellers arrival notice must be submitted to the customs authority—

- (a) at least one hour before the arrival of the bus at the land border-post where it will enter the Republic; or
- (b) if the place from where the bus departed to the Republic is less than one hour's drive from the border-post, at least ten minutes before the arrival of the bus at that border-post.

(2) An advance bus, crew and travellers arrival notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the land border-post where the bus will enter the Republic;
- (c) the date and scheduled time of arrival of the bus at the border-post;
- (d) the on-board operator details; and
- (e) crew and traveller details in respect of each crew member and traveller on board the bus.

#### **Reporting of arrival of buses, crew and travellers** (sections 65 and 87)

**3.26** (1) The on-board operator of a bus must on arrival of the bus at a land border-post where the bus enters the Republic report to a customs officer in accordance with the operational procedures applied at the border-post and provide the following information to the officer for electronic recording, to the extent that the information has not already been submitted in an advance bus, crew and travellers arrival notice referred to in rule **3.25** or an amended advance bus, crew and travellers arrival notice referred to in rule **3.54**:

- (a) General mandatory reporting information;
- (b) the on-board operator details;
- (c) the date and time of arrival of the bus at that land border-post;
- (d) crew and traveller details in respect of each crew member and traveller on board the bus when it enters the Republic; and
- (e) any other information required by the customs authority for purposes of recording the arrival of the bus, crew and travellers.

(2) The on-board operator must, after the information referred to in subrule (1) has been electronically recorded by the customs officer, confirm the correctness of the information in a manner required by the officer.

**Advance bus, crew and travellers departure notices** (*sections 66 and 87*)<sup>92</sup>

**3.27** An advance bus, crew and travellers departure notice<sup>93</sup> must—

- (a) be submitted at least one hour before the bus reaches the land border-post where it will leave the Republic; and
- (b) reflect the following information:
  - (i) The general mandatory reporting information;
  - (ii) the date and scheduled time of arrival of the bus at the land border-post where it will leave the Republic;
  - (iii) on-board operator details;
  - (iv) the foreign destination of the bus; and
  - (v) crew and traveller details in respect of each crew member and traveller on board the bus destined for a foreign destination.

**Reporting of departure of buses, crew and travellers** (*sections 67 and 87*)

**3.28** (1) The on-board operator of a bus must on arrival of the bus at a land border-post where the bus will leave the Republic report to a customs officer in accordance with the operational procedures applied at the border-post and provide the following information to the officer for electronic recording, to the extent that the information has not already been submitted in an advance bus, crew and travellers departure notice referred to in rule **3.27** or an amended advance bus, crew and travellers departure notice referred to in rule **3.54**:

- (a) General mandatory reporting information;
- (b) the on-board operator details;
- (c) the date and time of arrival of the bus at that land border-post;
- (d) crew and traveller details in respect of each crew member and traveller on board the bus destined for a foreign destination; and
- (e) any other information required by the customs authority for purposes of recording the departure of the bus, crew and travellers.

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<sup>92</sup> Note that the implementation of section 66 of the Control Act has been suspended in terms of section 943 and that rule **3.27** will accordingly only become effective from the date of implementation of section 66.

<sup>93</sup> See section 66(1) of the Control Act.



(2) The on-board operator must, after the information referred to in subrule (1) has been electronically recorded by the customs officer, confirm the correctness of the information in a manner required by the officer.

### ***Part 6: Reporting requirements for trucks entering or leaving Republic***

#### **Advance truck, crew and cargo arrival notices (sections 68 and 87)**

**3.29** (1) An advance truck, crew and cargo arrival notice<sup>94</sup> must, subject to subrule (3), be submitted to the customs authority before the arrival of the truck at the land border-post where it will enter the Republic.

(2) An advance arrival notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the land border-post where the truck will enter the Republic;
- (c) the date and scheduled time of arrival of the truck at the border-post;
- (d) the on-board operator details;
- (e) crew details in respect of each crew member on board the truck; and
- (f) if the truck transports—
  - (i) containerised cargo, containerised cargo details and container details in respect of each consignment of containerised cargo on board the truck;
  - (ii) bulk cargo, bulk cargo details in respect of the bulk cargo on board the truck; and
  - (iii) break bulk cargo, break bulk cargo details in respect of each consignment of break bulk cargo on board the truck.

(3) An own goods carrier<sup>95</sup> operating a truck who is in terms of rule 7.3 permitted to submit clearance declarations in paper format is hereby in terms of section 86(a)(ii) of the Control Act excluded from the application of section 68 of that Act.

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<sup>94</sup> See section 68(1) of the Control Act.

<sup>95</sup> See definition of “own goods carrier” in rule 1.1 and also rule 29.4(f).

**Reporting of arrival of truck, crew and cargo** (sections 69 and 87)

**3.30** (1) The on-board operator of a truck must on arrival of the truck at a land border-post where the truck enters the Republic report to a customs officer in accordance with the operational procedures applied at the border-post and provide to the officer, for purposes of electronic recording of the arrival of the truck, crew and cargo, all the information as the officer may require, to the extent that the required information has not already been submitted in an advance truck, crew and cargo arrival notice referred to in rule **3.29** or an amended advance truck, crew and cargo arrival notice referred to in rule **3.54**. Such information may include, as the customs officer may require—

- (a) general mandatory reporting information;
- (b) the on-board operator details;
- (c) the date and time of arrival of the truck at the land border-post where the truck enters the Republic;
- (d) crew details in respect of each crew member on board the truck when it enters the Republic; and
- (e) the transport name in relation to the truck; and
- (f) road manifest information, in the case of an own goods carrier referred to in rule **3.29(3)**.

(2) The on-board operator must, after the information referred to in subrule (1) has been electronically recorded by the customs officer, confirm the correctness of the information in a manner required by the officer.

**Advance truck, crew and cargo departure notices** (sections 70 and 87)

**3.31** (1) An advance truck, crew and cargo departure notice<sup>96</sup> must, subject to subrule (3), be submitted at least one hour before the truck reaches the land border-post where it will leave the Republic.

(2) An advance departure notice referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;

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<sup>96</sup> See section 70(1) of the Control Act.

- (b) the land border-post where the truck will leave the Republic;
- (c) the date and scheduled time of arrival of the truck at the border-post;
- (d) the on-board operator details;
- (e) details of the truck's destination;
- (f) crew details in respect of each crew member on board the truck; and
- (g) if the truck transports—
  - (i) containerised cargo, containerised cargo details and container details in respect of each consignment of containerised cargo on board the truck;
  - (ii) bulk cargo, bulk cargo details in respect of the bulk cargo on board the truck; and
  - (iii) break bulk cargo, break bulk cargo details in respect of each consignment of break bulk cargo on board the truck.

(3) An own goods carrier<sup>97</sup> operating a truck who is in terms of rule 7.3 permitted to submit clearance declarations in paper format is hereby in terms of section 86(a)(ii) of the Control Act excluded from the application of section 70 of that Act.

### **Reporting of departure of trucks, crew and cargo** (sections 71 and 87)

**3.32** (1) The on-board operator of a truck must on arrival of the truck at a land border-post where the truck will leave the Republic report to a customs officer in accordance with the operational procedures applied at the border-post and provide to the officer, for purposes of electronic recording of the arrival of the truck, crew and cargo, all the information as the officer may require, to the extent that the required information has not already been submitted in an advance truck, crew and cargo departure notice referred to in rule 3.31 or an amended advance truck, crew and cargo departure notice referred to in rule 3.54. Such information may include, as the customs officer may require—

- (a) General mandatory reporting information;
- (b) on-board operator details;
- (c) the date and time of arrival of the truck at that land border-post;

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<sup>97</sup> See definition of "own goods carrier" in rule 1.1 and also rule 29.4(f).

- (d) crew details in respect of each crew member on board the truck destined for a foreign destination;
- (e) the transport name in relation to the truck; and
- (f) road manifest information, in the case of an own goods carrier referred to in rule **3.31(3)**.

(2) The on-board operator must, after the information referred to in subrule (1) has been electronically recorded by the customs officer, confirm the correctness of the information in a manner required by the officer.

### ***Part 7: Cargo outturn reports by licensees of sea cargo terminals and depots***

#### **Outturn reports on containers off-loaded from or loaded on board vessels at sea cargo terminals (sections 73 and 87)**

**3.33** (1) An outturn report in respect of containers off-loaded from a vessel<sup>98</sup> at a sea cargo terminal must be submitted to the customs authority at intervals as may be agreed between the licensee of the terminal and the customs authority, but no later than 24 hours after the last container covered by the relevant report has been off-loaded from the vessel.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the terminal where off-loaded;
- (c) the date of arrival of the vessel at the terminal;
- (d) the landed purpose;
- (e) the number of containers off-loaded;
- (f) the container details listed in paragraph (a), (b), (d) and (e) of the definition of “container details”<sup>99</sup> in respect of each container; and
- (g) in the case of containers off-loaded for transshipment, transshipment details<sup>100</sup> in relation to those containers to the extent not provided in terms of paragraph (a).

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<sup>98</sup> See section 73(1) of the Control Act.

<sup>99</sup> See definition of “container details” in rule 1.1

(3) An outturn report in respect of containers loaded on board a vessel<sup>101</sup> at a sea cargo terminal must be submitted to the customs authority no later than 24 hours after the last container has been loaded on board the vessel.

(4) An outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the terminal where loaded;
- (c) the date of scheduled departure of the vessel from the terminal;
- (d) the number of containers loaded;
- (e) the container details listed in paragraph (a), (c), (d) and (e) of the definition of “container details” in respect of each container; and
- (f) in the case of containers loaded under the transshipment procedure, transshipment details in relation to those containers to the extent not provided in terms of paragraph (a).

**Outturn reports on break bulk cargo and bulk cargo off-loaded from or loaded on board vessels at sea cargo terminals (sections 74 and 87)**

**3.34** (1) An outturn report in respect of break bulk and bulk cargo off-loaded from a vessel<sup>102</sup> at a sea cargo terminal must be submitted to the customs authority no later than seven calendar days after the break bulk or bulk cargo has been fully offloaded from the vessel.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the terminal where off-loaded;
- (c) the date of arrival of the vessel at the terminal;
- (d) the cargo type;
- (e) in the case of break bulk cargo—

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<sup>100</sup> See definition of “transshipment details” in rule 1.1.

<sup>101</sup> See section 73(2) of the Control Act.

<sup>102</sup> See section 74(1) of Control Act.

- (i) the break bulk cargo details listed in paragraphs *(h)* to *(o)* of the definition of “break bulk cargo details”<sup>103</sup> in respect of each consignment of break bulk cargo off-loaded;
  - (ii) details of any excess or shortage found in any consignment off-loaded as measured against the applicable transport documents; and
  - (iii) the date the consignment was fully off-loaded;
- (f)* in the case of bulk cargo—
- (i) the bulk cargo details listed in paragraphs *(h)* to *(k)* of the definition of “bulk cargo details”<sup>104</sup> in respect of bulk cargo off-loaded;
  - (ii) details of any excess or shortage found in the quantity off-loaded as measured against the applicable transport documents; and
  - (iii) the date the bulk cargo was fully off-loaded; and
- (g)* in the case of a consignment of break bulk cargo or bulk cargo off-loaded for transshipment, transshipment details in relation to that consignment to the extent not provided in terms of paragraph *(a)*.

(3) An outturn report of break bulk and bulk cargo loaded on board a vessel<sup>105</sup> at a sea cargo terminal must be submitted to the customs authority no later than seven calendar days after the break bulk or bulk cargo has been fully loaded on board the vessel.

(4) An outturn report referred to in subrule (3) must reflect the following information:

- (a)* General mandatory reporting information;
- (b)* the terminal where loaded;
- (c)* the date of the scheduled departure of the vessel from the terminal;
- (d)* the cargo type;
- (e)* in the case of break bulk cargo—
  - (i) the break bulk cargo details listed in paragraphs *(h)* to *(o)* of the definition of “break bulk cargo details” in respect of each consignment of break bulk cargo off-loaded;

<sup>103</sup> See definition of “break bulk cargo details” in rule 1.1

<sup>104</sup> See definition of “bulk cargo details” in rule 1.1

<sup>105</sup> See section 74(2) of the Control Act.

- (ii) details of any excess or shortage found in any consignment loaded as measured against the applicable transport documents; and
  - (iii) the date the consignment was fully loaded;
- (f) in the case of bulk cargo –
  - (i) the bulk cargo details listed in paragraphs (h) to (k) of the definition of “bulk cargo details” in respect of bulk cargo off-loaded;
  - (ii) details of any excess or shortage found in the quantity loaded as measured against the applicable transport documents; and
  - (iii) the date the bulk cargo was fully loaded; and
- (g) in the case of a consignment of break bulk cargo or bulk cargo loaded under the transshipment procedure, transshipment details in relation to that consignment to the extent not provided in terms of paragraph (a).

(5) Cargo for which the licensee of the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1) or (3), but a separate outturn report must be submitted in terms of rule **3.50**.

**Outturn reports on break bulk cargo and bulk cargo received at sea cargo terminals for export** (*section 81*)

**3.35** (1) An outturn report in respect of break bulk and bulk cargo received at a sea cargo terminal for export must be submitted to the customs authority at hourly intervals.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the port of loading;
- (c) the terminal where received;
- (d) the gate-in date and time;
- (e) the cargo type;
- (f) the date of scheduled departure of the transporting vessel;
- (g) the movement reference number;

- (h) in the case of break bulk cargo the break bulk cargo details listed in paragraphs (h) to (o) of the definition of “break bulk cargo details”<sup>106</sup> in respect of each consignment of break bulk cargo received;
- (i) in the case of bulk cargo the bulk cargo details listed in paragraphs (h) to (k) of the definition of “bulk cargo details”<sup>107</sup> in respect of bulk cargo received; and
- (j) in the case of a consignment of break bulk cargo or bulk cargo received for transshipment, transshipment details in relation to that consignment.

(3) Cargo for which the licensee of the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1), but a separate outturn report must be submitted in terms of rule 3.50.

**Outturn reports on containers removed from or received at sea cargo terminals** (sections 75 and 87)

**3.36** (1) An outturn report in respect of containers containing imported goods removed from a sea cargo terminal<sup>108</sup> must be submitted to the customs authority at hourly intervals.

(2) A gate-out outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date of arrival at the terminal of the vessel from which each container was off-loaded;
- (c) the terminal where off-loaded;
- (d) the landed purpose;
- (e) the gate-out date and time;
- (f) container details in respect of each container; and
- (g) in the case of containers off-loaded for transshipment, transshipment details in relation to those containers to the extent not provided in terms of paragraph (a).

<sup>106</sup> See definition of “break bulk cargo details” in rule 1.1

<sup>107</sup> See definition of “bulk cargo details” in rule 1.1

<sup>108</sup> See section 75(1)(a) of the Control Act.



(3) An outturn report in respect of containers containing goods destined for export received at a sea cargo terminal<sup>109</sup> must be submitted to the customs authority at hourly intervals.

(4) A gate-in outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the terminal where received;
- (c) the gate-in date and time;
- (d) the date of scheduled departure of the transporting vessel;
- (e) container details in respect of each container; and
- (f) in the case of containers to be loaded under the transshipment procedure, transshipment details in relation to those containers to the extent not provided in terms of paragraph (a).

### **Notification of transshipment cargo remaining at sea cargo terminal for longer than 21 calendar days**

**3.37** (1) The licensee of a sea cargo terminal must notify the customs authority of any cargo cleared for transshipment that remains at the terminal for longer than 21 calendar days after the cargo has been cleared.

(2) (a) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the goods are.

(3) A notification referred to in subrule (1) must reflect—

- (a) the customs code of the sea cargo terminal;

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<sup>109</sup> See section 75(1)(b) of the Control Act.

- (b) if the notification is submitted by a customs broker or ordinary representative on behalf of the licensee of the sea cargo terminal, the information specified in rule **41.14**;<sup>110</sup>
- (c) transshipment details of the relevant cargo;
- (d) if the cargo is—
  - (i) containerised cargo, container details;
  - (ii) break bulk cargo, break bulk cargo details; or
  - (iii) bulk cargo, bulk cargo details; and
- (e) the reason why the cargo remained at the terminal for longer than 21 days, which may be motivated in a separate supporting document which must, on request, be submitted subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Outturn reports on containers received at or removed from container depots**  
(sections 75 and 87)

**3.38** (1) An outturn report in respect of containers containing imported goods received at a container depot<sup>111</sup> must be submitted at hourly intervals.

(2) A gate-in outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date of arrival of the vessel at the terminal where the containers were off-loaded;
- (c) the terminal where off-loaded;
- (d) the depot where received;
- (e) the gate-in date and time; and
- (f) container details in respect of each container.

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<sup>110</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the terminal, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in that capacity.

<sup>111</sup> See section 75(2)(a) of the Control Act.

(3) An outturn report in respect of containers containing goods destined for export removed from a container depot<sup>112</sup> must be submitted to the customs authority at hourly intervals.

(4) A gate-out outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the depot from where dispatched;
- (c) the terminal where to be loaded;
- (d) the date of scheduled departure of the vessel on which the containers are to be loaded;
- (e) the gate-out date and time; and
- (f) container details in respect of each container.

**Outturn reports on cargo received at container depots for packing for export**  
(section 81)

**3.39** (1) An outturn report in respect of cargo received at a container depot for packing for export must be submitted to the customs authority at hourly intervals.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) container depot where received;
- (c) the gate-in time and date;
- (d) the cargo type; and
- (e) the movement reference number.

(3) Cargo for which the licensee if the relevant depot has not received a transport document must not be included in the outturn report referred to in subrule (1), but a separate outturn report must be submitted in terms of rule **3.50**.

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<sup>112</sup> See section 75(2)(b) of the Control Act.

**Outturn reports on cargo unpacked from or packed into containers at container depots** (*sections 76 and 87*)

**3.40** (1) An outturn report in respect of all imported cargo unpacked from containers at a container depot<sup>113</sup> must be submitted to the customs authority at 24 hourly intervals.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the container depot where unpacked;
- (c) the date and time of unpacking of each container;
- (d) container details in respect of each container;
- (e) containerised cargo details in respect of each consignment;
- (f) the number of packages found;
- (g) the type of packages found;
- (h) the gross mass (KGM) of packages found; and
- (i) in the case of any discrepant packages found—
  - (i) the package condition;
  - (ii) a description of what the packages or contents should be; and
  - (iii) a description of the type of packages or contents found.

(3) An outturn report in respect of all cargo destined for export packed into containers at a container depot<sup>114</sup> must be submitted to the customs authority at 24 hourly intervals.

(4) An outturn report referred to in subrule (3) must reflect the following information—

- (a) General mandatory reporting information;
- (b) the container depot where packed;
- (c) the date and time of packing;
- (d) container details in respect of each container;
- (e) the number of packages packed;

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<sup>113</sup> See section 76(1)(a) of Control Act.

<sup>114</sup> See section 76(1)(b) of Control Act.

- (f) the type of packages packed;
- (g) the gross mass (KMG) of packages packed; and
- (h) in the case of any discrepant packages presented for packing—
  - (i) the package condition;
  - (ii) a description of what the packages or contents should be; and
  - (iii) a description of the type of packages or contents found.

(5) Cargo for which the licensee of the relevant depot has not received a transport document must not be included in the outturn report referred to in subrule (1) or (3), but a separate outturn report must be submitted in terms of rule **3.50**.

**Notification of export cargo remaining at container depot for longer than prescribed period** (*section 76(3)*)

**3.41** (1) Section 76(3) of the Control Act must be complied with if any cargo remains at a container depot for longer than five calendar days after delivery of the cargo to the depot for export.

(2) (a) A notification referred to in section 76(3) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Offices that serves the area where the goods are.

- (3) A notification referred to in subrule (2) must reflect—
- (a) the customs code of the container depot;
  - (b) if the notification is submitted by a customs broker or ordinary representative on behalf of the licensee of the container depot, the information specified in rule **41.14**;
  - (c) the movement reference number; and
  - (d) the reason why the cargo remained at the depot for longer than five calendar days, which may be motivated in a separate supporting document which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Part 8: Cargo outturn reports by licensees of air cargo terminals and depots**

**Outturn reports on cargo off-loaded from or loaded on board aircraft at air cargo terminals (sections 77 and 87)**

**3.42** (1) An outturn report of cargo off-loaded from an aircraft at an air cargo terminal<sup>115</sup> must be submitted to the customs authority no later than 24 hours after the aircraft has been fully unloaded.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date and time of arrival of the aircraft;
- (c) the date and time the cargo on the aircraft was fully off-loaded;
- (d) the terminal where off-loaded;
- (e) air cargo details<sup>116</sup> in relation to each consignment of air cargo off-loaded;
- (f) details of any excess or shortage found in any consignment off-loaded as measured against the applicable transport documents; and
- (g) in the case of a consignment of air cargo off-loaded for transshipment, transshipment details<sup>117</sup> in relation to that consignment to the extent not provided for in terms of paragraph (a).

(3) An outturn report of cargo loaded on board an aircraft at an air cargo terminal<sup>118</sup> must be submitted to the customs authority no later than 24 hours after the cargo has been loaded on board the aircraft.

(4) An outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date and time of scheduled departure of the aircraft;
- (c) the date and time the cargo was fully loaded on the aircraft;
- (d) the terminal where loaded;

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<sup>115</sup> See section 77(a) of Control Act.

<sup>116</sup> See definition of "air cargo details" in rule 1.1

<sup>117</sup> See definition of "transshipment details" in rule 1.1

<sup>118</sup> See section 77(b) of Control Act.

- (e) air cargo details in relation to each consignment of air cargo loaded;
- (f) details of any excess or shortage found in any consignment loaded as measured against the applicable transport documents; and
- (g) in the case of a consignment of air cargo loaded under the transshipment procedure, transshipment details in relation to that consignment to the extent not provided for in terms of paragraph (a).

(5) Cargo for which the licensee of the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1) or (3), but a separate outturn report must be submitted in terms of rule **3.50**.

### **Outturn reports on cargo received at air cargo terminals for loading on board aircraft** (*section 81*)

**3.43** (1) An outturn report of cargo received at an air cargo depot must be submitted to the customs authority at hourly intervals.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the port of loading;
- (c) the terminal where received;
- (d) the gate-in date and time;
- (e) the cargo type;
- (f) the date of scheduled departure of the transporting aircraft;
- (g) the movement reference number;
- (h) air cargo details in relation to each consignment received; and
- (i) in the case of a consignment of cargo received for transshipment, transshipment details in relation to that consignment.

(3) Cargo for which the licensee of the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1), but a separate outturn report must be submitted in terms of rule **3.50**.

### **Notification of transshipment cargo remaining at air cargo terminal for longer than 21 calendar days**

**3.44** (1) The licensee of an air cargo terminal must notify the customs authority of any cargo cleared for transshipment that remains at the terminal for longer than 21 calendar days after the cargo has been cleared.

(2) (a) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the goods are.

(3) A notification referred to in subrule (1) must include—

- (a) the customs code of the air cargo terminal;
- (b) if the notification is submitted by a customs broker or ordinary representative on behalf of the licensee of the air cargo terminal, the information specified in rule **41.14**;<sup>119</sup>
- (c) transshipment details of the relevant cargo;
- (d) air cargo details of the relevant cargo; and
- (e) the reason why the cargo remained at the terminal for longer than 21 days, which may be motivated in a separate supporting document which must be submitted to the customs authority on request subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Outturn reports on cargo received at air cargo depots for packing or consolidation (section 81)**

**3.45** (1) An outturn report in respect of cargo received at an air cargo depot for packing or consolidation must be submitted to the customs authority at hourly intervals.

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<sup>119</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the terminal, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in that capacity.



(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) air cargo depot where received;
- (c) the gate-in time and date;
- (d) the cargo type;
- (e) the movement reference number;
- (f) the air cargo details in respect of each consignment received;
- (g) the type of packages received for packing or consolidation; and
- (h) the gross mass (KGM) of those packages.

(3) Cargo for which the licensee if the relevant depot has not received a transport document must not be included in the outturn report referred to in subrule (1), but a separate outturn report must be submitted in terms of rule **3.50**.

**Outturn reports on cargo unpacked or packed at air cargo depots** (*section 78 and 87*)

**3.46** (1) An outturn report in respect of all imported cargo received and deconsolidated or unpacked at an air cargo depot<sup>120</sup> must be submitted to the customs authority no later than 24 hours after deconsolidation or unpacking of the cargo.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date and time of arrival of the aircraft;
- (c) the air cargo depot where deconsolidated or unpacked;
- (d) the date and time of deconsolidation of the consignment;
- (e) air cargo details in respect of each consignment;
- (f) the number of packages found;
- (g) the type of packages found;
- (h) the gross mass (KGM) of packages found; and

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<sup>120</sup> See section 78(1)(a) of the Control Act.

- (i) in the case of any discrepant packages found—
  - (i) the package condition;
  - (ii) a description of what the packages or contents should be; and
  - (iii) a description of the type of packages or contents found.

(3) An outturn report in respect of all cargo destined for export packed or consolidated at an air cargo depot<sup>121</sup> must be submitted to the customs authority no later than 24 hours after the cargo has been packed or consolidated.

(4) An outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the air cargo depot where the cargo is consolidated or packed;
- (c) the date and time of consolidation of the cargo or of packing of a unit load device<sup>122</sup>;
- (d) air cargo details in respect of each consignment;
- (e) the number of packages packed;
- (f) the type of packages packed;
- (g) the gross mass (KGM) of those packages; and
- (h) in the case of any discrepant packages found—
  - (i) the package condition;
  - (ii) a description of what the packages or contents should be; and
  - (iii) a description of the type of packages or contents found.

(5) Cargo for which the licensee of the relevant depot has not received a transport document must not be included in the outturn report referred to in subrule (1) or (3), but a separate outturn report must be submitted in terms of rule **3.50**.

**Notification of cargo remaining at air cargo depot for longer than prescribed period** (*section 78(3)*)

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<sup>121</sup> See section 76(1)(b) of the Control Act.

<sup>122</sup> See definition of unit load device” in rule 1.1

**3.47** (1) Section 78(3) of the Control Act must be complied with if any cargo remains at an air cargo depot for longer than three calendar days after delivery of the cargo to the depot for export.

(2) (a) A notification referred to in section 78(3) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Offices that serves the area where the goods are.

(3) A notification referred to in subrule (2) must reflect—

- (a) the customs code of the air cargo depot;
- (b) if the notification is submitted by a customs broker or ordinary representative on behalf of the licensee of the air cargo depot, the information specified in rule **41.14**;
- (c) the movement reference number; and
- (d) the reason why the cargo remained at the depot for longer than three calendar days, which may be motivated in a separate supporting document which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### ***Part 9: Cargo outturn reports by licensees of rail cargo terminals***

#### **Outturn reports on containers removed from or received at rail cargo terminals** *(section 81)*

**3.48** (1) An outturn report in respect of containers containing imported goods removed from a rail cargo terminal must be submitted to the customs authority at hourly intervals.

(2) A gate-out outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the date of arrival at the terminal of the train from which each container was off-loaded;

- (c) the terminal where off-loaded;
- (e) the landed purpose;
- (f) the gate-out date and time;
- (g) the premises to which each container is removed; and
- (h) container details<sup>123</sup> in respect of each container.

(3) An outturn report in respect of containers containing goods destined for export received at rail cargo terminal must be submitted to the customs authority at hourly intervals.

(4) A gate-in outturn report referred to in subrule (3) must reflect the following information:

- (a) General mandatory reporting information;
- (b) the terminal where received;
- (c) the gate-in date and time;
- (d) the date of scheduled departure of the transporting train; and
- (e) container details in respect of each container.

(5) Cargo for which the licensee if the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1) or (3) but a separate outturn report must be submitted in terms of rule **3.50**.

### **Outturn reports on break bulk and bulk cargo received at rail cargo terminals** (section 81)

**3.49** (1) An outturn report in respect of break bulk and bulk cargo received at a rail cargo terminal must be submitted to the customs authority at hourly intervals.

(2) An outturn report referred to in subrule (1) must reflect the following information:

- (a) General mandatory reporting information;
- (b) terminal where received;
- (c) the gate-in date and time;

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<sup>123</sup> See definition of “container details” in rule 1.1.

- (d) the date of scheduled departure of the transporting train;
- (e) the movement reference number; and
- (f) in the case of break bulk cargo the break bulk cargo details listed in paragraphs (h) to (o) of the definition of break bulk cargo details” in respect of each consignment of break bulk cargo received; and
- (g) in the case of bulk cargo the bulk cargo details listed in paragraphs (h) to (k) of the definition of “bulk cargo details” in respect of bulk cargo received.

(3) Cargo for which the licensee if the relevant terminal has not received a transport document must not be included in the outturn report referred to in subrule (1), but a separate outturn report must be submitted in terms of rule **3.50**.

### ***Part 10: Provisions applicable to outturn reports generally***

#### **Outturn reports on cargo with no transport documents (section 79)**

**3.50** (1) A separate outturn report in respect of—

- (a) cargo referred to in section 74, 76, 77 or 78 of the Control Act for which the licensee of the relevant terminal or depot has not received a transport document, must be submitted within the same timeframe applicable to that cargo in terms of rules **3.34, 3.40, 3.42** and **3.46**; and
- (b) cargo referred to in rules **3.35, 3.39, 3.43, 3.45, 3.48** and **3.49** for which the licensee of the relevant terminal or depot has not received a transport document, must be submitted within the same timeframe applicable to that cargo in terms of those rules.

(2) A separate outturn report referred to in subrule (1) must to the extent possible contain the same information as prescribed in rules **3.34, 3.40, 3.42** and **3.46**, or rules **3.35, 3.39, 3.43, 3.45, 3.48** and **3.49** as may be applicable, for outturn reports.

#### **Reports of shortlanded, shortshipped, shortpacked or excess cargo (section 80)**

**3.51** Any outturn report submitted in terms of Part 7, 8 or 9 in respect of cargo off-loaded, deconsolidated or unpacked must, where relevant, specify—

- (a) any containers that have been shortlanded or overlanded;
- (b) any goods which have been shortlanded, shortpacked, shortshipped as measured against the manifest or are in excess of manifested quantities;
- (c) unmanifested excess goods; or
- (d) that the goods have been fully accounted for according to the manifest.

**Part 11: Exemptions and exclusions (section 86)**

**Sea and air carriers exempted from submitting arrival and departure reports**

**3.52** (1) A carrier operating a foreign-going vessel is hereby in terms of section 86 of the Control Act exempted from submitting to the customs authority—

- (a) an arrival report in terms of section 50(1)(b)(i); and
- (b) a departure report in terms of section 53(1)(b)(i) of the Control Act.

(2) A carrier operating a foreign-going aircraft is hereby in terms of section 86 of the Control Act exempted from submitting to the customs authority—

- (a) an arrival report in terms of section 56(1)(b)(i); and
- (b) a departure report in terms of section 59(1)(b)(i) of the Control Act.

**Military buses and trucks excluded from application of Chapter 3**

**3.53** Military buses and trucks entering or leaving the Republic are hereby in terms of section 86(a)(i) of the Control Act excluded from the application of all of the provisions of Chapter 3 of the Act.

**Part 12: Other reporting matters**

**Submission of amended reporting documents (section 87)**

**3.54** (1) A person who has submitted a reporting document in terms of this Chapter must amend the document by submitting an amended reporting document reflecting the amended information if—

- (a) any information which has been reported has subsequently changed; or
- (b) any incorrect, incomplete or out-dated information has been reported.

(2) (a) An amended reporting document must be submitted immediately when the person concerned becomes aware of the changed, incomplete, incorrect or out-dated information.

(b) If the amendment to a reporting document affects the quantity of cargo previously reported, the amended report must furnish an explanation.

(3) An amended reporting document submitted in terms of subrule (1)—

(a) must contain the original information as amended by the updated information;  
and

(b) replaces the original document.

**Submission of reporting documents by registered agents**<sup>124</sup> (*section 85*)

**3.55** A reporting document submitted by a registered agent on behalf of a carrier not located in the Republic must, in addition to the name and customs code of the agent, also reflect the identity of the carrier.<sup>125</sup>

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<sup>124</sup> Note that nothing precludes a customs broker or ordinary representative from submitting a reporting document on behalf of a carrier, provided that in the case of a non-local carrier, the customs broker or ordinary representative submitting the reporting documents must be appointed by that carrier's registered agent in the Republic. See rule **41.14** for additional information to be stated in submissions by customs brokers, registered agents or ordinary representatives on behalf of principals

<sup>125</sup> See also rule **1.9**

## CHAPTER 4

### GENERAL PRINCIPLES GOVERNING CLEARANCE AND RELEASE OF GOODS AND CUSTOMS PROCEDURES

#### *Part 1: Additional provisions on clearance timeframes*<sup>126</sup>

##### **Timeframe for submission of clearance declarations for imported CTCs** *(section 90(1)(e) and (f))*

**4.1** A clearance declaration to clear goods imported through a cross-border pipeline or a cross-border transmission line for home use or a customs procedure must be submitted to the customs authority within 25 calendar days after the end of each accounting period<sup>127</sup> during which the goods were imported.<sup>128</sup>

##### **Timeframe for submission of clearance declarations for exported CTCs** *(section 94(1)(e) and (f))*

**4.2** A clearance declaration to clear goods for export through a cross-border pipeline or a cross-border transmission line must be submitted to the customs authority within 25 calendar days after the end of each accounting period during which the goods were exported.<sup>129</sup>

##### **Timeframe for submission of supplementary export clearance declarations in respect of goods containerised at container depot** *(section 94(2)(a))*

**4.3** A supplementary export clearance declaration referred to in section 94(2)(a) of the Control Act must be submitted no later than one hour before the container reaches the sea cargo terminal where the goods will be loaded for export.

##### **Timeframe for submission of export clearance declarations for prescribed courier articles exported by air** *(section 94(3))*

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<sup>126</sup> Timeframes prescribed in this Part are those contemplated in sections 90(1)(e) and (f) and 94(1)(e) and (f) of the Control Act.

<sup>127</sup> See definition of “accounting period” in rule 1.1

<sup>128</sup> See also rule 8.2

<sup>129</sup> See also rule 16.11



**4.4** (1) Prescribed courier articles<sup>130</sup> to be exported by air are hereby determined as a category of goods to which section 94(3) of the Control Act applies.

(2) A clearance declaration to clear prescribed courier articles for export by air must be submitted no later than one hour before the courier articles are taken to the foreign-going aircraft in which they are to be exported for loading on board the aircraft.<sup>131</sup>

**Timeframe for submission of export clearance declarations in respect of goods containerised in multiple containers cleared on single export clearance declaration (section 94(3))**

**4.5** (1) Goods containerised for export by sea in more than one container covered by the same clearance declaration are hereby determined as a category of goods to which section 94(3) of the Control Act applies.

(2) A clearance declaration to clear goods referred to in subrule (1) for export must be submitted no later than 24 hours prior to loading of the first of the containers covered by that clearance declaration on board the foreign-going vessel in which the goods are to be exported.<sup>132</sup>

***Part 2: Goods excluded from import clearance requirements***

**Additional categories of imported goods excluded from import clearance requirements (section 91(1)(k))**

**4.6** The following additional categories of imported goods<sup>133</sup> are excluded from sections 89 and 90 of the Control Act and goods falling within these categories are not required to be cleared in accordance with those sections:

- (a) South African foreign-going naval vessels returning to the Republic after official military visits abroad;

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<sup>130</sup> See definition of “prescribed courier article” in rule 1.1

<sup>131</sup> See also rule 24.17

<sup>132</sup> Note that nothing prevents an exporter from adhering to the timeframe prescribed in section 94(1)(a) of the Control Act. If an exporter elects to submit the export clearance declaration in accordance with the later timeframe as set out in this rule, Customs will in terms of section 923 not be liable for expenses caused by delays in the export of goods occasioned by actions performed in good faith in the exercise of their duties.

<sup>133</sup> These categories are additional to those listed in section 91 of the Control Act.

- (b) South African foreign-going military and naval aircraft returning to the Republic after official military visits abroad;
- (c) South African military trucks, buses and military equipment returning to the Republic after official visits abroad;
- (d) foreign-going naval vessels and military and naval aircraft of foreign countries on official visits to the Republic;
- (e) foreign-going aircraft used by officials and dignitaries of other governments or international organisations for official visits to the Republic;
- (f) foreign-going aircraft used by officials and dignitaries of the South African government for official visits abroad; and
- (g) fish, crustaceans, molluscs, birds or any other marine animals and any parts of, or products derived from such fish, crustaceans, molluscs, birds or animals landed in the Republic directly from a foreign-going vessel recognised as a ship of South African nationality in terms of the Ship Registration Act, 58 of 1998, to the extent that those products are obtained outside the Republic.<sup>134</sup>

**Customs permission required for removal into free circulation of certain imported goods excluded from clearance requirements** (*section 117(e) and (f)*)

**4.7** Imported goods excluded from clearance requirements in terms of section 91(1)(g), (h) or (j) of the Control Act, may be removed into free circulation from the customs controlled area where the goods are, but only after the customs authority has approved, after arrival of the goods, an application in terms of rule **4.8** for permission to remove the goods into free circulation.

**Application for permission to remove rule 4.7 goods** (*section 117*)

**4.8** (1) (a) An application for permission to remove goods referred to in rule **4.7** into free circulation must be submitted by or on behalf of the person entitled to claim the goods—

- (i) electronically through eFiling, subject to rule **41.13**; and

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<sup>134</sup> If obtained inside the Republic, i.e. in South African territorial waters or on an island which is part of the territory of the Republic, no clearance and therefore no exclusion from clearance requirements is required, as the goods are not being “imported”.

(ii) within the same timeframe or at the same time as applicable in terms of section 90(1)(a), (b), (c) or (d), as may be appropriate, for the submission of clearance declarations in respect of goods that are required to be cleared.

(b) If an application referred to in paragraph (a) is submitted in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the goods are.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15**(1);
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>135</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>136</sup>
- (c) the six digit Harmonised Commodity Description and Coding System number under which the goods are classified, or if not available, a precise description of the goods; and
- (d) the transport document number.

(3) An application referred to in subrule (1) must be supported by the following documents, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) An invoice, if applicable, and, in the case of goods contemplated in section 91(1)(g) or (h) of the Control Act, a transport document; and
- (b) an import permit issued by the Department of Health, in the case of human remains contemplated in section 91(1)(j) of the Act.

### **Customs to be notified of failure to remove rule 4.7 goods**

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<sup>135</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>136</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

**4.9** (1) If a person to whom permission in terms of rule **4.8** to remove rule **4.7** goods was granted, fails to remove the goods within three calendar days after the permission was granted, that person must notify the customs authority of the failure.

(2) (a) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the goods are.

(3) A notification in terms of this rule must reflect the following information:

- (a) the details referred to in rule **4.8(2)(a)** in relation to the person to whom the permission was granted;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>137</sup> on behalf of the person to whom the permission was granted, the information specified in rule **41.14**,<sup>138</sup>
- (c) the six digit Harmonised Commodity Description and Coding System number under which the goods are classified, or if not available, a precise description of the goods; and
- (d) the reference number of the permission to remove.

### ***Part 3: Goods excluded from export clearance requirements***

#### **Additional categories of goods destined for export excluded from export clearance requirements (section 95(1)(l))**

**4.10** The following additional categories of goods destined for export are excluded from sections 93 and 94 of the Control Act and goods falling within these categories are not required to be cleared in accordance with those sections:

<sup>137</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>138</sup> If the notification is submitted by an ordinary representative in terms of section 920 of the Customs Control Act on behalf of the person to whom permission to remove was granted, submission of the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers registered agents that submit documents in that capacity.

- (a) South African foreign-going naval vessels leaving the Republic temporarily for official military purposes;
- (b) South African foreign-going military and naval aircraft leaving the Republic temporarily for official military purposes;
- (c) South African military buses, trucks and military equipment leaving the Republic temporarily for official military purposes;
- (d) foreign-going naval vessels and military and naval aircraft of foreign countries on official visits to the Republic;
- (e) foreign-going aircraft used by officials and dignitaries of other governments or international organisations for official visits to the Republic; and
- (f) foreign-going aircraft used by officials and dignitaries of the South African government for official visits abroad.

**Customs permission required for loading of certain goods excluded from export clearance requirements** (*section 117(e) and (f)*)

**4.11** Goods destined for export that are excluded from clearance requirements in terms of section 95(1)(h), (i) and (k) of the Control Act may be loaded for export only after the customs authority has approved an application in terms of rule **4.12** for permission to load the goods.

**Applications for permission to load rule 4.10 goods** (*section 117*)

**4.12** (1) (a) An application for permission to load goods referred to in rule **4.11** must be submitted by or on behalf of the exporter of such goods—

- (i) electronically through eFiling, subject to rule **4.13**; and
- (ii) within the same timeframe or at the same time as required in terms of section 94(1)(a), (b), (c) or (d), as may be appropriate, for the submission of clearance declarations in the case of goods that are required to be cleared.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **4.13** in paper format, the application must be submitted to the Customs Office that serves the area where the goods are to be exported.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15**(1);
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>139</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>140</sup>
- (c) the six digit Harmonised Commodity Description and Coding System number under which the goods are classified, or if not available, a precise description of the goods; and
- (d) the transport document number.

(3) An application referred to in subrule (1) must be supported by the following documents, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) An invoice, if applicable, and, in the case of goods contemplated in section 95(1)(h) or (i) of the Control Act, a transport document; or
- (b) an export permit issued by the Department of Health, in the case of human remains contemplated in section 95(1)(k).

### **Customs to be notified of failure to load for export rule 4.11 goods**

**4.13** (1) A person to whom permission was granted in terms of rule **4.12** to load rule **4.11** goods for export must notify the customs authority in accordance with subrule (2) if the goods are not loaded for export within three calendar days after the permission was granted.

(2) (a) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place of exit through which the goods are to be exported.

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<sup>139</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>140</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Customs Control Act, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit documents in that capacity.

- (3) A notification in terms of this rule must reflect the following information:
- (a) The details referred to in rule **4.12(2)(a)** in relation to the person to whom the permission was granted;
  - (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>141</sup> on behalf of the person to whom the permission was granted, the information specified in rule **41.14**;<sup>142</sup>
  - (c) the six digit Harmonised Commodity Description and Coding System number under which the goods are classified, or if not available, a precise description of the goods; and
  - (d) reference number of the permission to load.

#### ***Part 4: Withdrawal of clearance exclusions***

##### **Circumstances for withdrawal of exclusions** (*section 117(a)*)

**4.14** The circumstances in which the customs authority may withdraw an exclusion from clearance requirements referred to in section 91 or 95 of the Control Act applicable to specific goods or goods imported or to be exported by a specific person, are as follows:

- (a) If a provision of this Act or a tax levying Act has been breached in connection with goods imported or to be exported under the exclusion;
- (b) if the importer or exporter uses or has used the exclusion—
  - (i) to evade tax;
  - (ii) to circumvent a provision of this Act or a tax levying Act that would otherwise be applicable to the goods;
  - (iii) to commit a fraudulent or dishonest act in relation to imported or exported goods; or
  - (iv) to otherwise abuse a system or procedure of this Act or a tax levying Act;
- (c) if any condition subject to which the goods were excluded is breached; and

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<sup>141</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>142</sup> If the notification is submitted by an ordinary representative in terms of section 920 of the Control Act on behalf of the person to whom permission to load has been granted, submission of the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (d) if the name of the importer or exporter appears on a list published in terms of section 901 of the Control Act.

**Procedure for withdrawal of exclusions** (*section 117(a)*)

**4.15** (1) If rule **4.14** becomes applicable to any specific goods or goods imported or to be exported by a specific person, the customs authority may withdraw with immediate effect an exclusion in respect of—

- (a) those specific goods; or
- (b) goods to be imported or exported by that specific person during a period as it may determine.

(2) When withdrawing an exclusion, the customs authority must give written notice to the importer or exporter affected by the withdrawal of—

- (a) the withdrawal of the exclusion; and
- (b) the reasons for the withdrawal.

(3) A person notified of the withdrawal of an exclusion in terms of subrule (1)(a) must immediately after receipt of the notification clear the relevant goods in accordance with the applicable provisions regulating the clearance of goods of that class or kind.

(4) Any withdrawal of an exclusion in terms of this rule is subject to reconsideration in accordance with Chapter 37 of the Control Act.

***Part 5: Additional measures on clearance and release of goods***

**Clearance substitutions for goods already released for home use** (*sections 107 and 117(b)*)

**4.16** A clearance substitution of goods already released for home use as provided for in section 107 of the Control Act is permissible only if—

- (a) the goods are identifiable as the goods originally imported;
- (b) the goods, if packed, are still in their original packaging; and
- (c) there are no administrative penalties outstanding in respect of the goods.



### **Conditional release of goods** (*section 104(b)*)

**4.17** (1) Goods that require special equipment for unloading or that are of such a nature that they must be unloaded or handled under specific conditions, are released for home use or a customs procedure subject to the following conditions:

- (a) A customs inspection may be conducted at the importer's premises or other premises nominated by the importer;
- (b) if such inspection is conducted, the attendance fee for the customs inspection at such premises is paid; and
- (c) seals and fastenings may be removed only in the presence of a customs officer unless the customs authority allows otherwise.

(2) The conditions referred to in subrule (1) are additional to any other conditions that may be imposed in terms of section 104(a) of the Control Act.

### **Additional circumstances when goods under customs procedure must for tax purposes be regarded to have reverted to free circulation**<sup>143</sup> (*section 113(1)(c) read with section 117*)

**4.18** For purposes of section 113(1)(c) of the Control Act, free circulation goods that—

- (a) automatically came under the tax free shop procedure in terms of section 317(1)(a) must for tax purposes be regarded to have reverted to free circulation if the goods—
  - (i) are after receipt in the tax free shop not accepted and returned; or
  - (ii) are not sold in the shop within the period applicable to the goods in terms of section 327(a); or
- (b) were cleared for the stores procedure in terms Part 2 of Chapter 15 of the Control Act must for tax purposes be regarded to have reverted to free circulation if the goods are not accepted as stores for a foreign-going vessel or aircraft or a cross-border train and returned.

### ***Part 6: Transfer of ownership of goods under customs procedures***

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<sup>143</sup> For tax implications if goods are regarded as having reverted to free circulation, see section 161 of the Control Act.

**Customs procedures to which section 111(1) applies** (*section 111(1) and (8)(a)*)

**4.19** Section 111(1) of the Control Act applies in relation to goods under the following customs procedures:

- (a) the warehousing procedure;
- (b) the inward processing procedure; and
- (c) the home use processing procedure.

**Exemptions within customs procedures to which section 111(1) applies**

(*section 111(8)(d)*)

**4.20** (1) Section 111(1) of the Control Act does not apply where the ownership of goods under a customs procedure listed in rule **4.19** is transferred—

- (a) by operation of law;<sup>144</sup> or
- (b) as a consequence of—
  - (i) a seizure or confiscation of the goods in terms of the Control Act or any other law;
  - (ii) an abandonment of the goods to the Commissioner in terms of the Control Act; or
  - (iii) an order of court.

(2) Section 111(1) also does not apply where the ownership of inward processed compensating products under the inward processing procedure<sup>145</sup> is transferred to a person who is—

- (a) an exporter licensed to export inward processed compensating products of the same class or kind as those to be transferred; or
- (b) the licensee of licensed inward processing premises producing compensating products in the production of which the transferred compensating products are to be used.

**Permissible customs procedures for purposes of section 111(1A)(b)** (*section 111(8)(c)*)

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<sup>144</sup> For instance the law on insolvency, liquidation of juristic entities, administration of estates, divorce, and other similar matters impacting on ownership of goods.

<sup>145</sup> No similar exemption is necessary for home use compensating products as these products may freely be sold into home use.

**4.21 (1)** If goods under a customs procedure listed in rule **4.19** are to be cleared for a subsequent procedure for purposes of a transfer of ownership in terms of section 111(1A)(b) of the Control Act, the permissible customs procedures for which the goods may be so cleared and the circumstances in which the goods may be cleared for those permissible procedures are as set out in the Table below:

| No. | Existing customs procedure                                  | Permissible subsequent customs procedure  | Circumstances in which permissible  |
|-----|---|---|---|
| 1   | Goods under warehousing in public warehouse                 | (i) Clearance for warehousing in another public or a private warehouse<br><br>(ii) Clearance for warehousing in the same public warehouse | (i) When the goods are, as a result of the ownership transfer, to be removed from the warehouse to another warehouse <sup>146</sup><br><br>(ii) When ownership of a portion of the goods is transferred and that portion is to remain in the same public warehouse <sup>147</sup> |
| 2   | Goods under warehousing in private warehouse <sup>148</sup> | Clearance for warehousing in a public or another private warehouse  |   |
| 3   | Imported goods under inward                                 | Clearance for inward processing in the name of  | When ownership of the imported goods  |

<sup>146</sup> The reason why a new clearance must be submitted is that the warehousing procedure is warehouse specific. See section 296(a) of the Control Act.

<sup>147</sup> If all the goods under a particular warehousing clearance in a public warehouse are to be transferred, section 111(1A)(b) and this rule will not apply. Instead, section 111(1A)(a) will apply and the transfer will be effected through an amended declaration replacing the name of the current owner with that of the new owner.

<sup>148</sup> Note the condition in section 301(1)(a) that all the goods in a private warehouse must be owned by the licensee of the warehouse. If ownership of goods in a private warehouse is to be transferred the goods must be removed from the warehouse.

|   |                     |   |  |
|---|---------------------|---|--|
|   | processing          | the new owner, subject to subrule (2)(a)                                    | is to be transferred for processing of the goods on inward processing premises licensed in the name of the new owner <sup>149</sup>  |
| 4 | Home use processing | Home use processing in the name of the new owner, subject to subrule (2)(b) | When ownership of the imported goods is to be transferred for processing of the goods on home use processing premises licensed in the name of the new owner <sup>150</sup> |
|   |                     |   |  |

(2) Ownership of imported goods under—

- (a) the inward processing procedure may be transferred only to a person that is a licensee of inward processing premises licensed for the inward processing of the class or kind of goods in question; or
- (b) the home use processing procedure may be transferred only to a person that is a licensee of home use processing premises licensed for the home use processing of the class or kind of goods in question.

**Applications for approval to transfer ownership of goods under customs procedures** (*section 111(8)*)

**4.22** No application in terms of section 111(1) of the Control Act for approval of the transfer of ownership of goods under a customs procedure listed in rule **4.19** may be submitted unless the prospective new owner complies with section 604.

<sup>149</sup> The reason why a new clearance declaration must be submitted is that the inward processing procedure is processing premises specific. See section 408(1)(a)(i) of the Control Act.

<sup>150</sup> The reason why a new clearance declaration must be submitted is that the home use processing procedure is processing premises specific. See section 435(1)(a)(i) of the Control Act.

## Applications where all goods covered by same clearance declaration are transferred

**4.23** (1) If ownership of all the goods covered by a specific clearance declaration is to be transferred, the prospective new owner of the goods must apply for approval of the transfer contemplated in section 111(1) of the Control Act by submitting—

- (a) in circumstances contemplated in section 111(1A)(a) where the goods after the transfer will remain under the existing customs procedure,<sup>151</sup> an amended clearance declaration referred to in section 174(2) which—
  - (i) amends the existing declaration by replacing the existing owner with the prospective new owner as the person clearing the goods; and
  - (ii) contains an indicator that the amended clearance declaration serves as an application for approval of the proposed transfer of ownership; or
- (b) in circumstances contemplated in section 111(1A)(b) where ownership of the goods will be transferred simultaneously with the release of the goods for a subsequent customs procedure that is permissible in terms of rule **4.21**, a clearance declaration<sup>152</sup> clearing the goods for that subsequent customs procedure which—
  - (i) indicates the prospective new owner as the person clearing the goods; and
  - (ii) contains an indicator that the clearance declaration serves as an application for approval of the proposed transfer of ownership.

(2) An application in terms of subrule (1) must be regarded to have been approved if the customs authority—

- (a) in the case of an application referred to in subrule (1)(a), accepts the amended clearance declaration in terms of section 174; or

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<sup>151</sup> Submission of an amended clearance declaration in terms of rule **4.23**(1)(a) will for instance be sufficient where the ownership of goods warehoused in a **public** warehouse is to be transferred without removing the goods from the warehouse. But note that an amended clearance declaration cannot be used as an application if the goods are stored in a **private** warehouse, because “private storage warehouse” is defined as premises used exclusively by the licensee of the premises for the storage of goods owned by the licensee or in which the licensee has a material interest. Therefore, in the event of a change in ownership the goods will have to be cleared out of the private warehouse and rule **4.23**(1)(b) will apply.

<sup>152</sup> Note that the warehousing, inward processing and home use processing procedures are all warehouse or processing premises specific, i.e. any change in warehouse where the goods are to be stored or premises where the goods are to be processed will require a new clearance declaration and not a mere amendment of the existing declaration.

- (b) in the case of an application referred to in subrule (1)(b), releases the goods for the subsequent customs procedure in terms of section 180.

### **Applications where only portion of goods covered by clearance declaration is transferred**

**4.24** (1) If ownership of only a portion of the goods covered by a specific clearance declaration is to be transferred, the prospective new owner of that portion of the goods must apply for approval of the transfer contemplated in section 111(1) of the Control Act by submitting a clearance declaration<sup>153</sup> clearing that portion of the goods for a customs procedure that is permissible in terms of rule **4.21** and which—

- (a) indicates the prospective new owner as the person clearing that portion of the goods; and
- (b) contains an indicator that the clearance declaration serves as an application for approval of the proposed transfer of ownership of that portion of the goods.

(2) An application in terms of subrule (1) must be regarded to have been approved if the customs authority releases that portion of the goods for the required customs procedure in terms of section 180.

### **Supporting documents for clearance declarations submitted as applications for permission to transfer ownership**

**4.25** (1) The following documents must support the submission of a clearance declaration or amended clearance declaration in terms of rule **4.23(1)(a)** or *(b)* or **4.24(1)**:

- (a) The original agreement in terms of which ownership of goods under a customs procedure is to be transferred by the existing owner to the prospective new owner; and
- (b) an original authorisation granted by the existing owner to the prospective new owner to submit the said clearance declaration or amended clearance declaration.

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<sup>153</sup> Note that in this instance an amended declaration cannot be used as an application.

(2) The customs authority may at any time request the existing owner or the prospective new owner to produce or submit a document referred to in subrule (1) to it, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Maximum customs procedure periods not affected by subsequent clearance for same kind of customs procedure**

**4.26** If a prospective new owner clears goods as contemplated in rule **4.23(1)(b)** or **4.24(1)** for a subsequent customs procedure that is of the same kind as the customs procedure for which the goods were cleared by the existing owner, any maximum period for which goods may remain under a customs procedure of that kind, or which otherwise applies to the goods under a customs procedure of that kind, must be regarded in the case of the subsequent procedure to have commenced on the date on which that period commenced under the previous procedure.

***Part 7: Record keeping by persons conducting business***

**Persons who must keep record** (*section 116*)

**4.27** (1) Registered persons and licensees must keep record relating to the business they conduct as registered persons or licensees as may be required by, and in accordance with, the specific provisions of the Control Act, the tax levying Acts, rules, international trade agreements and other measures, applicable to them.

(2) (a) Persons who are not registered persons or licensees and who deal in, sell or offer for sale any imported goods, or use imported goods in a manufacturing process, must keep record of their business relating to those goods.

(b) Records, books, accounts and documents relating to those goods, including the following documents, must be kept for at least five years:

- (i) Purchase orders for goods;
- (ii) invoices;
- (iii) delivery notes;
- (iv) receipt notes;
- (v) proof of payments made and received; and

(vi) any other documents as may be required in terms of other applicable legislation that may affect the payment of tax.

(c) Records that must be kept in terms of this subsection may be kept either by means of an appropriate computer-based system or paper-based system.<sup>154</sup>

**Records to be produced to Customs on request** (*section 116*)

**4.28** A person referred to in rule **4.27**(1) or (2) who has been requested by a customs officer to produce or submit any record referred to in that rule, must produce or submit such record to the customs authority subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>154</sup> Part 7 of Chapter 41 of these Rules applies also to records that must be kept in terms of rule **4.27**(2).



## CHAPTER 5

### GENERAL PRINCIPLES GOVERNING TRANSPORT, SEALING AND LOADING OF GOODS

#### *Part 1: Transport of goods not in free circulation*

#### **Transport of goods not in free circulation with other goods in same vehicle** (section 124)

**5.1** If goods not in free circulation are transported as contemplated in section 124 of the Control Act with goods in free circulation on the same vehicle, the following requirements apply:

- (a) The goods not in free circulation and the goods in free circulation must be separately identifiable; and
- (b) once a container containing goods not in free circulation has been sealed, the seal may not be broken to load goods in free circulation.

#### **Carriers and other persons delivering and licensees of premises receiving goods under customs procedure entitled to copy of release notification<sup>155</sup>**

**5.2** (1) When goods have been released for a customs procedure involving the transport of the goods, the following persons are entitled to request and receive a copy of the release notification from a person referred to in section 180(1)(a) or (b) of the Control Act to whom the release notification has been transmitted or issued:

- (a) A carrier or another person permitted under section 122(c) to transport the goods under the customs procedure; and
- (b) the licensee of a customs controlled area where the goods are received after transportation.

(2) A copy of a release notification obtained by person referred to in subrule (1)(a) or (b) may be used by that person to comply with the requirements of

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<sup>155</sup> The aim of this rule is to enable carriers and other persons transporting goods under a customs procedure and licensees of premises receiving goods under a customs procedure to comply with their obligations in terms of the rules regarding the recording of information in respect of those goods upon delivery and receipt, and to confirm that the goods delivered or received correspond with the goods specified in the release notification.

these Rules relating to the recording of delivery and receipt of the goods under the applicable customs procedure.

**Recording of receipt by carriers when receiving goods not in free circulation for transport** (*sections 131 and 903*)

**5.3** (1) When a carrier<sup>156</sup> receives goods not in free circulation for transport in any of the following circumstances, the carrier must record the information referred to in subrule (2) concerning the receipt of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules:

- (a) Where the carrier receives goods not in free circulation—
  - (i) for transport under a customs procedure from a customs controlled area to another customs controlled area not served by the same Customs Office; or
  - (ii) for redirection with the permission of the customs authority in terms of section 208, 230, 304, 322, 415 or 442 of the Control Act to a place other than a place referred to in the relevant section; or
- (b) where goods not in free circulation are transferred with the customs authority's permission in terms of section 130 of the Control Act to that carrier's vehicle or container from a vehicle or container operated by another carrier.

(2) The following information must be reflected when recording the receipt of goods in terms of subrule (1):

- (a) The name and customs code of the carrier receiving the goods or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (b) the date and time the carrier received the goods;
- (c) the customs code of the customs controlled area where the carrier received the goods or, if the place where the carrier received the goods is not a customs controlled area, the physical address or other specifics of that place;

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<sup>156</sup> This includes all licensed and non-local carriers who have registered agents in the Republic transporting goods within the Republic.

- (d) the movement reference number of the clearance declaration submitted in respect of the goods, if available to the carrier;<sup>157</sup>
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods received by the carrier correspond in class or kind or, if not ascertainable by the carrier, in general trade description with the goods described in the release notification issued in respect of the goods, if available to the carrier;<sup>158</sup> and
  - (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers received for transport by the carrier;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or each container received is intact;<sup>159</sup> and
  - (iv) if the release notification is available to the carrier,<sup>160</sup> confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) Information recorded in terms of this rule must be kept by the carrier or, in the case of a carrier that is not located in the Republic, either by the carrier or that carrier's registered agent in the Republic.

(4) A record of receipt of goods referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>157</sup> The movement reference number will not be available for instance where a clearance declaration for export has been submitted in respect of free circulation goods and a release notification has not been received yet.

<sup>158</sup> A release notification will for instance not be available where a clearance declaration for export has been submitted in respect of free circulation goods and a release notification has not been received yet.

<sup>159</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

<sup>160</sup> A release notification may for instance not be available where a clearance declaration for export has been submitted in respect of free circulation goods and a release notification has not been received yet.

**Recording of delivery by carriers when delivering goods not in free circulation at destination** (*sections 131 and 903*)

**5.4** (1) When a carrier<sup>161</sup> transporting goods not in free circulation referred to in rule 5.3(1)(a) or (b) delivers those goods at the customs controlled area to which the goods were transported or at the other place to which the goods were redirected with the permission of the customs authority, the carrier must record the information referred to in subrule (2) concerning the delivery of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of goods referred to in subrule (1):

- (a) The name and customs code of the carrier delivering the goods or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (b) the date and time of delivery of the goods;
- (c) the customs code of the customs controlled area where the goods were delivered or, if the place where the goods were delivered is not a customs controlled area, the physical address of that place;
- (d) the movement reference number of the clearance declaration submitted in respect of the goods, if available to the carrier;<sup>162</sup>
- (e) in the case of non-containerised goods—
  - (i) if the release notification is available to the carrier,<sup>163</sup> confirmation that the goods delivered at the destination correspond in class or kind or, if not ascertainable by the carrier, in general trade description with the goods described in the release notification issued in respect of the goods; and

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<sup>161</sup> This includes all licensed and non-local carriers who have registered agents in the Republic transporting goods in the Republic.

<sup>162</sup> Note that in respect of goods referred to in rule 4.5, a clearance declaration may be submitted 24 hours prior to loading of the goods on board the foreign-going vessel on which it will be exported. Because the movement reference number may therefore not be available yet, the movement reference number can be inserted in the record at a later stage.

<sup>163</sup> A release notification will for instance not be available where a clearance declaration for export has been submitted in respect of free circulation goods and a release notification has not been received yet.

- (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
- (i) the quantity of containers delivered by the carrier;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact;<sup>164</sup> and
  - (iv) if the release notification is available to the carrier,<sup>165</sup> confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each containers delivered at the destination correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) Information recorded in terms of this rule must be kept by the carrier or, in the case of a carrier that is not located in the Republic, either by the carrier or that carrier's registered agent in the Republic.

(4) A delivery record of goods referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Reporting of breakdowns, accidents and other unforeseen events (section 125)<sup>166</sup>**

**5.5 (1) (a)** A breakdown, accident or other unforeseen event occurring during the course of transporting goods not in free circulation,<sup>167</sup> which compromises

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<sup>164</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

<sup>165</sup> Note that in respect of goods referred to in rule 4.5, a clearance declaration may be submitted 24 hours prior to loading of the goods on board the foreign-going vessel on which it will be exported. Because the movement reference number may therefore not be available yet, the movement reference number can be inserted in the record at a later stage.

<sup>166</sup> Note that section 125 of the Control Act and this rule overlap with rules 25.14 and 25.15 in the case of certain accidents involving goods that have been cleared. Where this overlap occurs, the report in terms of rule 25.14 or 25.15 must be regarded to be a report also for purposes of section 125 and this rule. See rule 5.5(5).

the integrity of the goods or the transport of the goods, must for purposes of section 125 of the Control Act be reported electronically through eFiling, subject to rule **41.13**.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive such reports.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) If a carrier transported the goods, the name and customs code of the carrier or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (b) if a person referred to in section 122(c) of the Control Act transported the goods, the name and customs code of that person or, if that person does not have a customs code, the information specified in rule **41.15(1)**;
- (c) if the report is submitted by a customs broker, registered agent or ordinary representative<sup>168</sup> on behalf of a carrier or a person referred to in paragraph (b), the information specified in rule **41.14**;<sup>169</sup>
- (d) the conveyance number, if applicable;
- (e) the transport name;<sup>170</sup>
- (f) if the goods are transported in a container—
  - (i) the container number; and
  - (ii) any marks and other numbers on the container;
- (g) the six digit Harmonised Commodity Description and Coding System number under which the goods are classified, or if not available, a precise description of the goods;
- (h) in the case of goods that are sealed—

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<sup>167</sup> Note that section 125 and this rule do not apply in all instances where goods not in free circulation are transported, for instance before the goods are off-loaded from a foreign-going vessel or aircraft or a cross-border train. See section 120 of the Control Act.

<sup>168</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>169</sup> If the report is submitted by an ordinary representative in terms of section 920 of the Customs Control Act on behalf of the carrier or other person transporting the goods, submission of the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents who submit documents in that capacity.

<sup>170</sup> See definition of “transport name” in rule **1.1** in relation to road transport.

- (i) the seal number; and
- (ii) whether the seal is broken;
- (j) the transport document number;
- (k) details of the accident, breakdown or other unforeseen event;
- (l) the precise location of the relevant means of transport; and
- (m) whether transfer of the goods to another means of transport or container is required.

(3) Circumstances in which the integrity of goods is compromised for purposes of subrule (1) include the following:

- (a) When the goods have been destroyed, damaged, lost or decreased in value, volume or quantity due to the breakdown, accident or other unforeseen event;
- (b) when a customs seal affixed to a holding compartment or container in which the goods are transported has been broken or damaged during or after the breakdown, accident or other unforeseen event; or
- (c) when the breakdown, accident or other unforeseen event necessitated the re-loading of goods onto another means of transport or into another container.

(4) If the goods are to be transferred to another vehicle or container as a result of the breakdown, accident or other unforeseen event, an amended clearance declaration submitted in terms of rule **5.6** containing or supported by the information required in terms of subrule (2) may be regarded as a report submitted in compliance with this rule.

(5) A report submitted in terms of rule **25.14** or **25.15** involving a vessel, aircraft or train that has been involved in an accident in the Republic must be regarded also to be a report required for purposes of section 125 if the report concerns an accident that must be reported in terms of this rule for purposes of section 125.

**Customs permissions to transfer of goods between vehicles or containers**  
(*section 130*)

**5.6** (1) For purposes of section 130(2) of the Control Act, the other circumstances where permission may be given for the transfer of goods not in free circulation from the vehicle or container in which the goods are transported to another vehicle or container after commencement of the transport, are where damage is caused to the vehicle or container due to—

- (a) a natural occurrence; or
- (b) a hostile act by a third party.

(2) If goods are to be transferred to another vehicle in any of the circumstances contemplated in section 130, the person who cleared the goods for the customs procedure under which the goods are transported, must submit to the customs authority an amended clearance declaration contemplated in section 174(2)<sup>171</sup> reflecting—

- (a) the registration number of the vehicle to which the goods are transferred;
- (b) the transport document number; and
- (c) the name and customs code of the carrier or the person referred to in section 122(c) that is in operational control of the vehicle to which the goods are transferred.

(3) If goods are to be transferred to another container in any of the circumstances contemplated in section 130, the person who cleared the goods for the customs procedure under which the goods are transported must submit to the customs authority an amended clearance declaration contemplated in section 174(2) to reflect the number of the container to which the goods are transferred.

(4) Submission of an amended clearance declaration as required in terms of subrule (2) or (3) must for purposes of section 130 be regarded to be an application for permission to transfer goods between vehicles or containers.

(5) If the customs authority in terms of section 174(4)(b) issues a new release notification contemplated in that section, the new release notification must for purposes of section 130 be regarded to be permission for the transfer.

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<sup>171</sup> See Chapter 7 for submission of clearance declarations.



(6) Application for permission to transfer goods in accordance with this rule may be made promptly after the goods were transferred in the case of—

- (a) live animals;
- (b) perishable goods;
- (c) dangerous goods;
- (d) goods required for medical emergencies; or
- (e) goods that are due to the circumstances contemplated in section 130(2) in danger of being unlawfully removed, damaged or destroyed.

**Transfer of goods to vehicles or containers operated by other carriers** (*section 130*)

**5.7** (1) If a vehicle contemplated in rule 5.6(2) or a container contemplated in rule 5.6(3) is under the operational control of another carrier, the new carrier must—

- (a) record in accordance with rule 5.3 that the goods were received for transfer to that carrier's vehicle or container; and
- (b) include in that carrier's transport document—
  - (i) the transport name of the previous vehicle in which the goods were transported, if applicable;
  - (ii) the number of the container in which the goods were previously transported, if applicable;
  - (iii) the number of the seal on the previous container, if applicable;
  - (iv) the name and customs code of the previous carrier; and
  - (v) the number of that carrier's transport document.

**Application for permission to redirect transport of goods under customs procedures to places other than authorised places** (*sections 208, 230, 304, 322, 415 and 442*)

**5.8** (1) Application to the customs authority for permission contemplated in section 208, 230, 304, 322, 415 or 442 of the Control Act to redirect the transport of goods under a customs procedure to a place other than a place referred to in the applicable section, must, before the goods are redirected to that other place,<sup>172</sup> be

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<sup>172</sup> Note that where the person clearing is aware of the need for redirection before the transportation commences, permission must be obtained before the transportation commences. If the need for redirection arises whilst the

made by the person clearing the goods<sup>173</sup> for the customs procedure under which the goods are transported by submitting to the customs authority an amended clearance declaration as required by section 174(2)<sup>174</sup> reflecting the amended particulars.

(2) If the customs authority in terms of section 174(4)(b) issues a new release notification referred to in that section, the new release notification must for purposes of section 208, 230, 304, 322, 415 or 442, as may be applicable, be regarded to be permission for the redirection.

(3) An application referred to in subrule (1) must be supported by a motivation of the reason for the redirection, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recording of delivery by persons transporting goods to premises to which goods were redirected (section 903(1)(c) and (d))**

**5.9** (1) When a carrier transporting goods under permission granted in terms of rule 5.8, delivers the goods at the premises to which the goods were redirected, the carrier must comply with rule 5.4.

(2) When a person referred to in section 122(c) of the Control Act transporting goods under permission granted in terms of rule 5.8, delivers those goods at the premises to which the goods were redirected, that person must record the information referred to in subrule (3) concerning the delivery of those goods subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(3) The following information must be reflected when recording the delivery of goods in terms of subrule (2):

(a) The name and customs code of the person referred to in subrule (2) that transported the goods;

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goods are already in the process of being transported, the amended clearance declaration should be submitted without delay in order to obtain permission as expeditiously as possible. Any delay in obtaining permission may necessitate practical arrangements by the carrier to safeguard the cargo.

<sup>173</sup> See section 166 of the Control Act for meaning of "person clearing goods".

<sup>174</sup> See Chapter 7 of the Control Act for submission of amended clearance declarations.

- (b) the customs code or physical address of the premises to which the goods were redirected;
- (c) the date and time of delivery of the goods at those premises;
- (d) the movement reference number<sup>175</sup> of the clearance declaration submitted in respect of the goods;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at those premises correspond in class or kind, or, if not ascertainable by that person, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity, which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered by that person;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or each container is intact;<sup>176</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number, of the container or of each container delivered by that person correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(4) A record of delivery of goods referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recording of receipt by persons in control of premises to which goods were redirected** (*section 903(1)(c) and (d)*)

<sup>175</sup> See definition of “movement reference number” in rule 1.1.

<sup>176</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

**5.10** (1) When the licensee of the premises to which goods were redirected, or, if those premises are not licensed, the person in control of those premises, receives the goods on those premises, that licensee or person must record the information referred to in subrule (2) concerning the receipt of the goods at those premises subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods in terms of subrule (1):

- (a) The name and customs code of the carrier or person referred to in rule **5.9**(1) or (2) that delivered the goods at the premises to which the goods were redirected;
- (b) the customs code of the premises to which the goods were redirected or, if those premises are not licensed, the physical address of those premises;
- (c) the name and customs code of the licensee or other person in control of those premises or, if that person does not have a customs code, the information specified in rule **41.15**(1);
- (d) the date and time of receipt of the goods at those premises;
- (e) the movement reference number<sup>177</sup> of the clearance declaration submitted in respect of the goods;
- (f) in the case of non-containerised goods—
  - (i) confirmation that the goods received at those premises correspond in class or kind or, if not ascertainable by that licensee or person, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity, which must be updated when the actual quantity is confirmed;
- (g) in the case of containerised goods—
  - (i) the quantity of containers received by that licensee or person;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or each container is intact;  
<sup>178</sup> and

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<sup>177</sup> See definition of “movement reference number” in rule 1.1.

- (iv) confirmation that the container number and, if indicated on the release notification, the seal number, of the container or of each container received at those premises correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) or (g)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) This rule is not required to be complied with if the licensee or other person in control of the premises to which the goods were redirected transported the goods to those premises and has recorded delivery of the goods at those premises in terms of rule 5.9(2). In such a case the recording of information concerning delivery of the goods at those premises in terms of rule 5.10(2) may be regarded as compliance with this rule.

## ***Part 2: Sealing, seal verification and reporting of seal discrepancies***

### **Seals and sealing of vehicles, containers and packages** *(sections 126 and 131)*

**5.11** A seal affixed to a container may be mechanical or electronic, but in the case of a mechanical seal, must meet or exceed the current applicable ISO International Standard (IS) 17712.

### **Seal verification and reporting of seal discrepancies** *(section 131(a))*

**5.12** (1) A person who receives physical control of a container containing goods not in free circulation must upon receipt of the container check whether—

- (a) the container is sealed; and
- (b) the seal is intact or shows any signs of tampering.

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<sup>178</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

(2) A person referred to in subrule (1) must in accordance with subrule (3) immediately report to the customs authority any seal on a container referred to in that subrule that—

- (a) is missing; or
- (b) shows signs of tampering.

(3) (a) A report referred to in subrule (2) must be submitted electronically through eFiling, subject to rule **41.13**.

(b) If a report referred to in subrule (2) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves the area where the goods are.

(4) A report referred to in subrule (2) must reflect the following information:

- (a) The name and customs code of the person in physical control of the container;
- (b) if the report is submitted by a customs broker, registered agent or ordinary representative<sup>179</sup> on behalf of the person in physical control of the container, the information specified in rule **41.14**;<sup>180</sup>
- (c) the name or customs code of the person from whom the container was received;
- (d) the container number;
- (e) the date and time when the container was received;
- (f) a description of the seal discrepancy;
- (g) date and time the discrepancy was confirmed;
- (h) physical location of the container; and
- (i) the identification number of the replacement seal.

### **Affixing of replacement seals** (*section 131(a)*)

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<sup>179</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>180</sup> If the report is submitted by an ordinary representative in terms of section 920 of the Customs Control Act on behalf of the person who receives physical control of the container, submission of the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit documents in that capacity.

**5.13** (1) When a person referred to in rule **5.12(1)** establishes that a container seal is missing or tampered with, that person must affix a replacement seal on the container and record the new seal number in the report referred to in that rule.

(2) A seal referred to in subrule (1) must be supplied and affixed by and at the risk and expense of—

- (a) a carrier or person referred to in section 122(c) of the Control Act that transported the relevant container; or
- (b) the licensee of a container terminal or container depot where the relevant container is received or from where it is removed, or where it is packed, unpacked or loaded.

**Records to be kept in relation to seals** (*section 131*)

**5.14** (1) A person affixing or replacing a security seal to the holding compartment of a vehicle or a container must, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep record<sup>181</sup> in respect of each seal affixed or replaced by recording—

- (a) the identification number of the seal; and
- (b) in respect of each seal affixed or replaced—
  - (i) the container number, in the case where the seal was affixed to or replaced on a container;
  - (ii) the transport name, in the case where the seal was affixed to or replaced on the holding compartment of a vehicle; and
  - (iii) the date when the seal was affixed or replaced.

(2) Records must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>181</sup> Note that this record keeping requirement applies in addition to any other record keeping requirements contained in these Rule or a provision of the Control Act or a tax levying Act relating to licensees or registered persons.

**CHAPTER 6**  
**TAX STATUS OF GOODS<sup>182</sup>**

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<sup>182</sup> No rules required under this Chapter.



## CHAPTER 7

### STANDARD PROCESSES AND REQUIREMENTS FOR CLEARANCE AND RELEASE OF GOODS

#### *Part 1: Completion and submission of clearance declarations*

##### **Form and format for clearance declarations** (section 167(3))

**7.1** A clearance declaration contemplated in section 164 (a) to (d)<sup>183</sup> of the Control Act must be submitted electronically through EDI, subject to rule **41.13**.

##### **Additional information to be reflected on clearance declarations** (section 167(1)(k))

**7.2** In addition to the information listed in section 167(1)(a) to (j) of the Control Act, a clearance declaration must reflect—

- (a) the message function;
- (b) the number and date of any invoice issued in respect of the goods;
- (c) the transport mode;
- (d) the description of the goods as reflected on the relevant invoice;
- (e) if the clearance declaration is intended to serve as—
  - (i) an application for a refund in terms of rule **4.4** of the Customs Duty Rules, a refund indicator code; or
  - (ii) a notification of intent to claim a drawback in terms of rule **4.6** of the Customs Duty Rules, the drawback item number;
- (f) an indication to that effect if the clearance declaration is intended to serve as—
  - (i) an application to clear a specific parcel, container or consignment on incomplete or provisional information;
  - (ii) an application for registration as a casual importer or exporter;
  - (iii) an application for permission to transfer goods between vehicles and containers referred to in rule **5.6(4)**;
  - (iv) an application for permission to redirect goods referred to in rule **5.8(1)**;

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<sup>183</sup> For clearance declarations contemplated in section 164(1)(e), refer to Chapter 24.

- (v) a notification of change of particulars on or circumstances related to invoices referred to in rule **7.9**;
  - (vi) an application for temporary admission in terms of the Customs Tariff referred to in rule **12.3**;
  - (vii) a notification of intended removal of goods successfully reclaimed from a state warehouse referred to in rule **27.17(4)**;
  - (viii) an application for termination of detention of prohibited goods referred to in rule **35.2**;
  - (ix) an application for termination of detention of restricted goods **35.4**;
  - (x) an application for the extension of a timeframe included in the clearance declaration, referred to in rule **41.2(5)**; or
  - (xi) any other application or notification provided for in these Rules or the Customs Duty Rules;
- (g) a prior authorisation indicator, in the case of a provisional or incomplete clearance declaration submitted on authority of a formal application to clear goods on incomplete or provisional clearance information contemplated in rule **24.3**; and
- (h) any other information required for specific purposes by these Rules or the Customs Duty Rules.

**Categories of persons who may submit clearance declarations in paper format**  
(section 168(1))

**7.3** A clearance declaration contemplated in section 164(a) to (d) of the Control Act may be submitted in paper format by a person who is not accredited if—

- (a) the person submitting the declaration submits 10 or less clearance declarations per calendar month; or
- (b) the clearance declaration does not exceed 10 consignment lines.

**Completion of clearance declarations**

**7.4.** (1) When completing a clearance declaration the person clearing the goods must have regard to the Declaration Completion Manual as published on the SARS website.

(2) The valuation method used for determining the customs value of goods being cleared must be indicated on the clearance declaration by inserting one of the following symbols, as may be applicable, in the appropriate space on the declaration:<sup>184</sup>

- (a) “1”, if the primary valuation method as contemplated in section 127 of the Customs Duty Act was used;
- (b) “2”, if the identical goods method as contemplated in section 128(1)(a) of the Customs Duty Act was used;
- (c) “3”, if the similar goods method as contemplated in section 128(1)(b) of the Customs Duty Act was used;
- (d) “4”, if the deductive method as contemplated in section 128(1)(c) of the Customs Duty Act was used;
- (e) “5”, if the computed method as contemplated in section 128(1)(d) of the Customs Duty Act was used; or
- (f) “6”, if the fall-back method as contemplated in section 128(1)(e) of the Customs Duty Act was used.

(3) Any family, personal, employment or business relationship between the buyer and seller must be indicated on the clearance declaration by inserting one of the following symbols, as may be applicable, in the appropriate space on the declaration:<sup>185</sup>

- (a) “R”, if related within the meaning of section 130 of the Customs Duty Act; or
- (b) “N”, if not related within the meaning of that section.

## ***Part 2: Rules relating to supporting documents for clearance of goods***

**Supporting documents for manual clearances** (*section 168(2) read with section 176*)

**7.5** A person submitting a clearance declaration in paper format as contemplated in section 168(2) of the Control Act or in any of the circumstances contemplated in section 913(4)(a)(ii) or (b) must at the Customs Office where, and at the time when, the clearance declaration is submitted, have available with him or her for production

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<sup>184</sup> See section 116(2)(a) of the Customs Duty Act.

<sup>185</sup> See section 116(2)(b) of the Customs Duty Act.

or submission to the customs authority if such production or submission is requested, all supporting documents relevant to that clearance declaration.

**Contents of clearance instruction of principal** (*section 176(1)(c)*)

**7.6** (1) A clearance instruction referred to in section 176(1)(c) of the Control Act used in support of a clearance declaration or an amended clearance declaration submitted by a customs broker must reflect the following information:

- (a) The name and customs code of the principal issuing the instruction;
- (b) whether the goods are to be cleared for a specific customs procedure or for home use;
- (c) the origin of the goods;
- (d) any origin determination applicable to the goods;
- (e) the tariff heading, or a precise description of the goods on which the tariff classification of the goods may be determined;
- (f) any tariff determination applicable to the goods;
- (g) the price paid or payable for the goods;
- (h) the quantity of the goods;
- (i) the customs valuation method used;
- (j) any value determination applicable to the goods;
- (k) any advance ruling applicable to the goods;
- (l) the destination of the goods;
- (m) the trade agreement, if any, under which the goods are to be cleared;
- (n) the GSP, if any, under which the goods are to be cleared;
- (o) the method of payment of any tax to be used; and
- (p) any other information required for specific purposes by these Rules.

(2) A clearance instruction reflecting the information listed in subrule (1) must support every amendment of a clearance declaration submitted by a customs broker.

(3) A single clearance instruction may cover all identical clearance declarations and amendments to those clearance declarations to be submitted by a customs broker during a period specified on the clearance instruction.

### **Draft clearance declarations serving as clearance instructions**

**7.7** Despite rule 7.6(1), a draft clearance declaration prepared by a customs broker in respect of a particular clearance, subsequently endorsed by that customs broker's principal or a person within the principal's organisation authorised to issue clearing instructions, may serve as a clearance instruction in respect of that clearance.

### **Exemptions from section 176(1) in relation to transport documents (section 176(3))**

**7.8** Section 176(1)(b) of the Control Act does not apply if the goods are cleared for a customs procedure or home use—

- (a) before a transport document is issued in respect of the goods;<sup>186</sup> or
- (b) if no transport document is required for those goods.<sup>187</sup>

### **Notifications in respect of change of particulars on or circumstances relating to invoices (sections 177(4) and 178(5)(a))**

**7.9** (1) Submission of an amended clearance declaration reflecting the particulars as changed, must for purposes of sections 177(4) and 178(5)(a) of the Control Act be regarded to be a notification to the customs authority as required in terms of those sections.

(2) An amended clearance declaration referred to in subrule (1) must, if applicable, be supported by –

- (a) the amended invoice or a debit or credit note;
- (b) a statement contemplated in section 178(4); and
- (c) any other document providing evidence of the change in particulars or circumstances.

## ***Part 3: Record keeping***

### **Keeping of information supporting clearance declarations (section 179(a))**

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<sup>186</sup> For instance goods cleared for export before a transport document is issued.

<sup>187</sup> For instance a vehicle imported under its own power without being conveyed.

**7.10** Documents and records referred to in section 179 of the Control Act must be kept and retained in accordance with section 919, read with Part 7 of Chapter 41 of these Rules.

**Documents or records to be produced or submitted to Customs on request**  
*(section 179(b))*

**7.11** A person clearing goods must produce or submit a document or record referred to in section 176 of the Control Act to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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## CHAPTER 8

### HOME USE OF GOODS<sup>188</sup>

#### Measurement of CTC's<sup>189</sup> (section 191)

**8.1** (1) The quantity of a CTC imported from each supplier during an accounting period<sup>190</sup> must be determined by taking measurements of the CTC transported through the pipeline or transmitted through the transmission line during that accounting period.

(2) Measurements referred to in subrule (1)(a) must be taken only at the place and in accordance with the method indicated in the importer's registration details.

(3) The quantity of the CTC measured as contemplated in subrule (1) must be regarded to be the quantity of the CTC imported into the Republic, if the CTC is imported directly to the place where the measurement takes place.

#### Clearance of CTC's (sections 191 and 90(1)(e) and (f))

**8.2** (1) Only the following persons may submit clearance declarations to clear a CTC for home use:

- (a) A registered importer of a CTC;
- (b) the registered agent of an importer of a CTC not located in the Republic; or
- (c) a licensed customs broker duly authorised to submit a clearance declaration on behalf of a person referred to in paragraph (a) or (b).

(2) A person referred to in subrule (1) must, within the timeframe set out in rule **4.1**, submit electronically through EDI, subject to rule **41.13**, a regular clearance

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<sup>188</sup> Apart from CTCs, no rules are necessary for the clearance of goods for home use generally. This Chapter accordingly prescribes rules for CTCs only.

<sup>189</sup> See definition of "continuous transmission commodity" in rule **1.1**.

<sup>190</sup> See definition of "accounting period" in rule **1.1**.

declaration for home use in respect of the quantity of a CTC imported during the relevant accounting period.<sup>191</sup>

(3) A separate clearance declaration must be submitted in respect of each supplier from whom a CTC was imported during the relevant period.

### **Information to be reflected on home use clearance declaration for CTC's**

**8.3** A clearance declaration for home use of a CTC contemplated in rule 8.2 must reflect the following information:

- (a) The information listed in section 167 (a), (e) to (i) and (k) of the Control Act;
- (b) the information required in terms of section 190;
- (c) the customs code of the cross-border transmission line or pipeline; and
- (d) the relevant accounting period.

### **Supporting documents for clearance of CTC's (section 191)**

**8.4** (1) A clearance for home use of a CTC must, in addition to the documents referred to in sections 176(1)(a), (c) and (d) of the Control Act, be supported by a summary of the accounting record referred to in rule 8.5(1).

(2) An invoice relating to the import of a CTC must, in addition to the applicable information listed in section 177, also reflect—

- (a) the period to which the invoice relates;
- (b) the unit of measure and the number of units imported; and
- (c) the price per unit.

(3) Supporting documents referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Record keeping (section 192 read with 179)**

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<sup>191</sup> See definition of "accounting period" in rule 1.1. Note also that in terms of section 81(1)(a) of the Customs Duty Act the applicable rate of import duty is the rate applicable to the goods at the time when the goods are cleared for home use. For determination of time of clearance, see section 173 of the Control Act.



**8.5** (1) A registered importer of a CTC must in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep full accounting records of any CTC imported into the Republic.

(2) Records referred to in subrule (1) include—

- (a) documents supporting the clearance of a CTC for home use, as required by section 176;
- (b) a record of each measurement of a CTC during each accounting period; and
- (c) any other records that may be necessary for determining the history of any transaction relating to the import of a CTC.

(4) This rule must be read subject to any provisions of the Control Act or a tax levying Act prescribing record keeping requirements for persons who are licensees or registered persons in terms of the Control Act or a tax levying Act.

**Records to be produced or submitted to Customs on request** (*section 192 read with section 179*)

**8.6** An importer of a CTC who has been requested by a customs officer to produce or submit a record or document to the customs authority, must submit or produce such record or document subject to and in accordance with Part 6 of Chapter 41 of these Rules.

## CHAPTER 9

### NATIONAL AND INTERNATIONAL TRANSIT<sup>192</sup>

#### *Part 1: General provisions*

#### **Goods excluded from international transit procedure** (*section 194(3)*)

**9.1** The international transit procedure is not available for imported cigarettes in containers bearing the identification mark referred to section 54(2) of the Excise Duty Act, 1964.

#### **Customs seaports and airports for international transit purposes** (*section 198*)

**9.2** (1) Goods may be off-loaded from or loaded onto foreign-going vessels under the international transit procedure at the following customs seaports only:

- (a) Cape Town;
- (b) Durban;
- (c) East London;
- (d) Mossel Bay;
- (e) Port Elizabeth;
- (f) Port of Ngqura;
- (g) Richards Bay; and
- (h) Saldanha Bay.

(2) Goods may be off-loaded from or loaded onto foreign-going aircraft under the international transit procedure at the following customs airports only:

- (a) Cape Town International Airport;
- (b) King Shaka International Airport;
- (c) OR Tambo International Airport; and
- (d) Port Elizabeth International Airport.

#### **Use of other documents as transit clearance declarations for postal articles** (*section 203*)

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<sup>192</sup> Transit includes the transport of non-free circulation goods by sea after the goods have been off-loaded from the importing vessel. In the 1964 Act this type of transport was dealt with as “coastwise carriage”.

**9.3** (1) An air cargo transfer manifest may, for purposes for section 203 of the Control Act, serve or be submitted as a transit clearance declaration for postal articles.

(2) An air cargo transfer manifest referred to in subrule (1) must reflect the following minimum information:

- (a) The air waybill number;
- (b) the name of the customs airport where the goods are transferred;
- (c) the name of the transferring carrier;
- (d) the name of the receiving carrier;
- (e) the name of airport of destination indicated on the air waybill;
- (f) the number of packages; and
- (g) the weight of the packages and unit of measurement.

(3) This rule takes effect on the date on which Chapter 22 of the Control Act takes effect.<sup>193</sup>

## ***Part 2: Transit operations***

### **Application of this Part**

**9.4** This Part applies to all goods cleared for transit except electricity transmitted under the international transit procedure.

### **Commencement and completion periods for transit operations** (*section 206*)<sup>194</sup>

**9.5** (1) The commencement period for a transit operation contemplated in section 206(1) of the Control Act is—

- (a) seven calendar days from release of the goods for transit in the case of—
  - (i) goods that must be containerised for export at a container depot;
  - (ii) bulk cargo;
  - (iii) break bulk cargo; and
  - (iv) goods transported in abnormal loads; or

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<sup>193</sup> See section 943 of the Control Act which provides for implementation of the postal provisions at a later date.

<sup>194</sup> Note that a transit operation ends when the goods under transit reach the delivery point. This must be distinguished from the completion of a transit procedure which ends when goods are cleared for another permissible customs procedure or home use (in the case of national transit procedure), or when goods are exported (in the case of international transit procedure).

(b) three calendar days from the release of the goods for transit in the case of containerised cargo.

- (2) (a) Subject to paragraph (b), the completion period for—
- (i) a national transit operation as contemplated in section 206(2)—
- (aa) by sea, air and road, is two calendar days from commencement of the transit operation; and
- (bb) by rail, is three calendar days from commencement of the transit operation; and
- (ii) an international transit operation as contemplated in section 206(3)—
- (aa) by sea, air and road, is three calendar days from commencement of the transit operation; and
- (bb) by rail, is four calendar days from commencement of the transit operation.

(b) The completion period for a national or international transit operation involving goods transported in abnormal loads is seven calendar days from commencement of the transit operation.

### **Notification of failures to comply with commencement and completion periods**

**9.6** (1) (a) A notification of failure to comply with a commencement or completion period as required in terms of section 206(4) of the Control Act must be submitted to the customs authority<sup>195</sup> electronically through eFiling, subject to rule **41.13**, not later than 24 hours after the failure has occurred.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the starting point of the transit operation is situated.

- (2) A notification in terms of this rule must reflect the following information:
- (a) The customs code of the customs controlled area where the transit operation was intended to have commenced or ended;

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<sup>195</sup> This notification must in terms of section 206(4) of the Control Act be submitted by the licensee of the customs controlled area where the transit operation commences or ends, as the case may be.

- (b) if the notification is submitted by a customs broker or ordinary representative<sup>196</sup> on behalf of the licensee of the customs controlled area referred to in paragraph (a), the information specified in rule **41.14**;<sup>197</sup>
- (c) the movement reference number of the transit clearance declaration under which the goods are transported;
- (d) the name and customs code of the carrier responsible for carrying out the transit operation;
- (e) the precise—
  - (i) commencement period contemplated in rule **9.5(1)** that has not been complied with; or
  - (ii) completion period contemplated in rule **9.5(2)** that has not been complied with; and
- (f) the reason for the failure, which may be motivated in a separate supporting document to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Limitations on routes for transit operations** (*section 207*)

**9.7** (1) Road routes for purposes of section 207(1) of the Control Act are limited to national roads as envisaged in the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), in respect of the following categories of goods:

- (a) Any imported goods that are subject to excise duty imposed in terms of the Excise Duty Act; and
- (b) imported goods in respect of which the duty liability exceeds R1 000 000.

(2) Subrule (1) does not preclude a carrier from using a road which is not a national road—

- (a) in order to—
  - (i) gain access to a national road when travelling from the starting point of a transit operation; or

<sup>196</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>197</sup> If the notification is submitted on behalf of a licensee by an ordinary representative in terms of section 920 of the Customs Control Act, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit documents in that capacity.

- (ii) to reach a delivery point of a transit operation after travelling on a national road; or
- (b) in the event of a road closure affecting a national road.

**Procedure for obtaining permission to redirect goods from starting point or to delivery point of transit operation** (*section 208*)

**9.8** (1) If a person intends to redirect goods under a transit operation as contemplated in section 208 of the Control Act, an application for the customs authority's permission for the redirection of the goods must be submitted in accordance with rule **5.8**.

(2) Rules **5.9** and **5.10** apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

**Technical specifications for holding compartments of vehicles or containers used in transit of goods** (*section 210*)

**9.9** (1) A holding compartment of a vehicle or a container used in the transit of goods must conform to the following technical specifications:

- (a) It must be possible to affix a security seal to the holding compartment of the vehicle or the container in an easy and effective manner;
- (b) doors and all other closing systems of the holding compartment or the container must be—
  - (i) fitted with a device, secured by at least two bolts, riveted or welded to the nuts on the inside of the door or closing system, which enables easy and effective sealing of the holding compartment or the container; and
  - (ii) constructed in a manner covering all interstices and ensuring complete and effective closure;
- (c) screws, bolts, hinge-pins and other fasteners must be welded to the outer parts of the hinges for a door and any other closing system of the holding compartment of a vehicle or the container, so that the door or other closing system is incapable of being lifted off its hinge-pins once shut, unless the door or other closing system has a locking device which is inaccessible from the

outside and which prevents the door or closing system from being lifted off its hinge-pins;

- (d) the holding compartment or the container must be constructed in such a way that no goods can be removed from or introduced into the holding compartment or container after it has been sealed, without obvious damage to the holding compartment or the container, or without breaking the seal;
- (e) there must be no concealed space in the holding compartment or the container where goods can be hidden;
- (f) any space, in the holding compartment or the container, including compartments, receptacles and other recesses, which are capable of holding goods are readily accessible for customs inspection;
- (g) the inside surface of any empty space formed by the different layers of the sides, floor or roof of the holding compartment or the container must be firmly fixed, solid, unbroken and incapable of being dismantled without leaving obvious traces of tampering; and
- (h) any opening made in the floor of the holding compartment or the container for technical purposes such as for lubrication and maintenance must be fitted with a cover capable of being fixed in such a way that the holding compartment or container is inaccessible from the outside.

(2) (a) The technical specifications specified in subrule (1) apply to refrigerator vehicles, furniture vehicles, road tankers, trucks or trailers designed for the transport of vehicles and rail tankers in so far as it is possible to comply with those specifications taking into account the purpose of the vehicle.

(b) Any flange (filler cap), drain cock or manhole of a road or rail tanker must be constructed and equipped in such a manner to allow simple and effective customs sealing.

(3) Goods released by the customs authority for transit on vehicles in unenclosed holding compartments may be transported only in accordance with any conditions subject to which such release was given.

**Transfer of goods in transit to another vehicle or container operated by another carrier** (*section 211*)

**9.10** Rule **5.7** must be complied with when goods under a transit operation are transferred from one vehicle or container to another vehicle or container operated by another carrier.

**Application for permission to interrupt transit operations to carry out activities in relation to goods in transit (section 213(1))**

**9.11** (1) Application for permission to interrupt a transit operation for an activity contemplated in section 213(1) of the Control Act may, before commencement of the activity, be made by—

- (a) the carrier responsible for the transit operation;
- (b) the registered agent of that carrier, if the carrier is not located in the Republic; or
- (c) the person by or whose behalf the goods were cleared for transit.

(2) (a) An application referred to in subrule (1) must be submitted electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in subrule (1) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the goods are.

(3) The application must reflect—

- (a) the name and customs code of the applicant;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative on behalf of the applicant, the information specified in rule **41.14**;<sup>198</sup>
- (c) the movement reference number of the clearance declaration submitted in respect of the goods;
- (d) the transport name of the vehicle in which the goods are transported, if applicable;
- (e) the number of the container in which the goods are transported, if applicable;

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<sup>198</sup> If the application is submitted by an ordinary representative in terms of section 920 of the Customs Control Act on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents who submit applications in that capacity.



- (f) the number of any seal used on the holding compartment of the vehicle or the container;
- (g) the transport document number, as applicable;
- (h) the purpose for which the transit operation is to be interrupted;
- (i) the reason why the transit operation is to be interrupted for that purpose, which may be motivated in a separate supporting document to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules; and
- (j) the place where and the time when the activity will be carried out.

### **Recording of delivery by carriers carrying out transit operations**

**9.12** When a carrier carrying out a transit operation delivers the goods at the delivery point, the carrier must comply with rule **5.4**.

### **Documents that constitute proof of completion of transit operations** (*section 216(2)*)

**9.13** Proof of completion of a transit operation for purposes of section 216(2) of the Control Act is constituted by a carrier's record of delivery referred to in rule **9.12**.

### **Recording of receipt by licensees of customs controlled areas constituting delivery points** (*section 903(1)(c) and (d)*)

**9.14** (1) When the licensee of the customs controlled area which is the delivery point for goods under a transit operation, receives the goods at that customs controlled area, that licensee must record the information referred to in subrule (2) concerning the receipt of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods in terms of subrule (1):

- (a) The name and customs code of the carrier that delivered the goods at the delivery point or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the carrier's registered agent;

- (b) the customs code of the customs controlled area which is the delivery point for the goods;
- (c) the date and time of receipt of the goods at the delivery point;
- (d) the movement reference number<sup>199</sup> of the transit clearance declaration;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods received at the delivery point correspond in class or kind or, if not ascertainable by the licensee, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers received;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container received is intact;<sup>200</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of receipt of goods referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) Submission of an outturn report on the receipt of the relevant goods in terms of Chapter 3 of the Control Act by a licensee referred to in subrule (1) may be regarded as compliance with this rule.

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<sup>199</sup> See definition of “movement reference number” in rule 1.1.

<sup>200</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

**Timeframe for export of goods under international transit** (*section 217(2)*)

**9.15** The timeframe that must be applied for purposes of section 217(2) of the Control Act for the export of goods under international transit is ten calendar days, calculated from commencement of the international transit operation.

**Proof of export of goods under international transit** (*section 217 (3)(a)*)

**9.16** (1) If the customs authority in terms of section 217(3)(a) of the Control Act requests proof from the person who cleared goods for international transit that the goods have been exported, proof as prescribed in terms of rule **9.17** must be produced or submitted to the customs authority subject to and in accordance with Part 6 of Chapter 41 of these Rules.<sup>201</sup>

(2) Part 6 of Chapter 41 of these Rules, with any necessary changes the context may require, applies to any proof submitted in terms of subrule (1).

(3) If proof of export of goods is submitted to the customs authority in terms of rule **41.13** in paper format, such proof must be submitted to the Customs Office that serves the area where the international transit operation commenced.

**Documents that constitute proof of export**<sup>202</sup> (*section 217(3)*)

**9.17** The following documents may serve as proof for purposes of section 217(3)(a) of the Control Act that goods were exported:

- (a) For export by sea, a shipped on board bill of lading;
- (b) for export by air, any document stamped and signed by the air carrier, or evidencing in another way confirmation of loading of the goods by that carrier on board the aircraft, including an air waybill;

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<sup>201</sup> If the proof is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the person who cleared the goods, the submission must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents who submit proof in that capacity.

<sup>202</sup> Proof contemplated in this rule will only be requested by the customs authority if the customs authority is not satisfied on cargo reporting information provided in terms of Chapter 3, that goods were loaded on board the means of transport on which it was to be exported from the Republic. Also note that the list contained in this rule is not exhaustive, and that any other document that may constitute proof of export may be used.

- (c) for export by rail, any document stamped and signed by the rail carrier, evidencing receipt of the goods by that carrier, including a rail consignment note; and
- (d) for export by road, a release notification stamped by customs.<sup>203</sup>

### **Transport of vehicles in transit (section 218(a))**

**9.18** (1) Any imported second hand vehicles cleared for international transit by road must during the transit operation be carried on board a truck or trailer designed for the transport of vehicles.

- (2) Any imported new vehicle cleared for—
  - (a) national transit by road may be transported on board a truck or trailer designed for the transport of vehicles or under its own power; or
  - (b) international transit by road must be transported on board a truck or trailer designed for the transport of vehicles.

(3) For purposes of this rule “vehicle” means a motor car, bus, mini-bus, truck or motor cycle.

### **Timeframe for clearance of goods after completion of national transit operation (section 218(a)(ii))**

**9.19** Goods under the national transit procedure must be cleared for home use or a permissible customs procedure within three working days after the goods reached the delivery point indicated on the transit clearance declaration.

## ***Part 3: Record keeping by licensed carriers and registered agents of non-local carriers***

### **Records to be kept in relation to transport of goods under national or international transit operations (section 903(1)(g))**

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<sup>203</sup> Customs will only stamp a release notification in the event of a systems breakdown.

**9.20** (1) A carrier carrying out a national or international transit operation or, if the carrier is not located in the Republic, that carrier's registered agent, must in terms of section 903(1)(g) of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep record of—

- (a) all goods received, transported, delivered, transferred or in any other way handled by the carrier in the Republic under the transit operation, including of all information that must be recorded in terms of a provision of Part 2; and
- (b) any goods damaged, destroyed, lost or unaccounted for whilst under the control of the carrier when carrying out the transit operation.

(2) Records must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

***Part 4: Transit operations involving transmission of electricity (section 204(3))***

**Application of this Part (section 194(2A))**

**9.21** This Part applies to the transmission of electricity under the international transit procedure.

**Clearance of electricity for international transit (section 90(1)(f) and 201)**

**9.22** (1) Only the following persons may submit clearance declarations to clear electricity for international transit:

- (a) A registered importer of electricity;
- (b) the registered agent of an importer of electricity not located in the Republic; or
- (c) a licensed customs broker duly authorised to submit a clearance declaration on behalf of a person referred to in paragraph (a) or (b).

(2) A person referred to in subrule (1) must, within the timeframe set out in rule **4.1**, submit electronically through EDI, subject to rule **41.13**, a regular clearance declaration clearing for international transit the quantity of electricity imported during each accounting period for transmission to another country.<sup>204</sup>

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<sup>204</sup> See definition of "accounting period" in rule 1.1.

### **Information to be reflected on clearance declaration**

**9.23** A clearance declaration contemplated in rule **9.22**(2) must reflect –

- (a) The information listed in section 167 (a), (e) to (i) and (k) of the Control Act;
- (b) that the electricity is cleared for international transit;
- (c) the customs code of the cross-border transmission lines; and
- (d) the relevant accounting period.

### **Supporting documents for clearance of electricity for international transit**

**9.24** (1) A clearance for the international transit of electricity must, in addition to the documents referred to in sections 176(1)(a), (c) and (d) of the Control Act, be supported by a summary of the accounting record referred to in rule **9.26**(1).

(2) An invoice relating to the import of electricity for transmission under international transit must, in addition to the applicable information listed in section 177, also reflect—

- (a) the period to which the invoice relates;
- (b) the number of units imported for international transit; and
- (c) the price per unit.

(3) Supporting documents referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Determining quantity of electricity for international transit**

**9.25** (1) The quantity of electricity imported and exported for international transit by from each supplier during an accounting period must be determined by taking measurements of the electricity transmitted through the transmission line during that accounting period.

(2) Measurements of electricity in terms of this rule must be taken only at the place and in accordance with the method applicable to the importer in terms of the importer's registration in terms of section 611 of the Control Act.

(3) A separate clearance declaration must be submitted in respect of each supplier from whom electricity was imported under international transit procedure during the relevant accounting period.

### **Record keeping**

**9.26** (1) A registered importer of electricity must in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep full accounting records of electricity imported into the Republic for transmission to another country.

(2) Records referred to in subrule (1) include—

- (a) documents supporting the clearance of electricity for international transit, as required by section 176;
- (b) a record of each measurement of electricity for international transit during each accounting period; and
- (c) any other records that may be necessary for determining the history of any transaction relating to the import of electricity for international transit.

(3) This rule must be read subject to any provisions of the Control Act or a tax levying Act prescribing record keeping requirements for persons who are registered persons in terms of the Control Act or a tax levying Act.

### **Records to be produced or submitted to Customs on request**

**9.27** An importer of electricity for international transit who has been requested by a customs officer to produce or submit a record or document to the customs authority, must produce or submit such record or document subject to and in accordance with Part 6 of Chapter 41 of these Rules.

## CHAPTER 10

### EXCISE WAREHOUSE TRANSIT PROCEDURE

#### *Part 1: Excise warehouse transit operations*<sup>205</sup>

#### **Commencement and completion periods for excise warehouse transit operations** (*section 229*)

**10.1** (1) The commencement period for an excise warehouse transit operation contemplated in section 229(1) of the Control Act is—

- (a) seven calendar days from release of the goods for excise warehouse transit in the case of—
  - (i) bulk cargo, excluding bulk liquid cargo to be transported through a pipeline; or
  - (ii) break bulk cargo;
- (b) three calendar days from the release of the goods for excise warehouse transit in the case of containerised cargo; and
- (c) 24 hours from the release of the goods for excise warehouse transit in the case of liquid bulk cargo to be transported through a pipeline.

(2) (a) Subject to paragraph (b), the completion period for an excise warehouse transit operation contemplated in section 229(2) is two calendar days from the commencement of the excise warehouse transit operation.

(b) The completion period for an excise warehouse transit operation involving goods transported—

- (i) in abnormal loads, is seven calendar days from commencement of the transit operation; or
- (ii) through a pipeline, is 24 hours from commencement of the transit operation.

#### **Persons permitted to carry out excise warehouse transit operations other than through pipelines** (*section 239(b) read with section 231*)

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<sup>205</sup> It is to be noted that sections 231 to 235 and any rules under those sections do not apply where a pipeline is used for discharging liquid goods from vessels to an excise warehouse.



**10.2** (1) An excise warehouse transit operation may, in addition to a licensed carrier referred to in section 231 of the Control Act, also be carried out by—

- (a) the licensee of an excise manufacturing warehouse, in the case of goods cleared for excise warehouse transit to that excise manufacturing warehouse; or
- (b) the licensee of a storage warehouse, in the case of an excise warehouse transit operation commencing at that storage warehouse.

(2) In the case of an excise warehouse transit operation carried out in terms of subrule (1) by the licensee of an excise manufacturing warehouse or storage warehouse by road, the operation must be carried out using own transport.

(3) This rule does not apply to an excise warehouse transit operation carried out through a pipeline.<sup>206</sup>

**Excise warehouse transit operations carried out through pipelines** (*section 227(2)(b)*)

**10.3** (1) If an excise warehouse transit operation is carried out through a pipeline the responsibility for ensuring that the operation is carried out and completed in accordance with Control Act and these Rules rests—

- (a) with the licensee of the excise warehouse where the goods are to be delivered, if that licensee is also the person operating the pipeline; or
- (b) jointly and severally with that licensee and the person operating the pipeline, if they are separate persons.

(2) The person or persons responsible in terms of subrule (1) for an excise warehouse transit operation must determine in respect of each operation the quantity of goods transported through the pipeline to the excise manufacturing warehouse by taking accurate measurements of those goods.

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<sup>206</sup> This rule gives effect to section 231 of the Control Act which does not apply to excise warehouse transit operations carried out through pipelines. See section 227(2)(b).

(3) Measurements referred to in subrule (2) must be taken only at the place or places and in accordance with the method indicated in that licensee's licence details.

(4) If any goods remain in a pipeline after completion of an excise warehouse transit operation and those goods are pumped through or otherwise removed from the pipeline, those goods must in terms of the applicable provisions of the Control Act and these Rules be—

- (a) cleared for home use or a customs procedure;
- (b) abandoned to the Commissioner; or
- (c) destroyed under customs supervision.

**Notification of failure to comply with commencement or completion periods**  
(section 229)

**10.4** (1) (a) A notification of failure to comply with a commencement or completion period as required in terms of section 229(3) of the Control Act must be submitted to the customs authority<sup>207</sup> electronically through eFiling, subject to rule **41.13**, not later than 24 hours after the failure occurred.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the starting point of the excise warehouse transit operation is situated.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The customs code of the customs controlled area where the transit operation was intended to have commenced or ended;
- (b) if the notification is submitted by a customs broker or ordinary representative<sup>208</sup> on behalf of the licensee of the customs controlled area referred to in paragraph (a), the information specified in rule **41.14**;<sup>209</sup>

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<sup>207</sup> This notification must in terms of section 206(4) of the Control Act be submitted by the licensee of the customs controlled area where the transit operation commences or ends, as the case may be.

<sup>208</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

- (c) the movement reference number of the excise transit clearance declaration under which the goods are transported;<sup>210</sup>
- (d) the name and customs code of the carrier or warehouse licensee responsible for carrying out the excise warehouse transit operation, or, if the operation is carried out through a pipeline, the identity of the person operating the pipeline;
- (e) whether the failure was in relation to—
  - (i) a commencement period contemplated in rule **10.1(1)(a)** or *(b)*; or
  - (ii) a completion period contemplated in rule **10.1(2)(a)** or *(b)*; and
- (f) the reason for the failure, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Procedure for obtaining permission to redirect goods from starting point or to delivery point of excise warehouse transit operation** (*section 230*)

**10.5** (1) If a person intends to redirect goods under an excise warehouse transit operation to another destination as contemplated in section 230 of the Control Act, an application for the customs authority’s permission for the redirection of the goods must be submitted in accordance with rule **5.8**.

(2) Rules **5.9** and **5.10** apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

**Routes for transport of certain categories of goods in transit to licensed excise manufacturing warehouses** (*section 231(3)(c)*)

**10.6** (1) The following categories of goods transported by road under an excise warehouse transit operation may only be transported on national roads as envisaged in the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998):

- (a) bulk spirits of tariff heading 22.07;
- (b) bulk wine of tariff heading 22.04.29; and

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<sup>209</sup> If the notification is submitted on behalf of a licensee by an ordinary representative in terms of section 920 of the Customs Control Act, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications in that capacity.

<sup>210</sup> See definition of “movement reference number” in rule 1.1.

(c) cut rag tobacco of tariff heading 24.03.

(2) Subrule (1) does not preclude a carrier or warehouse licensee carrying out a transit operation from using a road which is not a national road—

(a) in order to—

(i) gain access to a national road when travelling from the starting point of an excise transit operation; or

(ii) to reach the delivery point of an excise transit operation after travelling on a national road contemplated in that subrule; or

(b) in the event of a road closure affecting a national road referred to in subrule (1).

**Technical requirements of vehicles or containers used in excise warehouse transit operations** (*section 232*)

**10.7** A vehicle or container used in an excise warehouse transit operation must comply with the requirements set out in rule **9.9**.

**Transfer of goods in excise warehouse transit to other vehicle or container operated by other carrier** (*section 233*)

**10.8** Rule **5.7** must be complied with when goods under an excise warehouse transit operation are transferred from one vehicle or container to another vehicle or container operated by another carrier.

**Recording of delivery of goods by carriers and warehouse licensees carrying out excise warehouse transit operations**

**10.9** (1) When a carrier carrying out an excise warehouse transit operation delivers the goods at the delivery point, the carrier must comply with rule **5.4**.

(2) When a warehouse licensee referred to in rule **10.2(1)(a)** or *(b)* carrying out an excise warehouse transit operation delivers the goods at the delivery point, the warehouse licensee must record the information referred to in subrule (3) concerning the delivery of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(3) The following information must be reflected when recording the delivery of goods in terms of subrule (1):

- (a) The name and customs code of the warehouse licensee referred to in rule **10.2(1)(a)** or *(b)* carrying out the excise warehouse transit operation;
- (b) the movement reference number<sup>211</sup> of the excise warehouse transit clearance declaration under which the goods were transported;
- (c) the date and time of delivery of the goods at the excise manufacturing warehouse;
- (d) the customs code of the excise manufacturing warehouse;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at the excise warehouse correspond in class or kind or, if not ascertainable by the warehouse licensee carrying out the excise warehouse transit, in general trade description with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered by the warehouse licensee;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact;<sup>212</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container delivered at the destination correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) or (iv) can be given, the reason why confirmation cannot be given.

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<sup>211</sup> See definition of “movement reference number” in rule **1.1**.

<sup>212</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.

(4) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(5) This rule does not apply where the excise warehouse transit operation was carried out by means of a pipeline.

**Recording of receipt of goods by licensees of excise manufacturing warehouses when goods are delivered at such excise warehouses** (*section 903(1)(c)*)

**10.10** (1) When the licensee of an excise manufacturing warehouse receives goods delivered at the warehouse under an excise warehouse transit operation, that licensee must record the information referred to in subrule (2) concerning the receipt of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods in terms of subrule (1):

- (a) The name and customs code of the carrier or warehouse licensee referred to in rule **10.2(1)(a)** or (b) that delivered the goods at the excise manufacturing warehouse or, if delivered through a pipeline, the identity of the person operating the pipeline;
- (b) the customs code of the excise manufacturing warehouse;
- (c) the date and time of receipt of the goods at the excise manufacturing warehouse;
- (d) the movement reference number<sup>213</sup> of the excise warehouse transit clearance declaration under which the goods were transported;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods received at the excise warehouse correspond in class or kind or, if not ascertainable by the excise warehouse licensee, in general trade description, with the goods described in the release notification issued in respect of the goods; and

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<sup>213</sup> See definition of “movement reference number” in rule 1.1.

- (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers received by the excise warehouse licensee;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container received is intact;<sup>214</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container received at the excise warehouse, correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) This rule is not required to be complied with if the licensee of the excise warehouse where the goods were delivered, transported the goods to the warehouse under a clearance and release for excise warehouse transit and has recorded delivery of the goods at that warehouse in terms of rule **10.9(2)**. In such a case the recording of information concerning delivery of the goods at that warehouse in terms of rule **10.9(2)** may be regarded as compliance with this rule.

### **Proof of completion of excise warehouse transit operations** (*section 237*)

**10.11** Proof of the completion of an excise warehouse transit operation for purposes of section 237(2) of the Control Act is constituted—

- (a) if the transit operation was carried out by a carrier, by the carrier's record of delivery in terms of rule **5.4(4)**, read with rule **10.9(1)**;

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<sup>214</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.

- (b) if the transit operation was carried out by a licensee referred to in rule **10.2(1)(a)** or (b), by the licensee's record of delivery in terms of rule **10.9(2)**;  
or
- (c) the excise warehouse licensee's record of receipt in terms of rule **10.10**.

***Part 2: Record keeping by licensed carriers and warehouse licensees carrying out excise warehouse transit operations***

**Records to be kept in relation to transport of goods under excise warehouse transit operations** (*section 903(1)(g)*)

**10.12 (1)** A licensed carrier or a licensee referred to in rule **10.2(1)(a)** or (b) carrying out an excise warehouse transit operation, or, if the operation was carried out through a pipeline, the licensee of the excise manufacturing warehouse where the goods were received, must in terms of section 903(1)(g) of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep record of—

- (a) all goods received, delivered, transported or in any other way handled by that carrier or licensee under the excise transit operation, including of all information that must be recorded by such carrier or licensee in terms of a provision of Part 1; and
- (b) any goods damaged, destroyed, lost or unaccounted for whilst—
  - (i) under the control of that carrier or licensee when carrying out the excise warehouse transit operation; or
  - (ii) being transported through the pipeline.

(2) Records must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.



## CHAPTER 11

### TRANSHIPMENT PROCEDURE

#### *Part 1: Introductory provisions*

#### **Limitation of customs seaports and airports for transhipment purposes** (section 245(1))

**11.1** (1) Customs seaports where goods may be transhipped as contemplated in—

(a) section 241(2)(a) of the Control Act are limited to—

- (i) Cape Town;
- (ii) Durban;
- (iii) East London;
- (iv) Port Elizabeth;
- (v) Port of Ngqura; and
- (vi) Richards Bay; and

(b) section 241(2)(b) are limited to the transfer of goods between the customs seaports Port Elizabeth and Port of Ngqura.

(2) Customs airports where goods may be transhipped are limited to—

- (a) Cape Town International Airport;
- (b) King Shaka International Airport;
- (c) OR Tambo International Airport; and
- (d) Port Elizabeth International Airport.

#### ***Part 2: Clearance and release of goods for transhipment***<sup>215</sup>

#### **Timeframe for submission of transhipment clearance declarations** (section 248(2)(b))

**11.2** (1) A clearance declaration to clear goods for transhipment must be

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<sup>215</sup> For provisions relating to the clearance for transhipment of prohibited or restricted goods, see section 775 and section 784(2)(b) of the Control Act, respectively.

submitted—

- (a) in the case of transshipment goods on board a vessel, at least one calendar day before the vessel arrives at the customs seaport where the goods will be transhipped; or
- (b) in the case of transshipment goods on board an aircraft, at least two hours before the aircraft arrives at the customs airport where the goods will be transhipped.<sup>216</sup>

(2) An advance notice referred to in rule **11.3(1)(a)**, **(b)** or **(c)** may serve as a transshipment clearance declaration as contemplated in section 251 only if the notice was submitted within the timeframe applicable to it in terms of rule **3.3(1)**, **3.5(1)(b)** or **3.12(2)**, as the case may be.

#### **Use of other documents as transshipment clearance declarations** (section 251)

**11.3** (1) Any of the following documents may, subject to rules **11.2(2)** and **11.4** and subrule (3) of this rule, serve as a clearance declaration for the transshipment of goods as contemplated in section 251 of the Control Act:

- (a) An advance loading notice of containerised cargo submitted in terms of rule **3.3(1)**, in the case of containerised cargo to be cleared for transshipment;
- (b) an advance sea cargo arrival notice submitted in terms of rule **3.5**, in the case of bulk or break bulk cargo to be cleared for transshipment; or
- (c) an advance air cargo arrival notice submitted in terms of rule **3.13**, in the case of air cargo to be cleared for transshipment.

(2) An advance notice referred to in subrule (1) must indicate that it will serve as a transshipment clearance declaration.<sup>217</sup>

(3) An advance notice referred to in subrule (1) may serve as a transshipment clearance declaration if the person submitting the notice<sup>218</sup> is—

- (a) a licensed carrier or customs broker that has indicated in that person's licence

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<sup>216</sup> These timeframes may in a specific case be shortened in terms of section 909 of the Control Act.

<sup>217</sup> See rules **3.3(2)(g)**, **3.5(2)(f)** and **3.13(2)(e)**.

<sup>218</sup> Note the definition of "cargo reporter" in section 1 of the Control Act if this person submits the advance notice as a cargo reporter. The cargo reporter could either be the carrier who transports the cargo or the customs broker who arranged the transport of the cargo.

details that such notices will be used as transshipment clearance declarations,<sup>219</sup>

- (b) the registered agent of a non-local carrier<sup>220</sup> that has indicated in that agent's registration details that such notices will be used as transshipment clearance declarations,<sup>221</sup>
- (c) a non-local carrier who has a registered agent authorised as contemplated in paragraph (b); or
- (d) an accredited client in terms of Chapter 30 of the Control Act.

### **Only clearance declarations to be used for transshipment between customs seaports served by same Customs Office**

**11.4** An advance notice referred to in rule 11.3(1) may not be used for the clearance of goods being transhipped as contemplated in section 241(2)(b) of the Control Act, and in such a case a transshipment clearance declaration referred to in section 249 must be submitted.

## ***Part 3: Rules relating to transshipment operations***

### **Notification of movement of transshipment goods between licensed premises at customs seaport or airport (section 254(2))**

**11.5** Submission of an outturn report on containers removed from a sea cargo terminal referred to in rule 3.36(1) and (2) must, in the case of transshipment goods to be removed from a sea cargo terminal, be regarded to be a notification contemplated in section 254(2) of the Control Act.

### **Commencement and completion periods for transshipment operations and export of transshipment goods (section 255)**

**11.6** (1) The period within which a transshipment operation must commence as contemplated in section 255(1) of the Control Act is 72 hours from release of the goods for transshipment, subject section 908 and 909 of the Control Act.

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<sup>219</sup> Carriers and customs brokers may indicate their intention to make use of advance notices referred to in rule 11.3 as transshipment clearance declarations through their licensing applications. See rule 29.21(a)(i) for carriers and rule 29.22(1)(a) for customs brokers.

<sup>220</sup> See section 85 of the Control Act.

<sup>221</sup> Agents for non-local carriers may apply for permission to make use of advance notices referred to in rule 11.3 as transshipment clearance declarations through their registration applications. See rule 28.9(3)(i).

(2) The period within which a transshipment operation must be completed as contemplated in section 255(2) of the Control Act is 21 calendar days from commencement of the transshipment operation, subject section 908 and 909 of the Control Act.

**Notifications when transshipment operations are unlikely to commence within commencement period (section 256(1))<sup>222</sup>**

**11.7** (1) A notification contemplated in—

- (a) section 256(1)(a) of the Control Act must be submitted to the customs authority before the commencement period for the transshipment operation applicable to the goods in terms of rule 11.7(1) expires; or
- (b) section 256(1)(b) must be submitted to the customs authority at regular intervals of 24 hours after submission of the notification referred to in paragraph (a).

(2) (a) A notification referred to in subrule (1)(a) or (b) must be submitted electronically through eFiling, subject to rule 41.13.

(b) If the notification is submitted to the customs authority in terms of rule 41.13 in paper format, the notification must be submitted to the Customs Office that serves the customs seaport or seaports or the customs airport or airports where the goods are to be transhipped.

(3) A notification referred to in subrule (1) must, in addition to the information required by, respectively, subsection (1)(a) or (b) of section 256, reflect—

- (a) the name and customs code of the person clearing the goods;
- (b) if the notification is submitted by a custom broker or ordinary representative<sup>223</sup> on behalf of the person clearing the goods, the information specified in rule 41.14;<sup>224</sup>

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<sup>222</sup> In terms of section 256(1) of the Control Act the person clearing the goods for transshipment must submit these notifications. This person could in terms of section 248(1) either be the cargo reporter or the cargo reporter's registered agent in the Republic, or the cargo reporter or registered agent on whose behalf a customs broker has submitted the clearance declaration.

<sup>223</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

- (c) the movement reference number<sup>225</sup> of the transshipment clearance declaration, if applicable;
- (d) the reporting document number<sup>226</sup> of the advance notice referred to in rule **11.3(1)**, if an advance notice is used as a transshipment clearance declaration; and
- (e) the transport name<sup>227</sup> and conveyance number<sup>228</sup> in relation to the vessel or aircraft –
  - (i) from which the goods were off-loaded; and
  - (ii) if available, on which the goods are to be loaded.

**Notification of failure to comply with completion periods** (*section 256(2)*)<sup>229</sup>

**11.8** (1) (a) A notification of a failure to comply with a completion period as required in terms of section 256(2) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**, not later than three hours after the failure occurred.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format the notification must be submitted to the Customs Office that serves the customs seaport or seaports or the customs airport or airports where the goods are to be transhipped.

(2) A notification referred to in subrule (1) must, in addition to the information required by, respectively, subsection (1)(a) or (b) or (2) of section 256, reflect—

- (a) the name and customs code of the licensee of the customs controlled area where the transit goods are in temporary storage or handled;

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<sup>224</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person clearing the goods, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in their capacity as customs broker.

<sup>225</sup> See the definition of “movement reference number” in rule **1.1**.

<sup>226</sup> See the definition of “reporting document number” in rule **1.1**.

<sup>227</sup> See the definition of “transport name” in rule **1.1**.

<sup>228</sup> See the definition of conveyance number in rule **1.1**.

<sup>229</sup> This notification must in terms of section 256(2) of the Control Act be submitted by the licensee of the customs controlled area where the transit goods are in temporary storage or handled.

- (b) if the notification is submitted by a customs broker or ordinary representative<sup>230</sup> on behalf of the licensee referred to in paragraph (a), the information specified in rule **41.14**;<sup>231</sup>
- (c) the movement reference number<sup>232</sup> of the transshipment clearance declaration, if applicable; and
- (d) the reporting document number<sup>233</sup> of the advance notice referred to in rule **11.3(1)**, if an advance notice is used as a transshipment clearance declaration.

#### **Part 4: Other matters**

##### **Timeframe for export of transshipment goods (section 259(3))**

**11.9** The timeframe that must be applied for purposes of section 259(3) for the export of transshipment goods is 21 calendar days from the commencement of the transshipment operation, subject section 908 and 909 of the Control Act.

##### **Notification of delay in exporting transshipment goods (section 259(3))<sup>234</sup>**

**11.10 (1)** A notification contemplated in—

- (a) section 259(3)(a) of the Control Act must be submitted to the customs authority within three hours after the timeframe applicable to the export of the transshipment goods in terms of rule **11.9** has expired; or
- (b) section 259(3)(b) must be submitted to the customs authority at regular intervals of 24 hours after submission of the notification referred to in paragraph (a).

(2) (a) A notification referred to in subrule (1)(a) or (b) must be submitted electronically through eFiling, subject to rule **41.13**.

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<sup>230</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>231</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the customs controlled area, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such licensees in their capacity as customs broker.

<sup>232</sup> See the definition of “movement reference number” in rule **1.1**.

<sup>233</sup> See the definition of “reporting document number” in rule **1.1**.

<sup>234</sup> In terms of section 259(3) of the Control Act the person clearing the goods for transshipment must submit these notifications. This person could in terms of section 248(1) either be the cargo reporter or the cargo reporter’s registered agent in the Republic, or the cargo reporter or registered agent on whose behalf a customs broker has submitted the clearance declaration.

(b) If the notification is submitted to the customs authority in terms of rule **41.13** in paper format the notification must be submitted to the Customs Office that serves the customs seaport or seaports or the customs airport or airports where the goods are transhipped.

(2) A notification referred to in subrule (1) must, in addition to the information required by, respectively, subsection (3)(a) or (b) of section 259, reflect—

- (a) the name and customs code of the person clearing the goods;
- (b) if the notification is submitted by a custom broker or ordinary representative<sup>235</sup> on behalf of the person clearing the goods, the information specified in rule **41.14**;<sup>236</sup>
- (c) the movement reference number of the transhipment clearance declaration, if applicable;
- (d) the reporting document number<sup>237</sup> of the advance notice referred to in rule **11.3(1)**, if an advance notice is used as transhipment clearance declarations; and
- (e) the transport name<sup>238</sup> and conveyance number<sup>239</sup> in relation to the vessel or aircraft on board which the goods were loaded for export.

#### **Proof of export of goods under transhipment (section 259(4))<sup>240</sup>**

**11.11** (1) (a) Proof as prescribed in rule **11.12** must, for purposes of section 259(4)(a) of the Control Act, be submitted to the customs authority on request.

(b) Part 6 of Chapter 41 of these Rules applies with any necessary changes the context may require to the submission of proof referred to in paragraph (a).

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<sup>235</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>236</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person clearing the goods, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in their capacity as customs broker.

<sup>237</sup> See the definition of “reporting document number” in rule **1.1**.

<sup>238</sup> See the definition of “transport name” in rule **1.1**.

<sup>239</sup> See the definition of “conveyance number” in rule **1.1**.

<sup>240</sup> In terms of section 259(4) of the Control Act the person clearing the goods for transhipment must provide proof of export of the transhipment goods. This person could in terms of section 248(1) either be the cargo reporter or the cargo reporter’s registered agent in the Republic, or the cargo reporter or registered agent on whose behalf a customs broker has submitted the clearance declaration.

(2) If proof of export of goods is submitted to the customs authority in terms of rule **41.13** in paper format such proof must be submitted to the Customs Office that serves the customs seaport or seaports or the customs airport or airports where the goods were transhipped.

**Documents that constitute proof of export<sup>241</sup> (section 259(4))**

**11.12** The following documents may serve as proof for purposes of section 259(4)(a) that transshipment goods were exported:

- (a) A shipped on board bill of lading, in the case of an export by sea; or
- (b) any document stamped and signed by the air carrier, or evidencing in another way confirmation of loading of the goods by that carrier on board the aircraft, including an air waybill, in the case of an export by air.

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<sup>241</sup> Proof contemplated in this rule will only be requested by the customs authority if it is not satisfied on cargo reporting information provided in terms of Chapter 3, that goods were loaded on board the means of transport on which it was to be exported from the Republic. Also note that the list contained in this rule is not exhaustive, and that any other document that may constitute proof of export may be used.



## CHAPTER 12

### TEMPORARY ADMISSION PROCEDURE

#### Definitions

**12.1** In this Chapter—

**“certificate of location”** means a document issued by the customs authority of the customs territory where goods are located, confirming that the goods are present in that territory and were inspected by that customs authority;

**“packing material”**, in relation to the temporary admission procedure, means a type of reusable transport equipment consisting of materials or articles which—

- (a) entered the Republic whilst being used to pack, cover, protect, stow or separate imported goods being transported; and
- (b) are of a durable nature manufactured for repeated use without alteration;<sup>242</sup> and

**“racking”**, in relation to the temporary admission procedure, means a type of reusable transport equipment consisting of a custom made frame or other support structure—

- (a) specially designed to protect a specific type of goods packed therein from damage during transport or handling; and
- (b) which is of a durable nature and manufactured for repeated use without alteration.

#### **Extent to which standard provisions relating to supporting documents apply to goods cleared for temporary admission (section 267(2))**

**12.2** All the provisions of Chapter 7 of the Control Act relating to supporting documents apply to goods that are cleared for temporary admission.

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<sup>242</sup> As “packing material” is used in the context of this Chapter as a type of reusable transport equipment, packing materials such as straw, paper, glass wool, and shavings when imported separately in bulk are not included in the definition.

**Applications for temporary admission in terms of Customs Tariff** (*section 293 read with section 903(1)(i)*)

**12.3** Wherever a provision in the Customs Tariff requires a person intending to clear goods for temporary admission to submit an application for permission to do so—

- (a) submission of a clearance declaration for the temporary admission procedure in respect of the relevant goods must be regarded to be such an application; and
- (b) the release notification issued by the customs authority in respect of those goods must be regarded to be the granting of such an application.

**Part 1: Rules applicable to temporary admission under international clearance arrangements**<sup>243</sup>

**Applications for approval of guaranteeing associations** (*sections 282(1)(a) and 903(1)(i)*)

**12.4** (1) (a) An application contemplated in section 282(1)(a) of the Control Act for approval of a guaranteeing association must be submitted electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format the application must be submitted to the Customs Office where registration and licensing applications are processed.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The registered or official name of the association;
- (b) the name under which it conducts business;
- (c) the entity type;
- (d) its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the

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<sup>243</sup> For clearance of commercial trucks, buses and taxis, private vehicles, small vessels and light aircraft where no international clearance arrangements are available for such bus or taxi or private vehicle, small vessel or light aircraft, see rules under Part 3 of Chapter 24.

laws of the Republic or another country, and if another country, the name of that country;

- (e) date of registration, incorporation or recognition;
- (f) its contact details and its physical and postal addresses in the Republic;
- (g) the banking details<sup>244</sup> of its bank account in the Republic; and
- (h) the name of its authorised officer,<sup>245</sup> as well as that person's—
  - (i) SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of his or her identification document;
  - (ii) citizenship; and
  - (iii) contact details and physical and postal addresses in the Republic;
- (i) if the application is submitted by an ordinary representative<sup>246</sup> on behalf of the association referred to in paragraph (a), the information specified in rule **41.14**;<sup>247</sup>
- (j) the names and contact details of each issuing association whose carnets are guaranteed by the guaranteeing association; and
- (k) the international agreement in terms of which the approval is sought.

(3) An application referred to in this rule must be supported by the following documents:

- (a) An undertaking by the applicant to guarantee—
  - (i) the payment of any money that may become payable to the Commissioner on any goods cleared for temporary admission on authority of a CPD or ATA carnet guaranteed by the applicant; and
  - (ii) the performance of any other function and fulfilment of any other obligation specified in the Convention or an agreement under which the relevant carnets are to be issued or guaranteed;
- (b) if the Convention on Temporary Admission or any international agreement referred to in section 280(1)(a)(ii) requires the guaranteeing association to be

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<sup>244</sup> See definition of “banking details” in rule 1.1

<sup>245</sup> See definition of “authorised officer” in rule 1.1.

<sup>246</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>247</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

affiliated with an appropriate international organisation, a document evidencing such affiliation; and

- (c) the resolution passed by the controlling board of the guaranteeing association appointing the person referred to in subrule (3)(h) as the authorised officer of the guaranteeing association.

(4) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Suspension or withdrawal of approval of guaranteeing associations**

**12.5** (1) The customs authority may suspend or withdraw an approval granted to a guaranteeing association in terms of rule **12.4** if the guaranteeing association—

- (a) fails or refuses to act in terms of an undertaking referred to in rule **12.4(4)(a)**;  
or
- (b) terminates its affiliation with an appropriate international organisation as may be required by the Convention on Temporary Admission or any international agreement referred to in section 280(1)(a)(ii) of the Control Act.

(2) If the customs authority intends to suspend or withdraw an approval in terms of subrule (1), it must first—

- (a) notify the guaranteeing association of the proposed suspension or withdrawal and of the reasons for the proposed suspension or withdrawal; and
- (b) give the guaranteeing association an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date of notification referred to in paragraph (a).

(3) The customs authority may despite subrule (2) suspend or withdraw an approval with immediate effect if circumstances so demand but in such a case the guaranteeing association is entitled to submit to the customs authority representations on the suspension or withdrawal within 30 calendar days after the suspension or withdrawal.

(4) A suspension or withdrawal in terms of this rule does not, in respect of carnets accepted by the customs authority before the date of withdrawal or suspension, affect the guaranteeing association's obligations in terms of an undertaking referred to in rule **12.4(4)(a)**.

**Notification of withdrawal as guaranteeing association (section 293)**

**12.6** (1) (a) If a guaranteeing association approved in terms of rule **12.4** intends to withdraw as guaranteeing association, that guaranteeing association must, at least six months in advance of the date of withdrawal, submit to the customs authority a notification of withdrawal electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office where registration and licensing applications are processed.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the guaranteeing association;
- (b) if the notification is submitted by an ordinary representative<sup>248</sup> on behalf of the association referred to in paragraph (a), the information specified in rule **41.14**;<sup>249</sup>
- (c) the date on which the withdrawal will become effective; and
- (d) the reason for the withdrawal, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) A notification in terms of this rule does not affect the guaranteeing association's obligations in terms of an undertaking referred to in rule **12.4(4)(a)** in

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<sup>248</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>249</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the association, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

respect of carnets accepted by the customs authority before the date on which the withdrawal will become effective referred to in subrule (2)(c).

**Applications for extension of validity period of CPD or ATA carnets before expiry** (sections 284(2) and 903(1)(i))

**12.7** (1) (a) The validity period of a CPD or ATA carnet, may be extended by the issuing association only with the approval of the customs authority of a replacement carnet extending the validity period of the carnet.

(b) An extension in terms of paragraph (a)—

- (i) may not exceed one year; and
- (ii) must be effected through the issuing of a replacement carnet.

(2) (a) An application for approval to issue a replacement carnet extending the validity period of an existing carnet—

- (i) may only be submitted by or on behalf of the guaranteeing association guaranteeing the carnet; and
- (ii) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**, at least 30 calendar days<sup>250</sup> before the expiry date of the carnet.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office indicated on the SARS website for receipt of such applications.

(3) An application referred to in subrule (2) must reflect the following information:

- (a) The name and customs code of the guaranteeing association;
- (b) if the application is submitted by an ordinary representative on behalf of the association referred to in paragraph (a), the information specified in rule **41.14**;<sup>251</sup>

<sup>250</sup> This period may be shortened in terms of section 909 of the Control Act.

<sup>251</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the association, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such associations in their capacity as customs broker.

- (c) the name, physical and postal addresses and contact details of the issuing association;
- (d) the name, postal addresses and citizenship of the CPD or ATA carnet holder;
- (e) the CPD or ATA carnet number;
- (f) the expiry date of—
  - (i) the existing carnet; and
  - (ii) the replacement carnet;
- (g) the date on which the goods were cleared for temporary admission on authority of the carnet;
- (h) the period fixed for the re-exportation of goods; and
- (i) the reason for the extension of the validity period of the carnet.

(4) If the application is approved a replacement CPD or ATA carnet indicating the extended validity period may be issued.

(5) A replacement carnet issued in terms of this rule must in all respects be identical to the previous carnet which it replaces, except in respect to the carnet number and the validity period of the carnet, which must commence immediately after the previous carnet expires.

**Applications for replacement of carnets destroyed, lost or stolen** (*sections 286(1) and 903(1)(i)*)

**12.8** (1) Approval by the customs authority for the replacement of a CPD or ATA carnet that has been destroyed, lost or stolen, as contemplated in section 286(1) of the Control Act, must be applied for in terms of this rule.

(2) (a) An application for approval to issue a replacement CPD or ATA carnet—

- (i) may only be submitted by or on behalf of the guaranteeing association guaranteeing the carnet; and
- (ii) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be

submitted to the Customs Office where registration and licensing applications are processed.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the guaranteeing association;
- (b) if the application is submitted by an ordinary representative<sup>252</sup> on behalf of the association referred to in paragraph (a), the information specified in rule **41.14**;<sup>253</sup>
- (c) the name, physical address and contact details of the issuing association;
- (d) the name and postal address and citizenship of the CPD or ATA carnet holder;
- (e) the CPD or ATA carnet number;
- (f) the expiry date of the carnet;
- (g) the date on which the goods were cleared for temporary admission on authority of the carnet; and
- (h) the reason for the replacement of the carnet.

(4) An application for the replacement of a CPD or ATA carnet in terms of this rule must be supported by an affidavit by the carnet holder setting out the circumstances in which the carnet was destroyed, lost or stolen.

(5) A supporting document referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) A replacement carnet issued in terms of this rule must in all respects, except for the carnet number in the case of a CPD carnet, be identical to the previous carnet that it replaces.<sup>254</sup>

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<sup>252</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>253</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the customs controlled area, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

<sup>254</sup> Note that the validity period of the replacement carnet must also be identical to that of the previous carnet.



**Production to customs authority of replacement carnets** (*section 293*)

**12.9** (1) If a replacement carnet is issued to a carnet holder in terms rule **12.7** or **12.8**, the carnet holder must at any Customs Office produce to the customs authority, subject to subrule (2)—

- (a) the new carnet replacing the previous one;
- (b) the previous CPD or ATA carnet that has been replaced, in the case of a replacement in terms of rule **12.7**; and
- (c) a letter from the customs authority evidencing approval for the replacement of the carnet, in the case of a replacement in terms of rule **12.7** or **12.8**.

(2) The documents referred to in subrule (1) must be produced together with the goods identified in the carnet—

- (a) before the expiry of the previous carnet, in the case of a replacement in terms of rule **12.7**; and
- (b) as soon as possible after receipt of the new carnet replacing the previous one, in the case of a replacement in terms of rule **12.8**.

**Requirements relating to clearance on authority of carnets** (*section 293*)

**12.10** (1) A person clearing goods on authority of a CPD or ATA carnet must at the Customs Office serving the place of entry produce to the customs authority the carnet and the goods identified in the carnet together with—

- (a) in the case of a CPD carnet—
  - (i) the carnet holder's identification document;
  - (ii) the carnet holder's drivers licence and international driving permit;
  - (iii) registration documentation in respect of the vehicle, including of the trailer,<sup>255</sup> if any;
  - (iv) a document evidencing valid local third party insurance coverage; and
  - (v) the bill of lading or air waybill referencing the carnet number, if transported by sea or air; and
- (b) in the case of an ATA carnet—

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<sup>255</sup> The definition of "vehicle" in section 1 of the Control Act also includes a trailer.

- (i) the carnet holder's identification document, or if another person acts as the carnet holder's representative, that person's identification document; and
- (ii) if the carnet was issued in respect of goods of which the import into the Republic is restricted, the relevant import permit issued in respect of the goods.

(2) A person clearing goods on authority of a CPD or ATA carnet must upon re-export at the Customs Office serving the place of exit produce the carnet and the goods identified in the carnet to the customs authority together with—

- (a) in the case of a CPD carnet—
  - (i) the carnet holder's identification document;
  - (ii) registration documentation in respect of the vehicle, including of the trailer,<sup>256</sup> if any;
  - (iii) a document evidencing valid local third party insurance coverage; and
  - (iv) the bill of lading or air waybill referencing the carnet number, if transported by sea or air; and
- (b) in the case of an ATA carnet, the carnet holder's identification document, or if another person acts as the carnet holder's representative, that person's identification document.

**Documents acceptable as proof of re-export of goods under temporary admission in terms of international clearance arrangements<sup>257</sup> (sections 279 and 293)**

**12.11** The following documents are acceptable as proof for purposes of section 279 of the Control Act that goods were loaded for export:

- (a) A carnet re-exportation counterfoil;
- (b) a certificate of location;
- (c) for export by sea, a shipped on board bill of lading, referencing the carnet number;

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<sup>256</sup> The definition of "vehicle" in section 1 of the Control Act also includes a trailer.

<sup>257</sup> Note that the list contained in this rule is not exhaustive, and that any other document that may constitute proof of re-export may be used.

- (d) for export by air, any document stamped and signed by the air carrier, or evidencing in another way confirmation of loading of the goods by that carrier on board the aircraft, including an air waybill;
- (e) for export by rail, any document stamped and signed by the rail carrier, evidencing receipt of the goods by that carrier, including a rail consignment note; and
- (f) for export by road, a release notification stamped by customs.<sup>258</sup>

**Part 2: Rules applicable to goods that automatically come under temporary admission procedure**

**Reporting of interruption or discontinuation of current use of vessel, aircraft, locomotive or railway carriage (section 289(2))**

**12.12 (1) (a)** An interruption or discontinuation of the current use of a vessel, aircraft, locomotive or railway carriage, as contemplated in section 289(2) of the Control Act,<sup>259</sup> must for purposes of that section be reported to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves place of entry where the relevant vessel, aircraft, locomotive or railway carriage entered the Republic.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the licensed carrier or registered agent submitting the report as required in terms of section 289(2);
- (b) if the report is submitted by a customs broker or ordinary representative<sup>260</sup> on behalf of the carrier or agent referred to in paragraph (a), the information specified in rule **41.14**,<sup>261</sup>
- (c) the conveyance number;<sup>262</sup>

<sup>258</sup> Customs will only stamp a release notification in the event of a systems breakdown.

<sup>259</sup> Section 289(1) of the Control Act specifies precisely the vessels, aircraft, locomotives and railway carriages to which the reporting obligation referred to in section 289(2) applies.

<sup>260</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>261</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier or registered agent, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of carriers and registered agents in that capacity.

<sup>262</sup> See definition of "conveyance number" in rule 1.1.

- (d) the transport name;<sup>263</sup>
- (e) a description of the nature of the current use of the relevant vessel, aircraft, locomotive or railway carriage;
- (f) the place of entry where the vessel, aircraft, locomotive or railway carriage entered the Republic;
- (g) the date of arrival of the vessel, aircraft, locomotive or railway carriage at the place referred to in paragraph (f);
- (h) the location of the vessel, aircraft, locomotive or railway carriage;
- (i) the date the interruption or discontinuation commenced; and
- (j) the reason for the interruption or discontinuation, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recognised types and categories of reusable transport equipment** (*section 290(1)(c)*)

**12.13** The following types and categories of reusable transport equipment are recognised for purposes of section 290 of the Control Act:

- (a) Containers;
- (b) unit load devices;
- (c) pallets;
- (d) racking used for the packing of components imported for clearance under the inward or home use processing procedure; and
- (e) packing material.

**Reporting of interruption or discontinuation of current use of reusable transport equipment** (*section 290(2)*)

**12.14** (1) (a) An interruption in or discontinuation of the current use of reusable transport equipment, as contemplated in section 290(3) of the Control Act,<sup>264</sup> must for purposes of that section be reported to the customs authority

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<sup>263</sup> See definition of “transport name” in rule 1.1.

<sup>264</sup> Rule 12.13 specifies the reusable transport equipment to which the reporting obligation referred to in section 290(3) applies.

electronically through eFiling, subject to rule **41.13** by the person in physical control of the transport equipment.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves the place of entry where the relevant reusable transport equipment entered the Republic.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person notifying or, if that person does not have a customs code, the information specified in rule **41.15**(1);
- (b) if the report is submitted by a customs broker or ordinary representative<sup>265</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>266</sup>
- (c) the type and category of reusable transport equipment;
- (d) in respect of containers—<sup>267</sup>
  - (i) the container number of each container; and
  - (ii) the quantity of containers;
- (e) in respect of unit load devices—
  - (i) the number of each device; and
  - (ii) the quantity of devices;
- (f) in respect of pallets, the quantity of pallets;
- (g) in respect of racking—
  - (i) the type of racking; and
  - (ii) the quantity of units;
- (h) in respect of packing materials—
  - (i) the type of packing material; and
  - (ii) the quantity, volume or mass of the packing material;
- (i) the location of the reusable transport equipment;
- (j) the date the interruption or discontinuation commenced; and

<sup>265</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>266</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the relevant person, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of another in that capacity.

<sup>267</sup> Note that “container” includes a specialised container used for the transportation of nuclear fuel.

- (k) the reason for the interruption or discontinuation, which may be motivated in a separate supporting document to be produced or submitted on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Additional requirements relating to reusable transport equipment under temporary admission procedure (section 293(f))**

**12.15** The following additional requirements apply to reusable transport equipment that automatically came under the temporary admission procedure in terms of section 290 of the Control Act:

- (a) Packing material under the temporary admission procedure—
- (i) may not be used for the packing of goods in the course of internal transport in the Republic whilst that packing material is under temporary admission procedure; and
  - (ii) must be re-exported by the same importer of the material or the same carrier who brought the packing material into the Republic.
- (b) Containers under the temporary admission procedure may be used for the internal transport of goods in the Republic only once before being re-exported, provided that the route for such internal transport is a reasonably direct route to the place of exit from where the containers will be re-exported from the Republic.
- (c) Pallets under the temporary admission procedure may be—
- (i) used for the internal transport of goods in the Republic; and
  - (ii) replaced by pallets of the same quantity, of the same type and of substantially the same value as the pallets which came into the Republic under temporary admission, for the purpose of re-exportation in compliance with the temporary admission procedure.
- (d) All reusable transport equipment under the temporary admission procedure must, subject to section 908 of the Control Act, be exported within a period of six months from the date when such goods came under the temporary admission procedure in terms of section 290(1).

***Part 3: Record keeping and miscellaneous matters***

**Persons who must keep record of reusable transport equipment that automatically come under temporary admission (section 290(2))**

**12.16** The following persons must keep record of the arrival in and the removal from the Republic of reusable transport equipment that automatically come under the temporary admission procedure in terms of section 290 of the Control Act:

- (a) In the case of containers, unit load devices and pallets on the inbound leg of that procedure, the carrier who brought those containers, devices or pallets into the Republic or, if that carrier is not located in the Republic, that carrier's registered agent;
- (b) in the case of containers, unit load devices and pallets on the outbound leg of that procedure, the carrier who will remove those containers, devices or pallets from the Republic or, if that carrier is not located in the Republic, that carrier's registered agent; and
- (c) in the case of racking delivered to licensed inward or home use processing premises, the licensee of those premises.

**Records to be kept of reusable transport equipment under temporary admission (section 290(2))**

**12.17** (1) Records of reusable transport equipment consisting of containers, unit load devices and pallets under the temporary admission procedure that must be kept in terms of rule **12.16(a)** and **(b)** by the carrier responsible for the equipment or the carrier's registered agent, include the following:

- (a) In respect of each container that enters or leaves the Republic automatically under the temporary admission procedure—
  - (i) the container number;
  - (ii) the size or type;
  - (iii) the place of entry where the container entered the Republic or the place of exit where it will leave the Republic; and
  - (iv) the date of arrival at the place referred to in subparagraph (iii); and
- (b) in respect of each unit load device that enters or leaves the Republic automatically under the temporary admission procedure—
  - (i) the device number;
  - (ii) the size or type;

- (iii) the place of entry where the device entered the Republic or the place of exit where the device will leave the Republic; and
  - (iv) the date of arrival at the place referred to in subparagraph (iii); and
- (c) in respect of pallets that enter or leave the Republic automatically under the temporary admission procedure—
- (i) the number of pallets in each consignment of goods;
  - (ii) the place of entry where the pallets entered the Republic or the place of exit where the pallets will leave the Republic; and
  - (iii) the date of arrival at the place referred to in subparagraph (ii).

(2) Records of reusable transport equipment consisting of racking under the temporary admission procedure that must be kept in terms of rule **12.16(c)** by the licensee of premises referred to in that rule, include the following:

- (a) The quantity of racking of each size or type received on those premises during each calendar month;
- (b) the quantity of racking of each size or type exported from those premises during each calendar month; and
- (c) the quantity of racking of each size or type remaining on those premises at the end of each calendar month.

**Keeping and submission of records** (*section 293*)

**12.18** (1) Records referred to in rule **12.17** must be kept in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules.

(2) Records must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Measures to ensure accurate identification of goods under temporary admission upon re-export** (*section 293(d)*)

**12.19** Measures contemplated in section 293(d) of the Control Act include—

- (a) recording upon entry into the Republic any marks and numbers or other specific identifying characteristics in respect of goods under temporary admission procedure and comparing those marks and numbers or other identifying characteristics upon re-export, which include—



- (i) in respect of a vehicle—
  - (aa) the make and model;
  - (bb) the year of manufacture;
  - (cc) whether it is a diesel or petrol engine;
  - (dd) the odometer reading;
  - (ee) the engine number;
  - (ff) the vehicle identification number (VIN) or chassis number;
  - (gg) the registration number;
  - (hh) the colour; and
  - (ii) a description of the audio- and satellite navigation system fitted in the vehicle, if applicable;
- (ii) in respect of reusable transport equipment, the details listed in rule **12.17**; and
- (iii) in respect of other identifiable goods—
  - (aa) a precise description;
  - (bb) any marks, numbers or other indications permanently affixed to the goods;
  - (cc) the model and serial number, if applicable;
  - (dd) the quantity, volume or mass; and
  - (ee) the country of origin;
- (b) taking samples of goods for purposes of comparison or making use of illustrations, photographs or technical descriptions for purposes of verification of the goods upon re-export; and
- (c) affixing customs marks to goods, including customs seals and identification bands.

## CHAPTER 13

### WAREHOUSING PROCEDURE

#### ***Part 1: Transport of goods under warehousing procedure and submission of delivery and receipt notifications***

#### **Persons other than carriers permitted to transport goods under warehousing procedure** (*section 313(f) read with section 122(c)*)

**13.1** The following persons are hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, authorised to transport, using own transport, goods under the warehousing procedure to a storage warehouse or when the goods are temporarily removed from the warehouse in terms of section 310(b) or (c):

- (a) The licensee of a private storage warehouse, in the case of goods transported to or temporarily removed from that private storage warehouse;
- (b) the licensee of a public storage warehouse, in the case of goods transported to or temporarily removed from that public warehouse, provided that the licensee is authorised to do so by the owner of the goods, in writing;
- (c) the registered owner<sup>268</sup> of the goods, in the case of goods transported to or temporarily removed from a public warehouse; or
- (d) the registered importer of the goods.

#### **Transport of new imported vehicles cleared for warehousing** (*section 313*)

**13.2** (1) A person entitled in terms of rule 13.1 to transport goods to, or to temporarily remove goods from, a storage warehouse may, in the case of new imported vehicles, transport or remove the vehicles in terms of that rule under their own power.

(2) Any imported second hand vehicles cleared for warehousing must, when transported to, or temporarily removed from, a customs warehouse, be carried by a licensed carrier on board a truck or trailer designed for the transport of vehicles.

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<sup>268</sup> See definition of “owner” in section 1(1) of the Control Act.

(3) For purposes of this rule “vehicle” means a motor car, bus, mini-bus, truck or motor cycle.

**Redirection of goods cleared for warehousing to place other than warehouse mentioned in clearance declaration** (*section 304(1)*)

**13.3** (1) If a person intends to redirect goods cleared for warehousing to a place other than the storage warehouse mentioned in the clearance declaration, as contemplated in section 304(1) of the Control Act, an application in accordance with rule **5.8** must be submitted to the customs authority for permission for the redirection of goods to that other place.

(2) Rules **5.9** and **5.10** apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

**Recording of delivery by carriers when goods are delivered under warehousing procedure at storage warehouses** (*sections 304(2)(a) and 903(1)(c) and (d)*)

**13.4** When a carrier that transported goods under the warehousing procedure to a storage warehouse delivers the goods at the warehouse, the carrier must comply with rule **5.4**.

**Recording of delivery by persons other than carriers when delivering goods under warehousing procedure at storage warehouses** (*sections 313(f) and 903(1)(c) and (d)*)<sup>269</sup>

**13.5** (1) When a person referred to in rule **13.1(a), (b), (c) or (d)** that transported goods under the warehousing procedure to a storage warehouse, delivers those goods at the warehouse, that person must record the information referred to in subrule (2) concerning the delivery of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of goods referred to in subrule (1):

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<sup>269</sup> See rules **5.3** and **5.4** for recording of receipt and delivery by carriers transporting goods under the warehousing procedure.

- (a) The name and customs code of the person that transported the goods to the storage warehouse
- (b) the date and time of delivery of the goods at the storage warehouse;
- (c) the customs code of the storage warehouse where the goods were delivered;
- (d) the movement reference number<sup>270</sup> of the warehouse clearance declaration submitted in respect of the goods;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at the storage warehouse correspond in class or kind or, if not ascertainable by that person, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact,<sup>271</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container delivered at the storage warehouse correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>270</sup> See definition of “movement reference number” in rule 1.1.

<sup>271</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

**Recording of receipt by licensees of storage warehouses when goods are received at storage warehouses** (*sections 304(2)(b), 313(b) and 903(1)(c)*)

**13.6** (1) When the licensee of a storage warehouse receives any of the following goods at that warehouse, the licensee must record the information referred to in subrule (2) or (3) concerning the receipt of those goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules:

- (a) Goods cleared and released for warehousing in that warehouse; and
- (b) goods in free circulation to be warehoused in that warehouse.

(2) The following information must be reflected when recording the delivery of goods referred to in subrule (1)(a):

- (a) the name and customs code of the carrier, or of the other person referred to in rule **13.1(a), (b), (c) or (d)**, that delivered the goods at the storage warehouse;
- (b) the name of the licensee of the storage warehouse where the goods were received;
- (c) the customs code of the storage warehouse where the goods were received;
- (d) the date and time of receipt of the goods at the storage warehouse;
- (e) the movement reference number<sup>272</sup> of the warehouse clearance declaration submitted in respect of the goods;
- (f) in the case of non-containerised goods—
  - (i) confirmation that the goods received at the storage warehouse correspond in class or kind or, if not ascertainable by the licensee, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (g) in the case of containerised goods—
  - (i) the quantity of containers delivered;
  - (ii) the container and seal numbers of each container;

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<sup>272</sup> See definition of “movement reference number” in rule 1.1.

- (iii) confirmation that the seal on the container or on each container received is intact;<sup>273</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container received at the storage warehouse correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) or (g)(iii) or (iv) can be given, the reason why confirmation cannot be given.

(3) The following information must be reflected when recording the delivery of goods referred to in subrule (1)(b):

- (a) the name or customs code of the carrier or other person that transported the goods to the storage warehouse;
- (b) the name of the licensee of the storage warehouse where the goods were received;
- (c) the customs code of the storage warehouse where the goods were delivered;
- (d) the date and time of receipt of the goods at the storage warehouse; and
- (e) the class or kind of goods received, as well as the quantity of goods received.

(4) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(5) This rule is not required to be complied with if the licensee of a storage warehouse where goods were delivered, transported the goods to the warehouse under a clearance and release for warehousing in that warehouse and has recorded delivery of the goods at that warehouse in terms of rule **13.5**. In such a case the recording of information concerning delivery of the goods at those premises in terms of rule **13.5(2)** may be regarded as compliance with this rule.<sup>274</sup>

## ***Part 2: Warehousing periods for goods under warehousing procedure***

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<sup>273</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.

<sup>274</sup> Note that this exemption does not absolve the licensee of a storage warehouse from recording in terms of rule **13.6(1)(b)** the receipt of goods in free circulation received at the warehouse.

**Extension of maximum warehousing periods for goods other than restricted goods** (*section 305(1) and (2)*)

**13.7** (1) An application for an extension in terms of section 908 of the Control Act of the maximum warehousing period mentioned in section 305(1) must be submitted to the customs authority at least 21 working days before the expiry of that period.<sup>275</sup>

(2) The maximum period referred to in section 305(1) for which the following classes, kinds or categories of goods may be warehoused, may be extended for a maximum period as stated below for the specific class, kind or category of goods:

- (a) Spare parts for vessels, aircraft or trains: For five years;
- (b) oceanic fibre optic cables: For five years; and
- (c) goods authorised in the Customs Tariff as goods to be used in the manufacture of any equipment, installation or device, for use solely in oil drilling and mineral exploration operations, including off-shore oil drilling and minerals exploration operations:<sup>276</sup> For five years.

**Maximum warehousing periods for restricted goods and extensions of such periods** (*section 305(4)*)

**13.8** (1) The maximum warehousing period for restricted goods contemplated in section 305(4) of the Control Act is—

- (a) thirty calendar days for second hand vehicles; and
- (b) ninety calendar days for all other restricted goods, subject to the legislation referred to in section 783(a) or (b).

(2) An application for an extension in terms of section 908 of the Control Act of the maximum warehousing period mentioned in subrule (1) must be submitted to the customs authority at least five working days before the expiry of that period.<sup>277</sup>

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<sup>275</sup> The procedure for such applications is dealt with in rule 41.2.

<sup>276</sup> Goods imported in terms of relief item 460.23 in the Customs Tariff.

<sup>277</sup> The procedure for such applications is dealt with in rule 41.2.

(3) The maximum warehousing period referred to in subrule (1) may not be extended by more than 30 calendar days.

### ***Part 3: Record keeping and reporting of goods in storage warehouses***

#### **Inventory control system for goods in storage warehouses**

**13.9** (1) The licensee of a storage warehouse must establish and maintain an inventory control system for goods in that warehouse to reflect against the stock inventory code assigned to the goods in terms of rule **13.10**—

- (a) the information listed in rule **13.12** in respect of free circulation goods, if goods in free circulation are stored together with goods under the warehousing procedure in that warehouse; and
- (b) the information listed in rule **13.11** in respect of goods under the warehousing procedure.

(2) An inventory control system referred to in this rule must—

- (a) enable the customs authority to identify the goods in free circulation stored in the warehouse and to distinguish those goods from the goods under the warehousing procedure; and
- (b) be kept in accordance with section 919 of the Control Act, read with the other provisions of this Part and Part 7 of Chapter 41 of these Rules.

(3) Records kept in terms of an inventory control system must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

#### **Stock inventory codes to be assigned to all goods received in storage warehouses**

**13.10** (1) The licensee of a storage warehouse must upon receipt of any goods in that warehouse—

- (a) document those goods on the inventory control system established for that warehouse in terms of rule **13.9**; and



(b) assign to such goods a stock inventory code in accordance with subrule (2), against which the information referred to in section 307 of the Control Act or rule **13.11** or **13.12** must be accessible in respect of such goods.

(2) A stock inventory code referred to in subrule (1)(b) must be assigned in accordance with the packing unit of the goods as reflected on –

- (a) the release notification issued by the customs authority in respect of the goods, in the case of goods cleared for warehousing procedure; or
- (b) the invoice or other commercial document, or the transport document, in the case of free circulation goods delivered at the storage warehouse.

### **Inventory control and record keeping of goods under warehousing procedure** (sections 307 and 313(a))

**13.11** (1) The inventory control system for a public or private storage warehouse must reflect, in addition to the information required in terms of section 307 of the Control Act, the following details in relation to goods cleared and released for storage in that warehouse against the inventory stock code assigned to those goods in terms of rule **13.10**:

- (a) A precise description of the goods, which description must include—
  - (i) the tariff classification;
  - (ii) the customs value;
  - (iii) the quantity, volume or weight of the goods as may be applicable; and
  - (iv) any marks and numbers on the goods;
- (b) the movement reference number<sup>278</sup> and date of the clearance declaration in terms of which the goods were cleared for storage in the warehouse;
- (c) in the case of goods removed temporarily from the warehouse for a purpose contemplated in section 310(b) or (c)—
  - (i) the purpose of the removal;
  - (ii) the date of removal;
  - (iii) the place where goods were removed to; and
  - (iv) the date of return of the goods;

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<sup>278</sup> See definition of “movement reference number” in rule 1.1.

- (d) in the case of goods sampled or accessed as contemplated in section 513, the information referred to in rule **23.6(c)**;
- (e) subject to subrule (2), any documents issued in respect of the goods from the time the goods are received in the warehouse until the goods are removed from the warehouse under a clearance and release for home use or a customs procedure, or removed from the warehouse in terms of section 310(d) or (e), including—
  - (i) any documentary evidence of origin issued in respect of the goods to which the licensee of the warehouse has access;
  - (ii) any record of receipt in terms of rule **13.6** in relation to the goods;
  - (iii) any authorisation granted by the customs authority for an extension of a warehousing period pursuant to an application referred to in rule **41.2**;
  - (iv) any report submitted to the customs authority as required in terms of section 308;
  - (v) any permission granted by the customs authority pursuant to an application referred to in rule **13.3**;
  - (vi) any approval granted by the customs authority for the temporary removal of goods from the warehouse as contemplated in section 310(b) or (c);
  - (vii) any detention, seizure or confiscation notice issued by the customs authority in terms of Chapter 34 of the Control Act;
  - (viii) any contract of purchase and sale concluded in respect of the goods whilst in the warehouse;
  - (ix) any purchase order issued by a prospective buyer in respect of the goods whilst in the warehouse;
  - (x) any worksheet referred to in section 82(1)(a) of the Customs Duty Act;
  - (xi) in the case of goods damaged, destroyed, lost or unaccounted for whilst under the warehousing procedure, any documents submitted or issued in terms of Chapter 25 of the Control Act for purposes of the application of that Chapter; and
  - (xii) any abandonment notice issued by the customs authority in terms of section 564;

- (f) the reference number of any permit or other authorisation referred to in section 784 issued in respect of restricted goods in the warehouse; and
- (g) when the goods are cleared for removal from the warehouse, the movement reference number<sup>279</sup> and date of any clearance declaration in terms of which the goods are cleared for home use or a customs procedure.

(2) In the case of a public storage warehouse, documents referred to in subrule (1)(e)(i), (viii), (ix) and (x) need not be reflected in the inventory control system against the inventory stock code.

### **Inventory control and record keeping of free circulation goods in storage warehouses** *(section 313(b))*

**13.12** The inventory control system for a public or private storage warehouse must reflect the following details in relation to any goods in free circulation in the storage warehouse against the inventory stock code assigned to such goods in terms of rule

#### **13.10:**

- (a) A precise description of the goods, including the quantity, volume or weight of the goods;
- (b) any marks and numbers on the goods;
- (c) the date of receipt of the goods in the warehouse;
- (d) in the case of a private warehouse, the reference number and the date of the sales invoice issued upon sale of the goods, if the goods were bought; and
- (e) in the case of goods removed from the warehouse, the date of removal.

### **Reports to be submitted in connection with warehoused restricted goods** *(sections 308 and 313(g))*

**13.13 (1)** A report contemplated in section 308 of the Control Act must be submitted in relation to all restricted goods stored in a storage warehouse.

- (2) (a) A report referred to in subrule (1) must—

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<sup>279</sup> See definition of “movement reference number” in rule 1.1.

- (i) cover monthly periods commencing immediately after the end of the calendar month during which restricted goods were first received in that warehouse; and
- (ii) must within seven working days after the end of each calendar month be submitted to the customs authority electronically, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report may be submitted to any Customs Office.

(3) A report referred to in subrule (1) must—

- (a) be in the form of an extract of the warehouse inventory contemplated in rule **13.12(1)** reflecting particulars of restricted goods in the storage warehouse for the relevant reporting period;
- (b) state the customs code of the storage warehouse; and
- (c) if the report is submitted by a customs broker or ordinary representative<sup>280</sup> on behalf of the licensee of the storage warehouse, state the information specified in rule **41.14**.<sup>281</sup>

#### ***Part 4: Actions in relation to warehoused goods***

##### **Application for permission to carry out sorting, packing and other actions in connection with specific warehoused goods (section 309)**

**13.14** (1) (a) An application for permission to sort, separate, grade, pack, repack, label or re-label specific goods warehoused in a storage warehouse, as contemplated in section 309 of the Control Act, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**, at least three working days before the commencement of the intended action in connection with the goods.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be

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<sup>280</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>281</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the storage warehouse, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in that capacity.

submitted to the Customs Office that serves the area where the storage warehouse is situated.

- (2) An application referred to in subrule (1) must be made—
- (a) in the case of goods in a private warehouse, by the licensee of the private storage warehouse; or
  - (b) in the case of goods in a public warehouse, by—
    - (i) the licensee of the public warehouse; or
    - (ii) the owner of the goods or the registered agent of the owner if the owner is not located in the Republic.
- (3) An application referred to in subrule (1) must reflect—
- (a) the name and customs code of the applicant;
  - (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>282</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>283</sup>
  - (c) the customs code of the storage warehouse where the goods are warehoused;
  - (d) the movement reference number<sup>284</sup> of the warehouse clearance declaration submitted in respect of the goods;
  - (e) whether proposed sorting, packing or other action to be taken will affect all the goods covered by the clearance declaration and, if not, a precise description of the goods that will be affected, which description must include—
    - (i) the tariff classification;
    - (ii) the quantity, volume or weight of the goods;
    - (iii) the customs value of the goods; and
    - (iv) any marks and numbers on the goods;
  - (f) the inventory stock code assigned in terms of rule **13.10** to the affected goods; and

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<sup>282</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>283</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

<sup>284</sup> See definition of “movement reference number” in rule **1.1**.

- (g) if the proposed action is to be carried out other than at the warehouse—
  - (i) the place where the action is to be carried out; and
  - (ii) the proposed date of removal and the proposed date of return of the goods.

- (4) An application referred to in subrule (1) must be supported by—
  - (a) a document setting out particulars of the proposed sorting, packing or other action, including a description of the nature of the action and, if the action involves packaging, a description of the final packaging;
  - (b) if the goods need to be removed to another place for the action, a document setting out—
    - (i) a description of any security measures to be taken at that place to ensure that the integrity of the goods are not compromised;
    - (ii) the proposed date of removal and proposed date of return of the goods; and
    - (iii) the reason why the action cannot be carried out at the storage warehouse; and
  - (c) in the case where the applicant is the licensee of the public warehouse, an authorisation by the owner of the affected goods to perform the relevant action in relation to the goods.

(5) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) Approval of an application in respect of goods that need to be removed from the storage warehouse for the proposed sorting, packing or other action and in respect of which the information referred to in subrule (4)(b) has been provided, must be regarded to be permission granted in terms of section 310 of the Control Act for the removal of the goods.

(7) The licensee of a public storage warehouse is, in the case of an application referred to in subrule (2)(b)(ii), entitled to a copy of any approval granted in respect of the application.

(8) In circumstances where the intended sorting, packing or other action referred to in subrule (1) in respect of specific goods will result in any information reflected on the clearance declaration submitted in respect of the relevant goods to be amended, the amended clearance declaration reflecting such change in information may be regarded to be an application in terms of this rule.

**Application for standing permission to carry out sorting, packing and other actions in connection with goods warehoused in storage warehouses in the normal course of business** (*section 309*)

**13.15** (1) The licensee of a private or public storage warehouse may apply for standing permission to sort, separate, grade, pack, repack, label or re-label goods warehoused in the warehouse, as contemplated in section 309 of the Control Act, on a repetitive basis in the normal course of the licensee's business: Provided that such an application may be submitted as part of the applicant's application for licensing the warehouse as a private or public storage warehouse in terms of Chapter 29 of the Control Act.

(2) (a) An application for standing permission must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to—

- (i) the Customs Office that serves the area where the storage warehouse is situated; or
- (ii) if the application is submitted as part of an application for licensing of the storage warehouse, the Customs Office where applications for licensing are processed.

(3) An application referred to in subrule (1) in relation to a storage warehouse already licensed must reflect—

- (a) the name of the applicant;

- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>285</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>286</sup>
- (c) the customs code of the storage warehouse;
- (d) a description of the kind or class of goods in respect of which the sorting, packing or other action for which standing permission is required, is to be done or taken; and
- (e) the place where the action is to be carried out.

(4) An application referred to in subrule (1) submitted as part of an application for licensing of a storage warehouse must contain in the licensing application—

- (a) a statement that the licensing application must be regarded also as an application referred to in subrule (1);
- (b) a description of the kind or class of goods in respect of which the sorting, packing or other action for which standing permission is required, is to be done or taken; and
- (c) if the sorting, packing or other action is to be carried out other than at the warehouse—
  - (i) the place where the action is to be carried out; and
  - (ii) the time within which the goods will be returned to the warehouse.

(5) An application submitted in respect of a licenced storage warehouse as provided in subrule (3) or as part of a licensing application for a storage warehouse as provided for in subrule (4) must be supported by—

- (a) a document setting out particulars of the proposed sorting, packing or other action to be done in the normal course of the licensee's business, including a description of the nature of the action and, if the action involves packaging, a description of the final packaging; and

<sup>285</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>286</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.



- (b) if the goods need to be removed to another place for the action, a document setting out—
- (i) a description of any security measures to be taken at that place to ensure that the integrity of the goods are not compromised;
  - (ii) the timeframe within which the goods will be returned to the storage warehouse; and
  - (iii) the reason why the action cannot be carried out at the storage warehouse.

(6) Supporting documents referred to in subrule (5) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(7) Approval of an application in respect of goods that need to be removed from the storage warehouse for the proposed sorting, packing or other action and in respect of which the information referred to in subrule (5)(b) has been provided, must be regarded to be permission granted in terms of section 310 of the Control Act for the removal of the goods.

### **Notification of commencement of actions covered by rule 13.15 standing permissions**

**13.16** (1) A licensee of a private or public storage warehouse who is the holder of a standing permission contemplated in rule **13.15** must, at least three working days before the commencement of any intended action in respect of warehoused goods covered by such standing permission, notify the customs authority of such commencement in accordance with this rule.

(2) A notification referred to in subrule (1) must be submitted to the customs authority—

- (a) electronically through e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) or (c) of the Control Act.

(3) A notification submitted in terms of subrule (2)(a) or (b), must—

- (a) if sent by e-mail, be directed to the Customs Office that serves the area where the relevant action will be performed at the e-mail address indicated on the SARS website for receipt of such notifications at that Customs Office;
- (b) if delivered by hand, be delivered to the physical address of the Customs Office referred to in paragraph (a); or
- (c) if telefaxed, be directed to the Customs Office referred to in paragraph (a) and sent to the fax number indicated on the SARS website for the receipt of such notifications at that Customs Office.

(4) A notification referred to in subrule (1) must reflect the following information:

- (a) the name and customs code of the holder of the standing permission;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>287</sup> on behalf of the holder, the information specified in rule **41.14**;<sup>288</sup>
- (c) the reference number of the standing permission granted in terms of rule **13.15**; and
- (d) the date of commencement of the intended action covered by the standing permission.

**Applications for approval to remove goods from storage warehouses for repair or preservation operations** (*section 310(b)*)

**13.17** (1) (a) An application for approval to remove goods from a storage warehouse for carrying out a repair or preservation operation in terms of section 310(b) of the Control Act must be submitted to the customs authority electronically through eFiling, subject rule **41.13**, at least three working days before the commencement of the proposed repair or preservation operation.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be

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<sup>287</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>288</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications in that capacity.

submitted to the Customs Office that serves the area where the warehouse is situated.

- (2) An application referred to in subrule (1) must be made—
- (a) in the case of goods in a private warehouse, by the licensee of the private storage warehouse; or
  - (b) in the case of goods in a public warehouse, by—
    - (i) the licensee of the public warehouse; or
    - (ii) the owner of the goods or the registered agent of the owner if the owner is not located in the Republic.
- (3) An application referred to in subrule (1) must reflect—
- (a) the name and customs code of the applicant;
  - (b) if the application is submitted by a customs broker or ordinary representative<sup>289</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>290</sup>
  - (c) the customs code of the storage warehouse where the goods are warehoused;
  - (d) the movement reference number<sup>291</sup> of the warehouse clearance declaration submitted in respect of the goods;
  - (e) whether the proposed repair or preservation operation is to be carried out in respect of all the goods covered by the clearance declaration, and, if not, details of the goods in respect of which the operation will be carried out, including a precise description of the goods, which description must include—
    - (i) the tariff classification;
    - (ii) the quantity, volume or weight of the goods;<sup>292</sup>
    - (iii) the customs value of the goods; and
    - (iv) any marks and numbers on the goods;

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<sup>289</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>290</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

<sup>291</sup> See definition of “movement reference number” in rule 1.1.

<sup>292</sup> The actual quantities in the unit of measurement as indicated in the relevant tariff heading must be reflected.

- (f) the inventory stock code assigned in terms of rule **13.10** to the goods in respect of which the operation is to be carried out;
- (g) the place where the repair or preservation operation is to be carried out; and
- (h) the proposed date of removal and the proposed date of return of the goods to the warehouse.

- (4) An application referred to in subrule (1) must be supported by—
  - (a) documents setting out—
    - (i) the nature of the repair or preservation operation;
    - (ii) a description of any security measures to be taken at the place to which the goods will be removed to ensure that the integrity of the goods are not compromised; and
    - (iii) the reason why the operation cannot be carried out at the storage warehouse; and
  - (b) in the case of the applicant being a public warehouse licensee, an authorisation by the owner of the affected goods to perform the relevant action in relation to the goods.

(5) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) The licensee of a public storage warehouse is, in the case of an application referred to in subrule (2)(b)(ii), entitled to a copy of any approval granted in respect of the application.

**Additional purposes for which warehoused goods may be removed from warehouses** (*section 310(c)*)

**13.18** Goods may, in addition to the purposes contemplated in section 310(a), (b), (d) or (e) of the Control Act, be removed from a storage warehouse also for the purpose of carrying out any of the following actions, in circumstances where these actions cannot be carried out at the warehouse:

- (a) Actions referred to in rule **13.14** or **13.15**;

- (b) in respect of bulk homogeneous goods for purposes of tariff headings 2707; 2713 to 2715; 2901; 2902 and 3403:
- (i) Cleaning;
  - (ii) decanting;
  - (iii) desalting;
  - (iv) water separation;
  - (v) filtering;
  - (vi) colouring; and
  - (vii) marking; and
- (c) in respect of goods for purposes of tariff headings other than the tariff headings referred to in paragraph (b):
- (i) Removal of dust;
  - (ii) sifting or screening;
  - (iii) sorting or grading;
  - (iv) classifying;
  - (v) matching (including the making-up of sets of articles);
  - (vi) washing;
  - (vii) trimming, filing, slitting or cutting; and
  - (viii) separating defective goods from prime quality goods.

**Application for permission to remove warehoused goods from storage warehouses other than for purposes specifically provided for (section 310(c))**

**13.19** (1) (a) An application for the customs authority's approval contemplated in section 310(c) of the Control Act to remove warehoused goods from a storage warehouse for a purpose other than a purpose referred to in section 310(a), (b), (d) or (e) or in rule **13.18**,<sup>293</sup> must be submitted to the customs authority electronically through eFiling, subject rule **41.13**, at least three working days before the removal of the goods.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be

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<sup>293</sup> Note that this rule only applies to the removal of goods from a storage warehouse where there is no specific provision in the Control Act for such removal. Instances where the Control Act provides such specific provision are contained in section 310(a), (b), (d) and (e) and also in rule **13.18** as read with section 310(c). For these removals no approval in terms of this rule is necessary.

submitted to the Customs Office that serves the area where the warehouse is situated.

- (2) An application referred to in subrule (1) must be submitted—
- (a) in the case of goods in a private warehouse, by the licensee of the private storage warehouse; or
  - (b) in the case of goods in a public warehouse, by—
    - (i) the licensee of the public warehouse; or
    - (ii) the owner of the goods, or the registered agent of the owner, if the owner is not located in the Republic.
- (3) An application referred to in subrule (1) must reflect—
- (a) the name and customs code of the applicant;
  - (b) if the application is submitted by a customs broker or ordinary representative<sup>294</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>295</sup>
  - (c) the customs code of the storage warehouse where the goods are warehoused;
  - (d) the movement reference number<sup>296</sup> of the warehouse clearance declaration submitted in respect of the goods;
  - (e) whether all the goods covered by the clearance declaration are to be removed and, if not, details of the goods to be removed, including a precise description of the goods, which description must include—
    - (i) the tariff classification;
    - (ii) the quantity, volume or weight of the goods;<sup>297</sup>
    - (iii) the customs value of the goods; and
    - (iv) any marks and numbers on the goods;
  - (f) the inventory stock code assigned in terms of rule **13.10** to the goods to be removed;

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<sup>294</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>295</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

<sup>296</sup> See definition of “movement reference number” in rule 1.1.

<sup>297</sup> The actual quantities in the unit of measurement as indicated in the relevant tariff heading must be reflected.

- (g) the place to which the goods are to be removed;
- (h) the purpose for which the goods are to be removed; and
- (i) the proposed date of removal and the proposed date of return of the goods.

(4) An application referred to in subrule (1) must be supported by—

- (a) documents setting out—
  - (i) particulars of the purpose for which the goods are to be removed;
  - (ii) particulars of any action to be carried out in connection with the goods;
  - (iii) a description of any security measures to be taken at the place to which the goods will be removed to ensure that the integrity of the goods are not compromised; and
  - (iv) the reason why the proposed action (if any) cannot be performed at the storage warehouse; and
- (b) in the case of the applicant being a public warehouse licensee, an authorisation by the owner of the affected goods to perform the relevant action in relation to the goods.

(5) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) The licensee of a public storage warehouse is, in the case of an application referred to in subrule (2)(b)(ii), entitled to a copy of any approval granted in respect of the application.

**Timeframes for return or clearance of goods removed from storage warehouses** (*section 310(c)*)

**13.20** The timeframe within which warehoused goods removed from a storage warehouse for a purpose listed in rule **13.18** or approved by the customs authority in terms of rule **13.17** or **13.19**, must either be returned to the warehouse or cleared and released as contemplated in section 310(a), is—

- (a) as approved or determined by the customs authority in a specific case; or

- (b) where paragraph (a) does not apply, five working days after removal of the goods.<sup>298</sup>

**Recording of receipt by licensees of storage warehouses when warehoused goods removed from warehouse are returned to warehouse (sections 313(c) and 903(1)(c))**

**13.21** (1) When warehoused goods removed from a storage warehouse in terms of section 310 of the Control Act are returned to the warehouse, the licensee of the warehouse must record the information referred to in subrule (2) concerning the receipt of those goods in the warehouse, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording receipt of goods referred to in subrule (1):

- (a) The name of the licensee and the customs code of the storage warehouse;
- (b) the name and customs code of the carrier or of the other person referred to in rule **13.1(a), (b), (c) or (d)** that delivered the goods at the storage warehouse;
- (c) the date and time of receipt of the goods at the storage warehouse;
- (d) the movement reference number<sup>299</sup> of the warehouse clearance declaration submitted in respect of the goods;
- (e) confirmation that the goods received at the storage warehouse correspond in class or kind and quantity with the goods removed from the warehouse; and
- (f) if no such confirmation can be given, particulars of why confirmation cannot be given.

(3) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

***Part 5: Measures to ensure effective customs control over goods under warehousing procedure***

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<sup>298</sup> This period may be extended in terms of section 908 of the Control Act.

<sup>299</sup> See definition of “movement reference number” in rule 1.1.



**Measures to ensure effective customs control during temporary removal of goods as contemplated in section 310 (section 313(c)(ii))**

**13.22** A place to which goods are temporarily removed in terms of section 310(b) or (c) must comply with the security standards for storage warehouses referred to in rule **29.31**.

**Storage of free circulation goods with goods not in free circulation in same storage warehouse (section 299(2))**

**13.23** (1) In the case of goods consisting of unpacked dry or liquid homogeneous goods, goods in free circulation may be stored in the same storage warehouse with goods not in free circulation, provided that—

- (a) the dutiability of the goods not in free circulation is not affected by storing the goods together with free circulation goods;
- (b) the free circulation goods are distinguished from the goods not in free circulation by means of a stock inventory code assigned in accordance with rule **13.10**; and
- (c) the free circulation goods are kept physically separate if the goods are not identical to the goods not in free circulation in respect of tariff classification, quality and technical characteristics.

(2) In the case of all other goods, goods in free circulation may be stored in the same storage warehouse with goods not in free circulation, provided that the free circulation goods are distinguished from the goods not in free circulation by means of a stock inventory code assigned in accordance with rule **13.10**.

(3) All goods in a storage warehouse must be easily accessible for customs inspection.

## CHAPTER 14

### TAX FREE SHOP PROCEDURE

#### ***Part 1: Establishment of, and transport of goods to and receipt of goods in, tax free shops***

##### **Places where tax free shops may be established (section 332)**

**14.1** (1) Tax free shops may, subject to subrule (2), be established at the following—

- (a) customs seaports designated as places of entry or exit in terms of section 31(1)(a) of the Control Act:
  - (i) Durban customs seaport; and
  - (ii) Cape Town customs seaport; and
- (b) customs airports designated as places of entry or exit in terms of section 31(1)(b):
  - (i) Cape Town International Airport;
  - (ii) King Shaka International Airport;
  - (iii) Kruger Mpumalanga International Airport; and
  - (iv) OR Tambo International Airport.

(2) More than one tax free shop may be covered by the same tax free shop licence, provided that such tax free shops are situated within the same customs seaport or airport.

##### **Only licensees apart from carriers permitted to transport goods under tax free shop procedure (section 332(b) read with section 122(c))**

**14.2** Licensees of tax free shops are hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, authorised to transport, using own transport, goods not in free circulation—

- (a) to a tax free shop under the tax free shop procedure; or
- (b) when the goods are transferred from the shop in terms of section 328(1)(c).<sup>300</sup>

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<sup>300</sup> Note that as goods in free circulation to be sold in a tax free shop are not transported to the shop under the tax free shop procedure, any person is entitled to transport such goods.

**Procedure for obtaining authorisation to redirect goods to location other than licensed tax free shop** (*section 322*)

**14.3** (1) If a person intends to redirect goods cleared and released for supply to a tax free shop to a place other than the licensed tax free shop indicated in the clearance declaration, an application in accordance with rule **5.8** must be submitted for the customs authority's permission to redirect the goods to that other place.

(2) Rules **5.9** and **5.10** apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

**Recording of delivery by carriers when delivering goods not in free circulation at tax free shops** (*section 332*)

**14.4** When a carrier that transported goods not in free circulation to a tax free shop under the tax free shop procedure delivers the goods at the shop, the carrier must comply with rule **5.4**.

**Recording of delivery by licensees when delivering goods not in free circulation at tax free shops** (*sections 332(c) and 903(1)(c) and (d)*)

**14.5** (1) When the licensee of a tax free shop that transported goods not in free circulation under the tax free shop procedure delivers the goods at the shop, the licensee must record the information referred to in subrule (2) concerning the delivery of the goods at the shop, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of goods in terms of subrule (1):

- (a) The name of the licensee that transported the goods to the tax free shop;
- (b) the customs code of the tax free shop where the goods were delivered;
- (c) the date and time of delivery of the goods at the tax free shop;
- (d) the movement reference number<sup>301</sup> of the tax free shop clearance declaration submitted in respect of the goods;

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<sup>301</sup> See definition of "movement reference number" in rule **1.1**.

- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at the tax free shop correspond in class or kind or, if not ascertainable by the licensee, in general trade description with the goods described in the release notification issued in respect of the goods; and
  - (ii) the quantity delivered;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact;<sup>302</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container delivered at the tax free shop correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) or (f)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Recording of receipt when both free circulation and non-free circulation goods are received at tax free shops**

**14.6** (1) When the licensee of a tax free shop receives goods at the tax free shop for sale in the shop the licensee must record the information referred to in—

- (a) subrule (2) concerning those goods, if the goods are not in free circulation; and
- (b) subrule (3) concerning those goods, if the goods are in free circulation.

(2) The following information must be reflected when recording the receipt of goods not in free circulation in terms of subrule (1)(a):

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<sup>302</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

- (a) The name and customs code of the carrier that delivered the goods to the tax free shop;<sup>303</sup>
- (b) the name of the licensee of the tax free shop where the goods were received;
- (c) the customs code of the tax free shop where the goods were received;
- (d) the date and time of receipt of the goods at the tax free shop;
- (e) the movement reference number of the tax free shop clearance declaration;
- (f) in the case of non-containerised goods—
  - (i) confirmation that the goods received at the tax free shop correspond in class or kind or, if not ascertainable by the licensee, in general trade description with the goods described in the release notification issued in respect of the goods; and
  - (ii) the precise quantity received;
- (g) in the case of containerised goods—
  - (i) the quantity of containers received;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or each container received is intact;<sup>304</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) or (g)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) The following information must be reflected when recording the receipt of goods in free circulation in terms of subrule (1)(b):

- (a) The name and customs code (if any) of the carrier or other person that transported the goods to the tax free shop;
- (b) the name of the licensee of the tax free shop where the goods were received;
- (c) the customs code of the tax free shop where the goods were received;

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<sup>303</sup> In terms of section 122 of the Control Act, read with rule **14.2**, only a carrier and the licensee of a tax free shop are permitted to transport goods not in free circulation to the shop. Goods in free circulation can be transported by any person.

<sup>304</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.

- (d) the date and time of receipt of the goods at the tax free shop; and
- (e) the class or kind of goods received in general trade description, and the quantity received.

(4) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(5) This rule is not required to be complied with if the licensee of a tax free shop transported goods not in free circulation to the shop under a clearance and release for the tax free shop procedure and has recorded delivery of the goods at that shop in terms of rule **14.5**. In such a case the recording of information concerning delivery of the goods at those premises in terms of rule **14.5** may be regarded as compliance with subrule (1)(a) of this rule.<sup>305</sup>

## ***Part 2: Sale, keeping and removal of goods in tax free shops***

### **Goods that may be sold in tax free shops (section 323(1))**

**14.7** Goods contemplated in section 323(1) of the Control Act are—

- (a) confectionary;
- (b) cosmetics and toiletries, including lotions, creams, soaps, bath products and similar products;
- (c) perfumes, eau de toilettes and colognes;
- (d) watches;
- (e) jewellery;
- (f) handbags;
- (g) leather products;
- (h) sunglasses;
- (i) tobacco and tobacco products;
- (j) alcoholic beverages;
- (k) electronic goods; and
- (l) clothes.

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<sup>305</sup> Note that this exemption does not absolve the licensee of a tax free shop from recording in terms of rule **14.6(1)(b)** receipt goods in free circulation received at the shop.

**Pre-departure transactions relating to goods in inbound tax free shops for delivery upon return (section 332)**

**14.8** (1) The licensee of an inbound tax free shop may enter into an agreement with an outbound traveller or crew member prior to that traveller or crew member's departure from the Republic for the sale and supply of goods in the inbound tax free shop<sup>306</sup> on the return of that traveller or crew member to the Republic, subject to subrules (2) and (3).

(2) A licensee referred to in subrule (1) must—

- (a) be satisfied that the outbound traveller or crew member referred to in subrule (1) is in possession of a valid boarding pass, crew identification card or airline ticket<sup>307</sup> indicating that that traveller or crew member is about to depart from the Republic;
- (b) request the following information in respect of the prospective purchaser at the time of the agreement:
  - (i) Full name;
  - (ii) passport or travel document number;
  - (iii) boarding pass number or crew identification card number, as may be applicable;
  - (iv) scheduled date of departure from the Republic and scheduled date of arrival back in the Republic; and
  - (v) particulars of the means of transport on which the traveller or crew member is to depart from the Republic, including flight or voyage number.

(3) (a) A traveller or crew member referred to in subrule (1) must upon that traveller or crew member's arrival back in the Republic as an inbound traveller or crew member, collect the goods in respect of which the agreement of sale had been entered into at the relevant inbound tax free shop.

(b) Ownership of the tax free shop goods purchased in terms of this rule may only be transferred on the premises of the inbound tax free shop when

<sup>306</sup> Note that the normal tax free limit as fixed for a particular class or kind of goods applies to such goods.

<sup>307</sup> An airline ticket is only acceptable if the agreement is entered into before a boarding pass has been issued.

that traveller or crew member collects the goods on his or her return upon showing a valid boarding pass or crew identification card indicating arrival from a place outside the Republic.

#### **Issuing of sales invoices** (*section 325*)

**14.9** A sales invoice contemplated in section 325 of the Control Act must reflect—

- (a) a precise description of the goods to which it relates, including the stock inventory code and the quantity;
- (b) the date of issue of the sales invoice;
- (c) the sales price of the goods in South African Rand;
- (d) the customs code of the tax free shop issuing the sales invoice; and
- (e) the following information in respect of the purchaser:
  - (i) full name;
  - (ii) passport or travel document number and boarding pass number;
  - (iii) date of arrival in the case of an inbound traveller, or date of departure in the case of an outbound traveller; and
  - (iv) particulars of the means of transport on which the traveller arrived in or is about to depart from the Republic, including flight or voyage number.

#### **Packing and sealing of goods purchased in tax free shops** (*section 332*)

**14.10** Goods sold in a tax free shop must be—

- (a) packaged in a transparent package together with the sales invoice referred to in rule **14.9** issued in respect of the goods, in a manner ensuring that the particulars on the invoice as well as the goods are clearly visible and identifiable; and
- (b) sealed to ensure that the goods cannot be removed from the package without the seal being broken.

#### **Ticketing, labelling or marking goods on display in tax free shops** (*section 332*)

**14.11** All goods displayed for sale in a tax free shop must be ticketed, labelled or marked to indicate that the selling price does not include tax.

#### **Application for approval of off-site retail outlets** (*section 326(1)*)



**14.12 (1) (a)** An application for approval to establish an off-site retail outlet contemplated in section 326(1) of the Control Act must prior to establishing such outlet be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

**(b)** If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to any Customs Office.

**(2)** An application referred to in subrule (1) must reflect the following information:

- (a)** The name of the applicant;
- (b)** if the application is submitted by a customs broker or ordinary representative<sup>308</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>309</sup>
- (c)** the customs code of the tax free shop for which the off-site outlet is to be established;
- (d)** the physical address of the proposed off-site outlet; and
- (e)** the purpose for which the off-site outlet is to be established.

**(3)** An application referred to in subrule (1) must be supported by—

- (a)** a site and building plan indicating the location of the proposed off-site outlet in relation to that tax free shop; and
- (b)** documents setting out standard operating procedures in relation to security measures that will be implemented to ensure the security of goods in the off-site outlet.

**(4)** Supporting documents referred to in subrule (3) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>308</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>309</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

**Transfer of goods between tax free shops and off-site outlets** (*section 326(1)(f)*)

**14.13** Goods may be transferred between a tax free shop and an off-site outlet established for that tax free shop only by a person referred to in rule **14.2**.

**Application for extension of maximum period goods may be kept in tax free shop** (*sections 327*)

**14.14** (1) The licensee of a tax free shop may in accordance with rule **41.2** apply to the customs authority for the extension of the maximum period, contemplated in section 327 of the Control Act, for which goods may remain in a tax free shop.

(2) An application referred to in subrule (1) must be submitted at least 21 working days before the expiry of the applicable period for the relevant goods.

**Additional circumstances in which goods may be removed from tax free shops** (*section 328(1)(f)*)

**14.15** Goods in a tax free shop may, in addition to the circumstances set out in section 328(1) of the Control Act, be removed from the tax free shop also if—

- (a) goods in the shop have been damaged or destroyed and the damaged goods or any parts, materials or residues obtained from the destroyed goods must be removed from the shop, provided the licensee of the shop has given notice to the customs authority in terms of Chapter 25 of the Control Act of the goods damaged or destroyed; or
- (b) goods that were in free circulation when supplied to the shop,<sup>310</sup> are to be removed from the shop—
  - (i) in compliance with the timeframe applicable to the goods in terms of section 327;
  - (ii) due to deterioration in the quality of the goods; or
  - (iii) due to expiry of the sell-by date.

**Application for approval to remove goods in other circumstances from tax free shops** (*section 328(1)(f)*)<sup>311</sup>

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<sup>310</sup> Note that goods that were not in free circulation when supplied to a tax free shop may, when the goods are to be removed from the shop for a reason mentioned in rule **14.15(b)(i), (ii) or (iii)**, only be removed from the shop in terms of a clearance contemplated in section 328(1)(b) of the Control Act.

**14.16** (1) (a) An application for the customs authority's approval contemplated in section 328(1)(f) of the Control Act to remove goods from a tax free shop in circumstances other than as set out in section 328(1)(a) to (e) or rule **14.15**, must at least three working days prior to the removal of the goods be submitted to the customs authority by the licensee of the tax free shop electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority terms of rule **41.13** in paper format, the application must be submitted at the Customs Office that serves the area where the tax free shop is situated.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>312</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>313</sup>
- (c) the customs code of the tax free shop;
- (d) the class or kind of goods and the stock inventory code assigned to the goods;
- (e) the reason for the removal of the goods, which may be submitted in a separate supporting document subject to and in accordance with Part 6 of Chapter 41 of these Rules; and
- (f) the proposed date of removal and proposed date of return of the goods, in the case where goods will be returned to the tax free shop.

(3) Goods not in free circulation removed from a tax free shop pursuant to an approval obtained in terms of this rule must within a timeframe from such removal as may be approved or determined by the customs authority either—

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<sup>311</sup> This rule also applies to goods that were in free circulation before the goods were supplied to the tax free shop.

<sup>312</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>313</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

- (a) be returned to the tax free shop; or
- (b) cleared and released for a permissible customs procedure.

**Manipulation, alteration or combination of goods in tax free shops for purposes of display or sale** (*section 329*)

**14.17** Goods in a tax free shop may be manipulated, altered or combined as contemplated in section 329 of the Control Act by performing the following actions only in relation to the goods—

- (a) stamping;
- (b) labelling;
- (c) ticketing;
- (d) marking; or
- (e) any other action as approved by the customs authority in terms of rule **14.18**.

**Application for approval to manipulate, alter or combine goods in tax free shops** (*section 329*)

**14.18** (1) (a) The licensee of a tax free shop must at least three working days before undertaking a proposed manipulation, alteration or combination of goods in the tax free shop, submit an application for approval contemplated in section 329 of the Control Act to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the tax free shop is situated.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>314</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>315</sup>

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<sup>314</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

- (c) the customs code of the tax free shop;
- (d) the class or kind of goods and the stock inventory code assigned to the goods;
- (e) particulars of the proposed manipulation, alteration or combination of the goods; and
- (f) the reason for the proposed manipulation, alteration or combination of the goods.

(3) The information referred to in subrule (2)(e) and (f) may be provided in separate supporting documents to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### ***Part 3: Accountability for goods in tax free shops***

#### **Inventory control system for tax free shops (section 330)**

**14.19** (1) An inventory control system contemplated in section 330 of the Control Act must—

- (a) be kept in accordance with section 919 of the Control Act, read with the other provisions of this Part and Part 7 of Chapter 41 of these Rules; and
- (b) enable the customs authority to perform detailed audits of the business conducted at and in connection with the tax free shop, including in relation to—
  - (i) goods not in free circulation received in the shop under the tax free shop procedure, to verify the information declared on the clearance declaration; and
  - (ii) free circulation goods received for sale in the tax free shop, to verify any information declared for VAT exemption purposes.

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<sup>315</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

(2) The licensee of a tax free shop must upon receipt of goods, whether in free circulation or not, in that tax free shop—

- (a) document those goods on the inventory control system for that tax free shop, established as contemplated in section 330 of the Control Act; and
- (b) assign to such goods a unique stock inventory code against which the information referred to in rule **14.20** or **14.21**, as may be applicable, must be accessible in respect of such goods.

(3) A stock inventory code referred to in subrule (2)(b) must be assigned in accordance with the packing unit of the goods as reflected on—

- (a) the release notification issued by the customs authority in respect of the goods, in the case of goods cleared for the tax free shop procedure; or
- (b) the invoice or other commercial document, or the transport document, in the case of free circulation goods delivered at the tax free shop for sale in the shop.

### **Inventory control and record keeping of goods cleared for tax free shop procedure** (*section 330*)

**14.20** In addition to the information contemplated in section 330(a) to (d) of the Control Act, the inventory control system must reflect the following in relation to goods cleared for tax free shop procedure and received in the tax free shop:

- (a) the class or kind of goods, as well as—
  - (i) the customs value;
  - (ii) the tariff classification;
  - (iii) the quantity, volume or weight of the goods; and
  - (iv) any marks and numbers on the goods;
- (b) the movement reference number and date of the clearance declaration in terms of which the goods were—
  - (i) cleared for tax free shop procedure; or
  - (ii) if unsold from the tax free shop, cleared for home use or for another permissible customs procedure;
- (c) the reference number and the date of the sales invoice issued upon sale of the goods, if the goods were sold;

- (d) the reference number and date of any permit, authorisation or preference certificate issued in respect of the goods;
- (e) in the case of goods removed from the tax free shop for a purpose contemplated in section 328(1)—
  - (i) the date of removal; and
  - (ii) in the case of a removal contemplated in paragraph (c) of that section, also the place to which the goods are removed;
- (f) an indication in respect of damaged, destroyed, lost or unaccounted for goods, that the goods are damaged, destroyed, lost or unaccounted for; and
- (g) any documents relating to all transactions or activities pertaining to goods from the time the goods are received in the tax free shop until the goods are removed from the shop, including any—
  - (i) authorisations granted by the customs authority for an extension of a tax free shop period pursuant to an application referred to in rule **14.14**;
  - (ii) reports submitted to customs as required in terms of section 331;
  - (iii) permissions granted by the customs authority pursuant to an application referred to in rule **14.16**;
  - (iv) detention, seizure or confiscation notices issued by the customs authority in terms of Chapter 34;
  - (v) contracts of sale, licence and royalty agreements, or other contract or agreement in respect of the goods, if applicable;
  - (vi) transfer pricing policies between a trade company and its subsidiaries;
  - (vii) purchase orders;
  - (viii) invoices or other proof of payment;
  - (ix) packing slips;
  - (x) delivery notes;
  - (xi) transport documents;
  - (xii) certificates of origin;
  - (xiii) clearance declarations and release notifications;
  - (xiv) worksheets;
  - (xv) import permits in respect of restricted goods;
  - (xvi) in the case of goods damaged, destroyed, lost or unaccounted for, any documents submitted or issued in terms of Chapter 25 of the Control

Act constituting proof of damage, destruction or loss or of goods unaccounted for;

- (xvii) any worksheets referred to in section 82(1)(a) of the Duty Act;
- (xviii) import permits in respect of restricted goods; and
- (xix) abandonment notices issued by the customs authority in terms of section 564 of the Control Act.

### **Inventory control and record keeping of free circulation goods received in tax free shops** (*section 330*)

**14.21** In addition to the information contemplated in section 330(a) to (d) of the Control Act, the inventory control system must reflect the following in relation to free circulation goods received in the tax free shop:

- (a) The class or kind of goods, as well as the quantity, volume or weight of the goods;
- (b) any marks and numbers on the goods;
- (c) the date of receipt of the goods in the tax free shop;
- (d) the reference number and the date of the sales invoice issued upon sale of the goods, if the goods were sold;
- (e) in the case of goods removed from the tax free shop for a purpose contemplated in section 328(1)—
  - (i) the date of removal; and
  - (ii) in the case of a removal contemplated in paragraph (c) of that section, also the place to which the goods are removed;
- (f) in the case of damaged, destroyed, lost or unaccounted for goods—
  - (i) an indication that the goods are damaged, destroyed, lost or unaccounted for; and
  - (ii) any documents constituting proof of damage, destruction or loss or that the goods are unaccounted for; and
- (g) all transactions or activities pertaining to the goods from the time the goods are received in the tax free shop until the goods are removed from the shop, including any—
  - (i) authorisations granted by the customs authority for an extension of a tax free shop period pursuant to an application referred to in rule **14.14**;
  - (ii) reports submitted to customs in terms of section 331;



- (iii) permissions granted by the customs authority pursuant to an application referred to in rule **14.16**;
- (iv) detention, seizure or confiscation notices issued by the customs authority in terms of Chapter 34 of the Control Act;
- (v) contracts of sale, licence and royalty agreements, or other contract or agreement in respect of the goods, if applicable;
- (vi) transfer pricing policies between a trade company and its subsidiaries;
- (vii) purchase orders;
- (viii) invoices or other proof of payment;
- (ix) packing slips;
- (x) delivery notes; and
- (xi) abandonment notices issued by the customs authority in terms of section 564.

**Reports to be submitted in connection with goods in tax free shops** (*section 331*)

**14.22** (1) (a) A report contemplated in section 331 of the Control Act must be in the form of a return and must be submitted at monthly intervals to the customs authority electronically through eFiling, subject to rule **41.13**, within seven working days after the end of each month.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format the report may be submitted at any Customs Office.

(2) A report referred to in subrule (1) must in respect of all goods referred to in section 331(2) of the Control Act reflect the following information in addition to the information listed in that section:

- (a) The name of the licensee of the tax free shop;
- (b) if the report is submitted by a customs broker or ordinary representative<sup>316</sup> on behalf of the licensee, the information specified in rule **41.14**,<sup>317</sup>

<sup>316</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>317</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of licensees in that capacity.

- (c) the customs code of the tax free shop;
- (d) the class or kind of the goods, as well as—
  - (i) the quantity, volume or weight; and
  - (ii) the stock inventory code allocated to the goods as contemplated in rule **14.19(2)(b)**; and
- (e) the date of receipt, sale or removal, as applicable, in respect of all goods referred to in that section.

### **Records to be produced or submitted to Customs on request**

**14.23** A licensee of a tax free shop who has been requested by a customs officer to produce or submit any record referred to in rule **14.20(g)** and **14.21(g)** must produce or submit the record to the customs authority subject to and in accordance with Part 7 of Chapter 41 of these Rules.

### ***Part 4: Special shops for diplomats***

#### **Definition**

**14.24** For purposes of this Part—

“**special shop for diplomats**” means a shop contemplated in section 332(d) of the Control Act, established for the tax free retail sale of goods to persons entitled to diplomatic immunities or privileges under the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), and includes any storage facilities on the premises.

#### **Place where special shops for diplomats may be established** *(section 332 (g))*

**14.25** (1) A special shop for diplomats may be established only in the Tshwane Metropolitan area and within a ten kilometre radius from the premises of a diplomatic mission as defined in the Diplomatic Immunities and Privileges Act, 2001.

(2) Only one special shop for diplomats may be established under a single special shop for diplomats licence.

#### **Application of provisions regulating tax free shop procedure to special shops for diplomats** *(section 332(f))*

**14.26** (1) The provisions of the Control Act and these Rules regulating the tax free shop procedure, except insofar as any such provision is modified, qualified or

deviated from in this Part, apply with any necessary changes the context may require to—

- (a) goods not in free circulation supplied to a special shop for diplomats; and
- (b) goods in free circulation received at a special shop for diplomats.

(2) (a) No goods not in free circulation may be supplied to a special shop for diplomats unless those goods are cleared and released under the tax free shop procedure as applied in terms of subrule (1)(a), and all those goods come under the tax free shop procedure when cleared for that procedure.

(b) All goods in free circulation received at a special shop for diplomats come under the tax free shop procedure as applied in terms of subrule (1)(b).

**Completion of tax free shop procedure in relation to goods received in special shops for diplomats** (*section 332(d)*)

**14.27** (1) The tax free shop procedure in relation to goods in a special shop for diplomats is, subject to subsection (2), completed when the goods are sold and the purchaser removes the goods from the shop.

(2) The tax free shop procedure, in relation to goods in a special shop for diplomats, ends before its completion if—

- (a) the goods before completion of the procedure are cleared and released for another customs procedure or for home use, as may be permissible in the circumstances; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 109(2) of the Control Act.

**Persons to whom goods may be sold in special shops for diplomats** (*section 332(d)*)

**14.28** Goods in a special shop for diplomats may be sold only to a person—

- (a) entitled to diplomatic immunities or privileges under the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001); and
- (b) who is in possession of—

- (i) a valid diplomatic identity card issued to that person by the government department responsible for diplomatic relations; and
- (ii) a certification issued by the government department responsible for diplomatic relations, authorising the sale and quantities of the goods to be sold.

**Issuing of sales invoices** (*section 332(d)*)

**14.29** No goods may be sold from a special shop for diplomats unless a sales invoice containing at least the following information is issued to the purchaser in respect of the sale:

- (a) The class or kind of goods to which it relates, as well as the stock inventory code and the quantity;
- (b) the date of issue of the sales invoice;
- (c) the selling price of the goods in South African Rand;
- (d) the name and physical address of the shop issuing the sales invoice;
- (e) the name of the purchaser;
- (f) the number of the diplomatic identity card of the purchaser;
- (g) the name of the diplomatic mission or international organisation or institution to which the purchaser is attached; and
- (h) the accreditation number issued to that diplomatic mission or international organisation or institution in terms of the Diplomatic Immunities and Privileges Act, 2001.

**Off-site outlets for special shops for diplomats disallowed** (*section 332*)

**14.30** No off-site outlet may be established for a special shop for diplomats.

**Removal of goods from special shops for diplomats** (*section 332(d) and (f)*)

**14.31** (1) Goods may be removed from a special shop for diplomats in the following circumstances only:

- (a) When the goods are sold to a person referred to in rule **14.28**;
- (b) in the case of goods cleared and released for the tax free shop procedure, if goods not sold as contemplated in paragraph (a) are cleared and released for home use or another customs procedure, as may be permissible in the circumstances;

- (c) if any steps referred to in section 115 of the Control Act are taken in respect of the goods and such steps require removal of the goods from the shop;
- (d) if the goods are detained, seized or confiscated and the customs authority directs in terms of Chapter 34, 35 or 36 of the Control Act that the goods be removed to another place; or
- (e) if any of the circumstances set out in rule **14.15** or approved in terms of rule **14.16** apply.

(2) Section 328(2) applies in respect of goods removed from a special shop for diplomats in contravention of subrule (1), or used or sold as samples, perfume testers or other items used for promoting sales in the shop.

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## CHAPTER 15

### STORES PROCEDURE<sup>318</sup>

#### *Part 1: Introductory rules*

#### **Classes or kinds of goods excluded from definition of “stores” (section 1(1))**

**15.1** Personal effects of a traveller or crew member or commercial goods in a traveller or crew member’s accompanied or unaccompanied baggage are excluded from the definition of “stores” in section 1 of the Control Act.

#### **Only licensed stores suppliers apart from carriers permitted to transport goods not in free circulation to vessels, aircraft or trains under stores procedure (sections 122(c) and 359(e)(i))**

**15.2** For purposes of section 122(c) of the Control Act a licensed stores supplier supplying stores to a foreign-going vessel or aircraft, or cross-border train, is hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, permitted to transport, using own transport, imported goods not in free circulation under the stores procedure to the vessel, aircraft or train.

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<sup>318</sup> Typical goods to which the stores procedure applies, include—

- (a) all consumables for use as stores on board a vessel, aircraft or train referred to in section 334(2) of the Control Act, such as –
  - (i) foodstuffs;
  - (ii) mineral waters and non-alcoholic drinks;
  - (iii) alcoholic drinks including ales, beers, wine and spirits;
  - (iv) tobacco or manufactured tobacco products, including cigarettes, cigarillos, cigars, hand-rolling tobacco, smoking tobacco and chewing tobacco or tobacco substitutes;
  - (v) soaps and toiletries;
  - (vi) medicinal supplies;
  - (vii) stationary and other consumer products;
  - (viii) books, magazines and dvd’s;
  - (ix) cleaning compounds and materials;
  - (x) boiler compounds, fuel, fuel oil treatment preparations, lubricants and filter sponges;
  - (xi) coating for boilers and boiler bricks;
  - (xii) paints, varnishes, solvents and corrosion and rust inhibitors;
  - (xiii) gas for refrigeration, welding and other on-board purposes;
  - (xiv) matches and lighter fluid in dispensing cans;
  - (xv) smoke abatement and oils slick dispersant preparations;
  - (xvi) coal; and
  - (xvii) products for the preservation, treatment or preparation on board of the goods carried;
- (b) all spare parts for the vessel, aircraft or train that may be needed for the operation or maintenance of the vessel, aircraft or train; and
- (c) tax free items for sale to travellers and crew consisting of items similar to those that may be bought in tax free shops.

## ***Part 2: Rules regulating reporting of stores taken on board in Republic***

### **Recording of delivery by carriers when delivering stores under stores procedure to foreign-going vessels or aircraft or cross-border trains (sections 359 and 903)**

**15.3** (1) When a carrier that transported goods under the stores procedure to a foreign-going vessel or aircraft or cross-border train delivers those stores to the vessel, aircraft or train, the carrier must comply with rule **5.4**.

(2) A record of delivery referred to in subrule (1) must in addition to the information referred to in rule **5.4(2)** also reflect the transport name and conveyance number of the vessel, aircraft or train to which the goods were delivered.

### **Recording of delivery by stores suppliers when delivering stores under stores procedure to foreign-going vessels or aircraft or cross-border trains (sections 359 and 903)**

**15.4** (1) When a licensed stores supplier that transported stores under the stores procedure to a foreign-going vessel or aircraft or cross-border train delivers those stores to the vessel, aircraft or train, the stores supplier must record the information referred to in subrule (2) concerning the delivery of the stores, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of stores referred to in subrule (1):

- (a) The name and customs code of the licensed stores supplier that transported the stores;
- (b) the movement reference number of the stores clearance declaration submitted in respect of the stores;
- (c) the customs code of the customs seaport, airport or railway station where the stores were delivered to the foreign-going vessel or aircraft or cross-border train;
- (d) the date and time of delivery of the stores;
- (e) the transport name and conveyance number of the vessel, aircraft or train to which the stores were delivered;

- (f) in the case of non-containerised stores—
- (i) confirmation that the stores delivered by the stores supplier correspond in class or kind with the stores described in the release notification issued in respect of the stores; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry) the estimated quantity which must be update when the actual quantity is confirmed;
- (g) in the case of containerised goods—
- (i) the quantity of containers delivered by the stores supplier;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact;<sup>319</sup> and
  - (iv) confirmation that the container number and seal number of the container or of each container delivered correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) or (g)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recording of acknowledgement of receipt of stores taken on board** (*section 343*)

**15.5** (1) An acknowledgement of receipt referred to in section 343 of the Control Act of a specific delivery of stores to a foreign-going vessel or aircraft or cross-border train in the Republic must—

- (a) be compiled when the stores are taken on board the vessel, aircraft or train;
- (b) reflect the information referred to in subrule (2); and
- (c) be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>319</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.



(2) The following information must be reflected when compiling an acknowledgement of receipt referred to in subrule (1):

- (a) On-board operator details of the on-board operator<sup>320</sup>
- (b) the name and customs code of the carrier operating the vessel, aircraft or train, or if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (c) the name and customs code of the carrier or stores supplier that delivered or supplied the stores;
- (d) the movement reference number<sup>321</sup> of the stores clearance declaration submitted in respect of the stores;
- (e) the customs code of the customs seaport, airport or railway station where the stores were delivered to the foreign-going vessel or aircraft or cross-border train;
- (f) the transport name;<sup>322</sup>
- (g) the conveyance number;<sup>323</sup>
- (h) the date and time when the stores were taken on board;
- (i) in the case of non-containerised goods—
  - (i) confirmation that the goods received by the on-board operator correspond in class or kind or, if not ascertainable by the on-board operator, in general trade description with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (j) in the case of containerised goods—
  - (i) the quantity of containers received;
  - (ii) the container and seal numbers of each container;
  - (iii) confirmation that the seal on the container or each container received is intact;<sup>324</sup> and

<sup>320</sup> See definition of "on-board operator details" in rule 1.1.

<sup>321</sup> See definition of "movement reference number" in rule 1.1.

<sup>322</sup> See the definition of "transport name" in rule 1.1.

<sup>323</sup> See definition of "conveyance number" in rule 1.1.

<sup>324</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.

- (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container received by the on-board operator correspond with the container and seal numbers on the release notification;
- (k) if no confirmation referred to in paragraph (i)(i) or (j)(iii) and (iv) can be given, the reason why confirmation cannot be given; and
- (l) a precise description, and quantity, weight or volume, of the stores not accepted and returned.

### ***Part 3: Rules regulating stores under stores procedure***

#### **Stores that must be sealed upon arrival at a customs seaport or airport (section 359)**

**15.6** (1) The on-board operator of a foreign-going vessel or aircraft or a cross-border train must, subject to subrule (2), when a stores arrival report must be submitted in terms of section 346 of the Control Act, seal the following goods, or request<sup>325</sup> the customs authority to seal such goods:

- (a) firearms, including air - , alarm - or gas pistols;
- (b) ammunition;
- (c) cigarettes, cigars, tobacco and any other manufactured tobacco products and substitutes;
- (d) ales, beer, wine, spirits or other alcoholic drinks; and
- (e) habit forming drugs, excluding medicine used by a traveller or crew member in terms of a doctor's prescription.

(2) The standard quantities of alcohol and tobacco and manufactured tobacco substitutes referred to in rule **15.7** may be left unsealed for personal use by travellers and crew members.

#### **Standard quantities of certain stores allowed for personal use of travellers or crew members on board vessels whilst in Republic (section 347(2) read with section 348(3))**

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<sup>325</sup> This request must be reflected on the stores arrival report. See rule **15.22**.

**15.7** Standard quantities of stores for purposes of section 347(2) of the Control Act allowable per traveller or crew member are the following in relation to—

- (a) alcohol:
  - (i) Six cans or bottles of beer per day, not exceeding 440ml per can or bottle;
  - (ii) one bottle of wine per day, not exceeding 750 millilitres; and
  - (iii) three bottles of spirits or liqueur per 10 days, not exceeding 1125 millilitres per bottle; and
- (b) tobacco and manufactured tobacco substitutes:
  - (i) 20 cigarettes per day;
  - (ii) 250 grams of tobacco per 10 days; or
  - (iii) 5 cigars, regardless of weight, per 10 days.

**Application for permission to break customs seals or interfere with secured stores (section 347(3))**

**15.8** (1) (a) Permission contemplated in section 347(3) of the Control Act to break any seal placed on stores<sup>326</sup> or to interfere with stores otherwise secured must be obtained by submitting an application for such permission to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format the application must be submitted to the Customs Office that serves the area in which the relevant customs seaport, airport or railway station is situated.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the carrier or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>327</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>328</sup>

<sup>326</sup> This includes stores sealed in terms of rule **15.6**.

<sup>327</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

- (c) the transport name;<sup>329</sup>
- (d) the conveyance number;<sup>330</sup>
- (e) the name and customs code of the customs seaport, airport or railway station where the vessel, aircraft or train has arrived;
- (f) the date and time of arrival of the vessel, aircraft or train;
- (g) the length of time the vessel, aircraft or train will stay at that seaport, airport or railway station;
- (h) the class or kind of the relevant stores;
- (i) the movement reference number of the clearance declaration reflecting those stores or the reference number of the stores arrival report reflecting those stores; and
- (j) the reason why the proposed breaking of any seal placed on the stores, or interference with stores secured in another way, is required, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Application for customs permission to issue stores for use on vessels in customs seaports** (*section 348(1) and (2)*)

**15.9** (1) (a) The on-board operator of a foreign-going vessel must apply to the customs authority for permission to issue stores as contemplated in section 348(1) of the Control Act by submitting an application electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the relevant customs seaport.

(2) An application referred to in subrule (1) must reflect the following, in addition to the information listed in section 348(1)(a) and (b):

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<sup>328</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of carriers in that capacity.

<sup>329</sup> See definition of “transport name” in rule 1.1.

<sup>330</sup> see definition of “conveyance number” in rule 1.1.

- (a) On-board operator details of the on-board operator submitting the application or on whose behalf the application is submitted;<sup>331</sup>
- (b) the name and customs code of the carrier operating the vessel or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (c) if the application is submitted by a customs broker or ordinary representative<sup>332</sup> on behalf of the on-board operator, the information specified in rule **41.14**;<sup>333</sup>
- (d) the transport name;<sup>334</sup>
- (e) the conveyance number;<sup>335</sup>
- (f) the name of the customs seaport;
- (g) the date and time of arrival at the customs seaport;
- (h) the length of time the vessel will stay at that seaport;
- (i) the class or kind of stores required for the duration of the stay at the customs seaport, including—
  - (i) the exact quantity, volume or weight, as may be appropriate; and
  - (ii) the customs value; and
- (j) the movement reference number of the clearance declaration reflecting those stores or the reference number of the stores arrival report reflecting those stores.

(3) If at the time of submission of an application contemplated in section 348(1), the on-board operator is aware that additional quantities of stores will be required for circumstances contemplated in section 348(2)(a) or (b), permission for the issuing of such additional stores may be requested in that application by including, as may be appropriate, in addition to the information listed in subrule (2)—

<sup>331</sup> See definition of “on-board operator details” in rule 1.1.

<sup>332</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>333</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the on-board operator, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit such applications on behalf of on-board operators in that capacity.

<sup>334</sup> See definition of “transport name” in rule 1.1.

<sup>335</sup> See definition of “conveyance number” in rule 1.1.

- (a) in the case of a delay in the departure of the vessel, the reason for and duration of the delay;
- (b) in the case of a function to be hosted on board, a description of the function and the number of attendees; and
- (c) in the case of the vessel remaining in the customs seaport for longer than ten calendar days, the additional number of calendar days.

(4) If additional stores are required subsequent to the submission of an application referred to in subrule (1) for circumstances contemplated in section 348(2)(a) or (b), application for permission for the issuing of such additional stores must be made in terms of subrule (1), reflecting in addition to the information listed in subrule (2), the information listed in subrule (3)(a), (b) or (c), as may be appropriate.

(5) The information referred to in subrule (3)(a), (b) or (c) may be provided in a separate supporting document produced or submitted to the customs authority subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Record to be kept by on-board operators in respect of stores issued on vessels (section 348(4))**

**15.10** A record contemplated in section 348(4) of the Control Act must be kept electronically and reflect the following information:

- (a) The name and customs code of the carrier or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (b) the transport name<sup>336</sup> and country of registration of the vessel;
- (c) on-board operator details;<sup>337</sup>
- (d) the conveyance number;<sup>338</sup>
- (e) the reference number of any permission to issue stores contemplated in section 348(1) or (2);
- (f) the date of issue of stores referred to in paragraph (e);
- (g) class or kind of stores issued in terms of section 348, including—

<sup>336</sup> See definition of "transport name" in rule 1.1.

<sup>337</sup> See definition of "on-board operator details" in rule 1.1.

<sup>338</sup> See definition of "conveyance number" in rule 1.1.

- (i) the exact quantity, volume or weight of the stores issued, as may be applicable; and
- (ii) the customs value;
- (h) in respect of stores issued that became damaged, destroyed, lost or unaccounted for whilst under the stores procedure, the information referred to in paragraph (g) in respect of those stores;
- (i) in respect of stores issued that remained unused, the information referred to in paragraph (g) in respect of those stores; and
- (j) in respect of issued stores sold to travellers and crew whilst the vessel is in the customs seaport, the information referred to paragraph (g) in respect of those stores.

**Categories of vessels, aircraft and trains permitted to carry tax free items for sale to travellers and crew (section 349)**

**15.11** (1) The following categories of vessels, aircraft and trains referred to in section 334(2) of the Control Act are permitted to carry tax-free items listed in subrule (2) for sale to travellers and crew:

- (a) Foreign-going vessels used for transporting travellers by sea for reward;
- (b) foreign-going aircraft used for transporting travellers by air for reward; and
- (c) cross-border trains used for transporting travellers by rail for reward.

(2) Tax-free items that may be carried on board a vessel, aircraft or train referred to in subrule (1) for sale to travellers and crew are—

- (a) confectionary;
- (b) cosmetics and toiletries, including lotions, creams, soaps, bath products and similar products;
- (c) perfumes, eau de toilettes and colognes;
- (d) watches;
- (e) jewellery;
- (f) handbags;
- (g) leather products;
- (h) sunglasses;
- (i) tobacco and tobacco products;
- (j) alcoholic beverages;

- (k) electronic goods; and
- (l) clothes.

**Sale of tax free items on board foreign-going vessels, aircraft or cross-border trains** (sections 349 and 359(b))

**15.12** (1) Tax free items may be sold on board a foreign-going vessel or aircraft or cross-border train as contemplated in section 349 of the Control Act—

- (a) only to travellers with boarding passes and crew members with valid crew identification cards on a journey from or to a place outside the Republic and only whilst those travellers and crew are on board the vessel, aircraft or train for purposes of that journey;
- (b) in the case of a vessel, aircraft or train entering the Republic, until the vessel, aircraft or train arrives at the last customs seaport or airport or train station in the Republic where travellers on a journey from outside the Republic disembark from the vessel, aircraft or train; and
- (c) in the case of a vessel, aircraft or train leaving the Republic, only after the first travellers bound for a destination outside the Republic, have boarded the vessel, aircraft or train.

(2) No stores may be sold tax free to travellers and crew on board a foreign-going vessel or aircraft or a cross-border train referred to in rule **15.11** unless a sales invoice reflecting the following information is issued in respect of the sale:

- (a) The name and customs code of the carrier issuing the sales invoice and, if the carrier is not located in the Republic, also of the carrier's registered agent in the Republic;
- (b) the transport name<sup>339</sup> and country of registration;
- (c) the conveyance number;<sup>340</sup>
- (d) the class or kind of stores sold, as well as the quantity, weight or volume;
- (e) the date of issue of the sales invoice;
- (f) the sales price of the goods; and
- (g) the following information in respect of the purchaser:
  - (i) Full name; and

<sup>339</sup> See the definition of "transport name" in rule 1.1.

<sup>340</sup> See definition of "conveyance number" in rule 1.1.



- (ii) passport or travel document number and boarding pass number.

**Additional purposes for which stores may be removed from vessels, aircraft or trains** (*section 350(1)(b)(iv)*)

**15.13** Additional purposes contemplated in section 350(1)(b)(iv) of the Control Act for which stores may be removed from a foreign-going vessel, aircraft or cross-border train are—

- (a) cleaning and repacking of eating utensils and other articles used for purposes of the presentation and consumption of meals, snacks and beverages on board the vessel, aircraft or train;
- (b) washing of linen and blankets; and
- (c) sanitising and repackaging headphones and similar reusable items for re-use.

**Application for approval to remove stores from vessels, aircraft or trains** (*section 350(1)(b)(iv)*)

**15.14** (1) (a) An application for approval to remove stores from a foreign-going vessel, aircraft or cross-border train contemplated in section 350(1)(b)(iv) of the Control Act must be submitted to the customs authority by the carrier operating the vessel or aircraft or train electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs seaport, airport or railway station from where the vessel, aircraft or train is scheduled to depart.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the carrier or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>341</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>342</sup>

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<sup>341</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

- (c) the transport name;<sup>343</sup>
- (d) the conveyance number;<sup>344</sup>
- (e) the class or kind of stores to be removed, as well as—
  - (i) the quantity, volume or weight of the goods, as may be applicable; and
  - (ii) the customs value;
- (f) the movement reference number of the clearance declaration reflecting those stores or the reference number of the stores arrival report reflecting those stores;
- (g) the reason why the stores are to be removed, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules; and
- (h) the proposed date of return, where applicable.

**Timeframe for return of stores removed from vessels, aircraft or trains** (*section 350(4)*)

**15.15** Goods removed as contemplated in—

- (a) section 350(1)(b)(i) of the Control Act must be returned in accordance with section 350(4) when the relevant vessel, aircraft or train is ready to depart; and
- (b) section 350(1)(b)(ii) or (iv) must be returned in accordance with section 350(4) within a timeframe from date of removal as may be approved or determined by the customs authority.

**Applications for permission to remove stores from vessel or aircraft for purpose of storage elsewhere** (*section 351*)

**15.16** (1) (a) The carrier operating a foreign-going vessel or aircraft may apply for permission for the removal of stores from the vessel or aircraft in the

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<sup>342</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit such applications on behalf of carriers in that capacity.

<sup>343</sup> See the definition of "transport name" in rule 1.1.

<sup>344</sup> See definition of "conveyance number" in rule 1.1.

circumstances contemplated in section 351 of the Control Act by submitting an application to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs seaport or airport where the vessel or aircraft is located.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the carrier or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>345</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>346</sup>
- (c) the transport name;<sup>347</sup>
- (d) the conveyance number;<sup>348</sup>
- (e) the class or kind of stores to be removed, as well as—
  - (i) the quantity, volume or weight of the goods, as may be applicable; and
  - (ii) the customs value;
- (f) the movement reference number of the clearance declaration reflecting those stores or the reference number of the stores arrival report reflecting those stores;
- (g) the reason why storage of the stores at another location is required, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules;

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<sup>345</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>346</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers and registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit such applications on behalf of carriers in that capacity.

<sup>347</sup> See the definition of "transport name" in rule 1.1.

<sup>348</sup> See definition of "conveyance number" in rule 1.1.

- (h) the physical address of the premises where the stores will be stored, and the name and contact details of the person in control of those premises; and
- (i) the period for which such storage is required.

(3) (a) Submission of a simplified clearance declaration in terms of rule **24.16** to clear stores for warehousing in the private storage warehouse of a stores supplier must for purposes of this rule be regarded to be an application for permission to move the stores to the private warehouse.

(b) Release by the customs authority of the stores for warehousing in that private warehouse must for purposes of this rule be regarded to be permission for the removal of the stores to that warehouse.

**Removal of waste derived from stores on foreign-going vessels, aircraft or cross-border trains** (*section 350(1)(b)(iii)*)

**15.17** (1) Any commercially valuable waste derived from stores on a foreign-going vessel or aircraft or a cross-border train that is removed for disposal in terms of section 350(1)(b)(iii) of the Control Act, must—

- (a) be cleared for home use under Chapter 8 of the Control Act or for a permissible customs procedure within three working days after such removal, if the stores from which the waste was derived were—
  - (i) stores on board the vessel, aircraft or train when it arrived in the Republic; or
  - (ii) goods not in free circulation when cleared under the stores procedure for supply as stores to the vessel, aircraft or train; or
- (b) revert to goods in free circulation if the stores from which the waste was derived were goods in free circulation when cleared under the stores procedure for supply as stores to the vessel, aircraft or train.

(2) Waste referred to in subrule (1)(a) must for purposes of the Control Act and any applicable tax levying Act be regarded to have been imported at the time it when is cleared for home use of a customs procedure.

**Kinds and classes of stores that may be replaced by equivalent goods in free circulation** (*sections 352(1) and 359(d)*)

**15.18** Stores of the following kinds or classes may be replaced with equivalent goods in free circulation as contemplated in section 352(1) of the Control Act:

- (a) Perishable stores no longer usable or of which the quality has deteriorated;
- (b) stores with an expiry date that has been reached or will be reached in the course of the next voyage; and
- (c) stores that are broken or damaged or for any other reason no longer usable.

**Application for permission to remove and replace stores with equivalent goods in free circulation (section 352(1))**

**15.19** (1) (a) An application for permission to remove stores from a foreign-going vessel or aircraft and to replace those stores with equivalent goods as contemplated in section 352(1) of the Control Act,<sup>349</sup> must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs seaport or airport where the vessel or aircraft is located.

(2) An application referred to in paragraph (a) may be made by—

- (a) the stores supplier who cleared the goods for supply as stores to the relevant vessel or aircraft;
- (b) the carrier operating the vessel or aircraft; or
- (c) that carrier's registered agent, if the carrier is not located in the Republic.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>350</sup> on behalf of the applicant, the information specified in rule **41.14**,<sup>351</sup>

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<sup>349</sup> Section 352 of the Control Act is available in instances such as where stores have reached their expiry date, the goods supplied are not of the required quality, etc.

<sup>350</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>351</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude

- (c) the transport name;<sup>352</sup>
- (d) the conveyance number;<sup>353</sup>
- (e) on-board operator details;<sup>354</sup>
- (f) the class or kind of stores to be removed and replaced, as well as—
  - (i) the technical characteristics of the goods;
  - (ii) the quantity, volume or weight of the stores, as may be applicable; and
  - (iii) the customs value;
- (g) the movement reference number of the clearance declaration reflecting those stores or the reference number of the stores arrival report reflecting those stores;
- (h) the class or kind of the equivalent goods, as well as—
  - (i) the quality;
  - (ii) the technical characteristics; and
  - (iii) the quantity, or volume or weight, as may be applicable; and
- (i) the reason why the stores need to be removed and replaced, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) Goods under the stores procedure which are removed from a foreign-going vessel or aircraft and replaced by equivalent goods with the permission of or on direction by the customs authority in terms of section 352, become goods in free circulation without any further customs formalities.

#### **Notification of aborted voyages** (*section 356*)

**15.20** A stores arrival report referred to in rule **15.22** in respect of a foreign-going vessel or aircraft returning to the Republic in circumstances contemplated in section 356(1) of the Control Act, containing an aborted voyage indicator contemplated in

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persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit such applications on behalf of carriers in that capacity.

<sup>352</sup> See the definition of “transport name” in rule 1.1.

<sup>353</sup> See definition of “conveyance number” in rule 1.1.

<sup>354</sup> See the definition of “on-board operator details” in rule 1.1.

paragraph (h) of that rule must be regarded to be a notification referred to in section 356(2).

#### ***Part 4: Stores arrival and departure reports***

##### **Railway stations where stores arrival and departure reports must be submitted** *(section 346 and 354)*

**15.21** The railway station prescribed for purposes of submission of—

- (a) a stores arrival report contemplated in section 346(1)(b) and (2)(c) of the Control Act is the first railway station in the Republic after the train entered the Republic; and
- (b) a stores departure report contemplated in section 354(1)(b) and (2)(c) is the last railway station in the Republic before the cross-border train leaves the Republic.

##### **Submission of, and information to be reflected on, stores arrival reports** *(sections 346 and 355)*

**15.22** (1) A stores arrival report referred to in section 346 of the Control Act, read with subrule (2), must be submitted by the carrier operating the foreign-going vessel or aircraft or cross-border train to the customs authority electronically through EDI, and must reflect the following information:

- (a) General mandatory reporting information<sup>355</sup> in relation to the vessel, aircraft or train;
- (b) the date and time of arrival of—
  - (i) the vessel or aircraft at the customs seaport or airport referred to in section 346(1)(a); or
  - (ii) the train at the train station referred to in rule **15.21(a)**;
- (c) the name of the customs seaport or airport—
  - (i) from which the vessel or aircraft was underway;
  - (ii) where the vessel or aircraft has arrived; and
  - (iii) where the vessel or aircraft will make its next stop;

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<sup>355</sup> See the definition of “general mandatory reporting information” in rule 1.1.

- (d) the name of the train station referred to in rule **15.21** where the train has arrived;
- (e) the class or kind of all stores on board upon arrival of the vessel, aircraft or train at the relevant seaport, airport or train station, as well as—
  - (i) the tariff classification;
  - (ii) the quantity, volume or weight of the goods, as may be applicable; and
  - (iii) marks and numbers on the goods, if applicable;
- (f) the number of travellers and crew on board;
- (g) in the case of stores in the personal possession of a crew member on board the vessel, aircraft or train, also crew details<sup>356</sup> in respect of that crew member; and
- (h) in the case of a vessel or aircraft returning to the Republic in circumstances contemplated in section 356(1), an indicator that the vessel or aircraft aborted its voyage and returned to the Republic.

(2) A stores arrival report must be submitted as a separate report—

- (a) in the case of a foreign-going vessel arriving at a customs seaport, within 12 hours after arrival at that seaport;
- (b) in the case of a foreign going aircraft arriving at a customs airport, within three hours after arrival at that airport; and
- (c) in the case of a cross-border train arriving at the railway station contemplated in rule **15.21(a)**, within three hours of arriving at that railway station.

**Submission of, and information to be reflected in, stores departure reports**  
(sections 354 and 355)

**15.23** (1) A stores departure report referred to in section 354 of the Control Act, read with subrule (2), must be submitted by the carrier operating the foreign-going vessel or aircraft or cross-border train<sup>357</sup> to the customs authority electronically through EDI, and must reflect the following information:

- (a) General mandatory reporting information in relation to the vessel, aircraft or train;
- (b) the date and time of departure of—

<sup>356</sup> See the definition of “crew details” in rule **1.1**.

<sup>357</sup> See rule **15.21** for railway stations where stores departure reports must be submitted.



- (i) the vessel or aircraft from the customs seaport or airport referred to in section 354(1)(a); or
  - (ii) the train from the train station referred to in rule **15.21(b)**;
  - (c) the customs code of the customs seaport, airport or railway station from where the vessel, aircraft or train has departed;
  - (d) in the case of a vessel or aircraft departing to another customs seaport or airport in the Republic, the name of that seaport or airport;
  - (e) class or kind of all stores on board upon departure, as well as—
    - (i) the tariff classification;
    - (ii) the quantity, volume or weight of the goods, as may be applicable; and
    - (iii) any marks and numbers on the goods, if applicable;
  - (f) an indication which of those stores were taken on board at the seaport, airport or train station from which the vessel, aircraft or train is departing;
  - (g) the number of travellers and crew on board; and
  - (h) in the case of stores in the personal possession of a crew member on board the vessel, aircraft or train, also crew details<sup>358</sup> in respect of that crew member.
- (2) A stores departure report must be submitted as a separate report—
- (a) in the case of a foreign-going vessel departing from a customs seaport, within 12 hours after departure from that seaport;
  - (b) in the case of a foreign going aircraft departing from a customs airport, within three hours after departure from that airport; and
  - (c) in the case of a cross-border train departing from the railway station contemplated in rule **15.21(b)**, within three hours after departure from that railway station.

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<sup>358</sup> See the definition of “crew details” in rule 1.1.

## CHAPTER 16

### EXPORT PROCEDURE<sup>359</sup>

#### *Part 1: Clearance and release of goods for export*

#### **Timeframes for delivery of goods cleared for export to depots and export terminals (section 368(1))**

**16.1** The timeframe for delivery of—

- (a) goods to be containerised at a container depot as contemplated in section 368(1)(a) of the Control Act, is at least six hours before the goods are packed into containers for export;
- (b) goods to be packed at an air cargo depot as contemplated in section 368(1)(b), is at least four hours before the goods are packed for export; and
- (c) goods referred to in section 368(1)(c)(i) and (ii) to the terminal where the goods will be loaded for export, is at least—
  - (i) five hours before the foreign-going aircraft on board of which the goods are to be loaded is scheduled to depart, in the case of goods to be delivered to an air cargo terminal;
  - (ii) five hours before the cross-border railway carriage on board of which the goods are to be loaded is scheduled to depart, in the case of containerised goods to be delivered to a rail cargo terminal; and
  - (iii) four hours before the foreign-going vessel or cross-border railway carriage on which the goods are to be loaded is scheduled to depart, in the case of bulk or break bulk goods to be delivered to a sea- or rail cargo terminal.

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<sup>359</sup> It is to be noted that the rules in terms of this Chapter apply only to goods that are exported under the export procedure as contemplated in section 361(2) of the Control Act, viz:

- (a) Outright exports;
- (b) exports under—
  - (i) the outbound leg of the temporary admission procedure contemplated in Part 2 of Chapter 12;
  - (ii) the temporary export procedure contemplated in Part 2 of Chapter 17; and
  - (iii) the outward processing procedure contemplated in Chapter 20; and
- (c) exports of inward processed compensating products contemplated in Part 3 of Chapter 18.

## **Goods to which timeframes for delivery to depots and terminals do not apply**

*(section 368(2)(c))*

**16.2** The timeframes set out in rule **16.1** do not apply to—

- (a) courier articles exported by air;
- (b) live animals;
- (c) perishable goods; and
- (d) hazardous goods.

## **Additional categories of goods excluded from section 369(1)** *(section 369(2)(b))*

**16.3** Section 369(1) of the Control Act does not apply to the following additional categories of goods:

- (a) goods released for export in accordance with expedited release procedures in terms of Part 2 of Chapter 24;
- (b) goods released for export in accordance with simplified clearance and release procedures in terms of Part 3 of Chapter 24;
- (c) international postal articles handled by the South African Post Office;
- (d) goods that are excisable goods in terms of the Excise Duty Act; and
- (e) inward processed compensating products.

## **Timeframes for notification of failures to export goods released for export**

*(section 370(1))*

**16.4** The timeframes that must be applied for purposes of section 370(1) of the Control Act must be calculated as follows:

- (a) the actual time since release of the goods for export until the goods reach the sea cargo terminal, plus seven calendar days, in the case of exports by sea;
- (b) the actual time since release of the goods for export until the goods reach the air cargo terminal, plus two calendar days, in the case of exports by air;
- (c) the actual time since release of the goods for export until the goods reach the rail cargo terminal, plus five calendar days, in the case of exports by rail; and
- (d) the actual time since release of the goods for export until the goods reach the land border-post, plus two calendar days, in the case of exports by road.

**Notification of failure to export goods within prescribed timeframes** *(section 370(1)(a))*

**16.5** (1) (a) A notification of failure to export goods within the timeframe determined in rule **16.4** must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place of exit from where the goods are to be exported.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person who cleared the goods for export;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>360</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**,<sup>361</sup>
- (c) the movement reference number of the export clearance declaration submitted in respect of the goods; and
- (d) the reason why the goods were not exported within the timeframe applicable to the goods, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Documents constituting proof that goods were loaded for export**<sup>362</sup> (section 370(2) and 372(c))

**16.6** The following documents are acceptable as proof for purposes of sections 370(2) and 372(c) of the Control Act that goods were loaded for export:

- (a) For export by sea, a shipped on board bill of lading;
- (b) for export by air, any document stamped and signed by the air carrier, or evidencing in another way confirmation of loading of the goods by that carrier

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<sup>360</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>361</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person clearing, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit such notifications in that capacity.

<sup>362</sup> Proof contemplated in this rule will only be requested by the customs authority if the customs authority is not satisfied on cargo reporting information, provided in terms of Chapter 3, that goods were loaded on board the means of transport on which it was to be exported from the Republic. Also note that the list contained in this rule is not exhaustive, and that any other document that may constitute proof of export may be used.

- on board the aircraft, including an air waybill;
- (c) for export by rail, any document stamped and signed by the rail carrier, evidencing receipt of the goods by that carrier, including a rail consignment note; and
- (d) for export by road, a release notification stamped by customs.<sup>363</sup>

## ***Part 2: Transport of goods not in free circulation under export procedure***

### **Persons other than carriers permitted to transport goods not in free circulation under export procedure (section 122(c) read with section 372(b))**

**16.7** The following persons are hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, authorised for purposes of section 122(c) of the Control Act to transport goods not in free circulation, using own transport, to a place of exit under the export procedure:

- (a) The owner of the goods;
- (b) the exporter clearing the goods for export; and
- (c) the licensee of any licensed premises where the goods are.<sup>364</sup>

## ***Part 3: Record keeping***

### **Record keeping by registered exporters**

**16.8** (1) A person registered as an exporter in terms of Chapter 28 of the Control Act must keep books, accounts and documents in respect of all transactions relating to any goods exported, including—

- (a) all documents in respect of the clearance of goods for export; and
- (b) any other records that may be necessary for determining the history of any transaction relating to the export of goods, including documents contemplated in rule **16.6** providing proof of—
  - (i) loading of goods for export; and
  - (ii) export of goods.

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<sup>363</sup> Customs will only stamp a release notification in the event of a systems breakdown.

<sup>364</sup> Note that in the case where the person referred to in rule **16.7(c)** is the licensee of a public storage warehouse, an authorisation by the owner of the affected goods to transport the goods is required.

(2) Documents referred to in subrule (1) must be kept in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules.

### **Documents or records to be produced or submitted to Customs on request**

**16.9** A registered exporter must produce or submit a document or record referred to in section 176 of the Control Act, read with rule **16.8**, to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### ***Part 4: Specific rules relating to export of CTC's through cross-border transmission lines and pipelines (section 371)***

#### **Places and methods for measurement of CTC's**

**16.10** (1) The quantity of a CTC exported during an accounting period must be determined by taking measurements of the CTC transported through the pipeline or transmitted through the transmission line during that accounting period.

(2) Measurements referred to in subrule (1) must be taken only at the place and in accordance with the method indicated in the exporter's registration details.

(3) The quantity of a CTC measured as contemplated in subrule (1) must be regarded to be the quantity of the CTC exported from the Republic, if the CTC is exported directly from the point where the measurement takes place.

#### **Clearance of CTCs**

**16.11** (1) Only the following persons may submit clearance declarations to clear a CTC for export:

- (a) A registered exporter of a CTC;
- (b) the registered agent of an exporter of a CTC not located in the Republic; or
- (c) a licensed customs broker duly authorised to submit a clearance declaration on behalf of a person referred to in paragraph (a) or (b).

(2) A person referred to in subrule (1) must, within the timeframe set out in rule **4.2**, submit electronically through EDI, subject to rule **41.13**, a regular export

clearance declaration in respect of the quantity of a CTC exported during the relevant accounting period.

(3) A separate clearance declaration must be submitted in respect of a CTC exported to a consignee during each accounting period.

### **Information to be reflected on export clearance declaration for CTC's**

**16.12** A clearance declaration for the export of a CTC contemplated in in rule **16.11** must reflect the following information:

- (a) The information listed in section 167(a) and (e) to (i) and (k) of the Control Act; and
- (b) the customs code of the cross-border transmission line or pipeline; and
- (c) the relevant accounting period.

### **Supporting documents for clearance of CTC's**

**16.13** (1) A clearance declaration for the export of a CTC must, in addition to the documents referred to in section 176(1)(a), (c) and (d) of the Control Act, be supported by a summary of the accounting records referred to in rule **16.14**(1).

(2) An invoice relating to the export of a CTC must, in addition to the applicable information listed in section 177, also reflect—

- (a) the period to which the invoice relates;
- (b) the unit of measure and the number of units exported;
- (c) the place of measurement; and
- (d) the price per unit.

(3) Supporting documents referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Record keeping in relation to export of CTC's**

**16.14** (1) A registered exporter of a CTC must in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep full accounting records of any CTC exported from the Republic.

- (2) Records referred to in subrule (1) include—
- (a) relevant documents supporting the clearance of a CTC for export, as required by section 176;
  - (b) a record of each measurement of a CTC during each accounting period; and
  - (c) any other records that may be necessary for determining the history of any transaction relating to the export of a CTC.

(3) This rule must be read subject to any provisions of the Control Act or a tax levying Act prescribing record keeping requirements for persons who are licensees or registered in terms of that Act or a tax levying Act.

**Records and documents to be produced or submitted to Customs on request**

**16.15** An exporter of a CTC that has been requested by a customs officer to produce or submit a record or document, must produce or submit the record or document to the customs authority subject to and in accordance with Part 6 of Chapter 41 of these Rules.



## CHAPTER 17

### TEMPORARY EXPORT PROCEDURE

#### Definition

**17.1** In this Chapter—

“**packing material**”, in relation to the temporary export procedure, means a type of reusable transport equipment consisting of materials or articles which—

- (a) leave the Republic whilst being used to pack, cover, protect, stow or separate goods for export being transported; and<sup>365</sup>
- (b) are of a durable nature manufactured for repeated use without alteration.

#### ***Part 1: Rules applicable to temporary export of goods under international clearance arrangements***<sup>366</sup>

#### **Application for approval of issuing associations located in Republic** (*sections 395 and 405(f)*)

**17.2** (1) Approval by the customs authority contemplated in section 395 of the Control Act must be applied for in terms of this rule.

(2) (a) An application for approval of an issuing association must be submitted by an issuing association electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office where registration and licensing applications are processed.

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<sup>365</sup> As “packing material” is used in the context of this Chapter as a type of reusable transport equipment, packing materials such as straw, paper, glass wool, and shavings when exported separately in bulk are not included in the definition.

<sup>366</sup> For clearance of commercial trucks, buses and taxis, private vehicles, small vessels and light aircraft where no international clearance arrangements are available for such bus or taxi or private vehicle, small vessel or light aircraft, see rules under Part 3 of Chapter 24.

(3) An application referred to in subrule (2) must reflect the following information:

- (a) The registered or official name of the issuing association;
- (b) the name under which it conducts business;
- (c) the entity type;
- (d) its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, the name of that country;
- (e) date of registration, incorporation or recognition;
- (f) its physical and postal address in the Republic;
- (g) its contact details;
- (h) the banking details<sup>367</sup> of its bank account in the Republic;
- (i) the name of its authorised officer,<sup>368</sup> as well as that officer's—
  - (i) SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of his or her identification document;
  - (ii) citizenship; and
  - (iii) contact details and physical and postal address in the Republic;
- (j) if the application is submitted by an ordinary representative<sup>369</sup> on behalf of the association referred to in paragraph (a), the information specified in rule **41.14**;<sup>370</sup> and
- (k) the international agreement in terms of which the approval is sought.

(4) An application referred to in this rule must be supported by the following documents:

- (a) If the Convention on Temporary Admission or any international agreement referred to in section 393(1)(a)(ii) requires the issuing association to be affiliated with an appropriate international organisation, a document evidencing such affiliation; and

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<sup>367</sup> See definition of “banking details” in rule 1.1

<sup>368</sup> See definition of “authorised officer” in rule 1.1.

<sup>369</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>370</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

(b) the resolution passed by the controlling board of the issuing association appointing the person referred to in subrule (3)(i) as the authorised officer of the issuing association.

(5) Supporting documents referred to in subrule (4) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Suspension or withdrawal of approval of issuing associations** (section 395)

**17.3** (1) The customs authority may suspend or withdraw an approval granted to an issuing association in terms of rule **17.2** if the issuing association terminates its affiliation with an appropriate international organisation as may be required by the Convention on Temporary Admission or any international agreement referred to in section 393(1)(a)(ii) of the Control Act.

(2) If the customs authority intends to suspend or withdraw an approval in terms of subrule (1), it must first—

- (a) notify the issuing association of the proposed suspension or withdrawal and of the reasons for the proposed suspension or withdrawal; and
- (b) give the issuing association an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date of notification referred to in paragraph (a).

(3) The customs authority may despite subrule (2) suspend or withdraw an approval with immediate effect if circumstances so demand but in such a case the issuing association is entitled to submit to the customs authority representations on the suspension or withdrawal within 30 calendar days after the suspension or withdrawal.

### **Notification of withdrawal as issuing association** (section 395)

**17.4** (1) (a) If an issuing association approved in terms of rule **17.2** intends to withdraw as an issuing association, that issuing association must, at least six months in advance of the date of withdrawal, submit to the customs authority a notification of withdrawal electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office where registration and licensing applications are processed.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the issuing association;
- (b) if the notification is submitted by an ordinary representative<sup>371</sup> on behalf of the association, the information specified in rule **41.14**,<sup>372</sup>
- (c) the date on which the withdrawal will become effective; and
- (d) the reason for the withdrawal, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) A notification in terms of this rule does not affect the validity of any carnet issued by the issuing association before the date on which the withdrawal will become effective referred to in subrule (2)(c).

#### **Requirements relating to clearance on authority of carnets** (*section 405(g)*)

**17.5** A person clearing goods on authority of an CPD or ATA carnet must at the Customs Office serving the place of exit upon export, or at the place of entry upon re-entry, produce the carnet and the goods identified in the carnet to the customs authority, together with—

- (a) that person's identification document or, if another person acts as the carnet holder's representative, that person's identification document; and
- (b) if the carnet was issued in respect of goods of which the export is restricted, the relevant export permit issued in respect of the goods.

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<sup>371</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>372</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the association, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

**Part 2: Rules applicable to goods which automatically come under temporary  
export procedure**

**Reporting of interruption or discontinuation of current use of vessel, aircraft,  
locomotive or railway carriage (section 402(2))**

**17.6** (1) (a) An interruption or discontinuation of the current use of a vessel, aircraft, locomotive or railway carriage as contemplated in section 402(2) of the Control Act,<sup>373</sup> must for purposes of that section be reported electronically through eFiling, subject to rule **41.13**.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves the place of exit where the relevant vessel, aircraft, locomotive or railway carriage left the Republic.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the licensed carrier or registered agent submitting the report as required in terms of section 402(2);
- (b) if the report is submitted by a customs broker or ordinary representative<sup>374</sup> on behalf of the carrier or agent referred to in paragraph (a), the information specified in rule **41.14**,<sup>375</sup>
- (c) the conveyance number;<sup>376</sup>
- (d) the transport name;<sup>377</sup>
- (e) a description of the nature of the current use of the relevant vessel, aircraft, locomotive or railway carriage;
- (f) the place of exit where the vessel, aircraft, locomotive or railway carriage left the Republic;
- (g) the date of departure of the vessel, aircraft, locomotive or railway carriage from the place referred to in paragraph (f);

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<sup>373</sup> Section 402(1) of the Control Act specifies the vessels, aircraft, locomotives and railway carriages to which the reporting obligation referred to in section 402(2) applies.

<sup>374</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>375</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier or registered agent, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of carriers and registered agents in that capacity.

<sup>376</sup> See definition of "conveyance number" in rule **1.1**.

<sup>377</sup> See definition of "transport name" in rule **1.1**.

- (h) the location of the vessel, aircraft, locomotive or railway carriage;
- (i) the date the interruption or discontinuation commenced; and
- (j) the reason for the interruption or discontinuation, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recognised types and categories of reusable transport equipment** (*section 403(1)(c)*)

**17.7** The following types and categories of reusable transport equipment are recognised for purposes of section 403 of the Control Act:

- (a) Containers;
- (b) unit load devices;
- (c) pallets; and
- (d) packing material.

**Reporting of interruption or discontinuation of current use of reusable transport equipment** (*section 403(2)*)

**17.8** (1) (a) An interruption in or discontinuation of the current use of reusable transport equipment as contemplated in section 403(2) of the Control Act,<sup>378</sup> must for purposes of that section be reported to the customs authority electronically through eFiling, subject to rule **41.13**, by the person who exported the transport equipment from the Republic or, if that exporter is not located in the Republic, by the exporter's registered agent in the Republic.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves the place of exit where the relevant reusable transport equipment left the Republic.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person notifying;

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<sup>378</sup> Rule **17.7** specifies the reusable transport equipment to which the reporting obligation referred to in section 403(3) applies.

- (b) if the report is submitted by a customs broker or ordinary representative<sup>379</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**,<sup>380</sup>
- (c) the type and category of reusable transport equipment;
- (d) in respect of containers—<sup>381</sup>
  - (i) the container number of each container; and
  - (ii) the quantity of containers;
- (e) in respect of unit load devices—
  - (i) the number of each device; and
  - (ii) the quantity of devices;
- (f) in respect of pallets, the quantity of pallets;
- (g) in respect of packing materials—
  - (i) the type of packing material; and
  - (ii) the quantity, volume or mass of the packing material;
- (h) the date when the reusable transport equipment left the Republic;
- (i) the location of the reusable transport equipment;
- (j) the date the interruption or discontinuation commenced; and
- (k) the reason for the interruption or discontinuation, which may be motivated in a separate supporting document submitted on request subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Additional requirements relating to reusable transport equipment under temporary export procedure (section 405)**

**17.9** The following additional requirements apply to reusable transport equipment that automatically came under the temporary export procedure in terms of section 403 of the Control Act:

- (a) Packing material that left the Republic under the temporary export procedure must be returned to the Republic by the same exporter who exported or the same carrier who transported the packing material out of the Republic.

<sup>379</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>380</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier or registered agent, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of carriers and registered agents in that capacity.

<sup>381</sup> Note that “container” includes a specialised container used for the transport of nuclear fuel.

- (b) Pallets that left the Republic under the temporary export procedure may for purposes of re-importation under the procedure be replaced by pallets of the same quantity, of the same type and of substantially the same value as the pallets which left the Republic.
- (c) All reusable transport equipment that left the Republic under the temporary export procedure must, subject to section 908, be returned to the Republic within six months from the date it left the Republic.

### ***Part 3: Record keeping and other matters***

#### **Notification of goods under temporary export not to be returned to Republic (section 404(b))**

**17.10** (1) (a) A notification contemplated in section 404(b) of the Control Act that goods exported under the temporary export procedure will not be returned to the Republic must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place of exit from where the goods were exported.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the exporter or registered agent submitting the notification;
- (b) if the notification is submitted by a customs broker or ordinary representative<sup>382</sup> on behalf of the exporter or agent referred to in paragraph (a), the information specified in rule **41.14**;<sup>383</sup>
- (c) the movement reference number of the temporary export clearance declaration submitted in respect of the goods; and

<sup>382</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>383</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the exporter or agent, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit reports on behalf of exporters or agents in that capacity.



- (d) the reason why the goods will not be returned to the Republic, which may be motivated in a separate supporting document produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Records to be kept of goods temporarily exported under regular clearance and release procedures** (*section 903(1)(g)*)

**17.11** A person clearing goods for temporary export under Part 2 of Chapter 17 of the Control Act must keep record of documents and information relating to—

- (a) the clearance and release of the goods for temporary export;
- (b) any tax paid in respect of the goods or any benefit received in terms of an export incentive scheme;
- (c) any refund or drawback claimed on export in respect of the goods;
- (d) any manufacturing, processing or repairs done abroad, other than maintenance in connection with the use of the goods whilst abroad;
- (e) any goods damaged, destroyed or lost whilst abroad; and
- (f) any deterioration in the condition of the goods whilst abroad.

**Persons who must keep record of reusable transport equipment that automatically come under temporary export procedure** (*section 403(2)*)

**17.12** The following persons must keep record of the removal from and the return to the Republic of reusable transport equipment that automatically come under the temporary export procedure in terms of section 403 of the Control Act:

- (a) In the case of containers, unit load devices and pallets on the outbound leg of that procedure, the carrier that transports those containers, devices or pallets from the Republic or, if that carrier is not located in the Republic, that carrier's registered agent; and
- (b) in the case of containers, unit load devices and pallets on the inbound leg of that procedure, the carrier who will return those containers, devices or pallets to the Republic or, if that carrier is not located in the Republic, that carrier's registered agent.

**Records to be kept of reusable transport equipment under temporary export procedure** (*sections 403(2)*)

**17.13** Records of reusable transport equipment consisting of containers, unit load devices and pallets under the temporary export procedure that must in terms of rule **17.12** be kept by the carrier or carrier's registered agent, must include the following:

- (a) In respect of each container that leaves or enters the Republic automatically under the temporary export procedure—
  - (i) the container number;
  - (ii) the size or type;
  - (iii) the place of exit where the container leaves the Republic or the place of entry where it re-enters the Republic; and
  - (iv) the date of departure from or arrival at the place referred to in subparagraph (iii);
- (b) in respect of each unit load device that leaves or enters the Republic automatically under the temporary export procedure—
  - (i) the device number;
  - (ii) the size or type;
  - (iii) the place of exit where the device leaves the Republic or the place of entry where the device re-enters the Republic; and
  - (iv) the date of departure from or arrival at the place referred to in subparagraph (iii); and
- (c) in respect of each pallet that leaves or enters the Republic automatically under the temporary export procedure—
  - (i) the number of pallets in each consignment of goods;
  - (ii) the place of exit where the pallets leave the Republic or the place of entry where the pallets re-enter the Republic; and
  - (iii) the date of departure from or arrival at the place referred to in subparagraph (ii).

#### **Keeping and submission of records**

**17.14** (1) Records referred to in rules **17.11** and **17.13** must be kept in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules.

(2) Records must be produced or submitted to the customs authority or a customs officer on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Measures to ensure accurate identification of goods under temporary export upon their return** (*section 405(e)*)

**17.15** Measures contemplated in section 405(e) of the Control Act to ensure accurate identification of goods under temporary export upon their return include—

- (a) recording before goods under temporary export leave the Republic any marks and numbers or other specific identifying characteristics in respect of such goods and comparing those marks and numbers or other identifying characteristics upon re-importation, which include—
  - (i) in respect of a vehicle—
    - (aa) the make and model;
    - (bb) the year of manufacture;
    - (cc) whether it is a diesel or petrol engine;
    - (dd) the odometer reading;
    - (ee) the engine number;
    - (ff) the vehicle identification number (VIN) and chassis number;
    - (gg) the registration number;
    - (hh) the colour; and
  - (ii) a description of the sound- and satellite navigation system fitted in the vehicle, if applicable;
  - (ii) in respect of reusable transport equipment, the details referred to in rule **17.13**; and
  - (iii) in respect of other identifiable goods—
    - (aa) a precise description of the goods;
    - (bb) any marks, numbers or other indications permanently affixed to the goods;
    - (cc) the model and serial number, if applicable;
    - (dd) the quantity, volume or mass; and
    - (ee) the country of origin;

- (b) taking samples of goods for purposes of comparison or making use of illustrations, photographs or technical descriptions for purposes of verification of the goods upon re-export; and
- (c) affixing customs marks to goods, including customs seals and identification bands.

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## CHAPTER 18

### INWARD PROCESSING PROCEDURE

**Additional requirements for clearance of goods for inward processing** (*section 412(e)*)

**18.1** Security referred to in section 412(e) must have been provided at the time of licensing as provided for in section 660 of the Control Act.

#### ***Part 1: Transport of goods to and receipt of goods in inward processing premises***

**Persons other than carriers who may transport goods under inward processing procedure** (*section 432(f) read with section 122(c)*)

**18.2** The following persons are hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, authorised to transport, using own transport, imported goods under the inward processing procedure or compensating products, by-products or waste obtained from those imported goods:

- (a) The licensee of the inward processing premises where the processing of the goods is to be carried out; and
- (b) a licensed importer of goods under the inward processing procedure contemplated in section 413(a).

**Redirection of goods to location other than licensed inward processing premises** (*section 415(1)*)

**18.3** (1) If a person intends to redirect goods cleared for inward processing to a location other than the licensed inward processing premises where the goods are to be processed as contemplated in section 415(1) of the Control Act, an application in accordance with rule **5.8** must be submitted to the customs authority for permission for the redirection of the goods to that other location.

(2) Rules **5.9** and **5.10** apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

**Recording of delivery of goods at inward processing premises** (*section 415(1)(b)(i)*)

**18.4** (1) (a) When a carrier that transported goods to inward processing premises delivers the goods at those premises, the carrier must comply with rule **5.4**.

(b) When a person referred to in rule **18.2(a)** or *(b)* that transported goods under the inward processing procedure to inward processing premises, delivers the goods at those premises, that person must record the information referred to in subrule (2) concerning delivery of the goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of goods referred to in subrule (1)(b):

- (a) The name and customs code of the person that transported the goods to the inward processing premises;
- (b) the date and time of delivery of the goods;
- (c) the customs code of the inward processing premises where the goods were delivered;
- (d) the movement reference number<sup>384</sup> of the home use processing clearance declaration in respect of the goods;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at the inward processing premises correspond in class or kind or, if not ascertainable by the person transporting, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered;
  - (ii) the container and seal number of each container;

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<sup>384</sup> See definition of “movement reference number” in rule 1.1.

- (iii) confirmation that the seal on the container or on each container delivered is intact,<sup>385</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, the seal number of the container or of each container delivered at the inward processing premises correspond with the container and seal numbers on the release notification; and
- (g) if no confirmation referred to in paragraph (e)(i) and (f)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recording of receipt by licensees of inward processing premises when goods are received at inward processing premises** (*section 415(1)(b)(ii)*)

**18.5** (1) When the licensee of inward processing premises receives goods cleared and released for inward processing at those premises, the licensee must record the information referred to in subrule (2) concerning the receipt of the goods at those premises, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods referred to in subrule (1):

- (a) The name and customs code of the carrier or other person referred to in rule **18.2(b)** that transported the goods to the inward processing premises;
- (b) the name of the licensee of the inward processing premises recording the receipt;
- (c) the customs code of the inward processing premises where the goods were received;
- (d) the date and time of receipt of the goods at the inward processing premises;
- (e) the movement reference number<sup>386</sup> of the inward processing clearance declaration submitted in respect of the goods.

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<sup>385</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.

- (f) in the case of non-containerised goods—
- (i) confirmation that the goods received at the inward processing premises correspond in class or kind, or, if not ascertainable by the licensee, in general trade description, with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity received or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (g) in the case of containerised goods—
- (i) the quantity of containers received;
  - (ii) the container and seal number of each container;
  - (iii) confirmation that the seal on the container or on each container received is intact;<sup>387</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) or (g)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of receipt referred to in this rule must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) This rule is not required to be complied with if the licensee of inward processing premises where goods were delivered, transported the goods to the inward processing premises under a clearance and release for inward processing in those premises and has recorded delivery of the goods at those premises in terms of rule **18.4**. In such a case the recording of information regarding the delivery of the goods at those premises may be regarded as compliance with this rule.

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<sup>386</sup> See definition of “movement reference number” in rule **1.1**.

<sup>387</sup> Note that any seal discrepancies must in terms of rule **5.12** be reported by a person who receives physical control of a container.



## **Conditions for release of goods for inward processing** (*section 415(2)(b)*)

**18.6** It is a condition of the release of goods cleared for inward processing that the inward processed compensating products obtained from those goods must be exported from the Republic to a country outside the other SACU member states.

### ***Part 2: Rules regulating inward processing procedure***

#### **Applications for approval to appoint subcontractor in respect of specific consignment of goods** (*sections 428(1) and 432(a)(ii)*)

**18.7** (1) (a) An application for approval to appoint a subcontractor contemplated in section 428(1) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the inward processing premises of the applicant are situated.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name of the applicant and the customs code of the applicant's inward processing premises;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>388</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>389</sup>
- (c) the customs code of the premises where the proposed subcontracted aspect of the inward processing is to take place or, if those premises do not have a customs code—
  - (i) the information specified in rule **41.15** of the subcontractor operating those premises; and
  - (ii) the physical address of those premises;

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<sup>388</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>389</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the inward processing premises, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of such licensees in that capacity.

- (d) the nature and extent of the proposed subcontracted inward processing to be undertaken by the subcontractor;
- (e) the movement reference number<sup>390</sup> of the inward processing clearance declaration submitted in respect of the goods; and
- (f) the time period required for completion of the proposed subcontracted processing.

(3) An application referred to in subrule (1) must be supported by the proposed agreement in terms of which the subcontractor is to be appointed by the licensee.

(4) A supporting document referred to in subrule (3) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Application for standing approval to appoint subcontractor** (*sections 428(1) and 432(a)(ii)*)

**18.8** (1) The licensee of inward processing premises may apply for a standing approval to appoint a subcontractor as contemplated in section 428(1) of the Control Act: Provided that such an application may be submitted as part of the applicant's application for licensing of the inward processing premises in terms of Chapter 29 of the Control Act.

(2) (a) An application for standing approval must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to—

- (i) the Customs Office that serves the area where the inward processing premises are situated; or

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<sup>390</sup> See definition of "movement reference number" in rule 1.1.

(ii) if the application is submitted as part of an application for licensing of the inward processing premises, the Customs Office where applications for licensing are processed.

(3) A standing application referred to in subrule (1) must reflect—

- (a) the information referred to in rule **18.7(2)(a)** to **(d)** and **(f)**, if the application is submitted after the applicant's inward processing premises have been licensed in terms of Chapter 29 of the Control Act; or
- (b) reflect the information referred to in rule **18.7(2)(c)**, **(d)** and **(f)**, if the application is submitted as part of an application for licensing of the inward processing premises.<sup>391</sup>

(4) An application referred to in this rule must be supported by the proposed agreement in terms of which the subcontractor is to be appointed by the licensee which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

#### **Annual business turnover for licensing of subcontractors' premises** (*section 428(2)*)

**18.9** The licensing requirement set out in section 428(2) of the Control Act for premises where the subcontracted processing of goods under the inward processing procedure is carried out, applies if the annual business turnover on those premises exceeds five million Rand.

#### **Obligations of subcontractors relating to processing of goods** (*section 432(a)(ii)*)

**18.10** Rules **18.18**, **18.19**, **18.20** and **18.21** are applicable, with any necessary changes as the context may require, to a subcontractor that is not a licensee appointed pursuant to an application in terms of rule **18.7** or **18.8**.

#### **Movement of imported goods, inward processed compensating products, by-products and waste between different locations** (*section 432(a)(iii)*)

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<sup>391</sup> See rule **29.20(a)(v)(aa)**.

**18.11** (1) (a) Imported goods cleared for inward processing and compensating products, by-products and commercially valuable waste obtained from those imported goods may, subject to subrule (2), not be moved from the premises of the licensee that carries out the inward processing, or of a subcontractor appointed in terms of section 428 of the Control Act, to another location without the permission of the customs authority.<sup>392</sup>

(b) Paragraph (a) does not apply if—

- (i) ownership of the imported goods has been transferred with the customs authority's approval in terms of Part 6 of Chapter 4 of these Rules and the movement to another location is occasioned by that transfer of ownership;<sup>393</sup> or
- (ii) compensating products are moved by a carrier or a person referred to in rule **16.7** in terms of a clearance for export.

(2) An approval for the appointment of a subcontractor granted by the customs authority pursuant to an application in terms of rule **18.7** or **18.8** may be regarded to be a permission contemplated in this rule for the movement of the relevant imported goods to the premises of the subcontractor.

(3) (a) An application for permission contemplated in subrule (1) must be submitted to the customs authority by the licensee or subcontractor, as the case may be, electronically through eFiling prior to the intended removal of the goods, compensating products, by-products or waste, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the relevant goods, inward processed compensating products, by-products or waste are.

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<sup>392</sup> A separate application for the return of the goods to the inward processing premises from which it was initially removed is not required. The movement of the goods will be tracked by the record of delivery and receipt referred to in rule **18.12**.

<sup>393</sup> Where the movement is occasioned by an approved transfer of ownership of goods, the goods will be removed on authority of a clearance declaration and not pursuant to an application in terms of this rule. As in the case of any delivery or receipt of goods not in free circulation, record of delivery and receipt referred to in rule **18.12** must be submitted on request.

(4) An application referred to in this rule must reflect the following information:

- (a) The name of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>394</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>395</sup>
- (c) the customs code of the premises from where the relevant goods, inward processed compensating products, by-products or commercially valuable waste are to be moved or, if to be moved from an unlicensed subcontractor's premises, the physical address of the premises;
- (d) the customs code of the premises to which the goods are to be moved or, if to be moved to unlicensed premises—
  - (i) the physical address of the premises; and
  - (ii) the information specified in rule **41.15** of the person in control of those premises;
- (e) if the goods to be moved are the imported goods—
  - (i) the movement reference number<sup>396</sup> of the inward processing clearance declaration submitted in respect of the goods; and
  - (ii) the quantity, volume or weight of the goods to be moved;
- (f) if the goods to be moved are inward processed compensating products, by-products or commercially valuable waste, a description of the nature of the products, by-products or waste, including the quantity, volume or weight; and
- (g) the nature of any processing—
  - (i) to be undertaken at the premises to which the goods are to be moved;  
or
  - (ii) that had been undertaken at the premises from where the compensating products, by-products or commercially valuable waste are to be moved.

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<sup>394</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>395</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

<sup>396</sup> See definition of “movement reference number” in rule 1.1.

(5) Goods or compensating products, by-products or waste removed on authority of a permission in terms of this rule must be removed by a licensed carrier or another person referred to in rule **18.2** within three working days after the approval of an application in terms of this rule has been submitted to the applicant.

### **Recording of delivery and receipt in respect of goods removed in terms of rule 18.11**

**18.12** (1) Delivery and receipt of goods moved in terms of rule **18.11** must be recorded in accordance with rules **18.4** and **18.5**, respectively, subject to subrule (2).

(2) Rules **18.4** and **18.5** must, in the case of the movement of imported goods cleared for inward processing or compensating products, by-products or commercially valuable waste obtained from those imported goods, be applied for purposes of subrule (1) with any necessary changes the context may require, and in such application any reference to inward processing premises must be read also as a reference to the premises of a subcontractor, whether licensed or unlicensed.

### **Notification of failure to clear inward processed compensating products for export within section 418(1) timeframe (section 418(2))**

**18.13** (1) (a) A notification of failure to comply with the timeframe for clearance of inward processed compensating products for export contemplated in section 418(2) of the Control Act must be submitted electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the goods are.

(2) A notification referred to in subrule (1) must reflect the following information:

(a) The name and customs code of the person who cleared the imported goods for inward processing;

- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>397</sup> on behalf of the person who cleared the goods, the information specified in rule **41.14**;<sup>398</sup>
- (c) the class or kind of inward processed compensating products in respect of which the failure was committed, as well as the quantity, volume or weight;
- (d) the physical address of the premises where those products are;
- (e) the date by which those products should have been cleared for export;
- (f) the movement reference number<sup>399</sup> of the inward processing clearance declaration in respect of the imported goods from which those compensating products were obtained; and
- (g) the reason for the failure to comply with the timeframe for export, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Application for permission to clear for home use goods under inward processing (section 423(2)(a))**

**18.14** (1) (a) Submission of a home use clearance declaration in respect of imported goods under inward processing procedure by the person who cleared such imported goods for inward processing must, subject to subrule (2), be regarded as an application for permission to clear such goods for home use as contemplated in section 423(2)(a) of the Control Act.

(b) Issuing by the customs authority of a release notification for home use of goods referred to in paragraph (a) must be regarded to be permission by the customs authority contemplated in section 423(2)(b) to clear imported goods under inward processing procedure for home use.

(2) A home use clearance declaration referred to in subrule (1)(a) must in addition to the supporting documents referred to in section 176 of the Control Act, be

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<sup>397</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>398</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person clearing the goods, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in that capacity.

<sup>399</sup> See definition of “movement reference number” in rule 1.1.

supported also by a document motivating the reason why the inward processed compensating products that were to be obtained from the imported goods will not be exported.

**Issuing of inward processing licences regarded to be approval of conversion rates** *(section 425(1))*

**18.15** If the customs authority approves in terms of Chapter 29 of these Rules an application of a person for a licence to import goods for inward processing or to use premises as inward processing premises, approval of the application must be regarded also to be an approval of a conversion rate contemplated in section 425(1) of the Control Act to be used in the inward processing of the class or kind of imported goods to which the rate applies, provided the information required in terms of rule **29.20(a)(iv)** or **29.24(2)(e)** has been provided in the licence application.

**Use of equivalent goods** *(section 429(1) and 432(b)(i))*

**18.16** (1) (a) If the licensee of inward processing premises where goods cleared for inward processing are to be processed intends to replace goods cleared for inward processing with equivalent goods in free circulation, that licensee must, prior to the use of those equivalent goods, apply for permission to use equivalent goods as contemplated in section 429(1) of the Control Act by submitting an application to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the inward processing premises are situated.

(2) An application referred to in subrule (1) must reflect the following information:

(a) The customs code of the inward processing premises;



- (b) if the application is submitted by a customs broker or ordinary representative<sup>400</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>401</sup>
- (c) the movement reference number<sup>402</sup> of the inward processing clearance declaration submitted in respect of the goods;
- (d) the date of import of the imported goods;
- (e) if not all the goods indicated on the clearance declaration are to be replaced by equivalent goods, the tariff classification, quantity, volume or weight of the goods to be replaced;
- (f) a statement that the equivalent goods replacing the imported goods are identical in description, quality, technical characteristics and quantity with the imported goods;
- (g) the name and contact details in respect of the supplier of the equivalent goods; and
- (h) the supplier's invoice number.

(3) An application referred to in subrule (1) must be supported by—

- (a) a document from the supplier of the equivalent goods setting out the product specifications in relation those goods; and
- (b) the supplier's invoice in respect of the equivalent goods.

(4) A supporting document referred to in subrule (3) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Timeframe for export of inward processed compensating products** (*section 430*)

(1)(b)(iii)

**18.17** Section 430(1)(b)(iii) of the Control Act becomes applicable if compensating products obtained from the processing of imported goods under the inward

<sup>400</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>401</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

<sup>402</sup> See definition of "movement reference number" in rule 1.1.

processing procedure and cleared and released for export as inward processed compensating products are not exported from the Republic within the timeframe referred to in rule **16.4**, subject section 908.

***Part 3: Record keeping and reporting in relation to goods on inward processing premises***

**Processing register for inward processing premises** (*section 427(1) and 432*)

**18.18** (1) The licensee of inward processing premises where goods are processed under the inward processing procedure, must, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, establish and maintain a processing register reflecting the information referred to in rule **18.19**.

(2) A licensee referred to in subrule (1) must for purposes of identifying imported goods cleared and released for inward processing received on that licensee's premises as well as inward compensating products or by-products obtained from such imported goods—

- (a) upon receipt of imported goods cleared for inward processing on those premises—
  - (i) document those goods in the processing register; and
  - (ii) arrange and mark those goods in a manner that will make them easily identifiable and accessible to the customs authority; and
- (b) upon obtaining inward processed compensating products or by-products from the processing of goods referred to in paragraph (a)—
  - (i) document those products in the processing register; and
  - (ii) arrange and mark those products in a manner that will make them easily identifiable and accessible to the customs authority.

**Record keeping in respect of goods on inward processing premises** (*sections 427 and 432(d)*)

**18.19** (1) A processing register referred to in rule **18.18** must, from the time of licensing of the inward processing premises, reflect information concerning the following in respect of imported goods received at the inward processing premises:

- (a) The class or kind of goods received, as well as—

- (i) the customs value;
  - (ii) the tariff classification;
  - (iii) the quantity, volume or weight of the goods; and
  - (iv) any marks and numbers on the goods, if applicable;
- (b) the movement reference number<sup>403</sup> of any clearance declaration in terms of which the goods were cleared—
- (i) for inward processing; and
  - (ii) for home use in terms of section 423(2)(a) of the Control Act, read with rule **18.14**;
- (c) any permit, authorisation or preference certificate issued in respect of the goods, including the reference number and date of such permit, authorisation or certificate;
- (d) goods removed in accordance with rule **18.11**, including—
- (i) the information referred to in paragraph (a), (b)(i) and (c) in relation to such goods;
  - (ii) the reference number of the removal permission; and
  - (iii) in the case of a removal to the premises of a subcontractor, the name of the subcontractor and the customs code or physical address of the subcontractor's premises;
- (e) goods damaged, destroyed, lost or unaccounted for, including the information referred to in paragraph (a), (b)(i) and (c) in relation to such goods;
- (f) the quantity, volume or weight of imported goods processed and the balance of unprocessed imported goods;
- (g) inward processed compensating products, by-products or commercially valuable waste obtained from the processing of the imported goods received, including—
- (i) the quantity, volume or weight; and
  - (ii) the conversion rate approved in terms of rule **18.15**;
- (h) compensating products, by-products or commercially valuable waste obtained from the imported goods that were damaged, destroyed, lost or unaccounted for, including a description of the nature of such products or waste and the quantity, volume or weight;

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<sup>403</sup> See definition of “movement reference number” in rule 1.1.

- (i) compensating products, by-products or commercially valuable waste obtained from the imported goods that were removed in accordance with rule **18.11**, including the reference number of the removal permission;
- (j) equivalent goods used, including—
  - (i) the reference number of any authorisation contemplated in rule **18.16**; and
  - (ii) the tariff classification of the goods, as well as the quantity, weight or volume;
- (k) goods abandoned in terms of section 564; and
- (l) in the case of goods sampled or accessed as contemplated in section 513, the information referred to in rule **23.6(c)**.

(2) The licensee of inward processing premises where goods are processed under the inward processing procedure, must in addition to the records referred to in subrule (1), keep record, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, of any documents in respect of activities pertaining to imported goods cleared for inward processing, from the time those goods are received on the inward processing premises until the compensating products obtained from those goods are removed from the premises, or any unprocessed imported goods are cleared for another customs procedure or for home use, including any—

- (a) reports submitted to the customs authority as required in terms of section 427 of the Control Act;
- (b) permissions to remove goods granted by the customs authority pursuant to an application referred to in rule **18.11**;
- (c) approvals to appoint a subcontractor granted by the customs authority pursuant to an application referred to in rule **18.7** or **18.8**;
- (d) approvals for the use of equivalent goods granted by the customs authority pursuant to an application referred to in rule **18.16**;
- (e) detention, seizure or confiscation notices issued by the customs authority in terms of Chapter 34 of the Control Act;
- (f) transport documents;
- (g) documentary evidence of origin;

- (h) clearance declarations, supporting documents required and release notifications in respect of the goods;
- (i) documents submitted or issued in terms of Chapter 25 of the Control Act for purposes of the application of that Chapter, if goods are damaged, destroyed, lost or unaccounted for whilst under the inward processing procedure;
- (j) documents acceptable as proof of loading for export,<sup>404</sup> in respect of inward processed compensating products; and
- (k) abandonment notices issued by the customs authority in terms of section 564; and
- (l) processing records in respect of the goods.

**Reports to be submitted by licensees of inward processing premises** (*sections 427(1) and 432(d) and (e)*)

**18.20** (1) A report contemplated in section 427(1) of the Control Act must cover three monthly reporting periods commencing on the date of licensing, and must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(2) A report referred to in subrule (1) must be in the form of a copy of the processing register referred to in rule **18.18**(1) for the relevant reporting period and reflect the customs code of the inward processing premises.

**Records to be produced or submitted to Customs on request** (*section 432(d) and (e)*)

**18.21** The licensee of inward processing premises must produce or submit any record or document referred to in rule **18.19** to the customs authority or a customs officer on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Part 4: General**

**Clearance of goods for export as inward processed compensating products**  
(*section 432(c)*)

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<sup>404</sup> See rule **16.6**.

**18.22 (1)** A clearance declaration clearing goods for export as inward processed compensating products must be supported by—

- (a) a document setting out the measures referred to in rule **29.34(f)** that have been taken to ensure that the compensating products were obtained from imported goods cleared for inward processing; and
- (b) a document referencing the movement reference number and date of the inward processing clearance declaration or declarations submitted in respect of the imported goods from which those compensating products were obtained.

(2) A supporting document referred to in subrule (1)(a) or (b) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Storage of free circulation goods used in processing with imported goods under inward processing procedure** (*section 432(g)*)

**18.23** Goods in free circulation used for processing may, subject to a permission obtained in terms of rule **18.16** in the case of equivalent goods,<sup>405</sup> be stored at inward processing premises together with imported goods under the inward processing procedure.

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<sup>405</sup> Customs permission is therefore not required if the relevant free circulation goods to be stored with the goods under inward processing are not equivalent goods.

## CHAPTER 19

### HOME USE PROCESSING PROCEDURE

#### ***Part 1: Transport of goods to and receipt of goods in home use processing premises***

#### **Persons other than carriers who may transport goods under home use processing procedure** *(section 451(d) read with section 122(c))*

**19.1** The following persons are hereby, in addition to carriers referred to in section 122(a) or (b) of the Control Act, authorised to transport, using own transport, goods under the home use processing procedure:

- (a) The licensee of the home use processing premises where the home use processing is to be carried out; and
- (b) a licensed importer of goods under the home use processing procedure contemplated in section 440(a).

#### **Redirection of goods to locations other than licensed home use processing premises** *(section 442(2)(a))*

**19.2** (1) If a person intends to redirect goods cleared for home use processing to a location other than the licensed home use processing premises where the goods are to be processed as contemplated in section 442(2)(a) of the Control Act, an application in accordance with rule 5.8 must be submitted to the customs authority permission for the redirection of the goods to that other location.

(2) Rules 5.9 and 5.10 apply to the delivery and receipt of goods at a place to which goods are redirected under permission granted in terms of subrule (1).

#### **Recording of delivery of goods at home use processing premises** *(section 442(2)(b)(i))*

**19.3** (1) (a) When a carrier that transported goods to home use processing premises delivers the goods at those premises, the carrier must comply with rule 5.4.

(b) When a person contemplated in rule 19.1(a) or (b) that transported goods under the home use processing procedure to home use

processing premises, delivers those goods at those premises, that person must record the information referred to in subrule (2) concerning the delivery of the goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the delivery of goods referred to in subrule (1)(b):

- (a) The name and customs code of the person that transported the goods to the home use processing premises;
- (b) the date and time of delivery of the goods;
- (c) the customs code of the home use processing premises where the goods were delivered;
- (d) the movement reference number<sup>406</sup> of the home use processing clearance declaration submitted in respect of the goods;
- (e) in the case of non-containerised goods—
  - (i) confirmation that the goods delivered at the home use processing premises correspond in class and kind, or if not ascertainable by the person transporting, in general trade description with the goods described in the release notification issued in respect of the goods; and
  - (ii) the actual quantity delivered or, if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (f) in the case of containerised goods—
  - (i) the quantity of containers delivered;
  - (ii) the container and seal number of each container;
  - (iii) confirmation that the seal on the container or on each container delivered is intact;<sup>407</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container correspond with the container and seal numbers on the release notification; and

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<sup>406</sup> See definition of “movement reference number” in rule 1.1.

<sup>407</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives physical control of a container.



(g) if no confirmation referred to in paragraph (e)(i) and (f)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of delivery referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Recording of receipt by licensees of home use processing premises when goods are received at home use processing premises** (*sections 442(2)(b)(ii) and 903(1)(c)*)

**19.4** (1) When the licensee of home use processing premises receives goods cleared and released for home use processing at those premises, the licensee must record the information referred to in subrule (2) concerning the receipt of the goods at those premises, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods referred to in subrule (1):

- (a) The name and customs code of the carrier or other person contemplated in rule **19.1(b)** that transported the goods to the home use processing premises;
- (b) the name of the licensee of the home use processing premises where the goods were received;
- (c) the customs code of the home use processing premises where the goods were received;
- (d) the date and time of receipt of the goods at the home use processing premises;
- (e) the movement reference number<sup>408</sup> of the home use processing clearance declaration submitted in respect of the goods;
- (f) in the case of non-containerised goods—
  - (i) confirmation that the goods received at the home use processing premises correspond in class or kind, or if not ascertainable by the

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<sup>408</sup> See definition of “movement reference number” in rule 1.1.

- licensee, in general trade description with the goods described in the release notification issued in respect of the goods; and
- (ii) the actual quantity received, or if the actual quantity is unknown in the case of bulk goods (liquid or dry), the estimated quantity which must be updated when the actual quantity is confirmed;
- (g) in the case of containerised goods—
- (i) the quantity of containers received;
  - (ii) the container and seal number of each container;
  - (iii) confirmation that the seal on the container or on each container received is intact;<sup>409</sup> and
  - (iv) confirmation that the container number and, if indicated on the release notification, seal number of the container or of each container correspond with the container and seal numbers on the release notification; and
- (h) if no confirmation referred to in paragraph (f)(i) and (g)(iii) and (iv) can be given, the reason why confirmation cannot be given.

(3) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) This rule is not required to be complied with if the licensee of home use processing premises where goods were delivered, transported the goods to the home use processing premises under a clearance and release for home use processing and has recorded delivery of the goods at those premises in terms of rule **19.3(1)(b)**. In such a case the recording of information concerning the delivery of the goods at those premises may be regarded as compliance with this rule.

## ***Part 2: Rules regulating home use processing procedure***

### **Applications for approval to appoint subcontractor in respect of specific consignment of goods (section 449(3))**

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<sup>409</sup> Note that any seal discrepancies must in terms of rule 5.12 be reported by a person who receives control of a container.

**19.5** (1) (a) An application contemplated in section 449(3) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the home use processing premises of the applicant are situated.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name of the applicant and the customs code of the applicant's home use processing premises;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>410</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>411</sup>
- (c) the customs code of the premises where the proposed subcontracted aspect of the home use processing is to take place or, if those premises do not have a customs code—
  - (i) the information specified in rule **41.15** of the subcontractor operating those premises; and
  - (ii) the physical address of those premises;
- (d) the nature and extent of the proposed subcontracted home use processing to be undertaken by the subcontractor;
- (e) the movement reference number<sup>412</sup> of the home use processing clearance declaration submitted in respect of the goods; and
- (f) the time period required for completion of the proposed subcontracted home use processing.

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<sup>410</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>411</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the home use processing premises, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of such licensees in that capacity.

<sup>412</sup> See definition of "movement reference number" in rule **1.1**.

(3) An application referred to in subrule (1) must be supported by the proposed agreement in terms of which the subcontractor is to be appointed by the licensee.

(4) A supporting document referred to in subrule (3) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Application for standing approval to appoint subcontractor** (*sections 449(3) and 451(a)(ii)*)

**19.6** (1) The licensee of home use processing premises may apply for a standing approval to appoint a subcontractor as contemplated in section 449(1) of the Control Act: Provided that such an application may be submitted as part of the applicant's application for licensing of the home use processing premises in terms of Chapter 29 of the Control Act.

(2) (a) An application for standing approval must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to –

- (i) the Customs Office that serves the area where the home use processing premises are situated; or
- (ii) if the application is submitted as part of an application for licensing of the home use processing premises, the Customs Office where applications for licensing are processed.

(3) A standing application referred to in subrule (1) must reflect—

- (a) the information referred to in rule **19.5(2)(a) to (d) and (f)**, if the application is submitted after the applicant's home use processing premises have been licensed in terms of Chapter 29 of the Control Act; or

(b) reflect the information referred to in rule **19.5(2)(c)**, (d) and (f), if the application is submitted as part of an application for licensing of the home use processing premises.<sup>413</sup>

(4) An application referred to in this rule must be supported by the proposed agreement in terms of which the subcontractor is to be appointed by the licensee which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Annual business turnover limits for licensing of subcontractors' premises**  
(section 449(2))

**19.7** The licensing requirement set out in section 449(2) of the Control Act for premises where the subcontracted processing of goods under home use processing procedure is carried out, applies if the annual business turnover on those premises exceeds five million Rand.

**Obligations of subcontractors relating to processing of goods** (section 451(a)(ii))

**19.8** Rules **19.14**, **19.15**, **19.16** and **19.17** are applicable, with the necessary changes as the context may require, to a subcontractor that is not a licensee appointed pursuant to an application in terms of rule **19.5** or **19.6**.

**Movement of imported goods, home use compensating products, by-products and waste between different locations** (section 451(a)(iii))

**19.9** (1) (a) Imported goods cleared for home use processing and compensating products, by-products and commercially valuable waste obtained from the processing of those imported goods may, subject to subrule (2), not be moved from the premises of the licensee that carries out the home use processing, or of a subcontractor appointed in terms of section 449 of the Control Act, to another location without the permission of the customs authority.<sup>414</sup>

(b) Paragraph (a) does not apply if—

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<sup>413</sup> See rule **29.20(a)(v)(bb)**.

<sup>414</sup> Note that a separate application for the return of the goods to the home use processing premises from which it was initially removed is not required. The movement of the goods will be tracked by the recording of deliveries and receipts referred to in rule **19.10**.

- (i) ownership of the imported goods has been transferred with the customs authority's approval in terms of Part 6 of Chapter 4 of these Rules and the movement to another location is occasioned by that transfer of ownership;<sup>415</sup>
- (ii) the compensating products are in terms of section 445 dealt with and moved as goods in free circulation; or
- (iii) the by-products or commercially valuable waste are in terms of section 446 dealt with and moved as goods in free circulation.

(2) An approval for the appointment of a subcontractor granted by the customs authority pursuant to an application in terms of rule **19.5** or **19.6** may be regarded to be a permission contemplated in this rule for the movement of the relevant imported goods to the premises of the subcontractor.

(3) (a) An application for permission contemplated in subrule (1) must be submitted to the customs authority by the licensee electronically through eFiling prior to the intended removal of the goods, home use compensating products, by-products or waste, subject to rule **41.13**.

(b) If an application referred to in subrule (a) is submitted to the customs authority in terms of rule **41.13** in paper format the application must be submitted to the Customs Office that serves the area where the relevant goods, home use compensating products, by-products or waste are.

(4) An application referred to in subrule (1) must reflect—

- (a) the name of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>416</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>417</sup>

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<sup>415</sup> Where the movement is occasioned by an approved transfer of ownership of goods, the goods will be removed on authority of a clearance declaration and not pursuant to an application in terms of this rule. As in the case of any delivery or receipt of goods not in free circulation, record of delivery and receipt referred to in rule **19.10** must be submitted on request.

<sup>416</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>417</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit applications on behalf of applicants in that capacity.

- (c) the customs code of the premises from where the relevant imported goods, home use compensating products, by-products or waste are to be moved or, if to be moved from unlicensed subcontractor's premises, the physical address of the premises;
- (d) the customs code of the premises to which the goods, compensating products, by-products or waste are to be moved or, if to be moved to unlicensed premises—
  - (i) the physical address of the premises; and
  - (ii) the information specified in rule **41.15** of the person in control of those premises;
- (e) if the goods to be moved are the imported goods—
  - (i) the movement reference number<sup>418</sup> of the home use processing clearance declaration submitted in respect of the goods; and
  - (ii) the quantity, volume or weight of the goods to be moved;
- (f) if the goods to be moved are compensating products, by-products or waste, a description of the nature of the products, by-products or waste, including the quantity, volume or weight; and
- (g) the nature of any processing—
  - (i) to be undertaken at the premises to which the goods are to be moved; or
  - (ii) that had been undertaken at the premises from where the compensating products, by-products or commercially valuable waste are to be moved.

(5) Goods, compensating products, by-products, or waste removed on authority of a permission in terms of this rule must be removed by a licensed carrier or another person referred to in rule **19.1** within three working days after the approval of an application in terms of this rule has been submitted to the applicant.

## **Recording of delivery and receipt in respect of goods removed in terms of rule 19.9**

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<sup>418</sup> See definition of "movement reference number" in rule 1.1.

**19.10** (1) Delivery and receipt of goods moved in terms of rule **19.9** must be recorded in accordance with rules **19.3** and **19.4** respectively, subject to subrule (2).

(2) Rules **19.3** and **19.4** must, in the case of the movement of imported goods cleared for home use processing or compensating products, by-products or commercially valuable waste obtained from those imported goods, be applied for purposes of subrule (1) with any necessary changes the context may require, and in such application any reference to home use processing premises must be read also as a reference to the premises of a subcontractor, whether licensed or unlicensed.

**Clearance for home use of imported goods falling within rebate item 317.03 when not used for production of home use compensating products** (*section 164(1)(f) read with 443(2)*)

**19.11** A quarterly account submitted to the customs authority in terms of Note 3 to rebate item 317.03 in respect of goods under the home use processing procedure may serve as a home use clearance declaration contemplated in section 443(2) of the Control Act for any imported goods under that procedure that are no longer intended to be used for the production of home use compensating products of the class or kind stated in the home use processing clearance declaration submitted in respect of those goods.

**Notification of failure to complete home use processing of goods within section 444(1) timeframe** (*section 444(2)*)

**19.12** (1) (a) A notification of failure to comply with the timeframe for completion of processing of imported goods under the home use processing procedure contemplated in section 444(1) of the Control Act, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area where the goods are.

(2) A notification referred to in subrule (1) must reflect the following information:



- (a) The name and customs code of the person who cleared the goods for home use processing;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>419</sup> on behalf of the person who cleared the goods, the information specified in rule **41.14**;<sup>420</sup>
- (c) the movement reference number<sup>421</sup> of the home use processing clearance declaration submitted in respect of the imported goods;
- (d) the nature of the processing that was to be undertaken;
- (e) the quantity, volume or weight of the imported goods in respect of which the failure was committed;
- (f) the physical address of the premises where the goods are;
- (g) the date when the processing of those imported goods should have been completed; and
- (h) the reason for the failure to comply with the timeframe for completion of the processing, which may be motivated in a separate supporting document to be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Issuing of home use processing licences regarded to be approval of conversion rates** (*section 447(1)*)

**19.13** (1) If the customs authority approves in terms of Chapter 29 of these Rules an application of a person for a licence to import goods for home use processing or to use premises as home use processing premises, approval of the application must, subject to subrule (2), be regarded also to be an approval of a conversion rate contemplated in section 447(1) of the Control Act to be used in the home use processing of the class or kind of imported goods to which the rate applies, provided the information required in terms of rule **29.20(a)(iv)** or **29.24(2)(e)** has been provided in the licence application.

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<sup>419</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>420</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in that capacity.

<sup>421</sup> See definition of “movement reference number” in rule **1.1**.

(2) Acceptance by the customs authority of a quarterly account submitted to it in terms of Note 3 to rebate item 317.03 in respect of goods under the home use processing procedure must be regarded as approval of a conversion rate contemplated in section 447(1).<sup>422</sup>

***Part 3: Record keeping and reporting in relation to goods on licensed home use processing premises***

**Processing register for home use processing premises** (*section 448(1) and 451*)

**19.14** (1) The licensee of home use processing premises where goods are processed under the home use processing procedure must, in accordance with section 919 of the Control Act read with Part 7 of Chapter 41 of these Rules, establish and maintain a processing register reflecting the information referred to in rule **19.15**.

(2) A licensee referred to in subrule (1) must for purposes of identifying imported goods cleared and released for home use processing received on that licensee's premises as well as home use compensating products or by-products obtained from such imported goods—

- (a) upon receipt of imported goods cleared for home use processing on those premises—
  - (i) document those goods in the processing register; and
  - (ii) arrange and mark such goods in a manner that will make them easily identifiable and accessible to the customs authority; and
- (b) upon obtaining home use compensating products or by-products from the processing of goods referred to in paragraph (a)—
  - (i) document those products in the processing register; and
  - (ii) arrange and mark such goods in a manner that will make them easily identifiable and accessible to the customs authority.

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<sup>422</sup> The effect of this is that an application for licensing of home use processing premises or for importer for home use processing for purposes of rebate item 317.03 does not have to reflect the conversion rate to be used for purposes of the processing of the relevant goods into compensating products, as required by rule **29.20(a)(iv)** or **29.24(2)(e)**.

(3) (a) This rule does not apply to licensees of home use processing premises where manufacturing of goods under rebate item 317.03 takes place.

(b) Despite paragraph (a) the licensee of home use processing premises referred to in that paragraph must, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep record of—

- (i) the information referred to in rule **19.15** (1)(a) to (k) in relation to imported goods received at the home use processing premises; and
- (ii) any documents referred to in rule **19.15**(2)(a) to (j) in respect of activities pertaining to imported goods cleared for home use processing.

**Record keeping in respect of goods on home use processing premises** (*section 448(1)*)

**19.15** (1) A processing register referred to in rule **19.14** must, from the time of licensing of the home use processing premises, reflect the following information in respect of imported goods received at the home use processing premises:

- (a) The class or kind of goods received, as well as—
  - (i) the customs value;
  - (ii) the tariff classification;
  - (iii) the quantity, volume or weight of the goods; and
  - (iv) any marks and numbers on the goods, if applicable;
- (b) the movement reference number<sup>423</sup> of the home use processing clearance declaration submitted in respect of the goods;
- (c) any permit, authorisation or preference certificate issued in respect of the goods, including the reference number and date of such permit, authorisation or certificate;
- (d) goods removed in accordance with rule **19.9**, including—
  - (i) the information referred to in paragraph (a), (b)(i) and (c) in relation to such goods;
  - (ii) the reference number of the removal permission; and
  - (iii) in the case of a removal to the premises of a subcontractor, the name of the subcontractor and the customs code or physical address of the subcontractor's premises;

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<sup>423</sup> See definition of "movement reference number" in rule 1.1.

- (e) goods damaged, destroyed, lost or unaccounted for, including the information referred to in paragraph (a), (b)(i) and (c) in relation to such goods;
- (f) the quantity, volume or weight of imported goods processed and the balance of unprocessed imported goods;
- (g) home use processed compensating products, by-products or commercially valuable waste obtained from the processing of imported goods received, as well as—
  - (i) the quantity, volume or weight; and
  - (ii) the conversion rate approved in terms of rule **19.13**;
- (h) compensating products, by-products or commercially valuable waste that were damaged, destroyed, lost or unaccounted for, as well as a description of the nature of such products or waste and the quantity, volume or weight;
- (i) compensating products, by-products or commercially valuable waste that were removed in accordance with rule **19.9**, including the reference number of the removal permission;
- (j) goods abandoned in terms of section 564; and
- (k) in the case of goods sampled or accessed as contemplated in section 513, the information referred to in rule **23.6(c)**.

(2) The licensee of home use processing premises where goods are processed under the home use processing procedure, must in addition to the records referred to in subrule (1), keep record, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, of any documents in respect of activities pertaining to imported goods cleared for home use processing, from the time those goods are received on the home use processing premises until the compensating products obtained from those goods are removed from the premises, or any unprocessed imported goods are cleared for home use or another permissible procedure,<sup>424</sup> including any—

- (a) reports submitted to the customs authority as contemplated in section 448(1) of the Control Act;
- (b) permissions to remove goods granted by the customs authority pursuant to an application referred to in rule **19.9**;

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<sup>424</sup> See section 443(2) of the Control Act.

- (c) approvals to appoint a subcontractor granted by the customs authority pursuant to an application referred to in rule **19.5** or **19.6**;
- (d) detention, seizure or confiscation notices issued by the customs authority in terms of Chapter 34 of the Control Act;
- (e) transport documents;
- (f) documentary evidence of origin;
- (g) clearance declarations, supporting documents required and release notifications in respect of the goods;
- (h) documents submitted or issued in terms of Chapter 25 of the Control Act for purposes of the application of that Chapter, if goods are damaged, destroyed, lost or unaccounted for whilst under the inward processing procedure;
- (i) abandonment notices issued by the customs authority in terms of section 564; and
- (j) processing records in respect of the goods.

**Reports to be submitted in connection with home use processing** (*sections 448(1) and 451(b)*)

**19.16** (1) A report contemplated in section 448(1) of the Control Act must cover three monthly reporting periods commencing on the date of licensing, and must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(2) A report referred to in subrule (1) must be a copy of the processing register referred to in rule **19.15**(1) for the relevant reporting period and reflect the customs code of the home use processing premises.

(3) A quarterly account submitted in terms of Note 3 to rebate item 317.03 in respect of home use processing premises where manufacturing of goods under that rebate item takes place, serves as a report in respect of those goods for purposes section 448(1).

**Records to be produced to Customs on request**

**19.17** The licensee of home use processing premises must produce or submit any record or document referred to in rule **19.15** to the customs authority or a customs

officer on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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## CHAPTER 20

### OUTWARD PROCESSING PROCEDURE

#### **Additional documents to support clearance of goods for outward processing**

*(section 176(1)(d))*

**20.1** (1) A clearance declaration clearing goods for outward processing must, in addition to the supporting documents referred to in section 176 of the Control Act, be supported also by—

- (a) a document setting out measures taken to ensure that when goods are cleared for home use as outward processed compensating products obtained from the exported goods, those goods can be verified as compensating products obtained from those exported goods, including—
  - (i) the quantity of outward processed compensating products expected to be obtained from those goods; and
  - (ii) the expected duration of the outward processing;
- (b) a copy of the agreement in terms of which the person operating the processing premises abroad undertakes to carry out the processing of the goods at those premises; and
- (c) a document setting out the conversion rate contemplated in section 469(1) of the Control Act to be applied in the outward processing of the exported goods, including the factors to be taken into account in determining the conversion rate.

(2) A supporting document referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) Issuing by the customs authority in terms of section 180 of the Control Act of a release notification for the outward processing of the goods must be regarded to be approval by the customs authority of the conversion rate as contemplated in section 469(1).

**Notification of non-clearance of products obtained from goods under outward processing for home use as outward compensating products (section 471(f))**

**20.2** (1) A notification referred to in section 471(f) of the Control Act must be submitted to the customs authority at least seven calendar days before the timeframe applicable to the goods in terms of section 465 of the Control Act for the clearing for home use of the compensating products obtained from those goods expires.

(2) (a) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place of exit where the goods cleared for outward processing were exported from the Republic.

(3) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person who cleared the goods for outward processing;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>425</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>426</sup>
- (c) the movement reference number<sup>427</sup> of the outward processing clearance declaration submitted in respect of the goods;
- (d) the nature of the processing that was or was to be undertaken;
- (e) if only a portion of the products obtained from the processing of the exported goods will be cleared for home use as outward processed compensating products, the portion that will not be cleared; and

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<sup>425</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>426</sup> If the notification is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the person who cleared the goods, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit notifications on behalf of such persons in that capacity.

<sup>427</sup> See definition of “movement reference number” in rule **1.1**.



- (f) the reason why products obtained from those goods will not be cleared for home use as outward processed compensating products, which may be motivated in a separate supporting document to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Form and format of statement referred to in section 468(2) of Control Act**

**20.3** (1) If the customs authority requests in terms of section 468(2) of the Control Act a statement referred to in that section, the statement must, within the timeframe for submission indicated in the request, be submitted electronically subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(2) A statement referred to in subrule (1) must in addition to the information stated in section 468(2)(a) and (b) reflect the following information:

- (a) The name and customs code of the person clearing the products for home use as outward processed compensating products;
- (b) if the statement is submitted by a customs broker, registered agent or ordinary representative<sup>428</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>429</sup>
- (c) the movement reference number<sup>430</sup> of the outward processing clearance declaration submitted in respect of the exported goods;
- (d) the name and customs code of the exporter or other person who reclaimed or received any import or domestic tax on the goods exported for outward processing or, if that person does not have a customs code, the information required in terms of rule **41.15**; and
- (e) the nature of any benefit contemplated in section 468(2)(b) reclaimed or received by that exporter or other person.

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<sup>428</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>429</sup> If the statement is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the person clearing the goods, the statement must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit such statements on behalf of such persons in that capacity.

<sup>430</sup> See definition of “movement reference number” in rule 1.1.

## CHAPTER 21

### CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

#### Definitions

**21.1** In this Chapter, unless the context otherwise indicates—

“**applicant**”, in relation to an application, means a person who intends to submit or has submitted an application;

“**application**” means an application in terms of this Chapter for—

- (a) a trusted or frequent traveller permit; or
- (b) the renewal of a trusted or frequent traveller permit;

“**permit details**”, in relation to a permit holder, means the information provided by that person in—

- (a) an application referred to in rule **21.8**; or
- (b) a subsequent update of that information in terms of rule **21.16**; and

“**permit holder**” means a person to whom a trusted or frequent traveller permit has been issued in terms of rule **21.11(2)**.

#### ***Part 1: Traveller declarations and clearance of baggage by persons entering or leaving Republic***

#### **Declaration of personal, travel and baggage information by persons entering or leaving Republic (sections 478(1) and 483(1))**

**21.2** (1) The actions to be performed in terms of section 478(1) or 483(1) of the Control Act by a person entering or leaving the Republic consist of the completion and submission of a traveller declaration on Form ..... as published as a rule on the SARS website for this purpose.

(2) A traveller declaration referred to in subrule (1) must be submitted to the customs authority at the place of entry or exit through which the person enters or leaves the Republic.<sup>431</sup>

**Traveller declarations<sup>432</sup> for persons entering Republic** (*sections 478(1)(b) and 479(1)*)

**21.3** (1) An entry traveller declaration must be submitted by all persons entering the Republic, excluding—

- (a) persons entering the Republic through a place of entry where a channel processing system is provided and who choose the green channel, unless the customs authority demands otherwise in terms of section 488(3)(a) of the Control Act;
- (b) persons entering the Republic through a place of entry where no channel processing system is provided, and who have no accompanied or unaccompanied baggage items that must be declared in terms of section 479(1)(a) to (e);
- (c) permit holders who enter the Republic through a place of entry where a self-service facility for trusted or frequent travellers is provided, who choose to proceed directly to that facility for purposes of customs processing and who have no accompanied or unaccompanied baggage items that must be declared in terms of section 479(1)(a) to (e); and
- (d) persons referred to in section 477(3).<sup>433</sup>

(2) An entry traveller declaration referred to in subrule (1) must reflect—

- (a) the following personal details in respect of the traveller or crew member:
  - (i) Name;
  - (ii) passport or travel document number;
  - (iii) citizenship;

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<sup>431</sup> Note that where a channel processing system is in effect at a place of entry or exit, a traveller declaration is only necessary if the traveller has baggage items to declare. In other words, a traveller who has nothing to declare and chooses the green channel will not submit a traveller declaration, and a traveller who has items to declare and chooses the red channel will submit a traveller declaration.

<sup>432</sup> A traveller declaration may in terms of Chapter 24 be used as a simplified clearance declaration for accompanied and unaccompanied baggage which must in terms of section 480(1) of the Control Act be cleared. Note that commercial goods in a traveller's accompanied or unaccompanied baggage must in terms of section 480(2)(b) be cleared on a regular clearance declaration, unless the customs authority determines otherwise in a specific case.

<sup>433</sup> Section 477(3) refers to transit travellers and crew.

- (iv) if that person is located in the Republic, his or her physical and postal address in the Republic; and
- (v) if that person is not located in the Republic—
  - (aa) the physical address of the place where he or she will be staying until leaving the Republic;
  - (bb) name of the person in control of that place and the contact details of that person; and
  - (cc) the date of intended departure from the Republic;
- (b) if that person entered the Republic on board a vessel, aircraft or train—
  - (i) that person's boarding pass number;
  - (ii) the voyage, flight or trip number; and
  - (iii) the date and time of arrival of the vessel or aircraft at the place of entry or of the train at the rail traveller terminal where that person disembarks;
- (c) the information listed in rule **24.13(3)(a) to (e)**;<sup>434</sup>
- (d) the information listed in rule **24.14(3)(a) to (e)**, in the case of a person being the on-board operator of a commercial truck, bus or taxi entering the Republic;<sup>435</sup> and
- (e) the information listed in rule **24.15(3)(a) to (d)**, in the case of a person being the on-board operator of a vehicle, small vessel or light aircraft entering the Republic as a private means of transport for the traveller.<sup>436</sup>

**Traveller declarations<sup>437</sup> for persons leaving Republic** (*sections 483(1)(b) and 484(1)*)

**21.4** (1) An exit traveller declaration must be submitted by all persons about to leave the Republic, excluding—

<sup>434</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.13** for the accompanied or unaccompanied baggage items mentioned in the declaration.

<sup>435</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.14** for the commercial truck, bus or taxi mentioned in the declaration.

<sup>436</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.15** for the vehicle, small vessel or light aircraft mentioned in the declaration.

<sup>437</sup> A traveller declaration may in terms of Chapter 24 be used as a simplified clearance declaration for accompanied and unaccompanied baggage which must in terms of section 485(1) of the Control Act be cleared. Note that commercial goods in a traveller's accompanied or unaccompanied baggage must in terms of section 485(2)(b) be cleared on a regular clearance declaration, unless the customs authority determines otherwise in a specific case.

- (a) persons leaving the Republic through a place of exit where a channel processing system is provided and who choose the green channel, unless the customs authority demands otherwise in terms of section 488(3)(a) of the Control Act;
- (b) persons leaving the Republic through a place of exit where no channel processing system is provided, and who have no accompanied or unaccompanied baggage items that must be declared in terms of section 484(1)(a) to (e);
- (c) permit holders leaving the Republic through a place of exit where a self-service facility for trusted or frequent travellers is provided, who choose to proceed directly to that facility for purposes of customs processing and who have no accompanied or unaccompanied baggage items that must be declared in terms of section 484(1)(a) to (e); and
- (d) persons referred to in section 477(3).

- (2) An exit traveller declaration referred to in subrule (1) must reflect—
  - (a) the following personal details in respect of the traveller or crew member:
    - (i) Name;
    - (ii) passport or travel document number;
    - (iii) citizenship;
    - (iv) if that person is located in the Republic—
      - (aa) his or her physical and postal address in the Republic; and
      - (bb) the name and e-mail, cellular telephone or fixed telephone contact details of a contact person in the Republic; and
    - (v) if that person is not located in the Republic, the last physical address where he or she stayed before leaving the Republic;
  - (b) if that person is leaving the Republic on board a vessel, aircraft or train—
    - (i) that person's boarding pass number;
    - (ii) the voyage, flight or trip number; and
    - (iii) the date and time of expected departure of the vessel or aircraft from the place of exit or of the train from the rail traveller terminal where that person will board;

- (c) the information listed in rule **24.13(4)(a)** to (e), in the case of a traveller or crew member leaving the Republic;<sup>438</sup>
- (d) the information listed in rule **24.14(3)(a)** to (e), in the case of a person being the on-board operator of a commercial truck, bus or taxi leaving the Republic;  
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- (e) the information listed in rule **24.15(3)(a)** to (d), in the case of a person being the on-board operator of a vehicle, small vessel or light aircraft leaving the Republic as a private means of transport for the traveller;<sup>440</sup> and
- (f) if the person is the holder of a trusted or frequent traveller permit, the permit number.

**Subsequent submission of traveller declarations for unaccompanied baggage**  
(section 489(a))

**21.5** (1) If a traveller or crew member entering or leaving the Republic has unaccompanied baggage in respect of which no traveller declaration is submitted at the time of customs processing of the traveller or crew member, the declaration may at any time after such customs processing of the traveller or crew member—

- (a) be electronically generated by the customs authority from information declared verbally by either the traveller or crew member or a person nominated by the traveller or crew member; and
- (b) be submitted by the traveller, crew member or nominated person.

(2) A traveller declaration signed and submitted by a person nominated by the traveller or crew member must for purposes of these Rules be regarded to be a traveller declaration signed and submitted by the traveller or crew member.

(3) A traveller declaration submitted by a nominated person must be accompanied by—

- (a) a letter of authorisation signed by the traveller or crew member; and

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<sup>438</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.13** for the accompanied en unaccompanied baggage items mentioned in the declaration.

<sup>439</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.14** for the commercial truck, bus or taxi mentioned in the declaration.

<sup>440</sup> If the traveller declaration contains this information, the traveller declaration serves as a simplified clearance in terms of rule **24.15** for the vehicle, small vessel or light aircraft mentioned in the declaration.

(b) copy of that person's identification document or driver's license, or, if that person is not a South African citizen, a copy of his or her passport or travel document, including, if applicable, a visa or immigration permit.

(4) No person may be nominated for purposes of this rule unless that person is located in the Republic.

**Part 2: Channel processing system for travellers and crew (section 488(1) and (2))**

**Channel processing system**

**21.6** (1) A traveller or a crew member entering or leaving the Republic through a place of entry or exit where a channel processing system is provided, may choose to proceed through either the green or the red channel in the traveller terminal at that place of entry or exit.

(2) (a) Proceeding through the green channel must be regarded<sup>441</sup> to be a declaration in terms of section 478(1) or 483(1) of the Control Act by the traveller or crew member that he or she has no accompanied or unaccompanied baggage items that must be declared in terms of section 479(1)(a) to (e) or 484(1)(a) to (e), as the case may be.

(b) Proceeding through the red channel indicates that the traveller or crew member has accompanied or unaccompanied baggage items that must be declared in terms of section 479(1)(a) to (e) or 484(1)(a) to (e), as the case may be.

(3) Choosing the green channel does not exclude the traveller or crew member from customs intervention in terms of Chapter 33 of the Control Act.<sup>442</sup>

(4) Choosing the red channel renders the traveller or crew member subject to—

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<sup>441</sup> In terms of such a channel system it is not necessary to submit a traveller declaration referred to in rule 21.2 if the traveller chooses the green channel. See section 488(3) of the Control Act. At places of entry or exit where there is no such system in place, the declaration must be submitted whether the traveller has goods to declare or not.

<sup>442</sup> See section 488(2)(b) of the Control Act.

- (a) customs processing;
- (b) submission of an entry or exit traveller declaration; and
- (c) compliance with clearance requirements in respect of accompanied and unaccompanied baggage items that must be cleared.<sup>443</sup>

***Part 3: Trusted or frequent travellers (section 489(c))***

**Self-service facilities for trusted or frequent travellers**

**21.7** (1) A person who is the holder of a trusted or frequent traveller permit and who enters or is leaving the Republic through a place of entry or exit where a self-service facility for trusted or frequent travellers is provided, may choose to proceed directly to that facility at that place of entry or exit for purposes of customs processing.

(2) If a permit holder chooses in terms of subrule (1) to proceed directly to a self-service facility for trusted or frequent travellers and that person has accompanied or unaccompanied baggage items that must be declared in terms of section 479(1)(a) to (e) or 484(1)(a) to (e) of the Control Act, as the case may be, that person must—

- (a) indicate his or her permit number on the traveller declaration; and
- (b) submit the declaration either manually at that facility or electronically through eFiling to the customs authority.

(3) An electronic submission referred to in subrule (2)(b) may be made at any time after check-in, in the case of an air traveller or crew member.

(4) A supporting document for a declaration referred to in subrule (2)(b), must be produced or submitted to the customs authority on request, subject to and in accordance with to Part 6 of Chapter 41 of these Rules.

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<sup>443</sup> See section 480 and 484 of the Control Act.



(5) Choosing a self-service facility for trusted or frequent travellers does not exclude the traveller or crew member from customs intervention in terms of Chapter 33 of the Control Act.

### **Application for trusted or frequent traveller permits**

**21.8** (1) No traveller or crew member entering or leaving the Republic may make use of a self-service facility for trusted or frequent travellers at a place of entry or exit unless that person is the holder of a trusted or frequent traveller permit.

(2) (a) A person who wishes to apply for a trusted or frequent traveller permit or renewal of a trusted or frequent traveller permit may do so by submitting an application to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application is submitted to the customs authority in terms of rule **41.13** in paper format the application must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications.

(3) An application referred to in subrule (2) must indicate whether the application is an application for a new permit or an application for the renewal of an existing permit, and if for renewal of an existing permit, the number of the applicant's existing permit.

(4) An application for a new permit must reflect—

(a) personal details of the applicant, which must include his or her—

- (i) full name;
- (ii) SARS tax reference number or, if he or she does not have a SARS tax reference number, his or her date of birth and the number and type of his or her identification document;
- (iii) citizenship;
- (iv) occupation; and
- (v) contact details, including physical and postal addresses in the Republic;

- (b) if the application is submitted by an ordinary representative<sup>444</sup> on behalf of the applicant, the information specified in rule **41.14**,<sup>445</sup>
- (c) the banking<sup>446</sup> details of the applicant's bank account in the Republic;
- (d) in the case of a parent or guardian assisting a child under 18 years of age or a person who by reason of physical incapacity cannot apply independently, a statement to that effect; and
- (e) the applicant's consent to the recording and use of the applicant's fingerprints and other biometric information by the customs authority for purposes of identification of the applicant and performing background and criminal record checks in relation to the applicant.

(5) An application for renewal of an existing permit must—

- (a) be submitted not later than 30 calendar days before the validity period of the existing permit expires; and
- (b) reflect—
  - (i) the applicant's name and customs code;
  - (ii) if the application is submitted by an ordinary representative<sup>447</sup> on behalf of the applicant, the information specified in rule **41.14**,<sup>448</sup> and
  - (iii) particulars of any change in the permit details of the applicant.

(6) A person under the age of 18 years may submit an application only with the assistance of his or her guardian unless that person is emancipated by an order of a court.

## **Supporting documents for applications**

**21.9** (1) An application for a trusted or frequent traveller permit referred to in rule **21.10** must be supported by the following documents:

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<sup>444</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>445</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

<sup>446</sup> See definition of "banking details" in rule **1.1**

<sup>447</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>448</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the applicant must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

- (a) A certified copy of the applicant's identification document proving identity and citizenship of the applicant;
- (b) a certified copy of the applicant's permanent residence permit issued in terms of the Immigration Act, 2002 (Act No. 13 of 2002), if the applicant is not a South African citizen;
- (c) a certified extract from the applicant's passport to provide proof of the number of international trips undertaken during a calendar month as required in terms of rule **21.10(c)**;
- (d) the original or a legible certified copy of—
  - (i) a municipal account issued to the applicant to confirm the applicant's physical address; and
  - (ii) a fixed line telephone or contract cellular phone account issued to the applicant to confirm the applicant's telephone contact details;
- (e) a banking details confirmation document<sup>449</sup> confirming the applicant's banking details; and
- (f) any other documents which the customs authority may require in a particular case.

(2) A supporting document referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Pre-conditions for submission of applications for trusted or frequent traveller permits**

**21.10** An application for a trusted or frequent traveller permit or renewal of such a permit may only be submitted by a person—

- (a) who is a South African citizen or the holder of a permanent residence permit in terms of the Immigration Act, 2002, (Act no. 13 of 2002);
- (b) who is not excluded from admission to the Republic in terms of the Immigration Act, 2002;
- (c) who usually undertakes at least three international trips per calendar month;

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<sup>449</sup> See definition of "banking details confirmation document" in rule 1.1

- (d) who has consented in writing to the recording and use of his or her fingerprints and other biometric information by the customs authority for purposes of identification and performing background and criminal record checks;
- (e) whose tax matters are in order;
- (f) who has a record of compliance<sup>450</sup> with the Control Act, the Customs and Excise Act, 1964, and the tax levying Acts, for a period of at least three years preceding the date of application; and
- (g) who has not been convicted of any offence involving fraud or dishonesty.

### **Consideration of applications and issue of permits**

**21.11** (1) An application for a trusted or frequent traveller permit may be approved or refused by the customs authority, and the applicant is entitled to be notified of the decision and, if refused, reasons for the decision.

(2) If an application is approved, the customs authority must issue a trusted or frequent traveller permit to and in the name of the applicant which must be—

- (a) delivered by hand to the applicant in any secured way; or
- (b) sent to the applicant by registered post.

### **Contents of trusted or frequent traveller permits**

**21.12** A trusted or frequent traveller permit must reflect—

- (a) a colour identification photograph of the permit holder;
- (b) the full name and customs code of the permit holder;
- (c) a statement that the permit holder may use self-service facilities for trusted or frequent travellers at places of entry and exit;
- (d) the date on which the permit takes effect;
- (e) the validity period of the permit; and
- (f) the number of the permit.

### **Validity period of trusted or frequent traveller permits**

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<sup>450</sup> See rule 1.8 for criteria determining a person's record of compliance.

**21.13** A trusted or frequent traveller permit—

- (a) takes effect from a date specified in the permit; and
- (b) remains valid for a period of one year from the date referred to in paragraph (a) unless—
  - (i) a shorter validity period is specified on the permit; or
  - (ii) the permit is withdrawn by the customs authority in terms of rule **21.15**.

**Conditions applicable to trusted or frequent traveller permits**

**21.14** (1) A trusted or frequent traveller permit is issued subject to the following conditions:

- (a) The permit holder may not—
  - (i) transfer the permit to another person;
  - (ii) allow another person to use the permit; or
  - (iii) use or attempt to use a permit which has expired or has been suspended or withdrawn by the customs authority.
- (b) The permit holder must immediately notify the customs authority if—
  - (i) his or her permit is lost or stolen; or
  - (ii) any of the circumstances which were material<sup>451</sup> to the granting of the application for the permit changes.
- (c) The permit holder must maintain compliance with rule **21.10(a)** to (c) and (e) to (g).

(2) (a) A notification referred to in subrule (1)(b) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive such notifications.

(3) A notification referred to in subrule (1)(b) must reflect—

- (a) the name and customs code of the permit holder;

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<sup>451</sup> Rule **21.10** sets out pre-conditions for the submission of applications for trusted or frequent traveller permits and compliance with these pre-conditions is accordingly material to the granting of an application.

- (b) if the notification is submitted by an ordinary representative<sup>452</sup> on behalf of the permit holder, the information specified in rule **41.14**;
- (c) the permit number; and
- (d) particulars, as may be applicable, of—
  - (i) the theft or loss of the permit; or
  - (ii) the changed circumstances.

### **Suspension or withdrawal of trusted or frequent traveller permits**

**21.15** (1) A trusted or frequent traveller permit issued in terms of this Part may be suspended or withdrawn<sup>453</sup> if the permit holder—

- (a) breaches a condition applicable to the permit in terms of rule **21.14**;
- (b) breaches a provision of the Control Act or a tax levying Act;
- (c) acquired the permit under false pretences; or
- (d) is no longer in compliance with a pre-condition referred to in rule **21.10** for the submission of applications for trusted or frequent traveller permits.

(2) If the customs authority intends to suspend or withdraw a permit, it must first—

- (a) notify the permit holder of the proposed suspension or withdrawal and of the reasons for the proposed suspension or withdrawal; and
- (b) give the permit holder an opportunity to submit representations on the proposed suspension or withdrawal within 30 calendar days of the date of notification referred to in paragraph (a).

(3) The customs authority may despite subsection (1) suspend the permit with immediate effect if circumstances so demand, but in such a case the permit holder is entitled to submit to the customs authority representations on the suspension within 30 calendar days after the permit has been suspended.

### **Updating of permit details**

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<sup>452</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>453</sup> Any decision to suspend or withdraw a permit is subject to internal reconsideration in accordance with any of the proceedings provided for in Chapter 37.

**21.16 (1)** If any of the permit details of the holder of a trusted or frequent traveller permit have changed or are to change, the permit holder must promptly update those details in accordance with this rule.

(2) An update in terms of subrule (1) containing the following information must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**:

- (a) The name and customs code of the permit holder;
- (b) if the update is submitted by an ordinary representative<sup>454</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>455</sup>
- (c) particulars of the change in permit details; and
- (d) the effective date of the change.

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<sup>454</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>455</sup> If the update is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the permit holder, the update must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

## CHAPTER 22

### INTERNATIONAL POSTAL ARTICLES HANDLED BY SOUTH AFRICAN POST OFFICE

*(No Rules at this stage as this Chapter will be implemented at a later stage)*

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## CHAPTER 23

### ACCESS TO AND SAMPLING OF GOODS<sup>456</sup>

#### Applications for permission to access goods subject to customs control<sup>457</sup> (section 513(1))

**23.1** (1) (a) An application for permission to access goods for the purpose of taking samples or performing actions permitted in terms of rule **23.4** as contemplated in section 513 of the Control Act, must, at least 24 hours before access for the intended purpose is required, be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs controlled area where the goods are.

(2) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the person clearing or entitled to clear the goods;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>458</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>459</sup>
- (c) the customs code of the customs controlled area<sup>460</sup> where the goods are;
- (d) whether the purpose of the required access is to take samples or to perform an action referred to in rule **23.4**;
- (e) in the case of an action referred to in rule **23.4**, a description of the proposed action;

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<sup>456</sup> Note that sampling of goods by customs officers are not dealt with in this Chapter, but in Part 5 Chapter 33.

<sup>457</sup> See section 28 of the Control Act for goods that are subject to customs control.

<sup>458</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>459</sup> If the application is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications on behalf of applicants in that capacity.

<sup>460</sup> The customs code to be reflected in respect of vessels that are at a docking facility outside a seaport must be the customs code of the terminal of which that docking facility forms part.

- (f) the purpose of the proposed taking of samples or performance of the other action referred to in rule **23.4** and in the case of a purpose contemplated in section 513(2)(c)(ii), a motivation of that purpose;
  - (g) the proposed date on which access is required;
  - (h) the estimated time required for the taking of samples or performance of the other action referred to in rule **23.4**, as the case may be;
  - (i) whether the affected goods have been cleared and, if not yet cleared, an indication of whether the goods will be cleared for home use or a customs procedure, and also the procedure for which it will be cleared;
  - (j) if the affected goods have already been cleared for home use or a customs procedure, the movement reference number<sup>461</sup> of the clearance declaration issued in respect of the affected goods;
  - (k) if the affected goods have not yet been cleared, a description of the goods, which must in the case of an action referred to in—
    - (i) rule **23.4(a)** or **(b)**, be the best description that can be given in the circumstances; and
    - (ii) rule **23.4(c)** or **(d)**, include—
      - (aa) the tariff classification;
      - (bb) the quantity, volume or weight, as may be appropriate;
      - (cc) the customs value; and
      - (dd) any marks and numbers on the goods, if applicable;
  - (l) the transport document number<sup>462</sup> in relation to the affected goods; and
  - (m) the invoice number in relation to the affected goods.
- (3) An application referred to in subrule (1) must be supported by—
- (a) any transport document issued in relation to the goods; and
  - (b) any invoice issued in relation to the goods.

(4) A supporting document referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>461</sup> See definition of “movement reference number” in rule 1.1.

<sup>462</sup> See definition of “transport document number” in rule 1.1.

**Applications for standing permission to access goods subject to customs control**<sup>463</sup> (section 513(1))

**23.2** (1) A person entitled to clear goods may apply for a standing permission to access and sample goods that require routine—

- (a) access due to their nature, for their preservation or for any other compelling reason; or
- (b) sampling for determining quantity, weight, volume, quality, condition or other relevant characteristic:

Provided that such an application may be submitted as part of the applicant's application for registration or licensing in terms of Chapter 28 or 29 of the Control Act.

(2) (a) An application for standing permission must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to—

- (i) the Customs Office that serves the area where the goods will be when sampling takes place; or
- (ii) if the application is submitted as part of an application for registration or licensing, the Customs Office where applications for registration and licensing are processed.

(3) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the applicant;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>464</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>465</sup>

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<sup>463</sup> See section 28 of the Control Act for goods that are subject to customs control.

<sup>464</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>465</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and agents that submit applications on behalf of applicants in that capacity.

- (c) the class or kind of goods in respect of which standing permission for routine access or sampling is required;
- (d) the customs code of the customs controlled area<sup>466</sup> where the sampling will take place;
- (e) the purpose of the access or sampling and any routine actions to be taken in respect of the goods;
- (f) if for sampling, the quantity, volume or weight of routine samples expected to be taken per sampling;
- (g) the estimated time required for access or the taking of samples; and
- (h) an indication of whether the goods will, when cleared, be cleared for home use or a customs procedure, and also the procedure for which it will likely be cleared.

(3) An application referred to in subrule (1) must be supported by a motivation of the reason why routine access or sampling is required in respect of the goods.

(4) A supporting document referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Notification of routine access to goods under authority of standing permissions** (*section 516*)

**23.3** (1) A person who is the holder of a standing permission contemplated in rule **23.2** must, at least 24 hours before any intended routine access to goods, notify the customs authority in accordance with this rule of the date and time of the access.

(2) A notification referred to in subrule (1) must be submitted to the customs authority—

- (a) electronically through e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) or (c) of the Control Act.

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<sup>466</sup> The customs code to be reflected in respect of vessels that are at a docking facility outside a seaport must be the customs code of the terminal of which that docking facility forms part.

- (3) A notification submitted in terms of subrule (1)(a) or (b), must—
- (a) if sent by e-mail, be directed to the Customs Office that serves the area where access to the goods is required at the e-mail address indicated on the SARS website for receipt of such notifications at that Customs Office;
  - (b) if delivered by hand, be delivered to the physical address of the Customs Office referred to in paragraph (a); or
  - (c) if telefaxed, be sent to the Customs Office referred to in paragraph (a) to the fax number indicated on the SARS website for the receipt of such notifications at that Customs Office.

(4) A notification referred to in subrule (1) must reflect the following information:

- (a) the name and customs code of the holder of the standing permission;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>467</sup> on behalf of the holder, the information specified in rule **41.14**;<sup>468</sup>
- (c) the reference number of the standing permission granted in terms of rule **23.2**;
- (d) the date and time of the intended routine access; and
- (e) the quantity, volume or weight of any routine samples expected to be taken.

**Actions that may be performed in relation to goods subject to customs control**  
(section 513(1)(b))

**23.4** For purposes of section 513(1)(b) of the Control Act actions in relation to goods subject to customs control include—

- (a) viewing or examining goods in order to establish whether the goods comply with any conditions set out in a contract of sale applicable to the goods;
- (b) viewing or examining goods in order to obtain or verify information supplied on a provisional or incomplete clearance declaration in terms of Part 1 of Chapter 24 of the Control Act;

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<sup>467</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>468</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications in that capacity.

- (c) examining goods to which Chapter 25 of the Control Act applies in order to establish the extent of any damage or deterioration; and
- (d) performing operations necessary to preserve the goods in their unaltered state, including—
  - (i) cleaning;
  - (ii) removal of dust; and
  - (iii) repair or change of faulty packaging.

**Costs arising from accessing and sampling goods or other actions** (*section 516*)

**23.5** The person that applied for permission in terms of rule **23.1** or **23.2** must carry any costs arising from the access to and sampling of the goods or the performance of an action referred to in rule **23.4** in connection with the goods.

**Conditions for accessing and sampling goods and performing actions** (*section 516*)

**23.6** If an application referred to in rule **23.1** or **23.2** is granted by the customs authority, sampling of goods or performing an action referred to in rule **23.4** must take place subject to the following conditions:

- (a) The person permitted to access the goods or a person acting on that person's behalf, must produce to the customs authority at the customs controlled area<sup>469</sup> where the goods are—
  - (i) that person's identification document;
  - (ii) in the case of a person acting on behalf of the person permitted to access the goods, also an authorisation to act on behalf of that person; and
  - (iii) the reference number of the authorisation granted pursuant to the application in terms of rule **23.1** or **23.2**;
- (b) the quantity drawn as a sample may not be more than the quantity—
  - (i) necessary for inspection or analysis, and counter-analysis, if required; or
  - (ii) permitted in respect of the relevant goods; and

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<sup>469</sup> In the case of goods on board vessels docked at a docking facility outside a seaport, a person requiring access to the goods must be identified at the terminal of which that docking facility forms part.

- (c) the person permitted to access and sample the goods, or a person acting on that person's behalf, must sign a sample register to confirm—
- (i) the identity of the person taking delivery of the sample, including his or her name, number and type of his or her identification document and designation;
  - (ii) the date and time when delivery of the sample is taken;
  - (iii) the movement reference number of the clearance declaration submitted in relation to the goods in respect of which the sample was taken, if the goods have already been cleared;
  - (iv) the number of the transport document issued in relation to the goods in respect of which the sample was taken, if the goods have not been cleared yet;
  - (v) a full description of the sample, including the quantity; and
  - (vi) whether the sample taken will be returned and if so, the anticipated date of return.

**Record keeping by licensees in relation to samples taken or other actions performed** (*section 516*)

**23.7** (1) The licensee of the premises where goods are located in respect of which sampling or other action referred to in rule **23.4** takes place, must in accordance with section 919 of the Control Act read with Part 7 of Chapter of these Rules, keep record of the information referred to in rule **23.6(c)**, including the date of return in the case of goods that are returned.

(2) Records must be produced or submitted to the customs authority on request, subject to Part 6 of Chapter 41 of these Rules.

## CHAPTER 24

### EXPEDITED CLEARANCE AND RELEASE OF GOODS

#### Definitions

**24.1** In this Chapter—

“**medical emergency**” means a situation where medical intervention<sup>470</sup> is essential and time is of the essence—

- (a) to obtain medical equipment or therapeutic drugs needed for that intervention; or
- (b) to collect donor organs for transplant on a patient; and

“**permission**” means a permission granted by the customs authority on application in terms of section 522(1), 530(1) or 534(1) of the Control Act to an applicant—

- (a) to clear, and to obtain release of, goods on incomplete or provisional clearance information in terms of Part 1 of Chapter 24 of the Act;
- (b) to obtain release of goods subject to subsequent clearance of the goods in terms of Part 2 of that Chapter; or
- (c) to clear, and to obtain release of, goods in accordance with simplified procedures in terms of Part 3 of that Chapter.

#### ***Part 1: Clearance and release of goods on incomplete or provisional clearance information***

#### **Exclusion of certain categories of goods from incomplete or provisional clearance (section 538)**

**24.2** (1) Part 1 of Chapter 24 of the Control Act does not apply to—

- (a) imported cigarettes and other imported tobacco products that are subject to excise duty; and
- (b) imported wine, spirits and beer and other imported alcoholic beverages that are subject to excise duty.

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<sup>470</sup> This could include a veterinary intervention.



(2) Goods falling within a category referred to in subrule (1) must be cleared in accordance with regular clearance requirements as may be applicable to the goods.

**Formal applications to clear and obtain release of goods on incomplete or provisional clearance information (sections 522 and 538)<sup>471</sup>**

**24.3** (1) (a) A formal application for permission as contemplated in section 522(2)(a)(i) or (ii) of the Control Act to clear, and to obtain release of, goods on incomplete or provisional clearance information must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs controlled area where the goods are or to which the goods are destined.

(2) An application in terms of subrule (1) must reach the customs authority no later than the following timeframes, as may be applicable:

- (a) For applications referred to in section 522(2)(a)(i) in relation to goods to which section 90 or 94 apply: No later than 48 hours before the time for submission of a clearance declaration in respect of those goods expires in terms of section 90 or 94;<sup>472</sup>
- (b) For applications referred to in section 522(2)(a)(i) in relation to goods already under a customs procedure (other than goods referred to in paragraph (a)): At any time whilst the goods are under that procedure;<sup>473</sup> and
- (c) For all applications referred to in section 522(2)(a)(ii): No later than 10 working days before the start of the period applied for.<sup>474</sup>

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<sup>471</sup> No application is necessary in the case of an incomplete clearance provided for in section 94(2) of the Control Act.

<sup>472</sup> This timeframe will apply to an application for incomplete or provisional clearance of a specific parcel, container or consignment of goods that is in the process of being imported through a place of entry or exported through a place of exit.

<sup>473</sup> This timeframe will apply to an application for incomplete or provisional clearance of a specific parcel, container or consignment of goods already under a customs procedure, such as warehousing.

<sup>474</sup> This timeframe will apply to an application for incomplete or provisional clearance of goods of a specific class or kind or other category of goods to be cleared during a specified future period.

(3) An application referred to in subrule (1) must state the following information:

- (a) The applicant's name and customs code, and whether the application is for incomplete or provisional clearance;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>475</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>476</sup>
- (c) whether the application is in respect of—
  - (i) a specific parcel, container or consignment of goods, as contemplated in section 522(2)(a)(i);<sup>477</sup> or
  - (ii) a specific class or kind or other category of goods to be cleared by the applicant during a specific period, as contemplated in section 522(2)(a)(ii);
- (d) in the case of an application referred to in paragraph (c)(i) of this subrule—
  - (i) a description of the class or kind of goods in the specific parcel, container or consignment of goods applied for;
  - (ii) whether the goods will be cleared for home use or a customs procedure and, if for a customs procedure, the required customs procedure; and
  - (iii) the customs controlled area where the goods are or to which the goods are destined for;
- (e) in the case of an application referred to in paragraph (c)(ii) of this subrule—
  - (i) a description of the specific class or kind or other category of goods applied for;
  - (ii) the specific period applied for; and
  - (iii) the customs controlled area where the goods are or will be or to which the goods are destined for; and

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<sup>475</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>476</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications on behalf of applicants in that capacity.

<sup>477</sup> Note that submission of a formal application for clearance and release on incomplete or provisional clearance information is not necessary in the case of a specific parcel, container or consignment of goods contemplated in section 522(2)(a)(i) as the proviso to section 522(2)(b) provides that a person clearing such goods may simply submit an incomplete or provisional clearance declaration which will then be regarded as an application. See rule **24.4** which deals with the situation where an incomplete or provisional clearance declaration is submitted as an application for incomplete or provisional clearance.

(f) whether the outstanding information or documents will be available at the time of submission of the supplementary declaration.

(4) In the case of an application referred to in subrule (3)(c)(ii) the period applied for may not be longer than the period for which the applicant's registration or licence will remain valid.

(5) An application referred to in subrule (1) must be supported by at least the following documents:

- (a) In the case of an application referred to in subrule (3)(c)(i), a statement setting out the reason why the information or documents necessary for a regular clearance of the goods are not at hand for the submission of a regular clearance declaration, and if due to a delay in obtaining such information or documents, whether such delay is attributable to the negligence of any person and could have been avoided if measures have been taken timeously;
- (b) in the case of an application referred to in subrule (3)(c)(ii), a statement setting out the reason why the information or documents necessary for a regular clearance of the goods will not be at hand for the submission of a regular clearance declaration, and if due to delays in obtaining such information or documents, whether such delays—
  - (i) is common practice within the industry in which the applicant operates;
  - (ii) is due to inherent characteristics of the goods or handling of the goods;<sup>478</sup> and
  - (iii) can be avoided if measures are taken timeously;
- (c) subject to subrule (6), an invoice issued in respect of the goods by the person who—
  - (i) exports the goods to or from the Republic; or
  - (ii) supplied the goods to be exported to or from the Republic; and
- (d) the importer or exporter's written clearing instructions, if the applicant is a customs broker.

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<sup>478</sup> Such as difficulties in the measurement of bulk goods.

(6) If a final invoice for the goods is not available at the time of submission of the application, the application must be supported by a pro-forma invoice issued in respect of the goods.

(7) Supporting documents referred to in subrule (5) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(8) An application in terms of subrule (3)(c)(i) for the clearance of a specific parcel, container or consignment of goods on incomplete information may not be submitted if the outstanding information can be included provisionally in a provisional clearance declaration. In such a case an application for provisional clearance may be submitted.

(9) This rule does not apply if an incomplete or provisional clearance declaration is in terms of the proviso to section 522(2)(b) used to serve as an application contemplated in subrule (3)(c)(i). If such a clearance declaration is used as an application for incomplete or provisional clearance, rule **24.4** applies.

**Clearance declarations serving as applications to clear and obtain release of goods on incomplete or provisional clearance information** (*proviso to section 522(2)(b)*)

**24.4** (1) If an incomplete or provisional clearance declaration is submitted to serve in terms of the proviso to section 522(2)(b) of the Control Act as an application contemplated in section 522(2)(a)(i), the declaration must—

- (a) contain a statement to that effect; and
- (b) indicate whether the outstanding information or documents will be available at the time of submission of the supplementary declaration.

(2) A clearance declaration referred to in subrule (1) must be submitted in accordance with rule **7.1** and within the timeframe applicable to the clearance of the relevant goods.

(3) A clearance declaration referred to in subrule (1) must be supported by the following documents:

- (a) The documents prescribed in terms of section 176(1) to support a clearance declaration for the clearance of goods for home use or the required customs procedure, as may be appropriate; and
- (b) a statement setting out the reason why the information or documents necessary for a regular clearance of the goods are not at hand for the submission of a regular clearance declaration, and if due to a delay in obtaining such information or documents, whether such delay is attributable to the negligence of any person and could have been avoided if measures have been taken timeously.

(4) If a final invoice for the goods as required in terms of section 176(1)(a) is not available at the time of submission of the clearance declaration, the declaration must be supported by a pro-forma invoice issued in respect of the goods.

(5) Supporting documents referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) An incomplete clearance declaration that in terms of the proviso to section 522(2)(b) serves as an application for incomplete clearance, may not be submitted if the outstanding information can be included provisionally in a provisional clearance declaration. In such a case a clearance declaration that serves as an application for provisional clearance may be submitted.

**Conditions subject to which permissions are granted** (*section 522(3)*)

**24.5** A permission granted to an applicant to clear and to obtain release of goods on incomplete or provisional clearance information during a specific period as contemplated in section 522(2)(a)(ii) of the Control Act, is subject to the condition that the customs authority may withdraw the permission—

- (a) if the applicant—
  - (i) obtained the permission under false pretences; or

- (ii) has in a material respect breached a provision of the Control Act, these Rules or a tax levying Act;<sup>479</sup>
- (b) if any of the circumstances which were material to the granting of the application for permission has changed;<sup>480</sup> or
- (c) if the applicant fails to provide security which the customs authority may require at any time during the validity period of the permission to cover any risks in relation to tax payable or that may become payable on the goods.

**Supporting documents for incomplete and provisional clearance declarations**  
(sections 523(2) and 524(2))

**24.6** (1) An incomplete or provisional clearance declaration must be supported by the documents referred to in section 176(1) of the Control Act: Provided that if a final invoice for the goods as required in terms of section 176(1)(a) is not available at the time of submission of the declaration, the declaration must be supported by a pro-forma invoice issued in respect of the goods.

(2) Supporting documents referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Timeframe for submission, and form, of supplementary clearance declarations**  
(section 526)

**24.7** (1) A supplementary clearance declaration contemplated in section 526 of the Control Act must, subject to rule 4.3, be submitted to the customs authority within seven working days from the date of acceptance by the customs authority of the incomplete or provisional clearance declaration in terms of section 171 for home use or a customs procedure or, in the case of liquid bulk goods, 25 calendar days, and in the case of dry bulk goods, 14 calendar days, from date of such acceptance.

(2) A supplementary clearance declaration must be an adjusted version of the incomplete or provisional declaration and must contain all the information required for a regular declaration, including—

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<sup>479</sup> See rule 1.5 for criteria when customs legislation has been breached in a material respect.

<sup>480</sup> See rule 1.7 for circumstances material to the granting of an application.

- (a) outstanding information not previously submitted;
- (b) the correct account of information previously submitted provisionally; and
- (c) any other necessary adjustments of information previously submitted.

***Part 2: Release of goods subject to subsequent compliance with clearance requirements***

**Limitation of categories of goods to which expedited release may be applied**

*(section 529 read with section 538(a))*

**24.8** Part 2 of Chapter 24 of the Control Act may not be applied to goods<sup>481</sup> other than the following categories:

- (a) Goods to be used for or during a medical emergency;
- (b) goods to be used for humanitarian relief efforts;
- (c) goods to be used as spares for foreign-going vessels or aircraft, cross-border trains, trucks and buses in urgent situations that put their conveyance schedules at risk;
- (d) live animals; and
- (e) hazardous goods.

**Application for expedited release** *(sections 530(2) and 538)*

**24.9** (1) (a) An application for permission as contemplated in section 530(1) of the Control Act to obtain expedited release of goods for home use or a customs procedure in accordance with expedited procedures, must be submitted to the customs authority electronically, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format the application must be submitted to the Customs Office that serves the customs controlled area where the goods are or to which the goods are destined.

(2) An application in terms of subrule (1)—

- (a) must, in the case of goods to which section 90 or 94 apply, reach the customs authority no later than 48 hours before the estimated time of arrival of the

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<sup>481</sup> Note that this Part cannot in terms of section 529 of the Control Act be applied to restricted goods and sectorally controlled goods.

goods at the place of entry or exit through which the goods are to be imported or exported;<sup>482</sup> or

- (b) may, in the case of goods already under a customs procedure (other than goods referred to in paragraph (a)), be submitted at any time whilst the goods are under that procedure.<sup>483</sup>

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The applicant's name and customs code;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>484</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>485</sup>
- (c) a precise description of the goods in respect of which expedited release is required;
- (d) the customs controlled area where the goods are or to which the goods are destined;
- (e) whether the goods will be cleared for home use or a customs procedure, and if for a customs procedure, the desired customs procedure; and
- (f) the undertaking contemplated in section 530(3)(a)(iii).

(4) An application referred to in subrule (1) must be supported by a statement setting out the reason—

- (a) why expedited release is required; and
- (b) why the applicable clearance requirements cannot be complied with immediately.

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<sup>482</sup> This timeframe will apply to an application for expedited release of goods that are in the process of being imported through a place of entry or exported through a place of exit.

<sup>483</sup> This timeframe will apply to an application for expedited release of a specific parcel, container or consignment of goods already under a customs procedure, such as warehousing.

<sup>484</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>485</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications on behalf of applicants in that capacity.



(5) Supporting documents referred to in subrule (4) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Conditions subject to which permissions to obtain expedited release are granted** (*section 530(4)*)

**24.10** Any permission granted to an applicant to obtain expedited release of goods is subject to the condition that the applicant must provide any security the customs authority may require, before or after release of the goods, to cover any risks in relation to tax payable or that may become payable on the goods, unless the goods are already covered by security for any tax risks that may arise.

**Timeframe for submission of regular clearance declarations** (*section 531*)

**24.11** A regular clearance declaration contemplated in section 531 of the Control Act must be submitted to the customs authority within three working days from the date of release of the goods in terms of section 180.

***Part 3: Simplified clearance and release of goods***

**List of goods categories for which simplified clearance is available**

**24.12** Part 3 of Chapter 24 of the Control Act, read with Part 3 of this Chapter of the Rules, provides for the following categories of goods to be cleared and released in accordance with simplified requirements:

- (a) Accompanied and unaccompanied baggage items for which simplified clearance is available in terms of sections 480(2) and 485(2);<sup>486</sup>
- (b) commercial trucks, buses, taxis, private vehicles, small vessels and light aircraft used as a means of transport for which simplified clearance under—
  - (i) the temporary admission procedure is available in terms of sections 270, 271, 272, 276, 277 or 278; or
  - (ii) the temporary export procedure is available in terms of sections 381, 382, 383, 389, 390 and 391;<sup>487</sup>

<sup>486</sup> No prior application for simplified clearance required for this category. For simplified clearance requirements for baggage items, see rule **24.13**.

<sup>487</sup> No prior application for simplified clearance required for this category. For simplified clearance requirements for these means of transport, see rules **24.14** and **24.15**.

- (c) courier articles referred to in rule **24.16(a)** to be cleared for home use or export;<sup>488</sup>
- (d) stores referred to in rule **24.16(b)** to be cleared for warehousing in the warehouse of a stores supplier or a public warehouse;<sup>489</sup> and
- (e) any specific consignment of goods not falling under a category of goods referred to in paragraphs (a) to (d) which the customs authority allows in terms of section 533(3) to be cleared and released in terms of simplified requirements.<sup>490</sup>

**Simplified clearance requirements for accompanied and unaccompanied baggage items of persons entering or leaving Republic (section 533(1)(a))**

**24.13 (1)** A traveller declaration submitted by a person entering or leaving the Republic<sup>491</sup> and containing the information specified in subrule (3) or (4) may serve as a clearance declaration for items in that person's accompanied and unaccompanied baggage—

- (a) that must in terms of section 480(1) or 485(1) of the Control Act be cleared; and
- (b) which that person is in terms of section 480(2) or 485(2) permitted to clear in accordance with simplified clearance requirements.<sup>492</sup>

(2) A traveller declaration used in terms of subrule (1) as a clearance declaration for the clearance of items in the baggage of a person entering or leaving the Republic must be submitted when that person is processed through the passenger processing system at the place of entry or exit through which that person entered or is leaving the Republic.

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<sup>488</sup> Prior application for simplified clearance required but application for courier licence in terms of rule **24.25(1)** regarded to be the application. No formal application therefore needed. For simplified clearance requirements for courier articles, see rule **24.17**.

<sup>489</sup> Prior application for simplified clearance required but application for stores supplier licence in terms of rule **24.25(2)** regarded to be the application. No formal application therefore needed. For simplified clearance requirements for these stores, see rule **24.18**.

<sup>490</sup> Prior application for simplified clearance required which can either be a formal application referred to in rule **24.19** or an application through submission of a clearance declaration in terms of rule **24.21**. No formal application therefore needed. For simplified clearance requirements for these goods, see rule **24.20**.

<sup>491</sup> See rules **21.3** and **21.4** for traveller declaration.

<sup>492</sup> Note that baggage items that consist of commercial goods as defined in section 476 of the Control Act must in terms of section 480(2)(b) be cleared in accordance with regular clearance requirements unless Customs determines otherwise in a specific case and allows a simplified clearance of those commercial goods. Rule **24.13** will apply where Customs allows a simplified clearance of any specific commercial goods.

(3) A traveller declaration of a person entering the Republic which is used in terms of subrule (1) as a clearance declaration for items in that person's baggage must, apart from the information a traveller declaration must contain in terms of rule **21.3**, also contain the following information:

- (a) A list of all of that person's baggage items that are cleared by means of the traveller declaration, distinguishing between—
- (i) any items that that person brings into the Republic temporarily for later re-exportation from the Republic,<sup>493</sup> differentiating between—
    - (aa) items to be re-exported in an unaltered state; and
    - (bb) items to be re-exported after being remodelled, processed, repaired or altered in the Republic;
  - (ii) any items previously taken out of the Republic that that person returns to the Republic,<sup>494</sup> differentiating between—
    - (aa) items returned in an unaltered state; and
    - (bb) items that have undergone remodelling, processing, repair or alteration abroad;
  - (iii) any items of a class or kind for which a tax free limit has been fixed and of which the quantity exceeds that limit;<sup>495</sup>
  - (iv) any items of a class or kind to which the tax free allowance is to be applied and of which the combined customs value exceeds that allowance;<sup>496</sup> and
  - (v) any items that are commercial goods and in respect of which a simplified clearance is allowed in terms of section 480(2)(b);
- (b) a description of each such item or class or kind of items, which must include—
- (i) the quantity, weight or volume;
  - (ii) the tariff classification;
  - (iii) the customs value; and
  - (iv) the origin;
- (c) whether the items or class or kind of items referred to in paragraph (a) are cleared for home use or a customs procedure and, if for a customs procedure, for which customs procedure;

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<sup>493</sup> This paragraph refers to items mentioned in section 479(1)(b) of the Control Act.

<sup>494</sup> This paragraph refers to items mentioned in section 479(1)(c) of the Control Act.

<sup>495</sup> This paragraph refers to items mentioned in section 479(1)(e)(ii) read with 479(2)(a) of the Control Act.

<sup>496</sup> This paragraph refers to items mentioned in section 479(1)(e)(iii) read with 479(2)(b) of the Control Act.

- (d) in the case of items cleared for remodelling, processing, repair or alteration in the Republic under the inward processing procedure, particulars of the nature of the remodelling, processing, repair or alteration; and
- (e) in the case of commercial goods referred to in paragraph (a)(v), the customs code issued to the person as a casual importer of goods.<sup>497</sup>

(4) A traveller declaration of a person leaving the Republic which is used in terms of subrule (1) as a clearance declaration for items in that person's baggage must, apart from the information a traveller declaration must contain in terms of rule **21.4**, also contain the following information:

- (a) A list of all that person's baggage items that are cleared by means of the traveller declaration, distinguishing between—
  - (i) any items that that person takes out of the Republic temporarily for later re-importation into the Republic,<sup>498</sup> differentiating between—
    - (aa) items to be re-imported in an unaltered state; and
    - (bb) items to be remodelled, processed, repaired or altered abroad;
  - (ii) any items previously brought into the Republic that that person takes out of the Republic,<sup>499</sup> differentiating between—
    - (aa) items that are in an unaltered state; and
    - (bb) items that have undergone remodelling, processing, repair or alteration in the Republic;
  - (iii) any items of a class or kind to which the tax free allowance is to be applied and of which the combined customs value exceeds that allowance;<sup>500</sup> and
  - (iv) any items that are commercial goods and in respect of which a simplified clearance is allowed in terms of section 485(2)(b);
- (b) a description of each such item or class or kind of items, which must include—
  - (i) the quantity, weight or volume;
  - (ii) the tariff classification;
  - (iii) the customs value; and
  - (iv) the origin;

<sup>497</sup> See rule **28.2** for the registration of casual importers.

<sup>498</sup> This paragraph refers to items mentioned in section 484(1)(b) of the Control Act.

<sup>499</sup> This paragraph refers to items mentioned in section 484(1)(c) of the Control Act.

<sup>500</sup> This paragraph refers to items mentioned in section 484(1)(e)(ii) read with 484(2) of the Control Act.

- (c) the customs procedure under which the items or class or kind of items referred to in paragraph (a) are cleared for export;
- (d) in the case of items cleared for remodelling, processing, repair or alteration abroad under the outward processing procedure, particulars of the nature of the remodelling, processing, repair or alteration; and
- (e) in the case of commercial goods referred to in paragraph (a)(iv), the customs code issued to the person as a casual exporter of goods.<sup>501</sup>

(5) A traveller declaration used as a clearance declaration must be supported by any invoices and other commercial documents issued in respect of any of the baggage items cleared by means of the traveller declaration.

(6) A person submitting a traveller declaration serving as a clearance declaration in terms of this rule must at the place of entry or exit where, and at the time when, the traveller declaration is submitted, have available with him or her for production to the customs authority if such production is requested, all supporting documents relevant to that traveller declaration.

**Simplified clearance requirements for commercial trucks, buses and taxis temporarily entering or leaving the Republic as means of transport** (*section 533(1)(b)*)<sup>502</sup>

**24.14** (1) A traveller declaration submitted by the on-board operator of a commercial truck, bus or taxi entering or leaving the Republic and containing the information specified in subrule (3) may serve as a clearance declaration for the clearance of the truck, bus or taxi under—

- (a) the temporary admission procedure for—
  - (i) temporary admission into the Republic when the truck, bus or taxi enters the Republic;<sup>503</sup> or
  - (ii) export under that procedure when the truck, bus or taxi leaves the Republic;<sup>504</sup> or

<sup>501</sup> See rule **28.3** for the registration of casual exporters.

<sup>502</sup> This rule does not apply to means of transport entering or leaving the Republic under a CPD carnet dealt with in Part 4 of Chapter 12 or Part 4 of Chapter 17 of the Control Act.

<sup>503</sup> See sections 270 and 271 of the Control Act.

<sup>504</sup> See sections 276 and 277 of the Control Act.

- (b) the temporary export procedure for—
- (i) temporary export from the Republic when the truck, bus or taxi leaves the Republic;<sup>505</sup> or
  - (ii) home use as re-imported unaltered goods when the truck, bus or taxi re-enters the Republic.<sup>506</sup>

(2) A traveller declaration used in terms of subrule (1) as a clearance declaration for a truck, bus or taxi entering or leaving the Republic must be submitted when the on-board operator of the truck, bus or taxi is processed through the passenger processing system at the land border-post through which the truck, bus or taxi entered or is leaving the Republic.

(3) The traveller declaration of the on-board operator of a truck, bus or taxi entering or leaving the Republic which is used in terms of subrule (1) as a clearance declaration for the truck, bus or taxi must, apart from the information a traveller declaration must contain in terms of rules **21.3** and **21.4**, also contain the following information:

- (a) On-board operator details;
- (b) a description of the truck, bus or taxi, which description must include—
  - (i) the make and model;
  - (ii) the year of manufacture;
  - (iii) the registration number;
  - (iv) the country of registration; and
  - (v) the engine number and the vehicle identification number (VIN) or chassis number;
- (c) in the case of a truck or bus operated by a carrier, the name and customs code of the carrier and, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of the carrier's registered agent in the Republic;
- (d) if the truck, bus or taxi is entering the Republic, whether it is cleared—
  - (i) for temporary admission into the Republic and, if so, the expected date of re-export; or

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<sup>505</sup> See sections 381 and 382 of the Control Act.

<sup>506</sup> See sections 289 and 390 of the Control Act.

- (ii) for home use as unaltered goods under the temporary export procedure and, if so, the date it left the Republic; and
- (e) if the truck, bus or taxi is leaving the Republic, whether it is cleared—
  - (i) for temporary export from the Republic and, if so, the expected date it is to return to the Republic; or
  - (ii) for export under the temporary admission procedure and, if so, the date it entered the Republic.

(4) An on-board operator submitting a traveller declaration serving as a clearance declaration in terms of this rule must at the place of entry or exit where, and at the time when, the traveller declaration is submitted, have available with him or her for production to the customs authority if such production is requested, all supporting documents relevant to that traveller declaration, including the following:

- (a) The relevant cross-border transport permit as may be required by, and issued in terms of, the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
- (b) in respect of a commercial truck or bus operated by a carrier, a letter from the carrier identifying the on-board operator and authorising him or her to drive the truck or bus across the border into or out of the Republic; and
- (c) in respect of a truck, bus or taxi—
  - (i) owned by the on-board operator or a carrier, as the case may be, a certified copy of the vehicle's registration certificate; or
  - (ii) not owned by the on-board operator or a carrier, as the case may be, a letter from the owner authorising the movement of the vehicle across the border into or out of the Republic.

**Simplified clearance requirements for vehicles, small vessels and light aircraft temporarily entering or leaving the Republic as private means of transport**  
*(section 533(1)(b))<sup>507</sup>*

**24.15** (1) A traveller declaration submitted by the on-board operator of a vehicle, small vessel or light aircraft entering or leaving the Republic as a private means of transport for a traveller visiting the Republic or for a traveller visiting abroad, and

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<sup>507</sup> This rule does not apply to means of transport entering or leaving the Republic under a CPD carnet dealt with in Part 4 of Chapter 12 or Part 4 of Chapter 17 of the Control Act.

which contains the information specified in subrule (3), may serve as a clearance declaration for the clearance of the vehicle, small vessel or light aircraft under—

- (a) the temporary admission procedure for—
  - (i) temporary admission into the Republic when the vehicle, small vessel or light aircraft enters the Republic;<sup>508</sup> or
  - (ii) export under that procedure when the vehicle, small vessel or light aircraft leaves the Republic;<sup>509</sup> or
- (b) the temporary export procedure for—
  - (i) temporary export from the Republic when the vehicle, small vessel or light aircraft leaves the Republic;<sup>510</sup> or
  - (ii) home use as re-imported unaltered goods when the vehicle, small vessel or light aircraft re-enters the Republic.<sup>511</sup>

(2) A traveller declaration used in terms of subrule (1) as a clearance declaration for a vehicle, small vessel or light aircraft entering or leaving the Republic must be submitted when the on-board operator of the vehicle, small vessel or light aircraft is processed through the passenger processing system at the place of entry or exit through which the vehicle, small vessel or light aircraft entered or is leaving the Republic.

(3) The traveller declaration of the on-board operator of a vehicle, small vessel or light aircraft entering or leaving the Republic which is used in terms of subrule (1) as a clearance declaration for the vehicle, small vessel or light aircraft must, apart from the information a traveller declaration must contain in terms of rules **21.4** and **21.6**, also contain the following information:

- (a) On-board operator details;
- (b) a description of the vehicle, small vessel or light aircraft, which description must include—
  - (i) the make and model;
  - (ii) the year of manufacture;
  - (iii) the registration number;

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<sup>508</sup> See section 272 of the Control Act.

<sup>509</sup> See section 278 of the Control Act.

<sup>510</sup> See section 383 of the Control Act.

<sup>511</sup> See section 391 of the Control Act.



- (iv) the country of registration; and
  - (v) in the case of a vehicle, the engine number and the vehicle identification number (VIN) or chassis number;
- (c) if the vehicle, small vessel or light aircraft is entering the Republic, whether it is cleared—
- (i) for temporary admission into the Republic and, if so, the expected date of re-export; or
  - (ii) for home use as unaltered goods under the temporary export procedure and, if so, the date it left the Republic; and
- (d) if the vehicle, small vessel or light aircraft is leaving the Republic, whether it is cleared—
- (i) for temporary export from the Republic and, if so, the expected date it is to return to the Republic; or
  - (ii) for export under the temporary admission procedure and, if so, the date it entered the Republic.

(4) An on-board operator submitting a traveller declaration serving as a clearance declaration in terms of this rule must at the place of entry or exit where, and at the time when, the traveller declaration is submitted, have available with him or her for production to the customs authority if such production is requested, all supporting documents relevant to that traveller declaration, including the following:

- (a) In respect of a vehicle—
- (i) owned by the on-board operator, a certified copy of the vehicle's registration certificate; or
  - (ii) not owned by the on-board operator, a letter from the owner authorising the movement of the vehicle across the border into or out of the Republic; or
- (b) in respect of a small vessel or light aircraft—
- (i) owned by the on-board operator, a certified copy of a document proving ownership; or
  - (ii) not owned by the on-board operator, a letter from the owner authorising the movement of the vessel or aircraft across the border into or out of the Republic.

**Additional categories of goods that may be cleared and released in accordance with simplified clearance requirements (section 533(1)(c))**

**24.16** In addition to the categories of goods referred to in section 533(1)(a) and (b) of the Control Act,<sup>512</sup> the following categories of goods may, subject to section 533(2)(a) and (b),<sup>513</sup> also be cleared and released in accordance with the simplified requirements set out in Part 3 of Chapter 24 of the Control Act:

- (a) Courier articles—<sup>514</sup>
  - (i) imported into the Republic that are in terms of section 89 required to be cleared for home use or a customs procedure; or
  - (ii) to be exported from the Republic that are in terms of section 93 required to be cleared for export; and
- (b) stores<sup>515</sup> for any reason to be removed from a foreign-going vessel or aircraft or cross-border train to the private storage warehouse of a stores supplier or to a public warehouse that are in terms of section 299(1) required to be cleared for warehousing in that warehouse.<sup>516</sup>

**Simplified clearance requirements for prescribed courier articles (section 533(1)(c))**

**24.17** (1) (a) Prescribed courier articles may be cleared for home use or a permissible customs procedure by the submission of a simplified clearance declaration containing the minimum information specified in subrule (4) to the customs authority electronically through EDI, subject to rule **41.13**.

<sup>512</sup> Goods that may in terms of section 533(1)(a) or (b) of the Control Act be cleared in accordance with simplified clearance procedures are:

- (a) Accompanied and unaccompanied baggage in terms of sections 480(2) or 485(2); and
- (b) the following means of transport entering or leaving the Republic under the temporary export procedure or the temporary admission procedure:
  - (i) Commercial trucks in terms of section 270, 276, 381 or 389;
  - (ii) buses and taxis in terms of section 271, 277, 382 or 390; or
  - (iii) private vehicles, small boats and light aircraft used as a private means of transport by travellers in terms of section 272, 278, 383 or 391.

<sup>513</sup> In terms of section 533(2)(a) and (b) the Minister may by notice in the Gazette restrict the categories of goods prescribed by rule under section 533(1)(c) that may be cleared in accordance with simplified procedures, to goods that have a customs value of less than a specified amount or in respect of which a tax below a specified amount is payable. Such a notice has been issued in respect of courier articles under Government Notice.....

<sup>514</sup> No formal application for simplified clearance in terms of section 534 is necessary as the application for the courier licence is regarded also to be an application for simplified clearance.

<sup>515</sup> No formal application for simplified clearance in terms of section 534 is necessary as the application for the stores suppliers licence is regarded also to be an application for simplified clearance.

<sup>516</sup> Stores consisting of goods that were in free circulation before cleared for the stores procedure are excluded here as such stores, when removed from the vessel, aircraft or train, revert to free circulation whether or not taken to the private warehouse of a stores supplier. Provisions applicable to goods reverting to free circulation include sections 113, 161, 350 and 353 of the Control Act.

(b) If a simplified clearance declaration referred to in paragraph (a) is submitted in terms of rule **41.13** in paper format, the declaration must be submitted to the Customs Office that serves the place of entry or exit through which the courier articles are imported or to be exported.

(2) A simplified clearance declaration clearing a consignment of prescribed courier articles must be submitted—

- (a) in the case of imported courier articles, before the arrival of the consignment at the place of entry through which the consignment will enter the Republic;  
or
- (b) in the case of courier articles to be exported—
  - (i) by air, no later than one hour before the courier articles are taken to the foreign-going aircraft in which they are to be exported for loading on board the aircraft; or
  - (ii) by road, within the same timeframes as prescribed in terms of section 94 for the regular clearance of goods destined for export by road.

(3) Only a licensed courier may submit a simplified clearance declaration for the clearance of prescribed courier articles handled by that courier.<sup>517</sup>

(4) A simplified clearance declaration referred to in subrule (1) must state—

- (a) the name and customs code of the courier and, unless the courier is the importer or exporter, also the name and customs code of the importer or exporter;
- (b) the transport name;
- (c) the conveyance number;
- (d) the transport document number;
- (e) in the case of a consignment of imported prescribed courier articles—
  - (i) a unique identifier number generated by the courier for each courier article in the consignment;

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<sup>517</sup> Note that the courier acts in this instance as either the importer or exporter of the courier articles or the holder of a customs broker's licence for courier articles contemplated in rule **29.5**

- (ii) details of the consignee of each courier article, which must include that person's customs code, if any, or name and physical and postal address;
  - (iii) details of the consignor of each courier article, which must include that person's customs code, if any, or name and physical and postal address;
  - (iv) the delivery address; and
  - (v) a description of each courier article, which must include—
    - (aa) quantity, weight or volume;
    - (bb) tariff classification;
    - (cc) customs value; and
    - (dd) country of origin; and
- (f) in the case of a consignment of prescribed courier articles to be exported from the Republic—
- (i) a unique identifier number generated by the courier for each courier article in the consignment;
  - (ii) details of the consignor of each courier article, which must include that person's customs code, if any, and name and physical and postal address;
  - (iii) name of the consignee of each courier article and foreign delivery address; and
  - (iv) a description of each courier article, which must include—
    - (aa) quantity, weight or volume;
    - (bb) tariff classification;
    - (cc) customs value; and
    - (dd) country of origin.

(5) A simplified clearance declaration for clearing a consignment of prescribed courier articles must be supported by at least—

- (a) an invoice or other commercial document issued in respect of a courier article by the person who—
  - (i) exports the courier article to or from the Republic; or
  - (ii) supplied the courier article to be exported to or from the Republic;
- (b) the transport document issued in respect of that consignment of courier

articles; and

- (c) the clearance instructions or authorisations given to the courier by the importers or exporters of the courier articles in the consignment, except where the courier is the importer or exporter.

(6) Supporting documents referred to in subrule (5) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Simplified clearance requirements for stores removed from vessels, aircraft and trains to warehouses** (*section 533(1)(c)*)

**24.18** (1) (a) Stores that are for any reason to be removed from a foreign-going vessel or aircraft or cross-border train to the private storage warehouse of a stores supplier or to a public warehouse and that are in terms of section 299(1) of the Control Act required to be cleared for warehousing before removal to that warehouse, may be cleared for warehousing in that warehouse by the submission of a simplified clearance declaration containing the minimum information specified in subrule (4), to the customs authority electronically through EDI, subject to rule **41.13**.

(b) If a simplified clearance declaration referred to in paragraph (a) is submitted in terms of rule **41.13** in paper format, the declaration must be submitted to the Customs Office that serves the area in which the warehouse is located.

(2) A simplified clearance declaration referred to in subrule (1) must be submitted before the removal of the stores from the vessel, aircraft or train to the warehouse.

(3) A simplified clearance declaration referred to in subrule (1) must reflect—

- (a) the name and customs code of the person clearing the stores for warehousing;
- (b) if the application is submitted by a customs broker on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;
- (c) the customs code of the warehouse;

- (d) the transport name of the vessel, aircraft or train from which the goods are to be removed;
- (e) the conveyance number;
- (f) the class or kind of stores to be warehoused, as well as—
  - (i) the quantity, weight or volume;
  - (ii) the tariff classification; and
  - (iii) the customs value;
- (g) whether the stores were on board the vessel, aircraft or train when it entered the Republic or whether the stores were taken on board in the Republic; and
- (h) if the stores were taken on board in the Republic, the movement reference number of the stores clearance declaration issued in respect of the stores.

(4) A simplified clearance declaration referred to in subrule (1) must be supported by at least—

- (a) a statement setting out the reason for the removal of the stores to the warehouse;
- (b) an invoice or other commercial document issued in respect of the stores by a stores supplier who initially supplied the stores to the vessel, aircraft or train; and
- (c) in the case of a clearance through a customs broker, the clearance instruction of the principal.

(5) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Formal application for simplified clearance of goods referred to in section 533(3) (sections 534(2)(b) and 538(b))<sup>518</sup>**

**24.19** (1) (a) An application for permission as contemplated in section 534(2)(a)(i) of the Control Act<sup>519</sup> to clear and obtain release of a specific

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<sup>518</sup> It is to be noted that in terms of section 534(4) no prior application is required for accompanied or unaccompanied baggage referred to in section 533(1)(a) or for means of transport referred to in section 533(1)(b). The application requirement is therefore confined to simplified clearance of goods to which section 533(3) applies as no formal application is in view of rule 24.25 required for courier articles and unused stores returned to a warehouse.

consignment of goods referred to in section 533(3) for home use or a customs procedure in accordance with simplified requirements must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the customs controlled area where the goods are or to which the goods are destined.

(2) An application in terms of subrule (1) must reach the customs authority no later than the following timeframes, as may be applicable:

- (a) For applications referred to in section 534(2)(a)(i) in relation to goods to which section 90 or 94 apply: No later than 48 hours before the time for submission of a clearance declaration in respect of those goods expires in terms of section 90 or 94;<sup>520</sup> or
- (b) for applications referred to in section 534(2)(a)(i) in relation to goods already under a customs procedure (other than goods referred to in paragraph (a)): At any time whilst the goods are under that procedure.<sup>521</sup>

(3) An application in terms of subrule (1) must reflect—

- (a) the applicant's name and customs code;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>522</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>523</sup>
- (c) a description of the class or kind of goods in the specific parcel, container or consignment applied for;

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<sup>519</sup> Simplified clearance in terms of section 533(3) is only available for "specific" consignments and not for simplified clearance of goods during a future period.

<sup>520</sup> This timeframe will apply to an application for simplified clearance of a specific parcel, container or consignment of goods that is in the process of being imported through a place of entry or exported through a place of exit.

<sup>521</sup> This timeframe will apply to an application for simplified clearance of a specific parcel, container or consignment of goods already under a customs procedure, such as warehousing.

<sup>522</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>523</sup> If the application is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications on behalf of applicants in that capacity.

- (d) whether the goods will be cleared for home use or a customs procedure and, if for a customs procedure, the required customs procedure; and
- (e) the place of entry through which the goods are imported or the place of exit through which the goods are to be exported.

(4) (a) An application referred to in subrule (1) must be supported by at least the following documents:

- (i) A motivation of the reasons why simplified clearance and release of the relevant goods are required;
- (ii) subject to paragraph (b), an invoice issued in respect of the goods by the person who—
  - (aa) exports the goods to or from the Republic; or
  - (bb) supplied the goods to be exported to or from the Republic; and
- (iii) the transport document issued in respect of the goods.

(b) If a final invoice for the goods is not available at the time of submission of the application, the application must be supported by a pro-forma invoice issued in respect of the goods.

(5) Supporting documents referred to in subrule (4) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(6) This rule does not apply if a simplified clearance declaration is in terms of the proviso to section 534(2)(b) used to serve as an application contemplated in section 534(2)(a)(i). If such a clearance declaration is used as an application for simplified clearance, rule **24.21** applies.

### **Simplified clearance requirements for goods allowed in terms of section 533(3) for simplified clearance**

**24.20** (1) (a) A specific consignment of goods referred to in section 533(3) of the Control Act in respect of which formal approval for simplified clearance has in terms of rule **24.19** been obtained, may be cleared for home use or a customs procedure by the submission of a simplified clearance declaration containing the



minimum information specified in subrule (4) to the customs authority electronically through EDI, subject to rule **41.13**.

(b) If a simplified clearance declaration referred to in paragraph (a) is submitted in terms of rule **41.13** in paper format, the declaration must be submitted to the Customs Office that serves the customs controlled area where the goods are or to which the goods are destined.

(2) A simplified clearance declaration clearing a consignment of such goods for home use or a customs procedure—

- (a) must, in the case of goods to which section 89 or 93 applies, be submitted within the same timeframes as prescribed in terms of section 90 or 94 for the regular clearance of goods; or
- (b) may, in the case of goods already under a customs procedure (other than goods referred to in paragraph (a)), be submitted at any time whilst the goods are still under that procedure.

(3) A simplified clearance declaration referred to in subrule (1) must reflect—

- (a) the name and customs code of the person clearing the goods;
- (b) if the declaration is submitted by a customs broker on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;
- (c) the transport name;
- (d) the conveyance number;
- (e) the transport document number;
- (f) a description of the class or kind of goods, which must include—
  - (i) quantity, weight or volume;
  - (ii) tariff classification;
  - (iii) customs value; and
  - (iv) country of origin; and
- (g) the reference number of the permission granted in terms of rule **24.19** in respect of the goods.

(4) A simplified clearance declaration submitted for clearing a consignment of goods must be supported by at least the documents referred to in section 176(1)(a), (b) and (c).

(5) Supporting documents referred to in subrule (4) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Clearance declarations serving as applications for simplified clearance of goods referred to in section 533(3) (proviso to section 534(2)(b))**

**24.21** (1) If a simplified clearance declaration is submitted to serve in terms of the proviso to section 534(2)(b) of the Control Act as an application contemplated in section 534(2)(a)(i) for the simplified clearance of goods referred to in section 533(3), the declaration must—

- (a) contain a statement to that effect; and
- (b) be submitted—
  - (i) in accordance with rule **24.20**(1); and
  - (ii) within the timeframe referred to in rule **24.20**(2).

(2) (a) A clearance declaration referred to in subrule (1) must, in addition to the documents referred to in rule **24.20**(4), be supported by a statement setting out the reason why simplified clearance and release of the relevant goods is required.

(b) If a final invoice for the goods as required in terms of section 176(1)(a) is not available at the time of submission of the clearance declaration, the declaration must be supported by a pro-forma invoice issued in respect of the goods.

(3) Supporting documents referred to in subrule (2) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Part 4: Permissions (section 538)**

**Permissions not transferable**

**24.22** No permission referred to in this Chapter granted by the customs authority may be transferred to another person.

### **Period of validity of permissions for incomplete, provisional or simplified clearance of goods**

**24.23** (1) A permission granted by the customs authority on application in terms of section 522(2)(a)(i) or 534(2)(a)(i) of the Control Act for the incomplete, provisional or simplified clearance of a specific parcel, container or consignment of goods applies only to that specific parcel, container or consignment of goods.

(2) A permission granted by the customs authority on application in terms of section 522(2)(a)(ii) for the incomplete or provisional clearance of a specific class or kind or other category of goods during a specific future period—

- (a) takes effect from a date specified in the permission; and
- (b) is valid for the period stated in the permission, unless the permission is suspended or withdrawn as contemplated in rule **24.24**.

(3) Subrule (2) does not apply to the simplified clearance of goods referred to in rule **24.25**.

### **Withdrawal of permissions**

**24.24** (1) A permission granted by the customs authority on application in terms of section 522(2)(a)(ii) of the Control Act for the incomplete, provisional or simplified clearance of goods during a future period, may be suspended or withdrawn by the customs authority if the person to whom the permission was granted—

- (a) has committed a material breach of the Control Act, these Rules or a tax levying Act,<sup>524</sup>
- (b) no longer qualifies for such permission; or
- (c) has failed to comply with a condition subject to which the permission was granted.

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<sup>524</sup> See rule **1.5** for criteria when customs legislation has been breached in a material respect.

(2) A person may, after being notified of the customs authority's intention to suspend or withdraw a permission, submit written representations to the customs authority on the proposed suspension or withdrawal within 30 calendar days of the date of notification.<sup>525</sup>

(3) The customs authority may, despite subrule (2) suspend or withdraw a permission with immediate effect if circumstances so demand but in such a case the person affected by the suspension or withdrawal is entitled to submit to the customs authority representations on the suspension or withdrawal within 30 calendar days after the suspension or withdrawal.

### **Certain licences to be regarded as permissions for simplified clearance of goods during validity period of licence**

**24.25** (1) If the customs authority has issued a courier licence to a person in terms of rule **29.8**—

- (a) the application submitted by that person for such licence in terms of Chapter 29 of the Control Act must for all purposes be regarded also to be an application in terms of section 534(2)(a)(ii) for the simplified clearance of prescribed courier articles during the validity period of the licence;
- (b) the courier licence issued to that person must for all purposes be regarded to be a permission granted by the customs authority in terms of section 534(1) for the simplified clearance of prescribed courier articles during the validity period of the licence; and
- (c) suspension or withdrawal of the licence by the customs authority in terms of Part 6 of Chapter 29 of that Act must for all purposes be regarded also to be a suspension or withdrawal of such permission in terms of rule **24.24**.

(2) If the customs authority has issued a stores supplier licence to a person in terms of section 634(1)—

- (a) the application submitted by that person for such licence in terms of Chapter 29 must for all purposes be regarded also to be an application in terms of section 534(2)(a)(ii) for the simplified clearance for warehousing of stores that

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<sup>525</sup> See rule **41.19** for the submission of representations to the customs authority.

- are for any reason to be removed from a foreign-going vessel or aircraft or cross-border train to a warehouse during the validity period of the licence;
- (b) the stores supplier licence issued to that person must for all purposes be regarded to be a permission granted by the customs authority in terms of section 534(1) for the simplified clearance for warehousing of such stores during the validity period of that licence; and
  - (c) suspension or withdrawal of the licence by the customs authority in terms of Part 6 of Chapter 29 of that Act must for all purposes be regarded also to be a suspension or withdrawal of such permission in terms of rule **24.24**.

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## CHAPTER 25

### DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS<sup>526</sup>

#### *Part 1: Goods other than compensating products*

#### **Notifications by persons referred to in section 542(2)<sup>527</sup> of goods damaged, destroyed, lost or unaccounted for (section 542)**

**25.1** (1) (a) If goods to which Part 1 of Chapter 25 of the Control Act applies<sup>528</sup> become damaged, destroyed, lost or unaccounted for, the person referred to in section 542(2) must submit the notification referred to in section 542(1) to the customs authority—

- (i) electronically through eFiling, subject to rule **41.13**; and
- (ii) in two phases as set out in subrule (2).

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place where—

- (i) the damaged goods or salvageable parts or materials of the destroyed goods currently are;
- (ii) the goods were when they became damaged, destroyed or lost; or
- (iii) it was discovered that the goods are lost or unaccounted for.

(2) A notification referred to in subrule (1) comprises—

(a) a first phase notification which must—

- (i) be submitted immediately after the person referred to in section 542(2) becomes aware that the goods have been damaged, destroyed, lost or unaccounted for; and
- (ii) reflect basic information prescribed in subrule (3); and

(b) a second phase notification which must—

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<sup>526</sup> Note that this Chapter does not apply to loss or damage caused by natural processes such as evaporation, drying out or deterioration in quality. Where goods diminish in volume or weight or deteriorate in quality due to such natural processes, the loss or damage must be accounted for in the clearance process.

<sup>527</sup> Note that the person referred to in section 542(2) of the Control Act is obliged to submit the notification. Failure to do so may result in a penalty. For other consequences of failure to submit, see section 543.

<sup>528</sup> See section 541(1) and (2) of the Control Act for goods to which Part 1 of Chapter 25 applies. That section must be read with section 540(2) which excludes certain goods altogether from Chapter 25.

- (i) be submitted within 10 working days after submission of the first phase notification; and
  - (ii) reflect comprehensive information as prescribed in subrule (4) and be supported by supporting documents referred to in subrule (5).
- (3) The first phase notification referred to in subrule (2)(a) must reflect—
- (a) the name and customs code of the person notifying;
  - (b) if the notification is submitted by a custom broker, registered agent or ordinary representative<sup>529</sup> on behalf of the person notifying, the name or customs code of that custom broker, registered agent or ordinary representative;
  - (c) in the case of goods becoming damaged, destroyed, lost or unaccounted for—
    - (i) during transport on a vessel, aircraft, train or vehicle—
      - (aa) the transport name and the conveyance number, and the transport ID if applicable;<sup>530</sup> and
      - (bb) the exact location<sup>531</sup> where the incident occurred, if the goods became damaged, destroyed or lost due to an incident; or
    - (ii) on any premises, the customs code of those premises or, if those premises are unlicensed premises, the physical address of the premises; and
  - (d) the nature of any incident that caused the goods to become damaged, destroyed, lost or unaccounted for, and the date and approximate time when the incident occurred.

(4) The second phase notification referred to in subrule (2)(b) must, in addition to the information referred to in section 542(4), and to the extent that such information is not already reflected in the first phase notification referred to in subrule (2)(a), also reflect:

- (a) The name and customs code of the person notifying or, if that person does not have a customs code, the information specified in rule **41.15(1)**;

<sup>529</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>530</sup> See relevant definitions in rule 1.1.

<sup>531</sup> This could be provided by the GPS coordinates.

- (b) if the notification is submitted by a custom broker, registered agent or ordinary representative<sup>532</sup> on behalf of the person notifying, the information specified in rule **41.14**;<sup>533</sup>
- (c) the quantity, volume or weight of the goods that were damaged, destroyed, lost or unaccounted for;
- (d) if the goods that were damaged, destroyed, lost or unaccounted for have been cleared, the movement reference number of the clearance declaration submitted in respect of the goods; and
- (e) if the goods that were damaged, destroyed, lost or unaccounted for have not been cleared—
  - (i) an accurate description of the class or kind of those goods, preferably by way of the tariff classification;
  - (ii) the container or ULD number, in the case of goods packed into a container or consolidated in a ULD;
  - (iii) any numbers or marks on the goods; and
  - (iv) the transport document number of any transport document issued in respect of the goods.

(5) A second phase notification referred to in subrule (2)(b) must, in addition to the documentary proof referred to in section 542(4)(e), be supported by the following documents, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A statement setting out the circumstances how the goods became damaged, destroyed, lost or unaccounted for;
- (b) a copy of any transport document issued in respect of the goods;
- (c) in the case of goods damaged or destroyed due to a cause mentioned in section 544(1) or 545(1), an independent appraisal or analysis by a qualified appraiser, assessing the extent—

<sup>532</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>533</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in their capacity as customs broker or registered agent.



- (i) of the damage and the loss in value of the goods;<sup>534</sup> or
  - (ii) to which any parts or materials have been or are salvageable from the destroyed goods;<sup>535</sup>
- (d) a copy of any invoice issued in respect of the goods; and
- (e) in the case of goods damaged or destroyed due to an accident involving a vessel or aircraft, the inventory compiled in terms of rule **25.17** of all wreck originating from the vessel or aircraft that was recovered from the site where the accident occurred.

(6) (a) A second phase notification referred to in subrule (2)(b) must, in the case of goods damaged or destroyed due to an accident involving a vessel or aircraft, also be supported by the inventory compiled in terms of rule **25.17** of all wreck originating from the vessel or aircraft that was recovered from the site where the accident occurred.

(b) A supporting document referred to in paragraph (a) must be produced or submitted on request, subject to Part 6 of Chapter 41 of these Rules.

(7) (a) Where goods became damaged, destroyed, lost or unaccounted for due to an incident referred to in section 125 or rule **25.14**,<sup>536</sup> which was reported in accordance with rule **5.5** or **25.14**, such a report may be regarded as compliance with the requirement in terms of this rule to submit a first phase notification referred to in subrule (2)(a), and in such a case no first phase notification needs to be submitted.

(b) In circumstances referred to in paragraph (a), the second phase notification referred to in subrule (2)(b) must include any information required in terms of subrule (3) that was not reflected in the relevant report.

(8) A person referred to in section 542(3) is, on written request to the person required in terms of section 542(2) to submit a notification referred to in rule (2)(a) or (b), entitled to a copy of the notification.

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<sup>534</sup> See section 544(2)(d) of the Control Act.

<sup>535</sup> See section 545(2)(d) of the Control Act.

<sup>536</sup> Also take note of rule **5.5** and its footnote in this respect.

(9) Air carriers are hereby exempted in terms of section 558(bA) from the notification obligation imposed by section 542(2) and the provisions of this rule if accompanied or unaccompanied baggage of travellers or crew members is damaged, destroyed, lost or unaccounted for.

**Notifications by persons referred to in section 542(3) of goods damaged, destroyed, lost or unaccounted for (section 542)**

**25.2** (1) (a) If a person referred to in section 542(3) of the Control Act elects to submit a notification referred to in section 542(1),<sup>537</sup> the notification must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place where—

- (i) the damaged goods or salvageable parts or materials of the destroyed goods currently are;
- (ii) the goods were when they became damaged, destroyed or lost; or
- (iii) it was discovered that the goods are lost or unaccounted for.

(2) A notification referred to in subrule (1) comprises—

(a) a first phase notification which must—

- (i) be submitted immediately after the person referred to in section 542(3) becomes aware that the goods have been damaged, destroyed, lost or unaccounted for; and
- (ii) reflect basic information prescribed in rule **25.1(3)**; and

(b) a second phase notification which must—

- (i) be submitted within 10 working days after submission of the first phase notification; and
- (ii) reflect comprehensive information as prescribed in rule **25.1(4)** and be supported by supporting documents referred to in rule **25.1(5)**.

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<sup>537</sup> Note that the person referred to in section 542(3), unlike the person referred to in section 542(2), is not obliged to submit the notification but may do so to protect his or her own interests, for instance where the person referred to in section 542(2) fails to submit the notification.

(3) A person referred to in section 542(3) is entitled to submit a notification in terms of this rule irrespective of whether the person required in terms of section 542(2) to submit the notification has done so or not.

**Documentary evidence to prove that goods became damaged, destroyed, lost or unaccounted for** (*section 558(a)*)

**25.3** The documents that may be submitted to the customs authority as evidence to prove that the goods became damaged, destroyed, lost or unaccounted for due to a cause referred to in section 544(1), 545(1), 546(1) or 547(1) of the Control Act, include the following, as may be appropriate:

- (a) An affidavit deposed to by a person who has knowledge of the facts—
  - (i) setting out the facts and circumstances in which the goods became damaged, destroyed, lost or unaccounted for; and
  - (ii) stating that the goods became damaged, destroyed or lost or unaccounted for due to a circumstance referred to in section 544(1), 545(1), 546(1) or 547(1), and not due to any wilful act, negligence or default of the person in physical control of or responsible for the goods;
- (b) in the case of goods damaged due to the inherent characteristics of the goods, an independent appraisal or analysis by a qualified appraiser assessing the damage to the goods due to such inherent characteristics;
- (c) a credit note from the supplier of the goods indicating an amount granted by the supplier to pay compensation for any damaged, destroyed, lost or unaccounted for goods;
- (d) an invoice from the supplier of the goods indicating that the supplier is replacing the damaged, destroyed, lost or unaccounted for goods without cost to the importer, exporter or owner;
- (e) a written commitment by the person referred to in section 542(2) or that person's insurer to pay compensation for the damaged, destroyed, lost or unaccounted for goods;
- (f) in the case of goods that have become damaged, destroyed or lost due to a hostile act by a third party, such as wilful damage to property, pilfering, theft, robbery or hijacking, a police report to that effect;
- (g) in the case of goods that have become damaged or destroyed due to an accident or fire, a police report or fire official's report to that effect; and

- (h) in the case of goods being lost or unaccounted for, any document that can provide evidence, depending on the particular circumstances, that—
- (i) the goods were short shipped, left behind or forgotten somewhere;
  - (ii) the goods were loaded on board the wrong vessel, aircraft, train or vehicle;
  - (iii) the goods were off-loaded at the wrong place;
  - (iv) the goods were withdrawn from the export stack;
  - (v) an administrative error occurred in documents or records relating to the goods; or
  - (iv) that the goods for any other reason became unaccounted for.

**Timeframe for complying with section 544(2)(d) in relation to damaged goods**

**25.4** If section 544(2)(d) of the Control Act becomes applicable to any damaged goods, the damaged goods must within three working days after the customs authority has accepted documentary proof submitted to it in terms of section 544(1), be dealt with in terms of section 544(2)(d)(i), (ii) or (iii).

**Timeframe for purposes of section 545(2)(d) in relation to parts or materials salvaged or salvageable from destroyed goods**

**25.5** If section 545(2)(d) of the Control Act becomes applicable to any destroyed goods, any parts or materials salvaged or salvageable from the destroyed goods must within three working days after the customs authority has accepted documentary proof submitted to it in terms of section 545(1), be dealt with in terms of section 545(2)(d)(i), (ii) or (iii).

**Additional causes recognised as justifiable for goods becoming unaccounted for (section 547(1)(c))**

**25.6** The non-loading of goods due to late cancellation for, or withdrawal of goods from, the export stack is for purposes of section 547(1)(c) of the Control Act recognised as a justifiable cause for goods becoming unaccounted for.

***Part 2: Compensating products***

**Notifications by persons referred to in section 549(2)<sup>538</sup> of compensating products damaged, destroyed, lost or unaccounted for (section 549)**

**25.7** (1) (a) If compensating products to which Part 2 of Chapter 25 of the Control Act applies<sup>539</sup> become damaged, destroyed, lost or unaccounted for, the person referred to in section 549(2) must submit the notification referred to in section 549(1) to the customs authority—

- (i) electronically through eFiling, subject to rule **41.13**; and
- (ii) in two phases as set out in subrule (2).

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place where—

- (i) the damaged compensating products or salvageable parts or materials of the destroyed compensating products currently are;
- (ii) the compensating products were when they became damaged, destroyed or lost; or
- (iii) it was discovered that the compensating products are lost or unaccounted for.

(2) A notification referred to in subrule (1) comprises—

(a) a first phase notification which must—

- (i) be submitted immediately after the person referred to in section 549(2) becomes aware that the goods have been damaged, destroyed, lost or unaccounted for; and
- (ii) reflect basic information prescribed in subrule (3); and

(b) a second phase notification which must—

- (i) be submitted within 10 working days after submission of the first phase notification; and
- (ii) reflect comprehensive information as prescribed in subrule (4) and be supported by supporting documents referred to in subrule (5).

(3) The first phase notification referred to in subrule (2)(a) must reflect—

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<sup>538</sup> Note that the person referred to in section 549(2) of the Control Act is obliged to submit the notification. Failure to do so may result in a penalty. For other consequences of failure to submit, see section 550.

<sup>539</sup> See section 548(1) and (2) of the Control Act for compensating products to which Part 2 of Chapter 25 applies. That section must be read with section 540(2) which excludes certain goods from Chapter 25 altogether. Also note that Part 2 only applies to inward and outward processed compensating products and not to home use processed products which upon production become goods in free circulation.

- (a) the name and customs code of the person notifying;
- (b) if the notification is submitted by a custom broker, registered agent or ordinary representative<sup>540</sup> on behalf of the person notifying, the name or customs code of that custom broker, registered agent or ordinary representative;
- (c) in the case of compensating products that became damaged, destroyed, lost or unaccounted for—
  - (i) during transport on a vessel, aircraft, train or vehicle—
    - (aa) the transport name and the conveyance number, and the transport ID if applicable,<sup>541</sup> and
    - (bb) the exact location<sup>542</sup> where the incident occurred, if the compensating products became damaged, destroyed or lost due to an incident; or
  - (ii) on any premises, the customs code of those premises or, if those premises are unlicensed premises, the physical address of the premises; and
- (d) the nature of any incident that caused the compensating products to become damaged, destroyed, lost or unaccounted for, and the date and approximate time when the incident occurred.

(4) The second phase notification referred to in subrule (2)(b) must, in addition to the information referred to in section 549(4), and to the extent that such information is not already reflected in the first phase notification referred to in subrule (2)(a), also reflect the following information:

- (a) The name and customs code of the person notifying or, if that person does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the notification is submitted by a custom broker, registered agent or ordinary representative<sup>543</sup> on behalf of the person notifying, the information specified in rule **41.14**,<sup>544</sup>

<sup>540</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>541</sup> See relevant definitions in rule 1.1.

<sup>542</sup> This could be provided by the GPS coordinates.

<sup>543</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>544</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of such persons in their capacity as customs broker or registered agent.

- (c) if the compensating products that were damaged, destroyed, lost or unaccounted for have been cleared, the quantity, volume or weight of those compensating products and the movement reference number of the clearance declaration submitted in respect of the goods;
- (d) if the compensating products that were damaged, destroyed, lost or unaccounted for have not yet been cleared, an accurate description of the class or kind of those compensating products, as well as—
  - (i) the tariff classification;
  - (ii) the quantity, volume or weight, as may be appropriate;
  - (iii) the customs value;
  - (iv) the container or ULD number, in the case of compensating products packed into a container or consolidated in a ULD; and
  - (v) any marks or numbers on the goods; and
- (e) the movement reference number of the clearance declaration submitted in respect of the goods from which those compensating products were obtained.

(5) A second phase notification referred to in subrule (2)(b) must, in addition to the documentary proof referred to in section 549(4)(f), be supported by the following documents, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A statement setting out the circumstances how the compensating products became damaged, destroyed, lost or unaccounted for;
- (b) a copy of any transport document issued in respect of the compensating products;
- (c) in the case of compensating products damaged or destroyed due to a cause mentioned in section 551(1) or 552(1), an independent appraisal or analysis by a qualified appraiser, assessing the extent—
  - (i) of the damage and the loss in value of the compensating products;<sup>545</sup>  
or
  - (ii) to which any parts or materials have been or are salvageable from the destroyed compensating products;<sup>546</sup> and

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<sup>545</sup> See section 551(2) of the Control Act.

<sup>546</sup> See section 552(2) of the Control act.

(d) a copy of any invoice issued in respect of the goods.

(6) (a) A second phase notification referred to in subrule (2)(b) must, in the case of compensating products damaged or destroyed due to an accident involving a vessel or aircraft, also be supported by the inventory compiled in terms of rule **25.17** of all wreck originating from the vessel or aircraft that was recovered from the site where the accident occurred.

(b) A supporting document referred to in paragraph (a) must be produced or submitted on request, subject to Part 6 of Chapter 41 of these Rules.

(7) (a) Where compensating products became damaged, destroyed, lost or unaccounted for due to an incident referred to in section 125 or rule **25.14**,<sup>547</sup> which was reported in accordance with rule **5.5** or rule **25.14**, such a report may be regarded as compliance with the requirement in terms of this rule to submit a first phase notification referred to in subrule (2)(a), and in such a case no first phase notification needs to be submitted.

(b) In circumstances referred to in paragraph (a), the second phase notification referred to in subrule (2)(b) must include any information required in terms of subrule (3) that was not reflected in the relevant report.

(8) A person referred to in section 549(3) is, on written request to the person required in terms of section 549(2) to submit a notification referred to in rule (2)(a) or (b), entitled to a copy of the notification.

(9) Air carriers are hereby exempted in terms of section 558(bA) from the notification obligation imposed by section 549(2) and the provisions of this rule if accompanied or unaccompanied baggage of travellers or crew members is damaged, destroyed, lost or unaccounted for.

**Notifications by persons referred to in section 549(3) of compensating products damaged, destroyed, lost or unaccounted for (section 549)**

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<sup>547</sup> Also take note of rule **5.5** and its footnote in this respect.



**25.8** (1) (a) If a person referred to in section 549(3) of the Control Act elects to submit a notification referred to in section 549(1),<sup>548</sup> the notification must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the place where—

- (i) the damaged compensating products or salvageable parts or materials of the destroyed compensating products currently are;
- (ii) the compensating products were when they became damaged, destroyed or lost; or
- (iii) it was discovered that the compensating products are lost or unaccounted for.

(2) A notification referred to in subrule (1) comprises—

(a) a first phase notification which must—

- (i) be submitted immediately after the person referred to in section 549(3) becomes aware that the compensating products have been damaged, destroyed, lost or unaccounted for; and
- (ii) reflect basic information prescribed in rule **25.7(3)**; and

(b) a second phase notification which must—

- (i) be submitted within 10 working days after submission of the first phase notification; and
- (ii) reflect comprehensive information as prescribed in rule **25.7(4)** and be supported by supporting documents referred to in rule **25.7(5)**.

(3) A person referred to in section 549(3) is entitled to submit a notification in terms of this rule irrespective of whether the person required in terms of section 549(2) to submit the notification has done so or not.

**Documentary evidence to prove that compensating products became damaged, destroyed, lost or unaccounted for (section 558(a))**

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<sup>548</sup> Note that the person referred to in section 549(3), unlike the person referred to in section 549(2), is not obliged to submit the notification but may do so to protect his or her interests, for instance where the person referred to in section 549(2) fails to submit the notification.

**25.9** The documents that may be submitted to the customs authority as evidence to prove that compensating products became damaged, destroyed, lost or unaccounted for due to a cause referred to in section 551(1), 552(1), 553(1) or 554(1) of the Control Act, include the following, as may be applicable:

- (a) An affidavit deposed to by a person with knowledge of the facts—
  - (i) setting out the facts and circumstances in which the compensating products became damaged, destroyed, lost or unaccounted for; and
  - (ii) stating that the compensating products became damaged, destroyed or lost or unaccounted for due to a circumstance referred to in section 551(1), 552(1), 553(1) or 554(1), and not due to any wilful act, negligence or default of the person in physical control of or responsible for the compensating products;
- (b) in the case of compensating products damaged due to the inherent characteristics of the compensating products, an independent appraisal or analysis by a qualified appraiser assessing the damage to the compensating products due to such inherent characteristics;
- (c) a written commitment by the person referred to in section 549(2) or that person's insurer to pay compensation for the damaged, destroyed, lost or unaccounted for compensating products;
- (d) in the case of compensating products that have become damaged, destroyed or lost due to a hostile act by a third party, such as wilful damage to property, pilfering, theft, robbery or hijacking, a police report to that effect;
- (e) in the case of compensating products that have become damaged or destroyed due to an accident or fire, a police report or fire official's report to that effect; and
- (f) in the case of compensating products being unaccounted for, any document that can provide evidence, depending on the particular circumstances, that—
  - (i) the goods were withdrawn from the export stack, in the case of inward processed compensating products; or
  - (ii) an administrative error occurred in documents or records relating to the compensating products.

**Additional causes recognised as justifiable for compensating products becoming unaccounted for** (*section 554(1)(d)*)

**25.10** The non-loading of goods due to late cancellation for, or withdrawal of goods from, the export stack is for purposes of section 554(1)(d) of the Control Act recognised as a justifiable cause for compensating products becoming unaccounted for.

### ***Part 3: Seized, confiscated or abandoned goods***

#### **Notifications by licensees when seized, confiscated or abandoned goods become damaged, destroyed, lost or unaccounted for (section 556)<sup>549</sup>**

**25.11** (1) (a) If seized, confiscated or abandoned goods become damaged, destroyed, lost or unaccounted for, the licensee referred to in section 556(2) of the Control Act must submit the notification referred to in section 556(1) to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the licensed premises or other place where—

- (i) the damaged goods or salvageable parts or materials of the destroyed goods currently are;
- (ii) the goods were when they became damaged, destroyed or lost; or
- (iii) it was discovered that the goods are lost or unaccounted for.

(2) A notification referred to in subrule (1) must be submitted—

- (a) in the case of goods that were on board a vessel, aircraft or train at the time of an incident referred to in rule **25.14**, no later than three working days from the day on which the report referred to in that rule was submitted;
- (b) in the case of goods that were on board a vehicle at the time of an incident referred to in section 125, no later than three working days from the time the report referred to in that section was submitted; or
- (c) in the case of any other goods, no later than three working days from the day on which the person who submits the notification became aware of the fact that the goods were damaged, destroyed, lost or unaccounted for.<sup>550</sup>

<sup>549</sup> Note that in terms of section 540(2)(a) this Chapter does not apply to goods that become damaged, destroyed, lost or unaccounted for in a state warehouse. Chapter 27 applies to such goods.

<sup>550</sup> Note that these timeframes are subject to extension in terms of section 908 of the Control Act.

(3) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the licensee submitting the notification;
- (b) if the notification is submitted by a custom broker or ordinary representative<sup>551</sup> on behalf of the licensee, the information specified in rule **41.14**;<sup>552</sup>
- (c) the reference number of the notice of seizure or confiscation or of the approval of abandonment, as may be applicable to the goods; and
- (d) the quantity, volume or weight of those goods that were damaged, destroyed, lost or unaccounted for.

(4) A notification referred to in subrule (1) must be supported by the following documents, which must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) a statement setting out how, when and where the goods became damaged, destroyed or lost or unaccounted for; and
- (b) if the goods became damaged, destroyed or lost or unaccounted for due to a cause set out in section 556(4), documentary evidence to that effect.

**Documentary evidence to prove that goods became damaged, destroyed, lost or unaccounted for (section 558(a))**

**25.12** The documents that may be submitted to the customs authority as evidence to prove that the seized, confiscated or abandoned goods became damaged, destroyed, lost or unaccounted for due to a cause referred to in section 556(4) of the Control Act, include the following, as may be applicable:

- (a) An affidavit deposed to by or on behalf of the licensee—
  - (i) setting out the facts and circumstances in which the goods became damaged, destroyed, lost or unaccounted for; and
  - (ii) stating that the goods became damaged, destroyed or lost or unaccounted for due to a circumstance referred to in section 556(4),

<sup>551</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>552</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in their capacity as customs broker.

and not due to any wilful act, negligence or default of the licensee in physical control of or responsible for the goods;

- (b) in the case of goods damaged due to the inherent characteristics of the goods, an independent appraisal or analysis by a qualified appraiser assessing the damage to the goods due to such inherent characteristics;
- (c) in the case of goods that have become damaged, destroyed or lost due to a hostile act by a third party, such as wilful damage to property, pilfering, theft, robbery or hijacking, a police report to that effect;
- (d) in the case of goods that have become damaged or destroyed due to an accident or fire, a police report or fire official's report to that effect; and
- (e) in the case of goods being unaccounted for, any document that can provide a justifiable reason why the goods are unaccounted for.

#### ***Part 4: Accidents involving vessels, aircraft or trains***<sup>553</sup>

##### **Application of this Part**

**25.13** This Part applies to—

- (a) any foreign-going vessel or aircraft or cross-border train; and
- (b) any domestic vessel, aircraft or train transporting goods not in free circulation within the Republic.

##### **Reporting of accidents involving vessels, aircraft or trains operated by carriers**<sup>554</sup>

**25.14** (1) (a) The carrier operating a vessel, aircraft or train referred to in rule **25.13(a)** or **(b)** that has stranded, crashed or become lost in the Republic or that has been involved in an accident which compromised the integrity of any goods to which Chapter 25 of the Control Act applies<sup>555</sup> on board the vessel, aircraft or train, must immediately upon becoming aware of the incident report the incident to the customs authority electronically through eFiling,<sup>556</sup> subject to rule **41.13**.

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<sup>553</sup> For accidents involving trucks carrying goods not in free circulation, see section 125 of the Control Act.

<sup>554</sup> Forced landings or calls are dealt with in rules under section 37 of the Control Act.

<sup>555</sup> See section 540(2) of the Control Act for goods to which Chapter 25 applies.

<sup>556</sup> The purpose of this report is to enable Customs to take immediate action as may be necessary and to send out officers to the site where the incident occurred to perform inspections and to take control of the movement of goods.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office nearest to the place where the incident occurred.

(2) A report referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the carrier or, if the carrier is not located in the Republic, the name or customs code of the carrier and the name and customs code of that carrier's registered agent in the Republic;
- (b) if the report is submitted by a customs broker or ordinary representative<sup>557</sup> on behalf of the carrier, the information specified in rule **41.14**;<sup>558</sup>
- (c) the transport name and the conveyance number<sup>559</sup> of the vessel, aircraft or train, and the transport ID in the case of a vessel or aircraft;
- (d) if the vessel, aircraft or train is or has been on a voyage in respect of which reporting requirements in terms of Chapter 3 of the Control Act apply, the number of—
  - (i) the advance vessel, aircraft or train arrival notice submitted to the customs authority, in the case of an inbound voyage;<sup>560</sup> or
  - (ii) the advance vessel, aircraft or train departure notice submitted to the customs authority, in the case of an outbound voyage;<sup>561</sup>
- (e) a general description of the goods that were on board the vessel, aircraft or train at the time of the incident;
- (f) whether there are salvageable goods at the site;
- (g) the nature, circumstances and approximate time of the incident;
- (h) the coordinates of the place where the incident occurred;
- (i) any steps the carrier took to secure the site; and
- (j) whether a law enforcement agency is present on the site.

(3) A report submitted to the customs authority in terms of subrule (1)—

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<sup>557</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>558</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the carrier, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of carriers in their capacity as customs broker.

<sup>559</sup> See definitions in rule **1.1**.

<sup>560</sup> See rules **3.4**, **3.12** and **3.19**.

<sup>561</sup> See rule **3.7**, **3.15** and **3.21**. Paragraph (d)(ii) will only become applicable once the provisions relating to the submission of advance departure notices take effect as provided for in terms of section 943 of the Control Act.

- (a) must for purposes of rule **25.1** or **25.7** be regarded to be a first phase notification referred to in that rule in respect of any goods or compensating products that became damaged, destroyed, lost or unaccounted for as a result of the accident; and
- (b) does not exempt a carrier from the obligation to submit a second phase notification referred to in rule **25.1(2)(b)** or **25.7(2)(b)** in respect of any goods or compensating products that became damaged, destroyed, lost or unaccounted for as a result of the accident.

### **Reporting of accidents involving vessels or aircraft not operated by carriers**

**25.15** (1) The owner, on-board operator or a crew member of a foreign-going vessel or aircraft not operated by a carrier that has stranded, crashed or become lost in the Republic must, in circumstances where it is possible for the owner, on-board operator or crew member to do so,<sup>562</sup> report the incident to the customs authority within 24 hours.

(2) A report referred to in subrule (1) must be submitted either electronically, by fax, by hand delivery or in any other way available in the circumstances to the owner, on-board operator or crew member.

(3) A law enforcement or rescue agency involved in recovery operations at the site of, or in respect of, the incident must without delay notify the customs authority of the incident.

(4) A report referred to in subrule (1) must state—

- (a) the SARS tax reference number of the owner, on-board operator or crew member submitting the report or, if that person does not have a SARS tax reference number, the number and type of his or her identification document;
- (b) the coordinates or other details of the place where the incident occurred;
- (c) the date and approximate time when the incident occurred;
- (d) the nature, circumstances and time of the incident; and

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<sup>562</sup> This requirement obviously does not apply in circumstances where it is impossible for the owner, on-board operator or crew member to notify the customs authority, for instance where the owner, on-board operator and crew members are injured or have perished.

- (e) whether a law enforcement agency has secured the site.

## **Part 5: Wreck**<sup>563</sup>

### **Application of this Part**

**25.16** (1) This Part applies to wreck as defined in section 1 of the Control Act, excluding abandoned wreck found or recovered by a person who is a licensed searcher of or for abandoned wreck.<sup>564</sup>

(2) The licence issued to a searcher of or for abandoned wreck<sup>565</sup> must be regarded to be permission contemplated in section 557(1) of the Control Act to remove abandoned wreck to the extent that such removal is permitted by and carried out in accordance with that person's licence conditions.

### **Inventory of wreck originating from stranded or sunken vessels or crashed aircraft** (*section 558(c)*)

**25.17** (1) The carrier operating a vessel or aircraft referred to in rule **25.13(a)** or **(b)** that has stranded, sunk or crashed, must compile an inventory of all wreck originating from the vessel or aircraft that was recovered from the site where the vessel stranded or sunk or the aircraft crashed, distinguishing, insofar as this is possible, between wreck that consists of—

- (a) the vessel or aircraft itself or its remains; and
- (b) cargo and other goods<sup>566</sup> that were on board the vessel or aircraft when it stranded, sunk or crashed.

(2) In the case of cargo and goods referred to in subrule (1)(b), the inventory must distinguish between damaged and undamaged goods.

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<sup>563</sup> Note the definition of "wreck" in section 1 of the Control Act. "Wreck" is not confined to historical ship wrecks, but includes the remains of any stranded or sunken vessel or crashed aircraft, any part of the vessel or aircraft and any goods or what is left of them that are or were on the vessel or aircraft or that were strewn around or washed away. It also includes goods that fell or were thrown overboard from a vessel during a voyage and found in the sea or washed up on the shore.

<sup>564</sup> Note that the only "wreck" to which this Part does not apply is where wreck has been abandoned and found or recovered by a person who is a licensed searcher of wreck in accordance with the conditions of the licence. An unlicensed person who finds abandoned wreck is not excluded from this Part.

<sup>565</sup> See rule **29.9**.

<sup>566</sup> Such as fuel and other stores.



(3) If a stranded vessel is re-floated and resumes its voyage either under its own power or on tow by another vessel, an inventory referred to in subrule (1) must be compiled only in relation to any cargo and other goods removed from the vessel during the recovery operation.

(4) An inventory compiled in terms of this rule must support a second phase notification submitted in terms of rule **25.1(2)(b)** or **25.7(2)(b)**.

(5) Compliance with this rule does not exempt a carrier from compliance with sections 542 and 549 of the Control Act, read with rules **25.1** and **25.7**, in relation to goods that became damaged, destroyed, lost goods or unaccounted for as a result of the incident.

**Procedures for dealing with wreck originating from stranded or sunken vessels or crashed aircraft (section 557(4))**

**25.18** (1) The carrier that operated a vessel or aircraft referred to in rule **25.13(a)** or **(b)** that has stranded, sunk or crashed must in collaboration with any law enforcement agencies present at the site where the incident occurred—

- (a) take all reasonable steps to ensure that no wreck consisting of goods with a commercial value is illegally removed from the vessel or aircraft or from the site; and
- (b) remove wreck which has a commercial value that was recovered from the stranded or sunken vessel or crashed aircraft to a state warehouse or any licensed premises determined by the customs authority in terms of section 570(3) or 580(1)(b) of the Control Act, as the case may be.

(2) Subrule (2)(b) does not apply to wreck consisting of goods that—

- (a) remain on a stranded vessel if the vessel is re-floated and resumes its voyage either under its own power or on tow by another vessel, and in such a case the goods may only be off-loaded at a place of entry or another place approved by the customs authority; or
- (b) can clearly be identified as goods in free circulation, and in such a case the carrier must deal with those goods in terms of its contract of carriage.

(3) Imported goods on board a vessel referred to in rule (2)(a) that is off-loaded at—

- (a) a place of entry, must be dealt with in accordance with section 89; or
- (b) any other place referred to in that subrule, must be removed to a state warehouse or any licensed premises determined by the customs authority in terms of section 570(3) or 580(1)(b), as the case may be.

(4) Any goods under a customs procedure on board a vessel referred to in rule (2)(a) that is off-loaded at—

- (a) a place of entry—
  - (i) in the case of goods under the export procedure or a procedure that allows the export of goods under that procedure, remains under that procedure until the goods are exported; or
  - (ii) in the case of goods under any other customs procedure, remains under that procedure until cleared for another permissible customs procedure or for home use; or
- (b) any other place referred to in that subrule, must be removed to a state warehouse or any licensed premises determined by the customs authority in terms of section 570(3) or 580(1)(b), as the case may be.

(5) Prohibited and restricted goods, whether damaged or undamaged, must be dealt with in accordance with Chapter 35 of the Control Act.

**Notification by persons who obtain possession of wreck by chance** (*section 557(2)*)

**25.19** (1) A notification submitted in terms of section 557(2) of the Control Act by a person in possession of wreck must reflect—

- (a) that person's name and customs code or, if that person does not have a customs code, the information specified in rule **41.15**;
- (b) the best description that can be given of the wreck, which must include—
  - (i) if it consists of apparent commercial goods, the class or kind of goods and approximate quantity; or
  - (ii) if it is a container, the number on the container;

- (c) the place where, and the circumstances in which, the wreck was found; and
- (d) if the wreck was removed for preservation or safe-keeping, the place to which it was removed.

(2) A notification referred to in subrule (1) must in accordance with section 557(2)(a) be submitted to the nearest Customs Office within 48 hours after the wreck was found. The notification must be submitted by hand, fax or e-mail on Form ..... as published as a rule on the SARS website for this purpose.

(3) Subrules (1) and (2) do not apply to a person in possession of wreck if that person is the carrier who operated the vessel or aircraft from which the wreck originated or a person appointed by that carrier to take charge of any recovery operations.

**Right of carriers to restore their possession of wreck found or removed by other persons** (*sections 557(4) and 558(c)*)

**25.20** (1) The carrier who operated a vessel or aircraft referred to in rule **25.13**(a) or (b) that has stranded, sunk or crashed or from which any goods were lost on its voyage is entitled, unless the customs authority determines otherwise—

- (a) to take possession of any wreck originating from that vessel or aircraft that was found by or is in the possession of or was removed by any other person; and
- (b) to deal with that wreck as part of the goods—
  - (i) recovered at that site; or
  - (ii) which were on board the vessel or aircraft during its voyage.

(2) If the carrier has appointed a person to take charge of any recovery at the site of a stranded or sunken vessel or crashed aircraft or to recover any goods that were lost on the vessel or aircraft's voyage, that person may exercise the rights referred to in subrule (1) on behalf of the carrier.

**Part 6: General**

### **Obligations of carriers not located in Republic**

**25.21** Where in this Chapter an obligation to comply with a requirement or to exercise a right<sup>567</sup> is conferred on a carrier, that obligation must be complied with or that right may be exercised, in the case of a carrier that is not located in the Republic, either by the carrier or that carrier's registered agent in the Republic.

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<sup>567</sup> See rule **25.20**.

## CHAPTER 26

### ABANDONMENT OF GOODS TO COMMISSIONER AND DESTRUCTION OF GOODS UNDER CUSTOMS SUPERVISION

#### *Part 1: Abandonment of goods to Commissioner*

#### **Application for permission to abandon goods to Commissioner<sup>568</sup> (section 562)**

**26.1** (1) (a) An application referred to in section 562(1) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the goods in respect of which abandonment is applied for, are located.

(2) An application referred to in subrule (1) must in addition to the information referred to section 562(2)(a) to (d), reflect the following information:

- (a) The name and customs code of the applicant;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>569</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>570</sup>
- (c) the customs code of the premises where the goods are or, if those premises do not have a customs code, the physical address of those premises;
- (d) if the goods have been cleared, the movement reference number of the clearance declaration submitted in respect of the goods;

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<sup>568</sup> The abandonment of goods in cases where the goods have no value or where the income generated by the sale of the goods is not likely to exceed the expenses in connection with the sale thereof, would probably not be in the best interest of the state as contemplated in section 563(a) of the Control Act, and in such cases applicants should rather consider an application in terms of rule **26.5** for the destruction of the goods.

<sup>569</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>570</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (e) in the case of damaged goods or salvaged parts or materials of destroyed goods, the reference number of any notification submitted in terms of rule **25.1** or **25.7** in respect of the goods damaged or destroyed; and
- (f) whether, in case of refusal of the application, the applicant opts for destruction of the goods under customs supervision, and if so, whether the applicant has any intention to utilise any remaining scrap or waste after the destruction.

(3) An application referred to in subrule (1) must be supported by—

- (a) any invoice issued in respect of the goods; and
- (b) any transport document issued in respect of the goods.

(4) A supporting document referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Additional information to be reflected on abandonment notices** (*section 564(2)(c)*)

**26.2** In addition to the information referred to in section 564(2)(a) and (b) of the Control Act, an abandonment notice must reflect the physical address of the state warehouse or place of safety to which the goods must be removed as determined by the customs authority in terms of section 565(c)(i).

**Consequences of abandonment of goods to Commissioner**

**26.3** If the customs authority approves an application submitted in terms of rule **26.1** any existing clearance declaration submitted in respect of the abandoned goods must be—

- (a) withdrawn, if all the goods covered by the declaration are abandoned to the Commissioner; or
- (b) amended to exclude the abandoned goods, if only a part of the goods covered by the declaration is abandoned to the Commissioner.

**Consequences of refusal of application for abandonment** (*section 566*)

**26.4** (1) If the customs authority refuses an application submitted in terms of rule **26.1** and the applicant has in terms of rule **26.1(2)(f)** opted for the destruction of the goods if the application is refused—

- (a) the goods must be destroyed under customs supervision as if the applicant has submitted an application in terms of rule **26.5** that has been approved by the customs authority;
- (b) the cost of destruction of the goods and any costs incidental thereto must be borne by the applicant; and
- (c) the applicant must be regarded to have given the undertakings referred to in rule **26.5(2)(h)** and **(j)**.

(2) If the customs authority refuses an application submitted in terms of rule **26.1** and the applicant has not in terms of rule **26.1(2)(f)** opted for the destruction of the goods if the application is refused, the goods must—

- (a) if not cleared, be cleared for home use or a permissible customs procedure; or
- (b) if already cleared for home use or a permissible customs procedure, continue to be dealt with in terms of the relevant clearance.

### ***Part 2: Destruction of goods under customs supervision***

#### **Application to destroy goods under customs supervision (section 567)**

**26.5** (1) (a) An application referred to in section 567(1) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the goods in respect of which destruction is applied for, are located.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant;

- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>571</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>572</sup>
  - (c) the customs code of the premises where the goods are or, if those premises do not have a customs code, the physical address of those premises;
  - (d) if the goods have been cleared, the movement reference number of the clearance declaration submitted in respect of the goods;
  - (e) if the goods have not been cleared, a description of the goods in sufficient detail to identify the goods;
  - (f) in the case of damaged goods or salvaged parts or materials of destroyed goods, the reference number of any notification submitted in terms of rule **25.1** or **25.7** in respect of the goods damaged or destroyed;
  - (g) a description of the method of destruction;
  - (h) an undertaking to pay any costs in connection with the destruction of the goods;
  - (i) in respect of customs supervision for the destruction of the goods—<sup>573</sup>
    - (i) the date and time when the special customs service<sup>574</sup> is required;
    - (ii) the approximate duration of the special customs service;
    - (iii) the place where the special customs service is required; and
    - (iv) the number of customs officers required;
  - (j) an undertaking to pay costs associated with the provision of special customs services provided in connection with the destruction of the goods; and
  - (k) whether the applicant has any intention to utilize any waste or scrap remaining after destruction.
- (3) An application referred to in subrule (1) must be supported by—
- (a) a statement setting out the reason for the application to destroy the goods;
  - (b) any invoice issued in respect of the goods;

<sup>571</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>572</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

<sup>573</sup> Note that a separate application for the provision of special customs services in terms of rule 1.11 is not required in this case.

<sup>574</sup> See definition of “special customs service” in rule 1.1.



- (c) any transport document issued in respect of the goods; and
- (d) a motivation for the attendance of more than one customs officer, if the attendance of more than one customs officer is required.

(4) A supporting document referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Destruction of goods under customs supervision** (*section 567(3)*)

**26.6** (1) If an application referred to in rule **26.5** is approved by the customs authority, the goods must be destroyed on the date indicated by the customs authority in an approval notice issued to the applicant.

(2) The cost of destruction of the goods and any costs incidental thereto must be borne by the applicant.

**Conditions applicable to all approvals for destruction of goods under customs supervision** (*sections 903(1)(j) and 918*)

**26.7** (1) An approved application for destruction of goods is subject to—

- (a) such special conditions as the customs authority may impose in a particular case; and
- (b) the general conditions set out in subrule (2).

(2) All approvals are subject to the following general conditions:

- (a) The method of destruction must adhere to any applicable legislation, including legislation relating to the protection of the environment and health and safety.
- (b) The applicant—
  - (i) must take all safety precautions necessary when destroying goods in terms of an approval referred to in rule **26.5**; and
  - (ii) bears the risk for any damage or loss that may be caused to a third party by the destruction of the goods.
- (c) Any existing clearance declaration submitted in respect of the destroyed goods must be—

- (i) withdrawn, if all the goods covered by the declaration were destroyed; or
  - (ii) amended to exclude the destroyed goods, if only part of the goods covered by the declaration was destroyed.
- (d) Any import or export tax payable but not yet paid on the goods by virtue of that clearance falls away in respect of the destroyed goods, unless provided otherwise in the tax levying Act regulating that tax.
- (e) Any import or export tax already paid on the destroyed goods by virtue of that clearance may in accordance with the tax levying Act regulating that tax be refunded to the person who paid the tax, unless provided otherwise in that tax levying Act.
- (f) If any parts or materials that have been salvaged from the destroyed goods or that are salvageable, those parts or materials must, in the case of imported goods, within the period prescribed by rule **26.8**, read with sections 908 and 909—
  - (i) be cleared for home use or a customs procedure permissible in the circumstances; or
  - (ii) be abandoned to the Commissioner in accordance with Part 1 of this Chapter.
- (g) If any of those parts or materials are cleared for home use or a customs procedure in terms of paragraph (f)(i), any tax payable on the parts or materials by virtue of that clearance may be set off against any tax referred to in paragraph (e) which is refundable in terms of the applicable tax levying Act.

(3) In the event of any inconsistency between a special condition imposed in terms of subrule (1)(a) and a general condition set out in subrule (2), the special condition prevails.

**Timeframe for clearance of waste or scrap remaining after destruction of goods** (*section 567(4)(a)*)

**26.8** The timeframe for purposes of section 567(4)(a) is seven working days after the date of destruction of the goods.<sup>575</sup>

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<sup>575</sup> This timeframe is subject to section 908 of the Control Act.

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## CHAPTER 27

### STATE WAREHOUSES

#### Definitions

**27.1** In this Chapter, unless the context otherwise indicates—

“**freight ton**”, for purposes of calculating state warehouse rent, means a unit of measurement equal to either one metric ton (1000kg) or one cubic meter, depending on whichever of the two yields the greatest amount of revenue when multiplied with the rate prescribed in rule **27.22(2)**, and, for purposes of this definition, any fraction of a metric ton or a cubic metre must be regarded as a whole metric ton or cubic metre, as the case may be;

“**goods description**”, in relation to goods to be described in a notice, notification or application submitted in terms of this Chapter, includes the following information relating to the goods to the extent that that information is available to the person submitting the notice, notification or application:

- (a) In the case of break bulk goods—
  - (i) the tariff classification or a description of the class or kind of goods in the packages;
  - (ii) the type, quantity and weight of the packages; and
  - (iii) any marks and numbers on the packages;
- (b) in the case of containerised goods—
  - (i) the container numbers;
  - (ii) the number of containers;
  - (iii) the weight and volume of the containers; and
  - (iv) the tariff classification or a description of the class or kind of goods in each container;
- (c) in the case of bulk goods—
  - (i) the tariff classification or a description of the class or kind of goods; and
  - (ii) the weight or volume of the goods;
- (d) in the case of a vehicle, whether containerised or not—

- (i) the make and model;
  - (ii) the year of manufacture;
  - (iii) the odometer reading;
  - (iv) the engine number;
  - (v) the vehicle identification number (VIN) or chassis number; and
  - (vi) the registration number; and
- (e) in the case of baggage of a person entering or leaving the Republic, any names and other personal details indicated on the baggage items;

**“recording state warehouse”**, in relation to goods—

- (a) retained at or removed to licensed premises other than a state warehouse under a direction or authorisation issued in terms of section 580(1)(a) or (b) of the Control Act, the state warehouse in the accounting records of which those goods must be recorded for state warehousing purposes in terms of section 580(3); or
- (b) redirected under a permission granted in terms of section 574 or 584, the state warehouse in the accounting records of which those goods must be recorded for state warehousing purposes in terms of rule **27.9(3)**;

**“state warehouse inventory code”**, in relation to goods in or accounted for in a state warehouse, means a unique identifying code assigned by the customs officer or licensee in charge of a state warehouse to goods received in or accounted for in that warehouse for purposes of—

- (a) inventory control; and
- (b) facilitating the keeping and retrieval of records in respect of the goods to which it relates; and

**“state warehousing”**, in relation to goods that are or have become subject to Chapter 27 of the Control Act, means the storage of such goods—

- (a) in a state warehouse referred to in section 570(3);
- (b) on any licensed premises referred to in section 580(1)(a) or (b) as if the goods were removed to a state warehouse; or
- (c) on any premises to which the goods were redirected under a permission granted in terms of section 574 or 584.

## **Part 1: Removal of goods to state warehouses<sup>576</sup>**

### **Removal notices by persons in physical control of goods to be removed to state warehouses (section 571)**

**27.2** (1) (a) If goods are to be removed to a state warehouse in compliance with section 570(1)<sup>577</sup> or a direction issued in terms of section 570(2) of the Control Act, the person referred to in section 571 must submit the removal notice contemplated in that section to the customs officer or licensee in charge of the warehouse determined in terms of section 570(3) to which the goods must be removed.

(b) A removal notice referred to in paragraph (a) must be submitted—

- (i) electronically through eFiling subject to section 913(4), if the goods must be removed to a state warehouse operated by the Commissioner; or
- (ii) by email, telefax or hand delivery, if the goods must be removed to a licensed state warehouse notice.

(2) A removal notice referred to in subrule (1)<sup>578</sup> must reflect the following information:

- (a) The name and customs code of the person that must remove the goods to the state warehouse or, if that person does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the notice is submitted by a customs broker, registered agent or ordinary representative<sup>579</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>580</sup>

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<sup>576</sup> Note that this Part facilitates Part 2 of Chapter 27 of the Control Act, in other words, where goods are actually removed to state warehouses.

<sup>577</sup> In terms of section 570(1) of the Control Act the duty to remove the goods to a state warehouse falls on the licensee in physical control of the goods.

<sup>578</sup> Note that section 571(2) of the Control Act requires the person submitting the removal notice to attach to the notice all supporting documents concerning the goods that are in the possession of that person.

<sup>579</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>580</sup> If the notice is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit notices on behalf of persons in that capacity.

- (c) the customs code of the state warehouse to which the goods are to be removed;
- (d) the estimated date and time of delivery of the goods at the state warehouse;
- (e) the name or customs code of the carrier or other person that will deliver the goods;
- (f) whether the goods are removed to the state warehouse in compliance with section 570(1) or a direction issued in terms of section 570(2) and, if in terms of a direction, the reference number of the direction;
- (g) the goods description;<sup>581</sup>
- (h) the condition of the goods;
- (i) whether the goods are dangerous goods and, if so, the relevant dangerous goods code applicable to the goods, or any warning markings on the goods;
- (j) whether there are any special storage requirements in relation to the goods;
- (k) in the case of perishable goods, any indicated expiry date;
- (l) in the case of goods that have been cleared, the movement reference number<sup>582</sup> of the clearance declaration submitted in relation to the goods;
- (m) in the case of goods that have not been cleared, the transport document number of the transport document issued in respect of the goods;
- (n) whether, to the knowledge of the person referred to in paragraph (a)—
  - (i) there are any charges outstanding in respect of the goods at the time of submission of the notice; or
  - (ii) the goods are the subject of any legal proceedings; and
- (o) the reason why the goods have become subject to state warehousing.

(3) All supporting documents relating to the goods that are in the possession of the person referred to in section 571 submitting the notice must be submitted in accordance with subrule (4) to the customs officer or licensee in charge of the state warehouse to which the goods are removed.

- (4) A supporting document referred to in subrule (3) must—
- (a) if the goods are removed to a state warehouse operated by the Commissioner, be submitted to the customs officer in charge of the

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<sup>581</sup> See definition of “goods description” in rule 27.1

<sup>582</sup> See definition of “movement reference number” in rule 1.1

warehouse on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules; or

- (b) if the goods are removed to a licensed state warehouse, be submitted to the licensee of the warehouse by e-mail, telefax or hand delivery.

**Unpacking of containers containing goods of different consignors or consignees** (*section 600*)

**27.3** (1) If a consignment of goods packed into a container is to be removed to a state warehouse in compliance with section 570(1) or a direction issued in terms of section 570(2) of the Control Act and that container also contains a consignment of goods not affected by section 570(1) or that direction—

- (a) the affected consignment must be removed from the container for removal to the state warehouse; and
- (b) the unaffected consignment in the container must be allowed to proceed in accordance with the Control Act.

(2) If subrule (1) applies, the affected container must be removed to a container depot for such removal.

**Hours for delivery of goods to state warehouses** (*section 600*)

**27.4** Goods may be delivered to a state warehouse only during—

- (a) the hours of attendance determined in terms of section 14 of the Control Act for the warehouse, in the case of a delivery to a state warehouse operated by the Commissioner; or
- (b) the ordinary business hours of the state warehouse, in the case of a delivery to a licensed state warehouse.

**Part 2: Retention of goods at, or removal of goods to, licensed premises other than state warehouses**<sup>583</sup>

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<sup>583</sup> Note that this Part facilitates Part 3 of Chapter 27 of the Control Act; in other words, where goods are removed to licensed premises as if those premises were state warehouses.



**Application for authorisation to retain or remove goods for state warehousing purposes on or to licensed premises other than state warehouses** (*section 580(1)*)

**27.5** (1) A licensee or other person in physical control of goods referred to in section 580(1) of the Control Act may in accordance with this rule apply for authorisation contemplated in that section—

- (a) to retain the goods for state warehousing on the licensed premises where the goods are currently located; or
- (b) to remove the goods for state warehousing to licensed premises other than a state warehouse.

(2) (a) An application for authorisation referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the licensed premises where the goods are to be state warehoused.

(3) An application referred to in subrule (2) must reflect the following information:

- (a) The name and customs code of the applicant;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>584</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>585</sup>
- (c) whether section 570(1) applies to the goods or whether a direction in terms of section 570(2) was issued in relation to the goods and, if a direction was issued, the reference number of the direction;
- (d) the customs code of the licensed premises where the goods are to be retained or to which the goods are to be removed;

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<sup>584</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>585</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers who submit documents on behalf of applicants in that capacity.

- (e) the goods description;<sup>586</sup>
- (f) whether the goods are dangerous goods and, if so, the relevant dangerous goods code applicable to the goods, or any warning markings on the goods;
- (g) whether there are any special storage requirements in relation to the goods;
- (h) in the case of perishable goods, any indicated expiry date;
- (i) in the case of goods that have been cleared, the movement reference number<sup>587</sup> of the clearance declaration submitted in relation to the goods;
- (j) in the case of goods that have not been cleared, the transport document number of the transport document issued in respect of the goods;
- (k) the reason why section 570(1) or (2) became applicable to the goods;
- (l) the reason why the goods are—
  - (i) to be retained on those premises; or
  - (ii) to be removed to other licensed premises other than a state warehouse; and
- (m) whether, to the knowledge of the applicant—
  - (i) there are any charges outstanding in respect of the goods at the time of submission of the application; and
  - (ii) the goods are the subject of any legal proceedings.

(4) The reason referred to in subrule (3)(k) or (l) may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Submission of retention notices by licensees in respect of goods to be retained on licensed premises** (*section 581(2)*)

**27.6** (1) If goods are in compliance with a direction or under authority of an authorisation issued in terms of section 580(1)(a) of the Control Act to be retained for state warehousing purposes on any licensed premises where the goods are currently located, the licensee of those premises must submit a notice of retention of the goods on those premises electronically, through eFiling subject to section 913(4), to the customs officer in charge of the recording state warehouse.

<sup>586</sup> See definition of “goods description” in rule 27.1

<sup>587</sup> See definition of “movement reference number” in rule 1.1.

(2) A retention notice referred to in subrule (1) must reflect the following information:

- (a) The name of the licensee of the licensed premises where the goods are to be retained and the customs code of those premises;
- (b) if the notice is submitted by a customs broker or ordinary representative<sup>588</sup> on behalf of the licensee, the information specified in rule **41.14**,<sup>589</sup>
- (c) the reference number of the section 580(1) authorisation authorising or direction directing the retention of the goods on those premises;
- (d) whether section 570(1) applies to the goods or whether a direction in terms of section 570(2) was issued in relation to the goods and, if a direction was issued, the reference number of that direction;
- (e) the goods description;<sup>590</sup>
- (f) the condition of the goods;
- (g) whether the goods are dangerous goods and, if so, the relevant dangerous goods code applicable to the goods, or any warning markings on the goods;
- (h) whether there are any special storage requirements in relation to the goods;
- (i) in the case of perishable goods, any indicated expiry date;
- (j) in the case of goods that have been cleared, the movement reference number<sup>591</sup> of any clearance declaration issued in relation to the goods;
- (k) in the case of goods that have not been cleared, the transport document number of the transport document issued in respect of the goods;
- (l) the reason why section 570(1) or (2) became applicable to the goods, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules; and
- (m) whether, to the knowledge of the person referred to in paragraph (a)—
  - (i) there are any charges outstanding in respect of the goods at the time of submission of the notice; or

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<sup>588</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>589</sup> If the notice is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the notice must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notices on behalf of licensees in that capacity.

<sup>590</sup> See definition of “goods description” in rule 27.1

<sup>591</sup> See definition of “movement reference number” in rule 1.1

- (ii) the goods are the subject of any legal proceedings.

(3) All supporting documents relating to the goods that are in the possession of the licensee submitting the notice must be submitted to the customs officer in charge of the recording state warehouse on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Submission of removal notices by persons in physical control of goods to be removed to licensed premises other than state warehouses** (*section 581*)

**27.7** (1) (a) If goods are in compliance with a direction or under authority of an authorisation issued in terms of section 580(1)(b) of the Control Act to be removed to licensed premises other than a state warehouse, the licensee or other person referred to in section 580(1) in physical control of the goods must submit the removal notice referred to in section 581(a) to—

- (i) the licensee of the premises to which the goods are removed; and
- (ii) the customs officer in charge of the recording state warehouse.

(b) A removal notice referred to in paragraph (a) must be submitted—

- (i) by email, telefax or hand delivery to the licensee of the premises to which the goods are removed; and
- (ii) electronically through eFiling, subject to section 913(4), to the customs officer in charge of the recording state warehouse.

(2) A removal notice referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person that will remove the goods or, if that person does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>592</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**,<sup>593</sup>

<sup>592</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>593</sup> If the notice is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person that must remove the goods, the notice must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which

- (c) the customs code of the licensed premises to which the goods will be removed;
- (d) the reference number of the section 580(1) authorisation authorising or direction directing the removal of the goods to those premises;
- (e) whether section 570(1) applies to the goods or whether a direction in terms of section 570(2) was issued in relation to the goods and, if a direction was issued, the reference number of the direction;
- (f) the estimated date and time of delivery of the goods at the licenced premises to which the goods are removed;
- (g) the name and customs code of the carrier or other person that will transport the goods;
- (h) the goods description;<sup>594</sup>
- (i) the condition of the goods;
- (j) whether the goods are dangerous goods and, if so, the relevant dangerous goods code applicable to the goods, or any warning markings on the goods;
- (k) whether there are any special storage requirements in relation to the goods;
- (l) in the case of perishable goods, any indicated expiry date;
- (m) in the case of goods that have been cleared, the movement reference number<sup>595</sup> of the clearance declaration submitted in relation to the goods;
- (n) in the case of goods that have not been cleared, the transport document number;
- (o) whether, to the knowledge of the person referred to in paragraph (a)—
  - (i) there are any charges outstanding in respect of the goods at the time of submission of the notice; or
  - (ii) the goods are the subject of any legal proceedings; and
- (p) the reason why section 570(1) or (2) became applicable to the goods, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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per definition exclude persons submitting documents as customs brokers and registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit notifications on behalf of such persons in that capacity.

<sup>594</sup> See definition of “goods description” in rule 27.1

<sup>595</sup> See definition of “movement reference number” in rule 1.1

(3) All supporting documents relating to the goods that are in the possession of the person referred to in subrule (2)(a) must be submitted to the customs officer in charge of the recording state warehouse on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Unpacking of containers containing goods of different consignors or consignees** (*section 600*)

**27.8** (1) If a consignment of goods packed in a container is to be removed in compliance with a direction or under authority of an authorisation of the customs authority in terms of section 580(1)(b) of the Control Act to any licensed premises other than a state warehouse and that container also contains a consignment of goods not affected by that direction or authorisation—

- (a) the affected consignment must be removed from the container for removal to those premises; and
- (b) the unaffected consignment in the container must be allowed to proceed in accordance with the Control Act.

(2) If subrule (1) applies, the affected container must be removed to a container depot for such removal.

***Part 3: Redirection of goods to be removed to state warehouses or authorised licensed premises***

**Application for permission to redirect goods to other places** (*section 574*)

**27.9** (1) (a) An application for permission contemplated in section 574 or 584 of the Control Act to redirect the transport of goods to a place other than the state warehouse determined in terms of section 570(3) or the licensed premises determined in terms of section 580(1)(b), must, before the goods are redirected to that other place, be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the goods are.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the licensee or other person in physical control of the goods applying for the permission;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>596</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>597</sup>
- (c) whether section 570(1) applies to the goods or whether a direction in terms of section 570(2) was issued in relation to the goods and, if a direction was issued, the reference number of the direction;
- (d) whether a direction or authorisation in terms of section 580(1)(b) was issued in relation to the goods and, if so, the reference number of the direction or authorisation;
- (e) the goods description of the goods to be redirected;<sup>598</sup>
- (f) the customs code of the premises to which the goods are to be redirected or, if those premises do not have a customs code, the physical address of the premises; and
- (g) the reason for the intended redirection, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) Any permission granted for the redirection of the goods in terms of section 574 or 584 is subject to a condition that the goods must for accounting purposes be recorded in the accounting records of—

- (a) a state warehouse operated by the Commissioner, as may be determined by the customs authority; or
- (b) the state warehouse determined in terms of section 580(3) as the state warehouse in whose accounting records those goods must be recorded.

#### ***Part 4: Delivery and receipt notifications***

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<sup>596</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>597</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers who submit documents in that capacity.

<sup>598</sup> See definition of “goods description” in rule 27.1

**Recording of receipt by carriers when receiving goods for transport for state warehousing purposes** (sections 570, 580 and 600)

**27.10** (1) When a carrier<sup>599</sup> receives goods for transport to a state warehouse, any licensed premises contemplated in section 580(1)(b) of the Control Act or any other place to which the goods are redirected in terms of a permission granted in terms of section 574 or 584, the carrier must record the information referred to in subrule (2) concerning the receipt of the goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.

(2) The following information must be reflected when recording the receipt of goods in terms of subrule (1):

- (a) The name and customs code of the carrier receiving the goods or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (b) the date and time the carrier received the goods;
- (c) the customs code of the customs controlled area where the carrier received the goods or, if the place where the carrier received the goods is not a customs controlled area, the physical address or other specifics of that place;
- (d) in the case of goods that have been cleared, the movement reference number<sup>600</sup> of the clearance declaration submitted in relation to the goods;
- (e) the destination of the goods;
- (f) the transport document number or unique consignment reference number; and
- (g) the goods description in relation to the goods received.

(3) A record of receipt referred to in this rule must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>599</sup> This includes all licensed and non-local carriers who have registered agents in the Republic transporting goods in the Republic.

<sup>600</sup> See definition of "movement reference number" in rule 1.1



**Delivery notifications by carriers when delivering goods at destination**  
(sections 570(5)(a), 580(6)(a) and 600)

**27.11** (1) A carrier that transports goods to any state warehouse under the control of the Commissioner, any licensed state warehouse, any licensed premises contemplated in section 580(1)(b) of the Control Act or any other place to which the goods are redirected in terms of a permission granted in terms of section 574 or 584 must, within three hours of delivery of the goods, notify the customs authority of the delivery of the goods.

(2) A delivery notification referred to in subrule (1) must be—

- (a) on Form ...as published as a rule on the SARS website; and
- (b) submitted to the customs authority—
  - (i) electronically through eFiling, if this mode of submission is available for such notifications;
  - (ii) by e-mailing the notification to the Customs Office that serves the area in which the state warehouse to which the goods are delivered or in which the goods are recorded is situated;
  - (iii) by telefaxing the notification to that Customs Office; or
  - (iv) by delivering the notification by hand to that Customs Office.

(3) A delivery notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the carrier or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>601</sup> on behalf of the carrier, the information specified in rule **41.14**;
- (c) in the case of goods that have been cleared, the movement reference number<sup>602</sup> of the clearance declaration submitted in relation to the goods;
- (d) the date and time of delivery of the goods;

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<sup>601</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>602</sup> See definition of “movement reference number” in rule 1.1

- (e) the customs code or physical address of the state warehouse, licensed premises or other place where the goods were delivered;
- (f) confirmation that the goods delivered by the carrier correspond with the goods description on the carrier's record of receipt submitted in terms of rule **27.10**; and
- (g) if no confirmation referred to in paragraph (f) can be given, the reason why confirmation cannot be given, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Submission of notifications by carriers not located in Republic** (*section 600*)

**27.12** A record of receipt or a delivery notification that must in terms of rule **27.10**(3) or **27.11** be submitted to the customs authority by a carrier must, in the case of a carrier that is not located in the Republic, be submitted either by the carrier or that carrier's registered agent in the Republic.

**Receipt notifications for goods received at state warehouses, other licensed premises and places to which goods are redirected** (*section 570(5)(b), 580(6)(b) and 600*)

**27.13** (1) If goods are received at a state warehouse under the control of the Commissioner or a licensed state warehouse in compliance with section 570(1) or a direction issued in terms of 570(2), or at other licensed premises in compliance with a direction or under an authorisation issued in terms of section 580(1)(b), or at any other place under a permission granted in terms of section 574 or 584, the customs officer in charge of that state warehouse, the licensee of that licensed state warehouse or those other licensed premises, or the licensee or other person in control of that other place, as the case may be, must within three hours of receipt of the goods, notify the customs authority of the receipt of the goods.

- (2) A receipt notification referred to in subrule (1) must be—
  - (a) on Form ...as published as a rule on the SARS website; and
  - (b) submitted to the customs authority—
    - (i) electronically through eFiling, if this mode of submission is available for such notifications;

- (ii) by e-mailing the notification to the Customs Office that serves the area in which the state warehouse to which the goods are delivered or in which the goods are recorded is situated;
- (iii) by telefaxing the notification to that Customs Office; or
- (iv) by delivering the notification by hand to that Customs Office.

(3) A receipt notification referred to in subrule (1) must reflect the following information:

- (a) The name of the licensee of the licensed state warehouse, other licensed premises or other place where the goods were received or, if that other place is not licensed premises, the name of the person in control of that place;
- (b) if the notification is submitted by a customs broker or ordinary representative<sup>603</sup> on behalf of the licensee, the information specified in rule **41.14**;<sup>604</sup>
- (c) the customs code of the state warehouse, other licensed premises or other place where the goods were received or, if that other place does not have a customs code, the physical address of that place;
- (d) the name and customs code of the carrier that delivered the goods or, in the case of a non-local carrier, the name or customs code of the carrier and the name and customs code of the registered agent of the carrier;
- (e) in the case of goods that have been cleared, the movement reference number of the clearance declaration submitted in relation to the goods;
- (f) the reference number of—
  - (i) the removal notice submitted to the state warehouse licensee in terms of section 571(1)(b); or
  - (ii) the notice submitted to the licensee of the other licensed premises in terms of section 580(4);
- (g) the date and time of receipt of the goods at the state warehouse, licensed premises or other place;

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<sup>603</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>604</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in that capacity.

- (h) confirmation that the goods description<sup>605</sup> on the removal notice submitted to the state warehouse licensee in terms of section 571 or to the licensee of those other licensed premises in terms of section 581 corresponds with the goods received; and
- (i) if no confirmation referred to in paragraph (h) can be given, the reason why confirmation cannot be given, which may be motivated in a separate supporting document produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

***Part 5: Reclaim of goods in or accounted for in state warehouses***<sup>606</sup>

**Timeframe for reclaiming of goods in or accounted for in state warehouses**  
(section 590(1))

**27.14** (1) The timeframes<sup>607</sup> within which goods in or accounted for in a state warehouse may in terms of section 590(1) of the Control Act be reclaimed, are as follows:

- (a) For the categories of goods reclaimed under section 590(1)(a) to (e): A period commencing on the date when the goods were received in or accounted for in the state warehouse and ending 30 calendar days after the date of publication of the list referred to in section 589(1) in which those goods are included.
- (b) For categories of goods reclaimed under section 590(1)(f):
  - (i) In the case of goods in or accounted for in a state warehouse in error or without legal justification,<sup>608</sup> a period commencing on the date when the customs authority admits the error or absence of justification or the error or absence of justification is confirmed in administrative appeal proceedings or by a court in a final judgement and ending, subject to

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<sup>605</sup> See definition of “goods description” in rule 27.1

<sup>606</sup> For the reclaim of goods in or accounted for in a state warehouse on account of an attachment in terms of section 704 of the Control Act, section 50 of the Customs Duty Act or section 114 of the Excise Duty Act for purposes of establishing a lien over the goods and that are released from the lien without being disposed of, see the provisions dealing with such liens.

<sup>607</sup> Note that the timeframes set out in this rule may be shortened or extended in terms of section 908 or 909 of the Control Act.

<sup>608</sup> For instance where goods were seized or confiscated without justification or customs erroneously issues a direction in terms of section 570(2) for the state warehousing of goods. Such mistakes will usually come to light in Chapter 37 proceedings.

- subrule (2), 30 calendar days after the date of publication of the list referred to in section 589(1) in which those goods are included;
- (ii) in the case of goods falling within a category referred to in section 570(1)(a)(ii), a period commencing on the date when the goods were received in or accounted for in the state warehouse until the expiry of 30 calendar days from the date of publication of the list referred to in section 589(1) in which those goods are included.

(2) If the ground for the state warehousing of goods is the subject of any administrative appeal or court proceedings, the period applicable to the goods in terms of subrule (1)(b)(i) ends, despite that subrule, 30 calendar days after—

- (a) the decision in those administrative proceedings on the matter is given; or
- (b) the court decides the matter in a final judgement.

**Procedure for reclaiming goods** (*section 590(1)*)

**27.15** (1) If a person entitled to reclaim goods in or accounted for in a state warehouse that fall within a category referred to in section 590(1)(a) to (e) of the Control Act submits a clearance declaration, an amended clearance declaration or any other document contemplated in that section for purposes of reclaiming the goods, that clearance declaration, amended clearance declaration or other document must be—

- (a) submitted to the customs authority—
  - (i) within the timeframe referred to in rule **27.14**(1)(a); and
  - (ii) in accordance with the ordinary requirements applicable to the submission of clearance declarations, amended clearance declarations or such documents; and
- (b) supported by all documents that are ordinarily required to support such clearance declarations, amended clearance declarations or other documents.

(2) (a) If a person entitled to reclaim goods in or accounted for in a state warehouse that do not fall within a category referred to in section 590(1)(a) to

(e)<sup>609</sup> wishes to reclaim those goods, the goods must be reclaimed under section 590(1)(f) by the submission by or on behalf of the applicant of an application—

- (i) on Form..... as may be prescribed as a rule on the SARS website for this purpose;
- (ii) within the timeframe referred to in rule **27.14(1)(b)(i)** or (ii), as may be applicable to the goods.

(b) The application must be submitted either electronically through eFiling to the customs authority or manually to the state warehouse where the goods are or in which the goods are accounted for.

(3) An application referred to in subrule (2) must reflect the following information:

- (a) the name and customs code of the applicant or, if the if that person does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>610</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>611</sup>
- (c) the customs code of the state warehouse where the goods are or in which the goods are accounted for and, if the goods are kept on other licensed premises or any other place, also the customs code or physical address of those premises or other place;
- (d) the goods description;<sup>612</sup>
- (e) the reason why the goods were state warehoused; and
- (f) the grounds for the reclaim, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Timeframe for removal of goods successfully reclaimed (section 591(1))**

<sup>609</sup> For instance goods in or accounted for in a state warehouse in error or without legal justification.

<sup>610</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>611</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents who submit documents in that capacity.

<sup>612</sup> See definition of “goods description” in rule **27.1**

**27.16** The timeframe within which goods in or accounted for in a state warehouse must in terms of section 591(1) of the Control Act be removed from the state warehouse or from the other premises where the goods are kept, is three working days from the date the customs authority releases the goods or otherwise approves the reclaim in terms of that section.<sup>613</sup>

**Procedure for removal of goods successfully reclaimed (sections 591 and 600)**

**27.17** (1) Goods in or accounted for in a state warehouse that have been successfully reclaimed in terms of section 590(1) of the Control Act may not be removed from the state warehouse or other premises where the goods are kept unless—

- (a) the person who reclaimed the goods has given notice to the customs authority of the intended removal on Form..... as may be prescribed as a rule on the SARS website for this purpose;<sup>614</sup> and
- (b) the customs authority has authorised such removal.

(2) The notification referred to in subrule (1)(a) may be submitted either electronically through eFiling to the customs authority or manually to the state warehouse where the goods are or are accounted for.

(3) A notification referred to in subrule (1) must reflect the following information:

- (a) the name or customs code of the person who successfully reclaimed the goods;
- (b) the customs code or physical address of the state warehouse or other premises where the goods are kept;
- (c) if the goods were reclaimed through a document referred to in rule **27.15(1)**, other than a clearance declaration or amended clearance declaration, the reference number of the document used for purposes of reclaiming the goods;
- (d) if the goods were reclaimed through an application in terms of rule **27.15(2)**, the reference number of the customs authority's approval of the application;

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<sup>613</sup> Note that this timeframe may be shortened or extended in terms of section 908 or 909 of the Control Act. See Rules **41.2** and **41.3**.

<sup>614</sup> Note that no notification is necessary if the goods are reclaimed through a clearance declaration or amended clearance declaration. See rule **27.17(4)**.

- (e) the date of the approval of the reclaim; and
- (f) the date on which the goods will be removed.

(4) If the customs authority releases for home use or a customs procedure goods reclaimed in terms of section 590(1)(a) to (d)—

- (a) the clearance declaration or amended clearance declaration submitted in terms of that section must be regarded to be the notification referred to in subrule (1)(a); and
- (b) the release notification issued by the customs authority in terms of section 180 read with section 174(4) must be regarded to be the authorisation referred to in subrule (1)(b).

(5) Goods may be removed from the state warehouse or other premises where the goods are kept only during the ordinary business hours of the state warehouse or such other premises on a working day.

### ***Part 6: Removal of sold goods from state warehouses or other premises***

#### **Timeframe for removal of sold goods (section 598)**

**27.18** The timeframe within which goods that have been sold in terms of section 592 or 593 of the Control Act must in terms of section 598(2) be removed from the state warehouse or other premises where the goods are kept, is three working days from the date of sale of the goods.<sup>615</sup>

#### **Procedure for removal of sold goods (sections 598 and 600)**

**27.19 (1)** Goods in or accounted for in a state warehouse that have been sold in terms of section 592 or 593 may not be removed from the state warehouse or other premises where the goods are kept unless—

- (a) the person who purchased the goods has notified the customs authority of the intended removal on Form..... as may be prescribed as a rule on the SARS website for this purpose; and
- (b) the customs authority has authorised such removal.

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<sup>615</sup> Note that this timeframe may be extended in terms of section 908 of the Control Act.



(2) The notification may be submitted either electronically through eFiling to the customs authority or manually to the state warehouse where the goods are or are accounted for.

- (3) A notification referred to in subrule (1) must reflect—
- (a) the name of the person to whom the goods were sold;
  - (b) the number of the invoice issued for the sale of the goods;
  - (c) the customs code or physical address of the state warehouse or other premises where the goods are kept; and
  - (d) the date on which the goods will be removed.

(4) Goods may be removed from the state warehouse or other premises where the goods are kept only during the ordinary business hours of the state warehouse or such other premises on a working day.

***Part 7: Removal of goods from state warehouses or other premises disposed of otherwise than by sales***

**Timeframe for removal of goods disposed of otherwise than by sales** (*section 596*)

**27.20** The timeframe within which goods that have been disposed of in terms of section 596(1) of the Control Act must in terms of section 596(4) be removed from the state warehouse or other premises where the goods are kept, is as the customs authority may direct.

**Procedure for removal of goods disposed of otherwise than by sales** (*sections 596 and 600*)

**27.21** (1) If goods in or accounted for in a state warehouse that have been donated, appropriated or made available to an organisation or organ of state in terms of section 596(1)(a), (b) or (c) of the Control Act are to be removed from the state warehouse or other premises where the goods are kept by that organisation or organ of state, those goods may not be removed unless—

- (a) the organisation or organ of state has notified the customs authority of the intended removal on Form..... as may be prescribed as a rule on the SARS website for this purpose; and
- (b) the customs authority has authorised such removal.

(2) The notification may be submitted either electronically through eFiling to the customs authority or manually to the state warehouse where the goods are or are accounted for.

(3) A notification referred to in subrule (1) must reflect—

- (a) the name of the organisation or organ of state to which the goods were donated, appropriated or made available;
- (b) the reference number of the customs authority's authorisation authorising the goods to be donated, appropriated or made available to the organisation or organ of state;
- (c) the customs code or physical address of the state warehouse or other premises where the goods are kept; and
- (d) the date on which the goods will be removed.

(4) Goods may be removed from the state warehouse or other premises where the goods are kept only during the ordinary business hours of the state warehouse or such other premises on a working day.

### ***Part 8: State warehouse rent***

#### **Goods on and rates at which state warehouse rent is payable (section 575(1)(a))**

**27.22** (1) State warehouse rent contemplated in section 575(1)(a) of the Control Act must, subject to the other provisions of this Part, be paid in respect of all goods in a state warehouse.

(2) State warehouse rent is charged at the following rates:

- (a) R57 per freight ton per calendar day for all goods other than goods referred to in paragraph (b) or (c);

- (b) R2 per kilogram per calendar day for accompanied and unaccompanied baggage of persons who entered or were leaving the Republic; and
- (c) R2 per kilogram per calendar day for goods referred to in section 91(1)(g) or (h).

(3) For purposes of subrule (2) the weight or volume of goods is measured by—

- (a) including the outer packing material used to pack, cover, protect, stow or separate goods being transported; and
- (b) in the case reusable transport equipment—
  - (i) including the pallet on which goods are stored for transport; or
  - (ii) excluding the container in which goods are stored for transport.

**Additional charges for goods requiring special care or treatment** (*section 575(1)(b)*)

**27.23** Any additional charges contemplated in section 575(1)(b) of the Control Act for goods in a warehouse that require special care or treatment—

- (a) may not exceed the actual costs incurred by the state warehouse in providing such special care or treatment; and
- (b) is recoverable as if those charges were part of the state warehouse rent payable in respect of those goods.

**Period for which state warehouse rent is charged** (*section 575*)

**27.24** (1) (a) State warehouse rent for goods successfully reclaimed in terms of section 590(1) of the Control Act is charged from the day the goods were received in the state warehouse up to the day the customs authority releases the goods or otherwise approves the reclaim in terms of section 591.

(b) If those goods are not removed from the state warehouse within the period applicable to the goods in terms of rule **27.16** and section 592(1)(c) is not applied to the goods, additional rent is charged from the day following the day on which that period expires until the day the goods are removed from the state warehouse.

(c) If section 592(1)(c) is applied to those goods, this subrule ceases to apply to the goods and subrule (2) becomes applicable to the goods.

(2) (a) State warehouse rent for goods sold in terms of section 592 or 593 is charged from the day the goods were received in the state warehouse up to the day on which the goods were sold.

(b) If those goods are not removed from the state warehouse within the period applicable to the goods in terms of rule **27.18** and section 598(2)(a) is applied to the goods, additional rent is charged from the date of sale up to the day the goods are removed from the state warehouse.

(3) When calculating the number of days in the period for which state warehouse rent is payable, the number of days must be calculated inclusive of both the day on which that period started and the day on which that period ended.

#### **Persons by whom state warehouse rent is payable**

**27.25** (1) State warehouse rent for goods referred to in—

- (a) rule **27.24**(1)(a) or (b) is payable by the person who successfully reclaimed the goods;
- (b) rule **27.24**(2)(a) is payable from the proceeds of the sale of the goods; or
- (c) rule **27.24**(2)(b) is payable by the purchaser of the goods.

(2) Subrule (1) must be read subject to rule **27.26**.

#### **Circumstances in which state warehouse rent may not be recovered from persons entitled to reclaim goods**

**27.26** No state warehouse rent charged in respect of goods in a state warehouse may be recovered from a person entitled to reclaim the goods if the goods were removed to or secured in the state warehouse—

- (a) in error;
- (b) on account of an alleged breach<sup>616</sup> of the Control Act or a tax levying Act and it is established either by the customs authority, in an administrative appeal or by a court in a final judgement that—
  - (i) no such breach was committed;

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<sup>616</sup> See definition of “breach” in section 1 of the Control Act.

- (ii) the act or omission that was committed did not constitute such a breach; or
  - (iii) the person entitled to reclaim the goods was not a party to the breach and did not benefit or stand to benefit from the breach;
- (c) on account of a detention, seizure or confiscation of the goods and, as may be appropriate—
- (i) the detention is terminated in terms of section 761(1)(e), (f) or (g);
  - (ii) the seizure is terminated in terms of section 764(1)(b), (c) or (d); or
  - (iii) the confiscation is withdrawn in terms of section 767(1)(b), (c) or (d);
- (d) on account of an attachment of the goods in terms of section 704 of the Control Act, section 50 of the Customs Duty Act or section 114 of the Excise Duty Act for purposes of establishing a lien over the goods and the goods are released from the lien<sup>617</sup> without being sold for purposes of paying the debt for which the lien was established; or
- (e) on account of an alleged contravention of legislation not administered by the Commissioner and it is established either by the authority administering that legislation or by a court in a final judgement that—
- (i) no such contravention was committed; or
  - (ii) the act or omission that was committed did not constitute such a contravention.

***Part 9: Storage fees for state warehousing of goods at premises other than state warehouses***

**Rates at which storage fees are payable (section 585(1))**

**27.27** Storage fees contemplated in section 585(1) of the Control Act charged by the licensee of licensed premises for goods retained at or removed to those premises for state warehouse purposes in terms of section 580(1), may not exceed the normal rates charged by that licensee for the storage of goods on those premises.

**Persons by whom storage fees are payable (section 585(2)(a))**

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<sup>617</sup> See for instance section 56(c) of the Customs Duty Act.

**27.28** (1) Storage fees charged by the licensee of licensed premises for goods retained at or removed to those premises in terms of section 580(1) of the Control Act for state warehouse purposes, are—

- (a) in the case of goods successfully reclaimed in terms of section 590(1), payable by the person who reclaimed the goods; or
- (b) in the case of goods sold in terms of section 592 or 593, payable from the proceeds of the sale of the goods: Provided that if additional storage fees become payable due to a failure to remove the goods from those premises within the timeframe applicable to the goods in terms of rule **27.18** and section 598(2)(a) is applied to the goods, the additional storage fees are payable by the purchaser.

(2) Subrule (1) must be read subject to rule **27.29**.

**Circumstances in which storage fees may not be recovered from persons entitled to reclaim goods**

**27.29** No storage fees charged in respect of goods retained at or removed to licensed premises for state warehouse purposes may be recovered from a person entitled to reclaim the goods if the goods were retained at or removed to those premises—

- (a) in error;
- (b) on account of an alleged breach<sup>618</sup> of the Control Act or a tax levying Act and it is established either by the customs authority, in an administrative appeal, by a court in a final judgement or as a result of the settlement of a dispute that—
  - (i) no such breach was committed;
  - (ii) the act or omission that was committed did not constitute such a breach; or
  - (iii) the person entitled to reclaim the goods was not a party to the breach and did not benefit or stand to benefit from the breach;
- (c) on account of a detention, seizure or confiscation of the goods and, as may be appropriate—

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<sup>618</sup> See definition of “breach” in section 1 of the Control Act.

- (i) the detention is terminated in terms of section 761(1)(e), (f) or (g) of the Control Act;
- (ii) the seizure is terminated in terms of section 764(1)(b), (c) or (d); or
- (iii) the confiscation is withdrawn in terms of section 767(1)(b), (c) or (d);
- (d) on account of an attachment of the goods in terms of section 704 of the Control Act, section 50 of the Customs Duty Act or section 114 of the Excise Duty Act for purposes of establishing a lien over the goods and the goods are released from the lien without being sold for purposes of paying the debt in respect of which the lien was established; or
- (e) on account of an alleged contravention of legislation not administered by the Commissioner and it is established either by the authority administering that legislation or by a court in a final judgement that—
  - (i) no such contravention was committed; or
  - (ii) the act or omission that was committed did not constitute such a contravention.

**Part 10: Record keeping of goods in or accounted for in state warehouses**

**State warehouse registers (section 576)**

**27.30** (1) The customs officer or licensee in charge of a state warehouse must keep and maintain a state warehouse register for purposes of keeping record of—

- (a) all goods received in that state warehouse in terms of section 570(3) of the Control Act;
- (b) all goods accounted for in that state warehouse in terms of section 580(3) or rule **27.9(3)**;
- (c) all goods removed from—
  - (i) that state warehouse, in the case of goods referred to in paragraph (a); and
  - (ii) the licensed premises or other place where the goods are kept, in the case of goods referred to in paragraph (b); and
- (d) any goods in the state warehouse or on those premises that are damaged or destroyed or that have become lost or unaccounted for.

- (2) A state warehouse register must—

- (a) be computer based; and
- (b) reflect the information referred to in rule **27.32**.

**Unique state warehouse inventory codes** (*section 576*)

**27.31** (1) The customs officer or licensee in charge of a state warehouse must for purposes of identifying goods in or accounted for in that state warehouse assign a unique state warehouse inventory code to each consignment of those goods—

- (a) in the case of goods in that state warehouse, upon receipt of the goods in the state warehouse; or
- (b) in the case of goods accounted for in that state warehouse, upon receipt of the retention notice referred to in rule **27.6** or the removal notice referred to in rule **27.7** submitted in respect of that consignment.

(2) The unique state warehouse inventory code assigned to a consignment of goods must be—

- (a) recorded in the state warehouse register; and
- (b) displayed on that consignment by means of marking the goods or attaching a label to the goods.

**Information to be recorded in state warehouse registers** (*section 576*)

**27.32** (1) The state warehouse register kept in terms of rule **27.30** must reflect the following information in respect of each consignment of goods received in or accounted for in the state warehouse:

- (a) Whether the goods were—
  - (i) removed to the state warehouse;
  - (ii) retained for state warehousing purposes at the licensed premises where the goods were;
  - (iii) removed for state warehousing purposes to licensed premises other than a state warehouse; or
  - (iv) redirected to another place in terms of section 574 or 584;
- (b) the customs code or name and contact details of the person who—
  - (i) in compliance with section 570(1) of the Control Act or a direction issued in terms of section 570(2) was responsible for removing the goods to the state warehouse;



- (ii) in compliance with a direction or under authority of an authorisation issued in terms of section 580(1)(a) was responsible for retaining the goods for state warehousing purposes at the licensed premises where the goods were;
  - (iii) in compliance with a direction or under authority of an authorisation issued in terms of section 580(1)(b) was responsible for removing the goods for state warehousing purposes to licensed premises other than a state warehouse; or
  - (iv) under a permission issued in terms of section 574 or 584 was responsible for redirecting the goods for state warehousing purposes to another place;
- (c) in the case of paragraph (b)(ii), (iii) or (iv), the reference number of the direction, authorisation or permission under which the goods were for state warehousing purposes retained at or removed to those premises or redirected to that other place;
- (d) in the case of goods removed to a state warehouse, licensed premises that are not a state warehouse or a place to which the goods were redirected—
  - (i) the customs code of the carrier or other licensee that delivered the goods to the state warehouse, those premises or that other place; and
  - (ii) the date on which the goods were received in the state warehouse, those premises or that other place;
- (e) in the case of goods retained for state warehousing purposes on the licensed premises where the goods were, the date from which the goods were retained;
- (f) the reason why the goods became subject to state warehousing;
- (g) in the case of goods imported or that were destined for export from the Republic—
  - (i) the customs code of the importer, exporter or owner of the goods and, if the importer, exporter or owner is not located in the Republic, also of the registered agent in the Republic of the importer, exporter or owner;
  - (ii) if the importer or exporter is a traveller, the traveller's name, contact details and passport or other travel document number; or

- (iii) if the importer, exporter or owner is unknown, a statement to that effect;
- (h) in the case of goods that were seized or confiscated, the name and contact details of the owner or person in whose possession the goods were;
- (i) in the case of goods manufactured in the Republic to which the Excise Duty Act applies, the excise code of the manufacturer;
- (j) in the case of lien goods referred to in section 570(2)(b), a statement to that effect and the name and contact details of the owner of the goods;
- (k) the goods description;<sup>619</sup>
- (l) the condition of the goods;
- (m) whether the goods are dangerous goods and, if so, the relevant dangerous goods code applicable to the goods, or any warning markings on the goods;
- (n) whether there are any special storage requirements in relation to the goods;
- (o) in the case of perishable goods, any indicated expiry date;
- (p) in the case of goods that have been cleared, the movement reference number<sup>620</sup> of the clearance declaration submitted in relation to the goods;
- (q) the transport document number in relation the goods;
- (r) the shelve or block number where the goods are stored in the state warehouse or the licensed premises on which the goods were retained or to which the goods were removed, if applicable;
- (s) whether there are any taxes, administrative penalties or interest outstanding or payable in connection with the goods and, if so—
  - (i) the type of tax or penalty; and
  - (ii) the amount outstanding or payable;
- (t) whether there are any expenses incurred by the Commissioner outstanding or payable in connection with the goods and, if so—
  - (i) the type of expense incurred; and
  - (ii) the amount outstanding or payable;
- (u) whether there are any charges or expenses referred to in section 595(1)(d), (e), (f) or (g) outstanding or payable in connection with the goods and, if so—
  - (i) particulars of the charge or expense;
  - (ii) the amount outstanding or payable; and

<sup>619</sup> See definition of “goods description” in rule 27.1

<sup>620</sup> See definition of “movement reference number” in rule 1.1

- (iii) the person to whom payable; and
- (v) whether the goods are the subject to any administrative appeal or judicial proceedings.

(2) If a consignment of goods is to be removed from a state warehouse or the licensed premises or other place where the goods are kept for state warehousing purposes, the following additional information must be recorded in the state warehouse register in respect of the relevant consignment of goods:

- (a) In the case of goods successfully reclaimed in terms of section 590(1)—
  - (i) the name and customs code of the person who successfully reclaimed the goods, or if that person does not have a customs code, the information required in terms of rule **41.15**;
  - (ii) the reference number of any release notification or other approval issued by the customs authority in terms of section 591;
  - (iii) the amount of each claim referred to in section 591(2);
  - (iv) whether all those claims have been paid; and
  - (v) the reference number of the authorisation issued by the customs authority in terms of rule **27.17** for the removal of the goods;
- (b) in the case of goods that have been sold—
  - (i) the date of sale;
  - (ii) the name, physical address and contact details of the purchaser;
  - (iii) the purchase price;
  - (iv) if the goods were sold conditionally, details of the condition subject to which the goods were sold;
  - (v) date when the purchase price was paid in full;
  - (vi) whether the purchase price was sufficient to pay all claims referred to in section 595(1) and, if not, the amount on each claim that remained unpaid; and
  - (vii) the reference number of the authorisation issued by the customs authority in terms of rule **27.19** for the removal of the goods;
- (c) in the case of goods disposed of in terms of section 596—
  - (i) the manner in which the goods are to be disposed of;

- (ii) if the goods are donated, appropriated or made available to an organisation or organ of state, the name, physical address and contact details of that organisation or organ of state; and
- (iii) the reference number of the authorisation issued by the customs authority in terms of rule **27.21** for the removal of the goods;
- (d) the date of removal of the goods;
- (e) the name and customs code or SARS tax reference number, and contact details, of the person who physically removes the goods or, if that person does not have a customs code or SARS tax reference number, the number and type of that person's identification document; and
- (f) the means of transport used for the removal, and if by vehicle, the registration number of the vehicle.

(3) If goods in a state warehouse or on other premises or place where goods are kept for state warehousing purposes are damaged or destroyed or become lost or unaccounted for, the following additional information must be recorded in the state warehouse register in respect of the relevant consignment of goods:

- (a) Whether the goods are damaged, destroyed, lost or unaccounted for;
- (b) the cause, distinguishing between—
  - (i) in the case of goods that were damaged, destroyed or lost—
    - (aa) a natural occurrence;
    - (bb) an accident;
    - (cc) a hostile act by another person; and
    - (dd) the inherent characteristics of the goods; and
  - (ii) in the case of goods that have become unaccounted for—
    - (aa) a short delivery;
    - (bb) an administrative error in any documents relating to the goods; and
    - (cc) another justifiable cause;
- (c) any explanation as to why the event occurred;
- (d) whether the damaged goods or any scrap that remained in the case of destroyed goods are capable of being economically sold; and

- (e) whether, and when, steps were taken to report the matter in terms of Chapter 25 of the Control Act.<sup>621</sup>

### **Record to be kept of all supporting and other documents**

**27.33** The customs officer or licensee in charge of a state warehouse must in addition to the information referred to in rule **27.32**, keep record of all documents pertaining to goods received in or accounted for in the state warehouse from the time those goods are received in or accounted for in the state warehouse until the goods are removed from the state warehouse or the licensed premises on which the goods were retained or to which the goods were removed for state warehouse purposes, including all—

- (a) supporting documents referred to in section 571(2) or 581(b) of the Control Act;
- (b) removal notices received in terms of section 571(1) or 581(1);
- (c) retention notices received in terms of section 581(2);
- (d) receipt notices referred to in section 570(5)(b) or 580(6)(b);
- (e) invoices in relation to expenses or charges incurred in relation to the goods;
- (f) release notifications or other approvals issued by the customs authority with regard to goods successfully reclaimed in terms of section 590(1); and
- (g) authorisations issued in terms of rule **27.17**, **27.19** or **27.21** for the removal of the goods from a state warehouse or premises where the goods are kept for state warehousing purposes.

### **Reports to be submitted by licensees of state warehouses in connection with goods in state warehouses** (*section 577*)

**27.34** (1) (a) A report contemplated in section 577 of the Control Act must be submitted to the customs authority electronically through eFiling subject to rule **41.13**.

(b) If a report referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the report must be submitted to the Customs Office that serves the area in which the state warehouse is situated.

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<sup>621</sup> Note that Chapter 25 does not apply to goods in a state warehouse operated by the Commissioner. See section 540(2)(a).

(2) A report referred to in subrule (1) must be in the form of a computer extract of the state warehouse register contemplated in rule **27.32** covering all entries in the register relating to goods during the relevant reporting period, and must reflect—

- (a) the customs code of the state warehouse; and
- (b) if the report is submitted by a customs broker or ordinary representative<sup>622</sup> on behalf of the licensee of the storage warehouse, the information specified in rule **41.14**.<sup>623</sup>

### ***Part 11: Miscellaneous matters***

#### **Timeframe for compliance with conditions of sale (section 597)**

**27.35** The timeframe for purposes of section 597 of the Control Act is within five calendar days from the date of sale of the goods.<sup>624</sup>

#### **Application to pay over surplus remaining after meeting of claims (section 595(2))**

**27.36** (1) (a) An application referred to in section 595(2) of the Control Act must be submitted to the customs authority by the owner electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office that serves the area where the state warehouse that conducted the sale is situated.

(2) An application referred to in subrule (1) must reflect—

<sup>622</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>623</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee of the state warehouse, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit these reports on behalf of licensees in that capacity.

<sup>624</sup> Note that application may be made in terms of rule **41.2** for extension of this timeframe in cases where, for example, a condition of sale requires the obtaining of a permit.

- (a) the name and customs code of the applicant, or if the applicant does not have a customs code, the information required in terms of rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>625</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>626</sup>
- (c) the banking details of the applicant's bank account into which the amount owed to the applicant must be paid;
- (d) the customs code of the state warehouse or licensed premises where the goods were before being sold;
- (e) the lot number of the goods on the list published in terms of section 589;
- (f) a statement that the applicant was the owner of the goods; and
- (g) a request to pay over any surplus of the proceeds of sale of the goods.

(3) If the customs authority so requests, proof of ownership referred to in section 595(2)(a) must within the timeframe indicated in the request be submitted to the customs authority.

**Timeframe within which imported goods excluded from clearance requirements must be claimed to avoid state warehousing** (*section 570(1)(a)(ii)*)

**27.37** To avoid being state warehoused, goods referred to in section 570(1)(a)(ii)<sup>627</sup> of the Control Act must be claimed within three working days after having been off-loaded from the means of transport in which the goods were imported into the Republic.

**Measures to ensure effective state warehouse operation and control** (*section 600*)

**27.38** The customs officer or licensee in charge of a state warehouse or the licensee of premises where goods are state warehoused must ensure that—

<sup>625</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>626</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

<sup>627</sup> These goods consist of accompanied and unaccompanied baggage and low value or no value goods not required to be cleared.

- (a) goods in the state warehouse or on those premises are stored in a safe and secure environment and that adequate security measures are taken for the protection of the goods, including—
  - (i) locking and guarding of buildings;
  - (ii) exercising control over any keys to buildings on the premises;
  - (iii) monitoring and controlling access to the premises and requiring visitors to sign an admittance register and to display visitor's permits; and
  - (iv) implementing any additional safety and control measures in respect of high value or high risk goods;
- (b) goods are labelled clearly and accurately and stored and arranged in an orderly manner that facilitates stock checks which must be performed on a regular basis;
- (c) that any racks or shelves are numbered and floors are marked according to rows to enable the whereabouts of specific goods to be easily determined;
- (d) goods of a perishable or dangerous nature are stored in conditions appropriate to the nature of the goods; and
- (e) suitable handling and loading equipment and other tools required for wrapping and opening of packages are available on the premises.

### **Storage of counterfeit goods in state warehouses**

**27.39** This Chapter does not apply to counterfeit goods stored in a state warehouse, and such goods must be kept apart from other goods in the warehouse and dealt with in accordance with the provisions applicable to counterfeit goods.



DRAFT

## CHAPTER 28

### REGISTRATION

#### Definitions

**28.1** In this Chapter, unless the context otherwise indicates—

“**applicant**” means a person who intends to submit or has submitted an application;

“**application**” means an application in terms of Chapter 28 of the Control Act for—

- (a) registration;
- (b) the renewal of a registration; or
- (c) the amendment of a registration certificate.

#### ***Part 1: Registration types***

##### **Registration types for importers** (*section 603*)

**28.2** The registration types that may in terms of section 603 of the Control Act be issued for the registration of persons as importers are—

- (a) registration as a local general importer;
- (b) registration as a non-local general importer;
- (c) registration as a local CTC importer;
- (d) registration as a non-local CTC importer;
- (e) registration as an importer for SEZ CCA development; or
- (f) registration as a casual importer.

##### **Registration types for exporters** (*section 603*)

**28.3** The registration types that may in terms of section 603 of the Control Act be issued for the registration of persons as exporters are—

- (a) (i) registration as a local general exporter;
- (ii) registration as a non-local general exporter;
- (iii) registration as a local CTC exporter; or

- (iv) registration as a non-local CTC exporter;
- (b) (i) registration as a local exporter for SACU-EFTA preferential tariff treatment;
- (ii) registration as a non-local exporter for SACU-EFTA preferential tariff treatment;
- (iii) registration as an approved local exporter for SACU-EFTA preferential tariff treatment; or
- (iv) registration as an approved non-local exporter for SACU-EFTA preferential tariff treatment;
- (c) (i) registration as a local exporter for SADC preferential tariff treatment; or
- (ii) registration as a non-local exporter for SADC preferential tariff treatment;
- (d) (i) registration as a local exporter for SADC EPA preferential tariff treatment;
- (ii) registration as a non-local exporter for SADC EPA preferential tariff treatment;
- (iii) registration as an approved local exporter for SADC EPA preferential tariff treatment; or
- (iv) registration as an approved non-local exporter for SADC EPA preferential tariff treatment;
- (e) (i) registration as a local exporter for SACU - MERCOSUR Agreement preferential tariff treatment; or
- (ii) registration as a non-local exporter for SACU - MERCOSUR Agreement preferential tariff treatment;
- (f) (i) registration as a local exporter for preferential tariff treatment under AGOA's GSP; or
- (ii) registration as a non-local exporter for preferential tariff treatment under AGOA's GSP;
- (g) (i) registration as a local exporter for preferential tariff treatment under Russia's GSP; or
- (ii) registration as a non-local exporter for preferential tariff treatment under Russia's GSP;
- (h) (i) registration as a local exporter for preferential tariff treatment under Norway's GSP; or

- (ii) registration as a non-local exporter for preferential tariff treatment under Norway's GSP;
- (i) (i) registration as a local exporter for preferential tariff treatment under Turkey's GSP; or
- (ii) registration as a non-local exporter for preferential tariff treatment under Turkey's GSP; or
- (j) registration as a casual exporter.

**Registration types for persons acquiring ownership of goods whilst under customs procedures** (*section 604*)

**28.4** The registration types that may in terms of section 604 of the Control Act be issued for the registration of persons acquiring ownership of goods whilst under a customs procedure are—

- (a) registration as a local person acquiring ownership of goods under a customs procedure; or
- (b) registration as a non-local person acquiring ownership of goods under a customs procedure.

**Registration types for agents of non-local licensees and registered persons** (*section 605*)

**28.5** The registration types that may in terms of section 605 of the Control Act be issued for the registration of persons as agents in the Republic for non-local licensees or registered persons are—

- (a) registration as an agent for non-local importers;
- (b) registration as an agent for non-local exporters;
- (c) registration as an agent for non-local persons acquiring ownership of goods under a customs procedure;
- (d) registration as an agent for non-local carriers; or
- (e) registration as an agent for non-local searchers of or for abandoned wreck.

**Registration types for electronic users** (*section 606*)

**28.6** The registration types that may in terms of section 606 of the Control Act be issued for the registration of persons as electronic users are—

- (a) registration as an electronic user (eFiling); or

(b) registration as an electronic user (Electronic Data Interchange).

**Registration of producers of goods of South African origin and registration types** (*section 607*)

**28.7** (1) No product may be certified as goods of South African origin for purposes of export under preferential treatment unless the producer<sup>628</sup> of that product is in relation to that product registered as a producer of goods of South African origin.

(2) The registration types that may in terms of subrule (1) be issued for the registration of persons as producers of goods of South African origin are—

- (a) registration as a producer of goods of South African origin for exports under SACU-EFTA Agreement;
- (b) registration as a producer of goods of South African origin for exports under SADC Agreement;
- (c) registration as a producer of goods of South African origin for exports under SADC EPA;
- (d) registration as a producer of goods of South African origin for exports under the SACU – MERCOSUR Agreement;
- (e) registration as a producer of goods of South African origin for exports under AGOA's GSP;
- (f) registration as a producer of goods of South African origin for exports under Russia's GSP;
- (g) registration as a producer of goods of South African origin for exports under Norway's GSP; or
- (h) registration as a producer of goods of South African origin for exports under Turkey's GSP.

***Part 2: Rules generally regulating all applications for registration or renewal or amendment of registration certificates***

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<sup>628</sup> Manufacturers of goods are included under the definition of "producer" in section 1 of the Control Act.

**Persons who may apply for registration or renewal or amendment of registration certificates (section 608)**

**28.8** (1) (a) Any person<sup>629</sup> may apply for registration of any registration type, subject to subrules (2), (3), (4) and (5).<sup>630</sup>

(b) Only a registered person may apply for the renewal or amendment of that person's registration certificate, subject to subrules (2), (3), (4) and (5).

(2) (a) An application may be submitted either by—  
(i) the person applying; or  
(ii) that person's ordinary representative acting on that person's behalf in terms of Part 5 of Chapter 41 of these Rules, subject to paragraph (b).

(b) No licensed customs broker or registered agent may in their capacity as customs broker or registered agent make or submit an application on behalf of another person, but may in a capacity as ordinary representative in terms of paragraph (a)(ii) submit an application.<sup>631</sup>

(3) (a) An individual with limited contractual capacity may apply in terms of subrule (1) only with the assistance of his or her guardian, curator or trustee, subject to paragraph (b).

(b) A person under the age of 18 years may apply only with the assistance of his or her guardian unless that person is emancipated by order of a court.

(4) A juristic entity<sup>632</sup> may apply in terms of subrule (1)—  
(a) if the entity is a company or co-operative, only through a duly authorised director or manager, or the authorised officer, of the company or cooperative;

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<sup>629</sup> Note that "person" is defined in section 1 of the Act to include, apart from a natural person, a juristic entity, an organ of state and an official of an organ of state.

<sup>630</sup> Although any person can apply for registration of any type, it should be noted that the customs authority is obliged in terms of section 610(1) of the Control Act to refuse certain applications, such as those where the applicant is in terms of a provision of the Act not entitled to the registration type applied for.

<sup>631</sup> The effect of this provision is that a customs broker or registered agent is not barred from submitting an application on behalf of another as an ordinary representative, provided Part 5 of Chapter 41 of these Rules applicable to ordinary representatives is complied with.

<sup>632</sup> See definition of "juristic entity" in section 1 of the Act.

- (b) if the entity is a close corporation or partnership, only through a duly authorised member of or partner in or a manager, or the authorised officer, of the close corporation or partnership;
- (c) if the entity is an association, club or other body of persons, only through the chairperson, manager or the authorised officer of that association, club or other body of persons;
- (d) if the entity is a trust or trust fund, only through the administrator, trustee or the authorised officer of the trust or trust fund;
- (e) if the entity is an entity referred to in paragraph (a) to (d) in liquidation or under judicial management, only through the liquidator or judicial manager of the entity or, if the liquidator or judicial manager is a company or firm, a duly authorised senior official of the company or firm;
- (f) if the entity is the estate of a deceased or insolvent person, only through the executor or administrator of the estate or, if the executor or administrator is a company or firm, a duly authorised senior official of the company or firm; or
- (g) if the entity is an organ of state, only through an official of that organ of state in an executive position.

(5) If an ordinary representative referred to in subrule (2)(a)(ii) submits an application on behalf of a juristic entity, the authorisation required in terms of rule **41.20(1)(a)** must be granted and signed by a person permitted in terms of subrule (4) to act for the entity.

### **Applications for registration and renewal or amendment of registration certificates** (*section 608*)

**28.9** (1) An application by a person for registration or for the renewal or amendment of a registration certificate must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

- (2) An application referred to in subrule (1) must reflect the following:<sup>633</sup>
- (a) Whether the application is for—
    - (i) registration;

<sup>633</sup> Please note the additional requirements in respect of applications for specific registrations set out in rules **28.10**, **28.11** and **28.12**.

- (ii) the renewal of a registration certificate; or
- (iii) the amendment of a registration certificate;
- (b) if the applicant is a juristic entity—
  - (i) the name of the individual authorised in terms of rule **28.8(4)** to act for the entity;
  - (ii) that person's SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of that person's identification document; and
  - (iii) that person's physical address, contact details and capacity;
- (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14**,<sup>634</sup>
- (d) whether the tax matters of the applicant are in order as contemplated in section 917 of the Control Act; and
- (e) the additional information required in terms of subrule (3), (4) or (5), as may be applicable.

(3) An application for a new registration referred to in subrule (2)(a)(i) must reflect the following additional information:

- (a) Particulars of the applicant, which must include—
  - (i) if the applicant is an individual—
    - (aa) the applicant's full name;
    - (bb) every other name under which the applicant conducts business;
    - (cc) his or her SARS tax reference number or, if he or she does not have a SARS tax reference number, his or her date of birth and the number and type of his or her identification document;
    - (dd) his or her citizenship; and
    - (ee) his or her contact details and physical and postal addresses in the Republic or elsewhere; or
  - (ii) if the applicant is a juristic entity—
    - (aa) the applicant's registered or official name;
    - (bb) every name under which the applicant conducts business;

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<sup>634</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.



- (cc) its entity type;
  - (dd) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, which country;
  - (ee) its date of registration, incorporation or recognition;
  - (ff) its contact details, and its physical and postal addresses in the Republic or elsewhere; and
  - (gg) the name of the individual who, for purposes of the Control Act and the tax levying Acts, will be the entity's authorised officer,<sup>635</sup> as well as that individual's—
    - (A) SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
    - (B) physical address, contact details and designation or capacity;
- (b) the registration category and type applied for;
- (c) if the applicant intends to make use of the services of a customs broker, particulars of an individual within the applicant's organisation authorised to issue clearance instructions to the customs broker, which must include that individual's—
- (i) SARS tax reference number or, if that individual does not have a SARS tax reference number, the number and type of his or her identification document; and
  - (ii) name, physical address, contact details and capacity or designation;
- (d) whether the applicant intends to make use of another person registered as an electronic user to submit documents or communications to the customs authority through an electronic communicative system referred to in rule **41.5** on the applicant's behalf;
- (e) if the applicant is located in the Republic—

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<sup>635</sup> See definition of "authorised officer" in rule 1.1.

- (i) the banking details<sup>636</sup> of the applicant's bank account in the Republic; and
- (ii) if the bank account referred to in subparagraph (i) is not the bank account into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid, also the banking details<sup>637</sup> of a bank account in the Republic into which such refund or drawback must be paid;<sup>638</sup>
- (f) if the applicant is not located in the Republic, the banking details<sup>639</sup> of a bank account in the Republic into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid;
- (g) in the case of an application for registration as a local or non-local CTC importer or exporter, the method and place of measurement of the CTC to be imported or exported;
- (h) in the case of an application for registration as an agent for a principal not located in the Republic whether the applicant or a person within the applicant's organisation contemplated in rule **28.24** has taken the Customs Sufficient Knowledge Test;
- (i) in the case of an application for registration as an agent of a non-local carrier, whether the applicant intends making use of a reporting document as a transshipment clearance declaration as contemplated in section 251 of the Control Act;<sup>640</sup>
- (j) in the case of an applicant located in the Republic, the location and physical address of the place where the records of the applicant's business as a registered person will be kept;<sup>641</sup>
- (k) the customs code allocated in respect of any other registration or any licence issued to the applicant in terms of the Control Act or the Excise Duty Act; and

<sup>636</sup> See definition of "banking details" in rule 1.1

<sup>637</sup> See definition of "banking details" in rule 1.1

<sup>638</sup> Note that registered persons must in terms of rule **28.25** update their registration details whenever these details change. This requirement also applies to a change in banking details. If such an update affects the applicant's customs relationships, such change in relationships must also be disclosed in terms of rule **28.27(1)(b)**.

<sup>639</sup> See definition of "banking details" in rule 1.1

<sup>640</sup> See rule **11.3(3)**.

<sup>641</sup> Note that records must be kept on the premises prescribed in rule **41.34** for the period prescribed in that rule. If the registered person, after expiry of that period, applies in terms of rule **41.35** or **41.36** to keep records at a different location in or outside the Republic, the details provided in paragraph (j) must be updated in terms of rule **28.25**. See also transitional rule **41.42** for records previously kept in terms of the Customs and Excise Act, 1964.

- (l) whether the applicant or an employee of the applicant in a managerial position, or if the applicant is a juristic entity, a director, administrator or trustee of the applicant, has during the five years preceding the application—
- (i) committed a breach of the Control Act, a tax levying Act or the Customs and Excise Act, 1964, in a material respect;
  - (ii) been convicted of an offence under the Control Act, a tax levying Act or the Customs and Excise Act, 1964;
  - (iii) been convicted of an offence involving fraud or dishonesty; or
  - (iv) was insolvent or in liquidation or under judicial management, as the case may be.

(4) An application for renewal of a registration certificate referred to in subrule (2)(a)(ii) must reflect the following additional information:

- (a) The name of the registered person applying for renewal of the registration certificate;
- (b) the registration category and type of the existing registration and the customs code allocated to the applicant for that registration; and
- (c) particulars of any change in the registration details of the applicant.

(5) An application for the amendment of a registration certificate referred to in subrule (2)(a)(iii) must reflect the following additional information:

- (a) The name of the registered person applying for the amendment of the registration certificate;
- (b) the registration category and type of the existing registration and the customs code allocated to the applicant for that registration;
- (c) full particulars of the amendment applied for; and
- (d) the reason for the amendment, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Applications for new registration or renewal of registration certificate for SACU-EFTA**

**28.10** (1) In addition to complying with the other requirements of this Part, no person may submit an application for—

- (a) a new registration as an approved local or non-local exporter for SACU-EFTA preferential tariff treatment, unless the applicant—
  - (i) is the holder of a registration as a local or non-local exporter for SACU-EFTA preferential tariff treatment;
  - (ii) has exported more than one shipment per annum of goods of South African origin under that registration; and
  - (iii) has a record of compliance with the SACU-EFTA Agreement,<sup>642</sup> or
- (b) renewal of registration of an existing registration as an approved local or non-local exporter for SACU-EFTA preferential tariff treatment, unless the applicant—
  - (i) has exported more than one shipment per annum of goods of South African origin under that registration; and
  - (ii) has a record of compliance with the SACU-EFTA Agreement.

(2) An application for a new registration or renewal of a registration certificate for SACU-EFTA must in addition to the information required in terms of rule **28.9**, reflect a statement that the applicant complies with subrule (1).

### **Applications for new registration or renewal of registration for SADC EPA**

**28.11** (1) In addition to complying with the other requirements of this Part, no person may submit an application for—

- (a) a new registration as an approved local or non-local exporter for SADC EPA preferential tariff treatment, unless the applicant—
  - (i) is the holder of a registration as a local or non-local exporter for SADC EPA preferential tariff treatment;
  - (ii) has exported more than one shipment per annum of goods of South African origin under that registration; and
  - (iii) has a record of compliance with the SADC EPA;<sup>643</sup> or
- (b) renewal of registration of an existing registration as an approved local or non-local exporter for SADC EPA preferential tariff treatment, unless the applicant—

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<sup>642</sup> See rule **1.8** for criteria determining a person's record of compliance.

<sup>643</sup> See rule **1.8** for criteria determining a person's record of compliance.

- (i) has exported more than one shipment per annum of goods of South African origin under that registration; and
- (ii) has a record of compliance with the SADC EPA.

(2) An application for a new registration or renewal of a registration for SADC EPA must in addition to the information required in terms of rule **28.9**, reflect a statement that the applicant complies with subrule (1).

**Applications for registration of agents of non-local licensees or registered persons** (*section 626(a)*)

**28.12** (1) An applicant for registration to act as the agent in the Republic of a non-local licensee or registered person as contemplated in section 605(1) of the Control Act, or another person within the applicant's organisation contemplated in rule **28.24**, must have sufficient knowledge<sup>644</sup> of customs laws, guides, interpretive notes, operational manuals and practices relating to the business of such an agent.

(2) An application referred to in subrule (1) may, despite subrule (1), be submitted before the applicant, or another person within the applicant's organisation contemplated in rule **28.24**, has complied with the relevant requirement of sufficient knowledge, but the applicant is not entitled to final consideration of the application unless the applicant has complied with that requirement.

(3) An application referred to in subrule (1) lapses if the applicant or a person within the applicant's organisation has not complied with the sufficient knowledge requirement within 90 calendar days from the date of submission of the application, subject to section 908 of the Control Act.

(4) No application for renewal of an existing registration to act as the agent in the Republic of a non-local licensee or registered person as contemplated in section 605(1) of the Control Act may be submitted unless the applicant, or another person within the applicant's organisation contemplated in rule **28.24**, complies with

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<sup>644</sup> See definition of "sufficient knowledge" in rule 1.1.

the requirement of sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices relating to the business of such an agent.

**Documents required for supporting all applications for registration and renewal or amendment of existing registrations** (*section 609*)

**28.13** (1) An application for registration of any registration type must be supported by the following documents to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A banking details confirmation document<sup>645</sup> confirming the banking details of the bank account referred to in rule **28.9(3)(e)(i)** or (ii) and (f), as may be applicable, into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid;
- (b) the original or a certified copy of—
  - (i) a municipal account or fixed line telephone account issued to the applicant to confirm the applicant's physical address, if the applicant is located in the Republic; and
  - (ii) a telephone account issued to the applicant to confirm the applicant's telephone contact details;
- (c) if the applicant is a juristic entity, a certified copy of the founding document or any certificate issued in terms of the laws of the Republic or of another country certifying that the applicant is incorporated, registered or recognised in terms of the laws of the Republic or that other country;
- (d) a certified copy of the identification document proving identity and citizenship—
  - (i) if the applicant is an individual, of the applicant;
  - (ii) if the applicant is a company or cooperative, of the managing director, the financial director and every other director, and of the authorised officer, of the company or cooperative;
  - (iii) if the applicant is a close corporation or partnership, of the authorised officer and every member of or partner in the close corporation or partnership;

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<sup>645</sup> See definition of "banking details confirmation document" in rule 1.1

- (iv) if the applicant is a trust or trust fund, of the trustee or administrator of the trust or trust fund if the trustee or administrator is an individual, and of the authorised officer of the trust or trust fund;
  - (v) if the applicant is an association, club or other body, of the chairperson or manager, and of the authorised officer, of the association, club or other body;
  - (vi) if the applicant is an entity referred to in subparagraph (i) to (v) in liquidation or under judicial management, of the liquidator or judicial manager of the entity if that liquidator or judicial manager is an individual;
  - (vii) if the applicant is the estate of a deceased or insolvent person, the executor or administrator of the estate if that executor or administrator is an individual; or
  - (viii) if the applicant is an organ of state, the official to whom the function in respect of the activity for which registration is required, is delegated;
- (e) a certified copy of the authorisation authorising a person —
- (i) contemplated in rule **28.8(2)(a)(ii)** to act as an ordinary representative of the applicant; or
  - (ii) other than the applicant to apply for refunds and drawbacks on behalf of the applicant;
- (f) if not already required in terms of paragraph (d), a certified copy of the identification document of—
- (i) a person referred to in paragraph (e), if that person is an individual; and
  - (ii) a duly authorised person referred to in rule **28.8(4)**, if the applicant is a juristic entity;
- (g) if the applicant applies for registration as an agent for a non-local licensee or registered person—
- (i) a certified copy of the agency contract between the applicant and the non-local licensee or registered person; and
  - (ii) if the non-local licensee or registered person is a juristic entity, a certified copy of the founding document or any certificate issued in terms of the laws of the country where the non-local licensee or registered person is incorporated, registered or recognised certifying such incorporation, registration or recognition;

- (h) if the applicant applies for registration as a local or non-local CTC importer or exporter, a certified copy of any lease agreement or other agreement whereby the applicant will import or export the CTC through a cross-border transmission line or cross-border pipeline;
- (i) if the applicant applies for registration as an importer for SEZ CCA development, a certified copy of the site and layout plan of the customs controlled area within the special economic zone showing the exact demarcated area to be developed by imported goods; and
- (j) if applicable, a document setting out any circumstances referred to in rule **28.9(3)(l)**.

(2) An application for the renewal or amendment of a registration certificate must be supported by the following documents to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The documents referred to in subrule (1)(d), (e) and (f), as may be applicable;
- (b) a document confirming or evidencing particulars of any change in the registration details of the applicant; and
- (c) in the case of an application for amendment of a registration certificate, documents substantiating any material facts mentioned in the motivation for the amendment referred to in rule **28.9(5)(d)**.

**Other documents to be submitted or made available to customs authority on request (section 609)**

**28.14** An applicant must on request by the customs authority—

- (a) submit to it any other documents that may be required for purposes of considering an application; and
- (b) make available to it any information, books, accounts and other documents necessary for—
  - (i) verifying any statements made by the applicant in the application; or
  - (ii) ascertaining facts relating to the activity in respect of which registration is sought.

**Part 3: Registration conditions**



**General conditions applicable to all registrations** (*section 613(1)*)

**28.15** (1) All registrations are subject to the following general conditions:

- (a) The registered person may not authorise or allow any other person to use on the registered person's behalf the customs code allocated by the customs authority to the registered person, except in accordance with rule **41.16**.
- (b) The registered person must whenever transacting business relating to the purpose for which that person was registered, indicate that customs code on any document issued by that person, including on—
  - (i) any communication to the customs authority or another organ of state; and
  - (ii) any authorisation issued by the registered person to any registered agent, customs broker or ordinary representative acting on behalf of the registered person.
- (c) The registration certificate or a certified copy of the registration certificate, or an official SARS letter of confirmation of registration, must be kept at each business premises where the registered person conducts business relating to the purpose for which the registration was granted.
- (d) All reports, applications, declarations, notifications and other documents or communications that must or may be submitted by the registered person to the customs authority in terms of the Control Act or a tax levying Act must be submitted electronically through EDI or eFiling, or another electronic communicative system administered by SARS, as may be applicable, except where a communication is submitted to the customs authority in paper format subject to rule **41.13**. A document or communication submitted in paper format must be submitted in accordance with any applicable requirements of these Rules or as the customs authority may direct in a specific case.
- (e) The registered person must promptly notify the customs authority of any occurrence that may in terms of section 618 of the Control Act constitute a ground for suspension or withdrawal of that person's registration.
- (f) The records a registered person must keep in connection with the activity or other purpose for which that person is registered must be kept in accordance with Part 7 of Chapter 41 of these Rules.

(2) Subrule (1)(b) and (c) does not apply to a person in relation to that person's registration as an electronic user.

**Additional conditions applicable to registered agents of non-local licensees and registered persons** (*section 613*)

**28.16** All registrations issued to agents of non-local licensees or registered persons are, in addition to those set out in rule **28.15**, subject to the following further general conditions:

- (a) The agent must maintain sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices by having available at all times within the business at least one person contemplated in rule **28.24** who has successfully completed the relevant Customs Sufficient Knowledge Test.
- (b) The agent must promptly give notice in accordance with rule **28.26** to the customs authority if paragraph (a) is at any stage no longer being complied with.
- (c) The agent must take all reasonable steps to ensure that the agent's principal complies with the Control Act, these Rules and any applicable tax levying Act.
- (d) If the agent's principal commits an act (including an omission to perform an act) which is a breach in terms of Control Act, these Rules or any applicable tax levying Act for which an administrative penalty may be imposed, the customs authority may hold the agent liable for the payment of that penalty if the agent—
  - (i) knew or should reasonably have known that the principal is to commit that act and failed to take reasonable steps within the powers of the agent to prevent the principal from committing that act; or
  - (ii) when becoming aware of that act, failed to notify the customs authority of the commission of that act.<sup>646</sup>

**Additional conditions applicable to registered electronic users** (*section 613*)

**28.17** The registration of an electronic user is, in addition to the conditions set out in rule **28.15**, subject to the following further general condition:

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<sup>646</sup> For liability of agent for criminal offences committed by the principal, see section 893(1) of the Control Act and section 218(1) of the Customs Duty Act.

The registered person, in the case of a person who electronically communicates with the customs authority directly for the submission of any declarations, reports, statements, returns, notifications, notices, applications, requests or other documents or communications, must—

- (a) be appropriately electronically enabled for the electronic user registration type for which that person has been registered and, thereafter, at all times maintain that enablement; and
- (b) sign, and submit to the customs authority in the case of a registration for EDI, or accept online in the case of a registration for eFiling, the electronic user agreement for the relevant registration type<sup>647</sup> and thereafter on an on-going basis comply with the agreement.

#### ***Part 4: Record keeping and reporting***

##### **Records to be kept by registered persons (section 626)**

**28.18** (1) A registered person must, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep such records as may be necessary to fully and accurately reflect all transactions relating to the activity or other purpose for which that person is registered, including any books, accounts and documents, whether created manually or by means of a computer.

- (2) The records kept in terms of subrule (1) must include—
  - (a) a record of all declarations, reports, notifications, notices, applications, returns and other documents submitted or issued by the registered person in terms of the Control Act or a tax levying Act;
  - (b) a record of all documents received by the registered person in terms of the Control Act or a tax levying Act; and
  - (c) a record of compliance with the Control Act and the tax levying Acts reflecting evidence of compliance and at least the following occurrences, if any:
    - (i) Any late or non-payment of duty, levy, tax or interest by the registered person;

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<sup>647</sup> Pro forma electronic user agreements are published on the SARS website.

- (ii) any customs queries and stop notes issued to the registered person and the outcome in each case;
- (iii) any warnings issued to the registered person by the customs authority and the outcome in each case;
- (iv) any administrative penalties imposed on the registered person, and whether confirmed or mitigated;
- (v) any criminal proceedings instituted against the registered person and the outcome of the proceedings; and
- (vi) any corrective steps taken and maintained by the registered person to ensure compliance.

### **Records and returns to be produced or submitted to customs authority on request**

**28.19** (1) A registered person must produce or submit any record referred to in rule **28.18** or render such returns or submit such particulars in connection with that person's transactions, as the customs authority may request.

(2) (a) Records referred to in subrule (1) must be submitted subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(b) Part 6 of Chapter 41 of these Rules, with any necessary changes the context may require, applies to the submission of returns and particulars referred to in subrule (1).

### ***Part 5: Simplified registration processes and exemptions for certain categories of persons***

#### **Persons acquiring ownership of goods whilst under customs procedure**

*(section 604)*

**28.20** The following categories of persons acquiring ownership of goods whilst under a customs procedure are hereby in relation to those goods exempted from the registration requirement in section 604 of the Control Act:

- (a) Persons acquiring goods whilst—
  - (i) under the tax free shop or stores procedure; or

- (ii) cleared for export under the export procedure;<sup>648</sup> and
- (b) persons acquiring goods whilst under any customs procedure—
  - (i) by operation of law;<sup>649</sup> or
  - (ii) as a consequence of—
    - (aa) a seizure or confiscation of the goods in terms of any law; or
    - (bb) an order of court.

**Casual importers and exporters** (*section 603 read with section 626(c) and (d)*)

**28.21** (1) If an unregistered importer or exporter clears goods for home use or a customs procedure and indicates in terms of rule 7.2(f)(ii) that the clearance declaration submitted by or on behalf of that importer or exporter in terms of section 90 or 94 of the Control Act must serve as an application for registration as a casual importer or exporter—

- (a) the clearance declaration must be regarded to be an application for registration of that person as a casual importer or exporter, as the case may be;
- (b) the release by the customs authority of those goods for home use or a customs procedure must be regarded to be the customs authority's approval of the registration application; and
- (c) the SARS tax reference number or the number and type of the identification document of the casual importer or exporter or, if the casual importer or exporter is a juristic entity, the SARS tax reference number or the number and type of the identification document of the entity's authorised officer, may be reflected in the field provided for that purpose on the clearance declaration.

(2) (a) A casual importer or exporter using the simplified registration procedure provided for in subrule (1) is exempted from Part 2 of Chapter 28 of these Rules.

(b) Parts 2 and 3 of Chapter 28 of the Control Act apply to those casual importers and exporters subject to subrule (1), and in the event of any inconsistency between a provision of any of those Parts and that subrule casual

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<sup>648</sup> This category may include goods such as inward processed compensating products under the inward processing procedure cleared for export under the export procedure.

<sup>649</sup> For instance the law on insolvency, liquidation of juristic entities, administration of estates, divorce, and other similar matters impacting the ownership of goods.

importers and exporters are exempted from that provision to the extent of the inconsistency.

(3) A casual importer or exporter whose application for registration is approved in terms of the simplified procedure provided for in subrule (1), remains registered as a casual importer or exporter for a period of three calendar years, including the calendar year in which that person was registered as a casual importer or exporter, unless the customs authority withdraws the registration earlier in terms of Part 4 of Chapter 28 of the Control Act.

(4) No person may be registered as a casual importer or exporter unless that person clears the relevant goods for home use, temporary admission, export or temporary export.

### **Travellers and crew importing or exporting baggage items other than commercial goods** (*sections 603(3) and 626*)

**28.22** Travellers and crew members who when entering or leaving the Republic import or export, as part of their accompanied or unaccompanied baggage, items that are not commercial goods, are hereby in relation to such items exempted from the requirement in section 603(1) of the Control Act to register as an importer or exporter.<sup>650</sup>

### **Persons importing or exporting international postal articles through South African Post Office**

**28.23** (1) Persons importing or exporting through the South African Post Office international postal articles with a customs value—

(a) not exceeding an upper value determined in terms of section 493(2) or 494(2) of the Control Act, are hereby in relation to such articles exempted from the

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<sup>650</sup> The effect of this exemption is that none of the provisions of Chapter 28 of the Control Act will apply to these travellers and crew members in relation to baggage items other than commercial goods. If travellers or crew members have commercial goods, they must register in terms of rule **28.9** as an importer or exporter or, if they are casual importers or exporters, they must register in terms of rule **28.21** as a casual importer or exporter.

requirement in section 603(1) of the Control Act to register as an importer or exporter;<sup>651</sup> or

- (b) exceeding that upper value, are not exempted but may, if that person is a casual importer or exporter, apply for registration in terms of rule **28.21**.

(2) Until Chapter 22 of the Control Act takes effect in terms of section 943 of that Act—<sup>652</sup>

- (a) the upper value referred to in subrule (1) must be regarded to be the same amount as the amount determined by ministerial notice in terms of section 533(2)(a) of that Act; and

- (b) any reference in a rule regulating the registration of importers and exporters to—

(i) the clearance of goods must, when applying that rule in terms of subrule (1)(b) to postal articles, be read as a reference to an entry of goods in terms of the Customs and Excise Act, 1964;

(ii) a clearance declaration must, when applying that rule in terms of subrule (1)(b) to postal articles, be read as a reference to a bill of entry within the meaning of the Customs and Excise Act, 1964; and

(iii) release for home use or a customs procedure must, when applying that rule in terms of subrule (1)(b) to postal articles, be read as a reference to release for home consumption or another purpose within the meaning of the Customs and Excise Act, 1964.

## ***Part 6: General registration provisions***

### **Customs Sufficient Knowledge Test (section 626(a))**

**28.24** (1) Any of the following persons may take the Customs Sufficient Knowledge Test to establish sufficient knowledge of customs laws, guides,

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<sup>651</sup> The effect of this exemption is that none of the provisions of Chapter 28 of the Control Act will apply to these persons importing or exporting through the South African Post Office international postal articles with a value below the upper limit.

<sup>652</sup> Note that rule **28.23**(1) cannot technically be implemented before Chapter 22 of the Control Act takes effect in terms of section 943 of that Act. That section provides that until Chapter 22 takes effect the Customs and Excise Act, 1964, as it existed immediately before the 2014 Amendment Act, will continue to apply to international postal articles. The interpretive adjustments as provided in rule **28.23**(2) above are accordingly necessary in the interim until Chapter 22 takes effect.

interpretive notes, operational manuals and practices for purposes of registration in terms of this Chapter where sufficient knowledge is in terms of this Chapter a requirement for registration.<sup>653</sup>

- (a) If the applicant is an individual—
  - (i) the applicant himself or herself; or
  - (ii) a person in the employ of the applicant authorised by the applicant to take the test; or
- (b) if the applicant is a juristic entity—
  - (i) a person referred to in rule **28.8(4)**; or
  - (ii) a person in the employ of the applicant authorised by the applicant to take the test.

(2) There is no restriction on the number of times the test may be taken in order to achieve the score required to establish sufficient knowledge.

(3) The score required for the test to establish sufficient knowledge is 60 per cent.

(4) A person who has successfully completed the Customs Sufficient Knowledge Test remains eligible for purposes of these Rules for a period of three years, and may at any time before the expiry of that period repeat the test in order to continue to be eligible after the expiry of the period without interruption.

### **Updating of registration details**

**28.25** (1) If any of the registration details of a registered person have changed or are to change, the registered person must promptly update those details in accordance with this rule.<sup>654</sup>

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<sup>653</sup> See rule **28.16(a)**

<sup>654</sup> If the update is submitted on behalf of the registered person by an ordinary representative contemplated in section 920 of the Customs Control Act, the update must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit an update in that capacity. An update submitted on behalf of the registered person by a customs broker, registered agent or ordinary representative must contain the additional information referred to in rule **41.14**.



(2) An update in terms of subrule (1) containing the following information must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**:

- (a) The name and customs code of the registered person;
- (b) particulars of the change in registration details; and
- (c) the effective date of the change.

(3) If the change in registration details was caused by a change in any of the circumstances that were material to the initial granting of the registration, the update must be effected through a notification in terms of rule **28.26** setting out, in addition to the information referred to in rule **28.26**(3), also particulars of the change in registration details and the effective date of the change.

**Notification of change in circumstances material to granting of registration**  
(*section 623 read with 903(1)(m)(v)*)

**28.26** (1) When complying with section 623 of the Control Act, a registered person must notify the customs authority of any change of circumstances that were material to the granting of that person's registration,<sup>655</sup> within seven working days of the change having occurred, read with section 908 of the Control Act.

(2) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

- (3) A notification referred to in subrule (1) must state—
- (a) the name and customs code of the registered person;
  - (b) if the notification is submitted by a customs broker, registered agent or ordinary representative on behalf of the registered person, the information specified in rule **41.14**,<sup>656</sup> and
  - (c) particulars of the changed circumstances.

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<sup>655</sup> See rule **1.7** for circumstances material to the granting of a person's registration. This includes an intention to discontinue the activity for which the registration was granted.

<sup>656</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the registered person, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit notifications on behalf of registered persons in that capacity.

**Part 7: Rules relating to disclosure of customs relationships**  
(section 626)

**Customs relationships to be disclosed**

- 28.27** (1) A registered person must promptly disclose to the customs authority—
- (a) any customs relationship<sup>657</sup> which that person has entered into for purposes of the activity for which that person is registered; and
  - (b) any customs relationship referred to in paragraph (a) that has been terminated or has lapsed.
- (2) A disclosure referred to in subrule (1) must reflect—
- (a) the name and customs code of the registered person making the disclosure or on whose behalf the disclosure is made;
  - (b) the date of the disclosure;
  - (c) the name and customs code of the registered person or licensee who is the other party to the customs relationship;
  - (d) the nature of the customs relationship;
  - (e) whether the disclosure relates to—
    - (i) the conclusion of a customs relationship referred to in subrule (1)(a); or
    - (ii) the termination or lapsing of a customs relationship referred to in subrule (1)(b); and
  - (f) in the case of a disclosure referred to in paragraph (e)(i), whether the other party to the customs relationship is authorised by the registered person to—
    - (i) use the customs code of the registered person on documents submitted by that party to the customs authority on behalf of the registered person;<sup>658</sup>
    - (ii) submit refund or drawback applications on behalf of the registered person; or

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<sup>657</sup> Note that a business relationship is only a customs relationship if the other party to the relationship is a registered person or licensee. See definition of “customs relationship”.

<sup>658</sup> Note that certain rules expressly require the citing of another person’s customs code. This is permissible in terms of rule 41.16(2). In other instances the customs code can only be used with the permission of the person to whom the code has been allocated.

- (iii) apply for a duty deferment benefit on behalf of the registered person, or operate on a deferment account of the registered person, if that person is a deferment benefit holder.

(3) A disclosure referred to in subrule (1) must be made by or on behalf of the registered person either —

- (a) electronically through the communicative system indicated on the SARS website for that purpose; or
- (b) in person by visiting any Customs Office.

### **Confirmation or rejection of customs relationships by other party**

**28.28** (1) A person named in a disclosure referred to in rule **28.27(1)(a)** by a registered person as the other party to a customs relationship, must within seven working days<sup>659</sup> from the date of being notified by the customs authority of the disclosure through the electronic communicative system referred to in rule **28.27(3)(a)**, either confirm or reject the customs relationship.

(2) If a person named as the other party to a customs relationship in terms of subrule (1)—

- (a) confirms the customs relationship, the customs authority must note in its system particulars of the customs relationship for purposes of its validation processes relating to declarations, reports, statements, returns, notices, notifications, applications, requests or other documents submitted by or on behalf of the registered person which involve that other party; or
- (b) rejects the customs relationship or fails to either confirm or reject the relationship within the prescribed timeframe, the disclosure becomes ineffective and the customs authority may disregard the alleged customs relationship for purposes of such validation processes.

(3) A confirmation or rejection referred to in subrule (1) must be made electronically through the communicative system indicated on the SARS website for that purpose.

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<sup>659</sup> Note that this timeframe is subject to extension in terms of section 908 of the Control Act.

### **Re-disclosure of customs relationships upon failure by other party to confirm or reject relationship**

**28.29** (1) If the other party to a customs relationship disclosed in terms of rule **28.27(1)(a)** fails to confirm or reject the customs relationship in accordance with rule **28.28(1)**, the registered person who made the disclosure may re-disclose the relevant customs relationship to the customs authority.

(2) Rules **28.27** and **28.28** apply with any necessary changes the context may require to a re-disclosure in terms of subrule (1).

### **Documents required for supporting disclosures**

**28.30** (1) A disclosure in terms of rule **28.27(1)(a)** must be supported by—

- (a) any agreement entered into between the parties that governs the customs relationship;
- (b) any authorisations given by the parties for purposes of the customs relationship; and
- (c) the documents listed in rule **28.13** to the extent that any of those documents is relevant to the disclosure.

(2) A document supporting a disclosure must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.<sup>660</sup>

(3) A registered person making a disclosure must on request by the customs authority submit to it any other documents that may be required for purposes of noting a customs relationship.

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<sup>660</sup> See rule **41.27** for supporting documents already in possession of Customs.

## CHAPTER 29

### LICENSING

#### Definition

**29.1** In this Chapter, unless the context otherwise indicates, “**applicant**” and “**application**” have the meanings assigned to them in section 628 of the Control Act.

#### *Part 1: Licence types*

#### **Licence types for premises** (*section 630*)

**29.2** (1) The licence types that may in terms of section 630 of the Control Act, read with subrule (2), be issued for the licensing of premises are:

- (a) A general sea cargo terminal licence authorising the premises to be managed, operated or used as a general sea cargo terminal;
- (b) a special sea cargo terminal licence authorising the premises to be managed, operated or used as a special sea cargo terminal;
- (c) a bulk sea cargo terminal licence authorising the premises to be managed, operated or used as a bulk sea cargo terminal;
- (d) a container terminal licence authorising the premises to be managed, operated or used as a container terminal;
- (e) a combination sea cargo terminal licence authorising the premises to be managed, operated or used as a combination sea cargo terminal;
- (f) a sea travellers terminal licence authorising the premises to be managed, operated or used as a sea travellers terminal;
- (g) a multi-purpose sea cargo terminal licence authorising the premises to be managed, operated or used as a multi-purpose sea cargo terminal;
- (h) an air cargo terminal licence authorising the premises to be managed, operated or used as an air cargo terminal;
- (i) (i) an air cargo depot licence authorising the premises to be managed, operated or used as an air cargo depot; or

- (ii) a courier air cargo depot licence authorising the premises to be managed, operated or used as an air cargo depot solely for conducting a courier business;
- (j) an air travellers terminal licence authorising the premises to be managed, operated or used as an air travellers terminal;
- (k) a rail cargo terminal licence authorising the premises to be managed, operated or used as a rail cargo terminal;
- (l) a rail travellers terminal licence authorising the premises to be managed, operated or used as a rail travellers terminal;
- (m) an international postal clearance depot licence authorising the premises to be managed, operated or used as an international postal clearance depot;<sup>661</sup>
- (n) a container depot licence authorising the premises to be managed, operated or used as a container depot;
- (o)
  - (i) a public storage warehouse licence authorising the premises to be managed, operated or used as a public storage warehouse for a specific purpose;
  - (ii) a private storage warehouse licence authorising the premises to be managed, operated or used as a private storage warehouse for a specific purpose;
  - (iii) an SEZ public storage warehouse licence authorising the premises to be managed, operated or used as an SEZ enterprise public storage warehouse for a specific purpose; or
  - (iv) an SEZ private storage warehouse licence authorising the premises to be managed, operated or used as an SEZ enterprise private storage warehouse for a specific purpose;
- (p)
  - (i) an inbound tax free shop licence authorising the premises to be managed, operated or used as an inbound tax free shop;
  - (ii) an outbound tax free shop licence authorising the premises to be managed, operated or used as an outbound tax free shop; or
  - (iii) a special shop for diplomats licence authorising the premises to be managed, operated or used as a special shop for diplomats;

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<sup>661</sup> This licence type will only apply as from the date on which Chapter 22 of the Control Act becomes effective. See section 943.

- (q) (i) an inward processing premises licence authorising the premises to be managed, operated or used as inward processing premises; or
- (ii) an SEZ inward processing premises licence authorising the premises to be managed, operated or used as an SEZ enterprise inward processing premises;
- (r) (i) a home use processing premises licence authorising the premises to be managed, operated or used as home use processing premises; or
- (ii) an SEZ home use processing premises licence authorising the premises to be managed, operated or used as an SEZ enterprise home use processing premises;
- (s) a state warehouse licence contemplated in section 569(b) of the Control Act authorising the premises to be managed, operated or used as such a state warehouse; or
- (t) a transshipment depot licence authorising the premises to be managed, operated or used as a transshipment depot.

(2) No person may manage, operate or use any premises as a transshipment depot unless those premises are in terms of section 634(3) of the Control Act licensed as such a depot.<sup>662</sup>

### **Licence types for cross-border facilities** (section 631)

**29.3** The licence types that may be issued for the licensing of cross-border import or export facilities in terms of section 631 of the Control Act are:

- (a) A cross-border transmission line licence authorising the transmission line to be used for—
  - (i) the import of electricity; or
  - (ii) the export of electricity from the Republic;
- (b) a cross-border pipeline licence authorising the pipeline to be used for—
  - (i) the import of a CTC; or
  - (ii) the export of a CTC from the Republic;
- (c) a cross-border cable-car licence authorising the cable-car to be used for—

<sup>662</sup> Section 630 of the Control Act prohibits the use of premises of the categories listed in rule 29.2 unless licensed, whilst section 634(3) enables the addition of further categories of premises to be controlled through licensing. Transshipment depot is an additional category added in terms of section 634(3).

- (i) the import of goods; or
- (ii) the export of goods from the Republic; or
- (d) a cross-border conveyor belt licence the conveyor belt to be used for—
  - (i) the import of goods; or
  - (ii) the export of goods from the Republic.

**Licence types for carriers** (*section 632*)

**29.4** The licence types that may be issued for the licensing of persons as carriers in terms of section 632 of the Control Act are:

- (a) A local or non-local sea carrier licence authorising the licensee to transport for reward by sea—
  - (i) goods into or out of the Republic;
  - (ii) travellers into or out of the Republic; or
  - (iii) goods not in free circulation within the Republic;
- (b) a local or non-local air carrier licence authorising the licensee to transport for reward by air—
  - (i) goods into or out of the Republic;
  - (ii) travellers into or out of the Republic; or
  - (iii) goods not in free circulation within the Republic;
- (c) a local or non-local rail carrier licence authorising the licensee to transport for reward by rail—
  - (i) goods into or out of the Republic;
  - (ii) travellers into or out of the Republic; or
  - (iii) goods not in free circulation within the Republic;
- (d) a local or non-local road carrier licence authorising the licensee to transport for reward by road—
  - (i) goods into or out of the Republic;
  - (ii) travellers into or out of the Republic; or
  - (iii) goods not in free circulation within the Republic;
- (e) a carrier licence for couriers authorising the licensee to carry out a carrier business solely for purposes of the courier business; or
- (f) an own goods carrier licence authorising the licensee to transport goods as contemplated in paragraph (d) of the definition of “carrier” in section 1 of the Control Act.



### **Licence types for customs brokers (section 633)**

**29.5** The licence types that may be issued for the licensing of persons as customs brokers in terms of section 633 of the Control Act are:

- (a) A general customs broker licence authorising the licensee to carry out any or all of the business modes listed in the definition of “customs broker” in section 1 of the Control Act;<sup>663</sup> or
- (b) a customs broker licence for couriers authorising the licensee to carry out any or all of the business modes listed in the definition of “customs broker” solely for purposes of the courier business.<sup>664</sup>

### **Licence types for stores suppliers (section 634(1))**

**29.6** The licence types that may be issued for the licensing of persons as stores suppliers in terms of section 634(1) of the Control Act are:

- (a) A stores supplier licence for foreign-going vessels;
- (b) a stores supplier licence for foreign-going aircraft; or
- (c) a stores supplier licence for cross-border trains.

### **Licence types for importers and exporters involved in processing procedures (section 634(2))<sup>665</sup>**

**29.7** The licence types that may be issued in terms of section 634(2) of the Control Act for the licensing of persons as importers or exporters involved in the processing procedures are:

- (a) An importer of goods for inward processing licence;
- (b) an importer of goods for home use processing licence; or
- (c) an exporter of inward processed compensating products licence.

### **Licensing of persons conducting courier business (section 634(3))**

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<sup>663</sup> A person licensed in terms of the Control Act as a customs broker to clear goods on behalf of other persons, is in terms of section 64B of the Excise Duty Act regarded to be a licensed clearing agent for purposes of that Act, and such a customs broker is accordingly without any additional licensing under that Act entitled to enter excisable goods in terms of that Act for removal in bond between excise warehouses or for home consumption.

<sup>664</sup> Note that a licensed courier will be allowed to clear courier goods either as a customs broker in terms of this licence or as the importer or exporter of the courier articles. See definition of “**courier business**” in rule 1.1

<sup>665</sup> Note that licensees of inward or home use processing premises are exempted from the requirement to license as an importer of goods for inward or home use processing. See section 634(2A) of the Control Act.

**29.8** (1) No person may conduct a courier business unless that person is licensed in terms of section 634(3) of the Control Act as a courier.

(2) No person not located in the Republic may be licensed in terms of subrule (1) as a courier unless that person is represented in the Republic by a registered agent located in the Republic.<sup>666</sup>

(3) The licence types that may be issued in terms of subrule (1) for the licensing of persons as couriers are:

- (a) A local courier licence; or
- (b) a non-local courier licence.

(4) The issue of a courier licence in terms of subrule (1) to a person does not affect the application of the Postal Services Act, 1998 (Act No. 124 of 1998), to the extent that that person conducts a courier service as contemplated in that Act.

**Licensing of persons searching for, or searching, abandoned wreck** (*section 634(3)*)<sup>667</sup>

**29.9** (1) No person may search for abandoned wreck or search any specific abandoned wreck unless that person is licensed in terms of section 634(3) of the Control Act for that purpose.

(2) No person not located in the Republic may be licensed in terms of subrule (1) as a searcher for abandoned wreck or as a searcher of any specific abandoned wreck unless that person is represented in the Republic by a registered agent located in the Republic.<sup>668</sup>

(3) The licence types that may be issued in terms of subrule (1) for the licensing of persons to search for abandoned wreck or to search any specific abandoned wreck are:

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<sup>666</sup> See section 1(3)(a) of the Control Act.

<sup>667</sup> Note that this rule applies only to *abandoned* wreck and not to wrecked, damaged or distressed vessels and aircraft or to goods washed ashore that have not been abandoned by the owner. Parts 4 and 5 of Chapter 25 of these Rules apply to such wrecks and goods.

<sup>668</sup> See section 1(3)(a) of the Control Act.

- (a) A local searcher for or of abandoned wreck licence; or
- (b) a non-local searcher for or of abandoned wreck licence.

**Part 2: General requirements for all applications for new licences or renewal or amendment of licences**

**Persons who may apply for new licences or renewal or amendment of licences**  
(section 635)

**29.10** (1) (a) Any person<sup>669</sup> may apply for a new licence of any licence type, subject to subrules (2), (3), (4) and (5).<sup>670</sup>

(b) Only the licensee to whom a licence has been issued may apply for the renewal or amendment of that licence, subject to subrules (2), (3), (4) and (5).

(2) (a) An application may be submitted either by—

- (i) the person applying; or
- (ii) that person's ordinary representative acting on that person's behalf in terms of Part 5 of Chapter 41 of these Rules, subject to paragraph (b).

(b) No licensed customs broker or registered agent may in their capacity as customs broker or registered agent make or submit an application on behalf of another person but may in a capacity as ordinary representative in terms of paragraph (a)(ii) submit an application.<sup>671</sup>

(3) (a) An individual with limited contractual capacity may apply in terms of subrule (1) only with the assistance of his or her guardian, curator or trustee, subject to paragraph (b).

(b) A person under the age of 18 years may apply only with the assistance of his or her guardian unless that person is emancipated by order of a court.

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<sup>669</sup> Note that "person" is defined in section 1 of the Act to include, apart from a natural person, a juristic entity, an organ of state and an official of an organ of state.

<sup>670</sup> Although any person can apply for a licence of any type, it should be noted that the customs authority is obliged in terms of section 637(1) of the Control Act to refuse certain applications, such as those where the applicant is in terms of a provision of the Act not entitled to the licence type applied for.

<sup>671</sup> The effect of this provision is that a customs broker or registered agent is not barred from submitting an application on behalf of another as an ordinary representative, provided Part 5 of Chapter 41 of these Rules applicable to ordinary representatives is complied with.

- (4) A juristic entity<sup>672</sup> may apply in terms of subrule (1)—
- (a) if the entity is a company or co-operative, only through a duly authorised director or manager, or the authorised officer, of the company or co-operative;
  - (b) if the entity is a close corporation or partnership, only through a duly authorised member of or partner in or a manager, or the authorised officer, of the close corporation or partnership;
  - (c) if the entity is an association, club or other body of persons, only through the chairperson or manager, or the authorised officer, of that association, club or other body of persons;
  - (d) if the entity is a trust or trust fund, only through the administrator, trustee or authorised officer of the trust or trust fund;
  - (e) if the entity is an entity referred to in paragraph (a) to (d) in liquidation or under judicial management, only through the liquidator or judicial manager of the entity or, if the liquidator or judicial manager is a company, a duly authorised senior official of the company;
  - (f) if the entity is the estate of a deceased or insolvent person, only through the executor or administrator of the estate or, if the executor or administrator is a company, a duly authorised senior official of the company; or
  - (g) if the entity is an organ of state, only through an official of that organ of state in an executive position.

(5) If an ordinary representative referred to in subrule (2)(a)(ii) submits an application on behalf of a juristic entity, the authorisation required in terms of rule **41.20(1)(a)** must be granted and signed by a person authorised in terms of subrule (4) to act for the entity.

### **Applications for new licences and renewal or amendment of existing licences** (*section 635*)

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<sup>672</sup> See definition of “juristic entity” in section 1 of the Control Act.

**29.11** (1) An application for a new licence or for the renewal or amendment of an existing licence must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(2) An application referred to in subrule (1) must reflect the following:<sup>673</sup>

- (a) Whether the application is for—
  - (i) a new licence;
  - (ii) the renewal of a licence; or
  - (iii) the amendment of a licence;
- (b) if the applicant is a juristic entity—
  - (i) the name of the individual through whom the entity applies in terms of rule **29.10(4)**;
  - (ii) that person's SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
  - (iii) that person's physical address, contact details and capacity;
- (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14**,<sup>674</sup>
- (d) whether the tax matters of the applicant are in order as contemplated in section 917 of the Customs Control Act; and
- (e) the additional information required in terms of subrule (3), (4) or (5), as may be applicable.

(3) An application for a new licence referred to in subrule (2)(a)(i) must reflect the following additional information:

- (a) Particulars of the applicant, which must include—
  - (i) if the applicant is an individual—
    - (aa) the applicant's full name;
    - (bb) every other name under which he or she conducts business;

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<sup>673</sup> Please note the additional requirements in respect of applications for specific licences set out in Part 3 of this Chapter.

<sup>674</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules.

- (cc) his or her SARS tax reference number or, if he or she does not have a SARS tax reference number, his or her date of birth and the number and type of his or her identification document;
  - (dd) his or her citizenship; and
  - (ee) his or her contact details and physical and postal addresses in the Republic or elsewhere; or
- (ii) if the applicant is a juristic entity—
- (aa) the applicant's registered or official name;
  - (bb) every name under which the applicant conducts business;
  - (cc) its entity type;
  - (dd) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, which country;
  - (ee) its date of registration, incorporation or recognition;
  - (ff) its contact details, and its physical and postal addresses in the Republic or elsewhere; and
  - (gg) the name of the individual who, for purposes of the Control Act and the tax levying Acts, will be the entity's authorised officer,<sup>675</sup> as well as that officer's—
    - (A) SARS tax reference number or, if that individual does not have a SARS tax reference number, the number and type of his or her identification document; and
    - (B) physical address, contact details and designation or capacity;
- (b) the licence category and type applied for;
- (c) if application is made for the licensing of any premises or other facility—
- (i) the location and physical address of the premises or facility or, if the premises applied for consist of a complex of premises, the location and address of each premises in the complex;

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<sup>675</sup> See definition of "authorised officer" in rule 1.1.

- (ii) the purpose for which the premises or facility will be operated, managed or used; and
  - (iii) whether the premises or facility is already licensed for another licence type or in terms of the Excise Duty Act, and, if so, the customs code issued in respect of that licence;<sup>676</sup>
- (d) any additional information required in terms of Part 3 for the licence category and type applied for;
- (e) whether the applicant intends to make use of another person registered as an electronic user to submit documents or communications to the customs authority through an electronic communicative system referred to in rule **41.5** on the applicant's behalf;
- (f) if the applicant is located in the Republic—
- (i) the banking details<sup>677</sup> of the applicant's bank account in the Republic; and
  - (ii) if the bank account referred to in subparagraph (i) is not the bank account into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid, also the banking details<sup>678</sup> of a bank account in the Republic into which such refund or drawback must be paid;<sup>679</sup>
- (g) if the applicant is not located in the Republic, the banking details<sup>680</sup> of a bank account in the Republic into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid;
- (h) in the case of an applicant located in the Republic, the location and physical address of the place where the records of the applicant's business as a licensee will be kept;<sup>681</sup>

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<sup>676</sup> Note that premises may in certain circumstances be licensed for more than a single purpose, for instance, nothing prevents a licensed excise manufacturing warehouse from being licensed as home use processing premises.

<sup>677</sup> See definition of "banking details" in rule **1.1**

<sup>678</sup> See definition of "banking details" in rule **1.1**

<sup>679</sup> Note that licensees must in terms of rule **29.48** update their licence details whenever these details change. This requirement also applies to a change in banking details and in persons authorised to apply for refunds or drawbacks.

<sup>680</sup> See definition of "banking details" in rule **1.1**.

<sup>681</sup> Note that records must be kept on the premises prescribed in rule **41.34** for the period prescribed in that rule. If the licensee after expiry of that period applies in terms of rule **41.35** or **41.36** to keep records at a different location in or outside the Republic, the details provided in paragraph (h) must be updated in terms of rule **29.48**. See also transitional rule **41.42** for records previously kept in terms of the Customs and Excise Act, 1964.

- (i) particulars of any other licence or any registration issued to the applicant in terms of the Control Act or the Excise Duty Act;
- (j) if rule **29.26**(1) applies to the applicant, whether the applicant, or another person within the applicant's organisation contemplated in rule **29.47**(1), has sufficient knowledge of customs laws, manuals and practices relating to managing, operating and using the premises or carrying out the activity for which the licence is required; and
- (k) whether the applicant or an employee of the applicant in a managerial position, or if the applicant is a juristic entity, a director, administrator or trustee of the applicant, has during the five years preceding the application—
  - (i) committed a breach of the Act, a tax levying Act or the Customs and Excise Act, 1964, in a material respect;
  - (ii) been convicted of an offence under the Act, a tax levying Act or the Customs and Excise Act, 1964;
  - (iii) been convicted of an offence involving fraud or dishonesty; or
  - (iv) was insolvent or in liquidation or under judicial management, as the case may be.

(4) An application for renewal of a licence referred to in subrule (2)(a)(ii) must reflect the following additional information:

- (a) The category and type of the licence;
- (b) the name of the licensee applying for renewal of the licence and the customs code allocated in respect of the licence;
- (c) particulars of any change in the licence details of the applicant; and
- (d) if rule **29.26**(4) applies to the applicant, whether the applicant, or another person within the applicant's organisation contemplated in rule **29.47**(1), has sufficient knowledge of customs laws, manuals and practices relating to managing, operating and using the premises or carrying out the activity for which the licence was issued.

(5) An application for the amendment of a licence referred to in subrule (2)(a)(iii) must reflect the following additional information:



- (a) The category and type of the licence;
- (b) the name of the licensee applying for the amendment of the licence and the customs code allocated in respect of the licence;
- (c) full particulars of the amendment applied for; and
- (d) the reason for the amendment, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Documents required for supporting all applications for new licences and renewal or amendment of existing licences (section 635)(d))**

**29.12** (1) An application for a new licence of any licence type must be supported by the following documents, as may be appropriate, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A banking details confirmation document<sup>682</sup> confirming the banking details of a bank account referred to in rule **29.11**(3)(f) or (g), as may be applicable, into which any refund or drawback that may become payable to the applicant in terms of the Control Act or the Customs Duty Act must be paid;
- (b) the original or a legible certified copy of—
  - (i) a municipal account or fixed line telephone account issued to the applicant to confirm the applicant's physical address; and
  - (ii) a telephone account issued to the applicant to confirm the applicant's telephone contact details;
- (c) if the applicant is a juristic entity, a certified copy of the founding document or any certificate issued in terms of the laws of the Republic or of another country certifying that the applicant is incorporated, registered or recognised in terms of the laws of the Republic or that other country;
- (d) a certified copy of the identification document proving identity and citizenship—
  - (i) if the applicant is an individual, of the applicant;

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<sup>682</sup> See definition of "banking details confirmation document" in rule 1.1.

- (ii) if the applicant is a company or cooperative, of the managing director, the financial director and every other director, and of the authorised officer, of the company or cooperative;
  - (iii) if the applicant is a close corporation or partnership, of the authorised officer and every member of or partner in the close corporation or partnership;
  - (iv) if the applicant is a trust or trust fund, of the trustee or administrator of the trust or trust fund if that trustee or administrator is an individual, and of the authorised officer of the trust or trust fund;
  - (v) if the applicant is an association, club or other body, of the chairperson or manager, and of the authorised officer of the association, club or other body;
  - (vi) if the applicant is an entity referred to in subparagraph (i) to (v) in liquidation or under judicial management, of the liquidator or judicial manager of the entity if that liquidator or judicial manager is an individual; or
  - (vii) if the applicant is the estate of a deceased or insolvent person, the executor or administrator of the estate if that executor or administrator is an individual;
- (e) a certified copy of the authorisation authorising a person contemplated in rule **29.10(2)(a)(ii)** to act as an ordinary representative of the applicant;
- (f) a certified copy of the authorisation authorising a person other than the applicant to apply for refunds and drawbacks on behalf of the applicant;
- (g) if not already required in terms of paragraph (d), a certified copy of the identification document of—
- (i) a person referred to in paragraph (e) or (f), if that person is an individual; and
  - (ii) a duly authorised person referred to in rule **29.10(4)**, if the applicant is a juristic entity;
- (h) documents evidencing that the applicant has in place—
- (i) an information security policy and security procedures or mechanisms to protect the applicant's electronic systems from unauthorised access; and
  - (ii) procedures and back-up capabilities to protect it against the loss of information;

- (i) if applicable, a document setting out any circumstances referred to in rule **29.11(3)(k)**; and
- (j) if rule **29.26(1)** applies to the applicant—
  - (i) a document listing the name of each person within the applicant's organisation that has completed the relevant Customs Sufficient Knowledge Test successfully and his or her SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
  - (ii) a letter of appointment of each person within the applicant's organisation included in the list referred to in subparagraph (i).

(2) An application for the renewal or amendment of a licence must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The documents referred to in subrule (1)(d), (e), (f) (g) and (j), as may be applicable;
- (b) a document confirming or evidencing particulars of any change in the licence details of the applicant; and
- (c) in the case of an application for amendment of a licence, documents substantiating any material facts mentioned in the motivation for the amendment referred to in rule **29.11(5)(d)**.

(3) This rule does not apply in respect of an application for a new licence or renewal of a licence to operate as a carrier or searcher of or for wreck not located in the Republic.

**Additional supporting documents required for applications for licensing of premises** (*section 630*)

**29.13** An application for the licensing of any premises in terms of section 630 of the Control Act must, in addition to the documents and information listed in rule **29.12**, be supported by the following documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) Documents proving or confirming the physical address of—
  - (i) the premises to which the application relates; and
  - (ii) the premises where the records of the business to which the application relates will be kept, if those premises are not the same as those mentioned in subparagraph (i);
- (b) a site plan showing the exact location of the premises or complex of premises in relation to adjoining properties and public roads, including vehicle and other access points to the premises;
- (c) a layout plan showing the exact location of the areas within the premises to be used for purposes of the licence type applied for, including the location of—
  - (i) access points to buildings on the premises such as doors, windows, openings fitted with roller shutters, lifts and staircases;
  - (ii) areas set aside for specific activities relating to goods, such as secure or temporary storage of goods, unpacking of containers, consolidation for export; and
  - (iii) in the case of a substantial business—
    - (aa) areas set aside for the performance of enforcement functions by customs officers; and
    - (bb) vehicle parking bays, also indicating which parking bays are allocated for use by customs officers;
- (d) documents evidencing compliance with any requirements of other legislation applicable to the premises;
- (e) documents evidencing the applicant's ownership of or other right to the premises,<sup>683</sup> including—
  - (i) a title deed or other deed of ownership or entitlement; or
  - (ii) a lease agreement;
- (f) documents setting out procedures to ensure the physical security of—
  - (i) the premises;
  - (ii) any goods on the premises; and
  - (iii) the records relating to the business conducted on the premises; and
- (g) in the case of an application for the licensing of inward processing premises, a document describing the measures that will be taken to verify that goods

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<sup>683</sup> See sections 639(b) and 665(d) of the Control Act.

cleared for export from the Republic in terms of Part 3 of Chapter 18 of the Control Act are inward processed compensating products obtained from the relevant imported goods.

**Other documents to be submitted or made available to customs authority on request**

**29.14** An applicant must on request by the customs authority—

- (a) submit to it any other documents that may be required for purposes of considering an application; and
- (b) make available to it any information, books, accounts and other documents necessary for—
  - (i) verifying any statements made by the applicant in the application; or
  - (ii) ascertaining facts relating to the premises, facility or activity in respect of which a new licence or a renewal or amendment of a licence is sought.

***Part 3: Additional requirements for applications for specific licence types***

**Applications for new licences or renewal of licences of premises as bulk sea cargo, special sea cargo or multi-purpose sea cargo terminals (*section 665(b)*)**

**29.15** An application for a new licence or the renewal of a licence to manage, operate and use premises as a bulk sea cargo, special sea cargo or multi-purpose sea cargo terminal as contemplated in section 630(1) of the Control Act must state the following additional information:

- (a) The place where measurements will be taken of any liquid bulk cargo loaded or off loaded at the terminal; and
- (b) the method of measurement.

**Applications for new licences or renewal of licences of premises as public or private storage warehouses (*section 665(b)*)**

**29.16** An application for a new licence or the renewal of a licence to manage, operate and use premises as a public or private storage warehouse as contemplated in section 630(1) of the Control Act, including a public or private storage warehouse in a special economic zone, must—

- (a) state the following additional information:
  - (i) The purpose for which the warehouse will be used with reference to sections 300 and 301; and
  - (ii) in the case of an application also serving as a standing application to carry out sorting, packing and other actions in connection with goods warehoused in storage warehouses referred to in rule **13.15(4)**, the information referred to in rule **13.15(4)(a)** to (c); and
- (b) be supported by the following additional documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:
  - (i) a document setting out the specifics of the inventory control system to be used in the warehouse, including the waste inventory control system; and
  - (ii) in the case of an application serving as a standing application referred to in rule **13.15(4)**, the documents referred to in rule **13.15(5)**.

**Applications for new licences or renewal of licences for cross-border transmission lines, pipelines, cable-cars and conveyor belts** (*section 665(b)*)

**29.17** An application for a new licence or the renewal of a licence to import or export goods through a cross-border transmission line or pipeline or by means of a cable-car or conveyor belt as contemplated in section 631 of the Control Act must state the following additional information:

- (a) The place where measurements are to be taken, in the case of a CTC; and
- (b) the class or kind of CTC or other goods to be imported or exported through or by means of the transmission line or pipeline, or cable-car or conveyor belt respectively; and
- (c) the method of measurement of all CTCs to be imported or exported through or by means of the pipeline or transmission line.

**Applications for new licences or renewal of licences of premises as state warehouses** (*section 665(b)*)

**29.18** (1) An application for a new licence or the renewal of a licence to operate premises as a state warehouse as contemplated in section 630(3) of the Control Act

must, in addition to the other documents referred to in rule **29.12**, be supported by a document setting out specifics of the inventory control system to be used in the state warehouse, including the waste inventory control system.

(2) The document referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Applications for new licences or renewal of licences of premises as tax free shops and special shops for diplomats (section 665(b))**

**29.19** (1) An application for a new licence or the renewal of a licence to manage, operate and use premises as a tax free shop or a special shop for diplomats as contemplated in section 630(1) of the Control Act must in addition to the other documents referred to in rule **29.12**, be supported by a document setting out specifics of the inventory control system to be used in the tax free shop or the special shop for diplomats, including the waste inventory control system.

(2) The document referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Applications for new licences or renewal of licences of premises as inward or home use processing premises (section 665(b))**

**29.20** An application for a new licence or the renewal of a licence to manage, operate and use premises as inward or home use processing premises as contemplated in section 630(2) of the Control Act, including such premises within a special economic zone must—

- (a) state the following additional information:
- (i) The class or kind of imported goods to be processed under the new or renewed licence at the premises under the inward or home use processing procedure;
  - (ii) the type of inward or home use processed compensating products into which those goods will be processed;

- (iii) any by-products and waste that will in the ordinary course of such processing be obtained;
  - (iv) the conversion rate contemplated in section 425 or 447 of the Control Act to be used for the purposes of the processing of goods of each class or kind into compensating products;<sup>684</sup> and
  - (v) in the case of an application serving also as an application for standing approval to appoint a subcontractor for—
    - (aa) inward processing operations referred to in rule **18.7**, the information referred to in rule **18.7(2)(c)**, **(d)** and **(f)**; or
    - (bb) home use processing operations referred to in rule **19.5**, the information referred to in rule **19.5(2)(c)**, **(d)** and **(f)**; and
- (b) be supported by the following additional documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:
- (i) A document setting out—
    - (aa) the factors that were taken into account in determining the conversion rate referred to in paragraph (a)(iv); and
    - (bb) any other relevant information to explain the conversion rate; and
  - (ii) in the case of an application serving as an application for standing approval to appoint a subcontractor for inward processing operations referred to in rule **18.7** or for home use processing operations referred to in rule **19.5**, any documents relevant to such appointments.

**Applications for new licences or renewal of licences as carriers** (*section 632 and 665(b)*)

**29.21** An application for a new licence or the renewal of a licence to conduct business as a carrier as contemplated in section 632 of the Control Act must—

- (a) state the following additional information:
  - (i) whether the applicant intends making use of a reporting document as a transshipment clearance declaration as contemplated in section 251 of the Control Act;<sup>685</sup> and

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<sup>684</sup> Note that this application will in terms of rule **18.15** or **19.13** be regarded also as an application for custom's approval of the conversion rate.



- (ii) any code issued to the applicant by an international body such as the International Air Transport Association (IATA) or the Bureau International des Containers en du Transport Intermodal (B.I.C.); and
- (b) be supported by the following additional documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:
  - (i) If the applicant is located in the Republic,<sup>686</sup> documents proving or confirming the physical address of—
    - (aa) the premises from where the applicant's business as a carrier in the Republic will be conducted under the new or renewed licence; and
    - (bb) the premises where the records of the applicant's business as a carrier will be kept, if those premises are not the same as those referred to item (aa);
  - (ii) if the applicant is not located in the Republic, a copy of the agency agreement between the applicant and a registered agent located in the Republic concluded for purposes of representing the applicant in the Republic; and<sup>687</sup>
  - (iii) any document confirming the issuing of a code referred to in paragraph (a)(ii).

**Applications for new licences or renewal of licences as customs brokers**  
(sections 633 and 665(b))

**29.22** (1) An application for a new licence or the renewal of a licence to conduct business as a customs broker as contemplated in section 633 of the Control Act must—

- (a) state whether the applicant intends making use of a reporting document as a transshipment clearance declaration as contemplated in section 251 of the Control Act;<sup>688</sup> and
- (b) be supported by documents proving or confirming the physical address of—

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<sup>685</sup> See rule 11.3(3).

<sup>686</sup> See section 1(3)(a) of the Control Act.

<sup>687</sup> See section 632(2)(b) and(3)(b) of the Control Act.

<sup>688</sup> See rule 11.3(3).

- (i) the premises where the applicant will conduct the business of a customs broker under the new or renewed licence; and
- (ii) the premises where the records of the applicant's business as a customs broker will be kept, if those premises are not the same as those referred to in subparagraph (i).

(2) The document referred to in subrule (1)(b) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Applications for new licences or renewal of licences as stores suppliers**  
(section 634(1) and 665(b))

**29.23** (1) An application for a new licence or the renewal of a licence to conduct business as a stores supplier as contemplated in section 634(1) of the Control Act must be supported by documents proving or confirming the physical address of—

- (a) the premises from where the applicant will conduct the business as a stores supplier under the new or renewed licence; and
- (b) the premises where the records of the applicant's business as a stores supplier will be kept, if those premises are not the same as those referred to in paragraph (a).

(2) Supporting documents referred to in subrule (1) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Applications for new licences or renewal of licences as importers and exporters of goods under processing procedures** (sections 634(2) and 665(b))

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**29.24** (1) No person may submit an application for a new licence or the renewal of a licence of any of the following licence types as contemplated in section 634(2) of the Control Act unless the applicant is located in the Republic.<sup>690</sup>

<sup>689</sup> Note that licensees of inward or home use processing premises are exempted from the requirement to license as an importer of goods for inward or home use processing. See section 634(2A) of the Control Act.

<sup>690</sup> See section 1(3)(a) of the Control Act.

- (a) An importer of goods for inward processing licence;
- (b) an importer of goods for home use processing licence; or
- (c) an exporter of inward processed compensating products licence.

(2) An application contemplated in subrule (1)(a) or (b) must state the following additional information:

- (a) The customs code and physical address of the licensed inward or home use processing premises where the imported goods will be processed;
- (b) the class or kind of imported goods that will be imported under the inward or home use processing procedure for processing on those premises;
- (c) the type of inward or home use processed compensating products into which those goods will be processed;
- (d) any by-products and waste that will be obtained in the ordinary course of such processing;
- (e) the conversion rate contemplated in section 425 or 447 of the Control Act to be used for purposes of the processing of goods of each class or kind into compensating products;<sup>691</sup> and
- (f) in the case of inward processing, the party who will export the compensating products.

(3) An application referred to in subrule (1)(a) or (b) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The agreement between the importer and the licensee of inward or home use processing premises where the goods imported by the importer are to be processed, setting out—
  - (i) the terms on which such processing will be undertaken; and
  - (ii) specifics of the conversion rate referred to in section 425 or 447 of the Control Act to be used for purposes of such processing;
- (b) documents proving or confirming the physical address of—
  - (i) the premises from where the applicant's business as such an importer will be conducted;

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<sup>691</sup> Note that this application will in terms of rule 18.15 or 19.13 be regarded also as an application for customs' approval of the conversion rate.

- (ii) the premises where the records of the applicant's business as such an importer will be kept, if those premises are not the same as those referred to in subparagraph (i); and
- (iii) a document setting out—
  - (aa) the factors that were taken into account in determining the conversion rate referred to in subrule (2)(e); and
  - (bb) any other relevant information to explain the conversion rate.

(4) An application contemplated in subrule (1)(c) must state the following additional information:

- (a) The type of inward processed compensating products that will be exported under the new or renewed licence; and
- (b) the customs code or physical address of the licensed inward processing premises where the compensating products will be obtained.

(5) An application referred to in subrule (4) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The agreement between the exporter and the licensee of the inward processing premises where the goods from which those products will be obtained are to be processed, setting out the terms on which the exporter will acquire those products for export; and
- (b) documents proving or confirming the physical address of—
  - (i) the premises from where the applicant's business as such an exporter will be conducted; and
  - (ii) the premises where the records of the applicant's business as such an exporter will be kept, if those premises are not the same as those referred to in subparagraph (i).

**Applications for new licences or renewal of licences to search for abandoned wreck or to search specific abandoned wreck (section 634(3))**

**29.25** An application for a new licence or the renewal of a licence to search for abandoned wreck or a specific abandoned wreck contemplated in rule **29.9** must—

- (a) state the following additional information:

- (i) In the case of an application relating to a specific wreck—
    - (aa) details of the wreck applied for;
    - (bb) whether the wreck is older than 50 years; and
    - (cc) if the location of the wreck is known, its location, and if the location is unknown, the area to be searched; and
  - (ii) in the case of an application relating to the search for any wreck, the area to be searched; and
- (b) be supported by the following additional documents, which must be submitted to the customs authority, subject to and in accordance with Part 6 of Chapter 41 of these Rules:
- (i) If the applicant is located in the Republic,<sup>692</sup> documents proving or confirming the physical address of—
    - (aa) the premises from where the applicant's business as such a searcher for or of wreck will be conducted; and
    - (bb) the premises where the records of the applicant's business as such a searcher for or of wreck will be kept, if those premises are not the same as those referred to in item (aa);
  - (ii) if the applicant is not located in the Republic, a copy of the agency agreement between the applicant and a registered agent located in the Republic concluded for purposes of representing the applicant in the Republic as contemplated in rule **29.9(2)**;
  - (iii) a document—
    - (aa) evidencing that the specific wreck to be searched or searched for has been abandoned; or
    - (bb) setting out the grounds for the applicant's belief that the wreck has been abandoned;
  - (iv) if the specific wreck to be searched for or to be searched is older than 50 years, a written permission of the National Monuments Council authorising the search; and
  - (v) in the case of the renewal of an existing licence—
    - (aa) a report on the activities of the licensee during the validity period of the existing licence; and

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<sup>692</sup> See section 1(3)(a) of the Control Act.

(bb) details of anticipated activities during the validity period of the renewed licence.

**Compliance with requirement of sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices** (section 665(b))

**29.26** (1) An applicant applying for any of the following categories or types of licences, or the renewal of such a licence, must have sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices by having available within the applicant's business at least one person contemplated in rule **29.47**(1) that has completed the relevant Customs Sufficient Knowledge Test:

- (a) Terminal licence;
- (b) container or air cargo depot licence;
- (c) public or private storage warehouse licence;
- (d) state warehouse licence;
- (e) tax free shop licence;
- (f) special shop for diplomats licence;
- (g) customs broker licence;
- (h) local carrier licence;
- (i) inward processing premises licence;
- (j) home use processing premises licence;
- (k) stores supplier licence; and
- (l) local courier licence.

(2) An application for a licence referred to in subrule (1) may, subject to subrule (3), be submitted before the applicant complies with subrule (1), but the applicant is not entitled to final consideration<sup>693</sup> of the application unless the applicant has complied with that requirement.

(3) An application for a licence referred to in subrule (1) lapses if the applicant does not comply with that subrule within 90 calendar days from the date of submission of the application, subject to section 908 of the Control Act.

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<sup>693</sup> The effect of this is that the application will not be granted before the applicant complies with the sufficient knowledge requirement.

(4) No application for renewal of a licence for a category or type of licence referred to in subrule (1) may be submitted unless the applicant, or another person in the applicant's organisation contemplated in rule **29.47(1)**, has complied with the requirement of sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices relating to the business of such a licensee.

#### ***Part 4: Licence conditions***

##### **General conditions applicable to all licences** (*section 642(1)(a)*)

**29.27** All licences are subject to the following general conditions:

- (a) The licensee must on request by the customs authority furnish security as contemplated in section 660 of the Control Act to cover any tax risk that may arise in relation to goods not in free circulation that may at any time be under the control of the licensee.
- (b) The licensee may not authorise or allow any other person to use on the licensee's behalf the customs code allocated by the customs authority to that licensee, except in accordance with rule **41.16**.
- (c) The licensee must whenever transacting business relating to the purpose for which the licence was granted, indicate that customs code on any document issued by the licensee, including on—
  - (i) any communication to the customs authority or another organ of state; and
  - (ii) any authorisation issued by the licensee to any registered agent, any licensed customs broker or carrier or any ordinary representative to act on behalf of the licensee.
- (d) The licence or a certified copy of the licence, or an official SARS letter of confirmation of licensing, must at all times be kept on—
  - (i) the licensed premises, if applicable; or
  - (ii) the business premises of the licensee, if the licensee is located in the Republic.
- (e) All reports, applications, declarations, notifications and other documents or communications that must or may be submitted by the licensee to the customs authority in terms of the Control Act or a tax levying Act must be submitted electronically through EDI or eFiling, or any other communicative

system as may be applicable for the particular document or communication, except where a document or communication is submitted to the customs authority in paper format subject to rule **41.13**. A document or communication submitted in terms of rule **41.13** in paper format, must be submitted in accordance with any applicable requirements of these Rules or as the customs authority may direct in a specific case.

- (f) The licensee must take all reasonable steps to safeguard all goods not in free circulation that are at any stage under the licensee's physical control, against damage, destruction or loss.
- (g) The records a licensee must keep in connection with the business or activity for which the licence was issued, must be kept in accordance with Part 7 of Chapter 41 of these Rules.
- (h) The licensee must provide all reasonable assistance to customs officers conducting an inspection or search in terms of Chapter 33 of the Control Act—
  - (i) on the licensed premises;
  - (ii) on any premises managed, operated or used by the licensee for purposes of the business or activity for which the licence was issued, including any premises on which records referred to in paragraph (g) are kept;<sup>694</sup> or
  - (iii) of or for any goods or documents under the physical control of the licensee.

**Additional general conditions applicable to licensed cargo terminals** (*sections 642(1)(a), 643 and 665(h)*)

**29.28** (1) All licences issued in respect of cargo terminals are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The licensee must regulate the movement of inbound and outbound cargo through the terminal in a manner that takes account of the reasonable requirements of customs officers to perform their enforcement functions on the terminal effectively.

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<sup>694</sup> See also section 888 of the Control Act in terms of which it is a criminal offence to hinder, interfere with or obstruct a customs officer from performing his or her enforcement functions.



- (b) The licensee must provide permanent adequate space within the terminal to the customs authority to carry out its enforcement functions on a continuous basis, including—
  - (i) office accommodation and counter facilities for the performance of administrative work arising from such enforcement functions;
  - (ii) an area for the inspection of goods;
  - (iii) a place for the installation of scanning equipment; and
  - (iv) parking space for customs officers.
- (c) The licensee must provide permanent adequate space within the terminal or at any nearby premises for the temporary storage<sup>695</sup> of goods.
- (d) The licensee must provide a separate area within the terminal or at any nearby premises for the temporary safekeeping of detained or seized goods pending steps to be taken in connection with the goods in terms of the Control Act.

(2) All licences issued in respect of bulk sea cargo, special sea cargo or multi-purpose sea cargo terminals are, in addition to those listed in rule **29.27** and subrule (1), subject to the following further general conditions:

- (a) The licensee must install and maintain meters, gauges, and other appliances to be used in measuring the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any liquid bulk cargo loaded or off loaded at the terminal.
- (b) The licensee must—
  - (i) in accordance with any standards or criteria applicable to the relevant liquid bulk cargo industry, make accurate measurements of, and for assessing the actual loss in, the volume, weight or quantity of any liquid bulk cargo loaded or off loaded at the terminal; and
  - (ii) within 72 hours after a measurement was made notify the customs authority electronically through eFiling, subject to rule **41.13**, of the measurement.
- (c) The licensee must update the licence details in accordance with rule **29.48** if there is any change in—

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<sup>695</sup> See definition of “temporary storage” in section 1 of the Control Act.

- (i) the method of measurement of liquid bulk cargo loaded or off-loaded at the terminal; or
  - (ii) the place where the measurements are taken.
- (d) Any notification referred to in paragraph (b)(ii) must reflect the following information:
- (i) The name of the licensee and the customs code of the terminal receiving the cargo;
  - (ii) if the notification is submitted by a customs broker or ordinary representative on behalf of the licensee, the information specified in rule **41.14**,<sup>696</sup> and
  - (iii) particulars of the measurement and the date and time of the measurement.

**Additional general conditions applicable to licensed traveller terminals**  
(sections 642(1)(a), 643 and 665(h))

**29.29** All licences issued in respect of traveller terminals are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The licensee must regulate the movement of outbound and inbound travellers and crew through the terminal in a manner that takes account of the reasonable requirements of customs officers to perform their enforcement functions at the terminal effectively.
- (b) The licensee must provide permanent adequate space within the terminal for the customs processing of outbound and inbound travellers and crew members and their accompanied and unaccompanied baggage, including—
  - (i) office accommodation and counter facilities for the performance of administrative work arising from such customs processing and other enforcement functions in connection with such travellers and crew members;
  - (ii) an area for the inspection of baggage;
  - (iii) a place for the installation of scanning equipment;

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<sup>696</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit notifications on behalf of licensees in that capacity.

- (iv) private facilities for interviewing, and the bodily searching of, persons by customs officers; and
  - (v) parking space for customs officers.
- (c) The movement of travellers and crew at the terminal must be organised in such a way that all travellers and crew must move through the space made available to the customs authority in terms of paragraph (a) for the customs processing of travellers and crew.
- (d) The licensee must provide permanent space within the terminal or at any nearby premises for the temporary storage of unaccompanied and unclaimed baggage.
- (e) The licensee must provide a separate area within the terminal or at any nearby premises for the temporary safekeeping of detained or seized baggage pending steps to be taken in connection with the baggage in terms of the Control Act.

**Additional general conditions applicable to licensed cargo depots** (*sections 642(1)(a), 643 and 665(h)*)

**29.30** All licences issued in respect of cargo depots, including transshipment depots, are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The licensee must regulate the movement of inbound and outbound cargo through the depot in a manner that takes account of the reasonable requirements of customs officers to perform their enforcement functions in the depot effectively.
- (b) The licensee must provide permanent space within the depot to the customs authority to carry out its enforcement functions on a continuous basis, including—
- (i) office accommodation and counter facilities for the performance of administrative work arising from such enforcement functions;
  - (ii) an area for the inspection of goods;
  - (iii) a place for the installation of scanning equipment; and
  - (iv) parking space for customs officers.

- (c) The licensee must provide permanent space within the depot or at any nearby premises for the temporary storage<sup>697</sup> of goods.
- (d) The licensee must provide a separate area within the depot or at any nearby premises for the temporary safekeeping of detained or seized goods pending steps to be taken in connection with the goods in terms of the Control Act.

**Additional general conditions applicable to licensed storage warehouses**  
(sections 642(1)(a), 643 and 665(h))

**29.31** (1) All licences issued in respect of public or private storage warehouses, including those within a special economic zone, are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the public or private storage warehouse is housed must be sturdy and suitable for the purpose for which it is used, and must comply with—
  - (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.
- (b) The public or private storage warehouse must—
  - (i) be conducted in a way that safeguards the goods in the warehouse against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place, suitable to the type of structure, to ensure the physical security of the goods, including, if appropriate, adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;
    - (bb) burglary; and
    - (cc) illegal removal of goods;
- (c) The licensee of a public or private storage warehouse must whenever necessary provide adequate space to customs officers within or at the warehouse to enable them to conduct their enforcement functions on the premises.

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<sup>697</sup> See definition of “temporary storage” in section 1 of the Control Act.

- (d) The licensee of a public or private storage warehouse may not make any alterations to any existing structure on the premises without the prior approval of the customs authority.
- (e) The licensee of a public or private storage warehouse must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee's business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test successfully; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.
- (f) All goods received in a public or private storage warehouse must, until it is removed from the warehouse, be accounted for on an appropriate and effective stock inventory system referred to in rule **13.10**.

(2) All licences issued in respect of public storage warehouses, including those within a special economic zone, are, in addition to those listed in subrule (1) and in rule **29.27**, subject to the following further general conditions:

- (a) Any racks or shelves in a warehouse must be numbered and any floor storage space must be marked in rows, in the case of goods stacked or packed on racks or shelves or on the floor.
- (b) Goods must be stored, packed or stacked in a systematic manner and must be labelled clearly and accurately and arranged in a way that facilitates the tracking of goods, depending on the nature of the goods stored in, and the structure of, the warehouse.
- (c) Stock checks must be performed on a regular basis.
- (d) Additional safety and control measures must be maintained for high value or high risk goods.
- (e) Goods that are of a perishable or dangerous nature must be stored in conditions appropriate to the nature of the goods.
- (f) Suitable handling and loading equipment and other tools required for the wrapping and opening of packages must be available on the premises, depending on the nature of the goods.

- (g) The licensee of a public storage warehouse must provide a separate area<sup>698</sup> within or at the warehouse for the temporary storage of detained or seized goods pending steps to be taken in connection with the goods in terms of the Control Act.

**Additional general conditions applicable to licensed tax free shops** (*sections 642(1)(a), 643 and 665(h)*)

**29.32** All licences issued in respect of tax free shops are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the tax free shop and any off-site outlet for the shop is housed must be sturdy and suitable for the purpose for which it is used, and must comply with—
- (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.
- (b) The tax free shop and any off-site outlet for the shop must—
- (i) be managed in a way that safeguards the goods in the shop or outlet against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place to ensure the physical security of the goods, including adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;
    - (bb) burglary; and
    - (cc) illegal removal of goods.
- (c) The tax free shop must have a separate sales area for the retail display of goods for sale to customers and a storage area for the supply of goods to the sales area.
- (d) The customer entrance to the shop or outlet must lead directly into the sales area where goods are on retail display for sale to customers.

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<sup>698</sup> Note that this “separate area” does not have to be a specific fixed area that is permanently dedicated for the purpose of temporary storage of detained or seized goods. The requirement is just that the area must be separate, i.e. the goods kept in such area must be separate from the other goods in the warehouse. Therefore different areas can at different times be used as the “separate area”. In the case of liquid bulk goods it must be a separate tank, dedicated at a specific time for detained or seized goods.

- (e) No customers may be allowed into other parts of the shop such as storerooms where goods are not on public display.
- (f) The licensee of the tax free shop must whenever necessary provide adequate space to customs officers within or at the shop to enable them to conduct their enforcement functions on the premises.
- (g) The licensee must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee's business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test successfully; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.
- (h) All goods received in the tax free shop until it is removed from the tax free shop must be accounted for on an appropriate and effective stock inventory system referred to in rule **14.19**.

**Additional general conditions applicable to special shops for diplomats**  
(sections 642(1)(a), 643 and 665(h))

**29.33** All licences issued in respect of special shops for diplomats are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the special shop for diplomats is housed must be sturdy and suitable for the purpose for which it is used, and must comply with—
  - (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.
- (b) The special shop for diplomats must—
  - (i) be managed in a way that safeguards the goods in the shop or outlet against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place to ensure the physical security of the goods, including adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;

- (bb) burglary; and
  - (cc) illegal removal of goods.
- (c) The special shop for diplomats must have a separate sales area for the retail display of goods for sale to customers and a storage area for the supply of goods to the sales area.
- (d) The customer entrance to the shop or outlet must lead directly into the sales area where goods are on retail display for sale to customers.
- (e) No customers may be allowed into other parts of the shop such as storerooms where goods are not on public display.
- (f) The licensee of the special shop for diplomats must whenever necessary provide adequate space to customs officers within or at the shop to enable them to conduct their enforcement functions on the premises.
- (g) The licensee must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee’s business at least one person contemplated in rule **29.47**(1) who has completed the relevant Customs Sufficient Knowledge Test successfully; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.
- (h) All goods received in the special shop for diplomats until it is removed from the shop must be accounted for on an appropriate and effective stock inventory system referred to in rule **14.19** as applied by rule **14.26**.

**Additional general conditions applicable to licensed inward processing premises** (*sections 642(1)(a), 643 and 665(h)*)

**29.34** All licences issued in respect of inward processing premises,<sup>699</sup> including those within a special economic zone, are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the inward processing is undertaken must be sturdy and suitable for the purpose for which it is used, and must comply with—
  - (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.

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<sup>699</sup> See section 630(2)(a) of the Control Act.



- (b) The inward processing premises must—
- (i) be managed in a way that safeguards the goods on the premises against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place, suitable to the type of structure, to ensure the physical security of the goods, including, if appropriate, adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;
    - (bb) burglary; and
    - (cc) illegal removal of goods.
- (c) The licensee may not make any alterations to any existing structure forming part of the inward processing premises without the prior approval of the customs authority.
- (d) When processing goods under the inward processing procedure on the premises, the conversion rate applicable to the goods and as approved by the customs authority must be used for the conversion of the goods to inward processed compensating products for purposes of the Control Act and any applicable tax levying Act.<sup>700</sup>
- (e) The licensee must whenever necessary provide adequate space to customs officers on the inward processing premises to enable them to conduct their enforcement functions on the premises.
- (f) The licensee must take adequate measures to ensure that goods cleared for export from the Republic in terms of Part 3 of Chapter 18 of the Control Act can be verified as inward processed compensating products obtained from imported goods cleared for inward processing.
- (g) The licensee must—
- (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee's business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test successfully; and

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<sup>700</sup> See section 425 of the Control Act.

- (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.

**Additional general conditions applicable to licensed home use processing premises** (*sections 642(1)(a), 643 and 665(h)*)

**29.35** All licences issued in respect of home use processing premises,<sup>701</sup> including those within a special economic zone, are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the home use processing is undertaken must be sturdy and suitable for the purpose for which it is used, and must comply with—
  - (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.
- (b) The home use processing premises must—
  - (i) be managed in a way that safeguards the goods on the premises against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place, suitable to the type of structure, to ensure the physical security of the goods, including, if appropriate, adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;
    - (bb) burglary; and
    - (cc) illegal removal of goods.
- (c) The licensee may not make any alterations to any existing structure forming part of the home use processing premises without the prior approval of the customs authority.
- (d) When processing goods under the home use processing procedure on the premises, the conversion rate applicable to the goods and as approved by the customs authority must be used for the conversion of the goods to home use processed compensating products for purposes of the Control Act and any applicable tax levying Act.<sup>702</sup>
- (e) The licensee must whenever necessary provide adequate space to customs

<sup>701</sup> See section 630(2)(b) of the Control Act.

<sup>702</sup> See section 447 of the Control Act.

officers on the home use processing premises to enable them to conduct their enforcement functions on the premises.

- (f) The licensee must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee's business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test successfully; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.

**Additional general conditions applicable to licensed state warehouses**  
(sections 642(1)(a), 643 and 665(h))

**29.36** All licences issued in respect of state warehouses referred to in section 569(b) of the Control Act are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The structure in which the state warehouse is housed must be sturdy and suitable for the purpose for which it is used, and must comply with—
  - (i) any applicable fire prevention standards; and
  - (ii) any applicable health and safety regulations.
- (b) The state warehouse must—
  - (i) be conducted in a way that safeguards the goods in the warehouse against conduct in breach of the Control Act or any other misappropriation; and
  - (ii) have adequate security measures in place, suitable to the type of structure, to ensure the physical security of the goods, including, if appropriate, adequate locking devices for windows, doors and gates and permanently installed electronic security equipment, to prevent—
    - (aa) unauthorised entry;
    - (bb) burglary; and
    - (cc) illegal removal of goods.
- (c) The licensee of a state warehouse must whenever necessary provide adequate space to customs officers within the warehouse to enable them to conduct their enforcement functions on the premises.

- (d) The licensee of a state warehouse may not make any alterations to any existing structure forming part of the premises without the prior approval of the customs authority.
- (e) The licensee must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee’s business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test successfully; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.
- (f) All goods received in the state warehouse until it is removed from the warehouse must be accounted for on an appropriate and effective stock inventory system.
- (g) Any racks or shelves in the warehouse must be numbered and any floor storage space must be in marked rows, in the case of goods stacked or packed on racks or shelves or on the floor.
- (h) Goods must be stored, packed or stacked in a systematic manner and must be labelled clearly and accurately and arranged in a way that facilitates stock checks<sup>703</sup> and the tracking of goods, depending on the nature of goods stored in, and the structure of, the warehouse.
- (i) Additional safety and control measures must be maintained for high value or high risk goods.
- (j) Goods that are of a perishable or dangerous nature must be stored in conditions appropriate to the nature of the goods.
- (k) Suitable handling and loading equipment and other tools required for the wrapping and opening of packages must be available on the premises, depending on the nature of the goods.
- (l)
  - (i) The entry and exit of all persons and vehicles into or out of a state warehouse must be monitored and controlled.
  - (ii) Records must be kept of all visitors, and the reason for visits must be recorded in an admittance register.

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<sup>703</sup> Note that in terms of section 576 of the Control Act stock checks must be performed on a monthly basis.

- (iii) All visitors entering the warehouse must sign the register on entry as well as on exit.
- (iv) All visitors must display visitor's permits which must be provided for this purpose.

**Additional general conditions applicable to all licensed cross-border transmission lines** (sections 642(1)(a), 644 and 665(h))

**29.37** All licences issued in respect of cross-border transmission lines are, in addition to those listed in rule **29.27**, subject to the further general condition that the licensee must inform the customs authority of any change in—

- (a) the method of measurement of electricity imported or exported through the cross-border transmission line; or
- (b) the place where measurements are taken.

**Additional general conditions applicable to all licensed cross-border pipelines** (sections 642(1)(a), 644 and 665(h))

**29.38** All licences issued in respect of cross-border pipelines are, in addition to those listed in rule **29.27**, subject to the further general condition that the licensee must inform the customs authority of any change in—

- (a) the class or kind of CTC imported or exported through the cross-border pipeline;
- (b) the method of measurement of all CTCs imported or exported through the cross-border pipeline; or
- (c) the place where measurements are taken.

**Additional general conditions applicable to all licensed cross-border cable-cars and conveyor belts** (sections 642(1)(a), 644 and 665(h))

**29.39** All licences issued in respect of cross-border cable-cars or conveyor belts are, in addition to those listed in rule **29.27**, subject to the further general condition that the licensee must inform the customs authority of any change in the class or kind of goods imported or exported by way of the cross-border cable-car or conveyor belt.

**Additional general conditions applicable to all licensed local carriers** (sections 642(1)(a), 645 and 665(h))

**29.40** All licences issued in respect of local carriers are, in addition to those listed in rule **29.27**, subject to the further general condition that the licensee must—

- (a) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee’s business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test; and
- (b) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.

**Additional general conditions applicable to all licensed customs brokers**  
*(sections 642(1)(a), 646 and 665(h))*

**29.41** All licences issued in respect of customs brokers are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The licensee is entitled to carry out any or all of the business modes referred to in the definition of “customs broker” in section 1 of the Control Act unless the licence specifically excludes any of those business modes from the licence.
- (b) The licensee must—
  - (i) maintain sufficient knowledge of customs laws, manuals and practices by having available at all times within the licensee’s business at least one person contemplated in rule **29.47(1)** who has completed the relevant Customs Sufficient Knowledge Test; and
  - (ii) promptly give notice in terms of rule **29.49** to the customs authority if subparagraph (i) is at any stage not complied with.
- (c) The licensee must separately keep record of all authorisations referred to in section 165(1)(b) of the Control Act in terms of which the licensee submits clearance declarations on behalf of other persons, for a period of at least five years.

**Additional general conditions applicable to all licensed stores suppliers**  
*(sections 642(1)(a) and 665(h))*

**29.42** All licences issued in respect of stores suppliers are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) A stores supplier that delivers goods cleared for the stores procedure to a foreign-going vessel, foreign-going aircraft or cross-border train must record the information referred to in paragraph (b) concerning the delivery of the goods, subject to and in accordance with Part 7 of Chapter 41 of these Rules.
- (b) The following information must be reflected when recording the delivery of goods as contemplated in paragraph (a):
  - (i) The name and customs code of the stores supplier;
  - (ii) the date and time of delivery of the goods;
  - (iii) confirmation that the goods delivered correspond with the goods described in the release notification issued in respect of the goods; and
  - (iv) if no such confirmation can be given, the reason why confirmation cannot be given.

**Additional general conditions applicable to all licensed importers and exporters of goods under inward or home use processing procedures (sections 642(1)(a) and 665(h))<sup>704</sup>**

**29.43** All licences issued in respect of importers of goods for inward or home use processing<sup>705</sup> are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The imported goods—
  - (i) must be delivered to the inward or home use premises of the licensee with whom the importer has concluded an agreement for the processing of the goods; and
  - (ii) may be processed only by or under the control of that licensee.
- (b) The importer is responsible for ensuring, in the case of the inward processing of the goods, that all compensating products derived from the inward processing of the imported goods are exported in accordance with

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<sup>704</sup> These conditions will only apply to those importers and exporters of goods under the inward or home use processing procedures that are specifically licensed for the purpose of such imports and exports. These conditions do not apply to licensees of inward or home use processing premises who themselves import goods for inward or home use processing. See section 634(2) of the Control Act.

<sup>705</sup> See section 634(2)(a) and (b) of the Control Act.

Chapter 18 of the Control Act, unless otherwise provided for in the agreement referred to in paragraph (a).

**Additional general conditions applicable to all licensed searchers of or for abandoned wreck** (*section 634(3)(a)*)

**29.44** All licences issued in respect of searchers of or for abandoned wreck are, in addition to those listed in rule **29.27**, subject to the following further general conditions:

- (a) The licence does not diminish the rights of any other person to whom a similar licence has been or may be issued.
- (b) The licence only covers a wreck or wrecks that have been abandoned and does not confer any right on the licensee to search or work a wreck where another party is still exercising or is yet to exercise their salvage rights. The onus to establish whether a wreck has been abandoned or the rights of another party will be infringed by searching or working a wreck rests with the licensee.
- (c) Unless the customs authority determines otherwise in a specific case, any goods recovered by the licensee from an abandoned wreck—
  - (i) must be regarded to be imported goods imported on the date of their recovery; and
  - (ii) attract import tax at the rate as specified in any applicable tax levying Act for goods of that class or kind.
- (d) If the licensee recovers any unopened safe, chest, container or other receptacle from a wreck, the licensee—
  - (i) must immediately give notice of the unopened safe, chest, container or other receptacle to the nearest Customs Office;
  - (ii) may open the safe, chest, container or other receptacle only under customs supervision unless the customs authority determines otherwise; and
  - (iii) must compile a list of all goods found in the safe, chest, container or other receptacle.
- (e) If the goods recovered from a wreck are imported goods or in terms of paragraph (c) regarded to be imported goods, the licensee must within three working days of the date of recovery of the goods—



- (i) clear the goods for home use or a customs procedure and, if cleared for home use, pay to the Commissioner any import tax payable on the goods in terms of any applicable tax levying Act; and
- (ii) pay to the Commissioner, in addition—
  - (aa) a royalty of 15 per cent of the customs value of the goods; and
  - (bb) any expenses incurred by the Commissioner for services rendered to the licensee in connection with the goods.
- (f) The customs authority may direct the licensee to obtain at own cost a sworn appraisalment of the recovered goods if the customs value of the goods cannot be readily determined.
- (g) If the licensee fails to comply with paragraph (e)(i) or (ii), the goods must be removed to a state warehouse pending compliance with that paragraph in accordance with Chapter 27 of the Customs Control Act.
- (h) The licensee must keep a register at the licensee's place of business or, if the licensee is not located in the Republic, at the place of business of the licensee's registered agent in the Republic, specifying—
  - (i) all goods recovered by the licensee from any wreck covered by the licence;
  - (ii) the date of recovery;
  - (iii) the class or kind of goods and the quantity, weight or volume;
  - (iv) the date cleared for home use or a customs procedure; and
  - (v) the movement reference number of the clearance declaration.
- (i) The licensee must notify the customs authority of—
  - (i) the date of commencement with operations in terms of the licence, which must be within three months from the date of issue of the licence; and
  - (ii) the date of cessation of operations.
- (j) The licence does not affect the application of any other legislation applicable to the search of or for wreck, including the recovery of goods from any wreck.
- (k) The licensee may not disturb or remove any wreck older than 50 years without the permission of the National Monuments Council.

***Part 5: Record keeping and reporting***

**Records to be kept by licensees** (*section 665(l)*)

**29.45** (1) A licensee must, in accordance with section 919 of the Control Act, read with Part 7 of Chapter 41 of these Rules, keep such books, accounts, data and other records, as may be necessary to fully and accurately reflect the business conducted by the licensee for the particular licence type.

- (2) The records kept in terms of subrule (1) must include—
- (a) a record of all declarations, applications, reports, notifications, notices, returns and other documents submitted or issued by the licensee in terms of the Control Act or a tax levying Act;
  - (b) a record of all documents received by the licensee in terms of the Control Act or a tax levying Act;
  - (c) in the case of a licensed cargo terminal, depot or cross-border transmission line, pipeline, cable car or conveyor belt, a record of—
    - (i) all goods loaded, off-loaded, received, packed, unpacked, consolidated, deconsolidated, temporarily stored, delivered, removed or in any other way handled at such terminal, depot or cross-border transmission line, pipeline, cable car or conveyor belt; and
    - (ii) all goods damaged, destroyed, lost or unaccounted for at such terminal, depot or cross-border transmission line, pipeline, cable car or conveyor belt;
  - (d) in the case of a licensee responsible for goods cleared for a customs procedure, all records that must in terms of the Control Act be kept for purposes of that customs procedure; and
  - (e) in the case of all licensees, a record of compliance with the Control Act and the tax levying Acts reflecting evidence of compliance and the following occurrences, if any:
    - (i) Any late or non-payment of duty, levy, tax or interest by the licensee if the licensee is held responsible for such payment;
    - (ii) any customs queries and stop notes issued to the licensee and the outcome in each case;
    - (iii) any warnings issued to the licensee by the customs authority and the outcome in each case;

- (iv) any administrative penalties imposed on the licensee, and whether confirmed or mitigated;
- (v) any criminal proceedings instituted against the licensee and the outcome of the proceedings; and
- (vi) any corrective steps taken and maintained by the licensee to ensure compliance.

**Records to be produced or submitted and returns to be rendered to customs authority on request** (*section 665(l)*)

**29.46** (1) A licensee must produce or submit any record referred to in rule **29.45** or render such returns or submit such particulars in connection with that person's transactions, as the customs authority may require.

(2) (a) Records referred to in subrule (1) must be submitted subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(b) Part 6 of Chapter 41 of these Rules, with any necessary changes the context may require, applies to the submission of returns and particulars referred to in subrule (1).

**Part 6: General provisions**

**Customs Sufficient Knowledge Test** (*section 665(b)*)

**29.47** (1) Any of the following persons may take the Customs Sufficient Knowledge Test to establish sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices for purposes of licensing in terms of this Chapter where sufficient knowledge is in terms of this Chapter a requirement for the licence.<sup>706</sup>

- (a) If the applicant is an individual—
  - (i) the applicant himself or herself; or
  - (ii) a person in the employ of the applicant authorised by the applicant to take the test; or
- (b) if the applicant is a juristic entity—

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<sup>706</sup> See rules **29. 26**.

- (i) a person referred to in rule **29.10**(4) duly authorised to act for the entity;  
or
- (ii) a person in the employ of the applicant authorised by the applicant to take the test.

(2) There is no restriction on the number of times the test may be taken in order to achieve the score required to establish sufficient knowledge.

(3) The score required for the test to establish sufficient knowledge is 60 per cent.

(4) A person who has successfully completed the Customs Sufficient Knowledge Test remains eligible for purposes of these Rules for a period of three years, and to continue to be eligible must at the expiry of that period repeat the test.

### **Updating of licence details**

**29.48** (1) If any of the licence details of a licensee have or are to change, the licensee must promptly update those details in accordance with this rule.<sup>707</sup>

(2) An update in terms of subrule (1) containing the following information must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**:

- (a) The name and customs code of the licensee;
- (b) particulars of the change in licence details;
- (c) the effective date of the change; and
- (d) any additional information prescribed by any other rule.<sup>708</sup>

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<sup>707</sup> If the update is submitted on behalf of the licensee by an ordinary representative contemplated in section 920 of the Customs Control Act, the update must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents who submit an update in that capacity. An update submitted on behalf of the licensee by a customs broker, registered agent or ordinary representative must contain the additional information referred to in rule **41.14**.

<sup>708</sup> See for instance rule **29.28**(2)(d).

(3) If the change in licence details affect the information on the licensee's licence, the update must be effected through an application in terms of rule **29.11** for an amendment of the licence.

### **Notification of change of circumstances on which applications for licences were granted** (*section 661*)

**29.49** (1) When complying with section 661(1) of the Control Act, a licensee must notify the customs authority of any change of circumstances that were material to the granting of the relevant licence,<sup>709</sup> within three working days of the change having occurred, read with section 908 of the Control Act.

(2) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(3) A notification referred to in subrule (1) must state—

- (a) the name of the licensee and the customs code issued in respect of the licence;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**,<sup>710</sup> and
- (c) particulars of the changed circumstances, which may be submitted in a separate supporting document subject to Part 6 of Chapter 41 of these Rules.<sup>711</sup>

### **Reporting by licensees of breaches of Control Act, these Rules or tax levying Acts** (*section 665(n)(i)*)

**29.50** (1) If a licensee discovers or becomes aware of a breach of the Control Act, these Rules or a tax levying Act committed by any person in relation to goods

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<sup>709</sup> See section 661(2) of the Control Act and rule **1.7** for circumstances material to the granting of an application for a licence. This could include an intention to discontinue the activity for which the licence was granted.

<sup>710</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit notifications on behalf of licensees in that capacity.

<sup>711</sup> See section 661(2) of the Control Act and rule **1.7**.

handled or otherwise dealt with by the licensee in terms of the licence, the licensee must immediately report the breach to—

- (a) a customs officer on the premises where the goods are, if the goods are on licenced premises where the customs authority has a permanent presence; or
- (b) the customs authority electronically through eFiling, subject to rule **41.13**.

(2) A report referred to in subrule (1) must reflect—

- (a) the name and customs code of the licensee;
- (b) if the report is submitted by a customs broker, registered agent or ordinary representative on behalf of the licensee, the information specified in rule **41.14**;<sup>712</sup>
- (c) particulars of the breach, which may be submitted in a separate supporting document subject to and in accordance with Part 6 of Chapter 41 of these Rules; and
- (d) details of the person that committed the breach to the extent that such details are known to the licensee.

**Part 7: Rules relating to disclosure of customs relationships**  
(section 665)

**Customs relationships to be disclosed**

**29.51** (1) A licensee must promptly disclose to the customs authority—

- (a) any customs relationship<sup>713</sup> which the licensee has entered into for purposes of the activity for which that licensee is licensed; and
- (b) any customs relationship referred to in paragraph (a) that has been terminated or has lapsed.

(2) A disclosure referred to in subrule (1) must reflect—

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<sup>712</sup> If the report is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the report must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit reports on behalf of licensees in that capacity.

<sup>713</sup> Note that a business relationship is only a customs relationship if the other party to the relationship is a registered person or licensee. See definition of “customs relationship”.

- (a) the name and customs code of the licensee making the disclosure or on whose behalf the disclosure is made;
  - (b) the date of the disclosure;
  - (c) the name and customs code of the registered person or licensee who is the other party to the customs relationship;
  - (d) the nature of the customs relationship;
  - (e) whether the disclosure relates to—
    - (i) the conclusion of a customs relationship referred to in subrule (1)(a); or
    - (ii) the termination or lapsing of a customs relationship referred to in subrule (1)(b); and
  - (f) in the case of a disclosure referred to in paragraph (e)(i), whether the other party to the customs relationship is authorised by the licensee to—
    - (i) use the customs code of the licensee on documents submitted by that party to the customs authority on behalf of the licensee;<sup>714</sup>
    - (ii) submit refund or drawback applications on behalf of the licensee, where applicable; or
    - (iii) apply for a duty deferment benefit on behalf of the licensee, or operate on a deferment account of the licensee, if that licensee is a deferment benefit holder.
- (3) A disclosure referred to in subrule (1) must be made by or on behalf of the licensee either—
- (a) electronically through the communicative system indicated on the SARS website for the purpose of disclosing customs relationships; or
  - (b) in person by visiting any Customs Office.

### **Confirmation or rejection of customs relationships by other party**

**29.52** (1) A person named in a disclosure referred to in rule **29.51**(1)(a) by a licensee as the other party to a customs relationship, must within seven working days<sup>715</sup> from the date of being notified by the customs authority of the disclosure

<sup>714</sup> Note that certain rules expressly require the citing of another person's customs code. This is permissible in terms of rule **41.16**(2). In other instances the customs code can only be used with the permission of the person to whom the code has been allocated.

<sup>715</sup> Note that this timeframe is subject to extension in terms of section 908 of the Control Act.

through the electronic communicative system referred to in rule **29.51(3)(a)**, either confirm or reject the customs relationship.

(2) If a person named as the other party to a customs relationship in terms of subrule (1)—

- (a) confirms the existence of that customs relationship, the customs authority must note in its system particulars of the customs relationship for purposes of its validation processes relating to declarations, reports, statements, returns, notices, notifications, applications, requests or other documents submitted by or on behalf of the licensee which involve that other party; or
- (b) rejects that customs relationship or fails to either confirm or reject the relationship within the prescribed timeframe, the disclosure becomes ineffective and the customs authority may disregard the existence of that customs relationship for purposes of such validation processes.

(3) A confirmation or rejection referred to in subrule (1) must be made electronically through the communicative system indicated on the SARS website for the purpose of disclosing customs relationships.

### **Re-disclosure of customs relationships upon failure by other party to confirm or reject relationship**

**29.53** (1) If the other party to a customs relationship disclosed in terms of rule **29.51(1)(a)** fails to confirm or reject the customs relationship in accordance with rule **29.52(1)**, the licensee who made the disclosure may re-disclose the relevant customs relationship to the customs authority.

(2) Rules **29.51** and **29.52** apply with any necessary changes the context may require to a re-disclosure in terms of subrule (1).

### **Documents required for supporting disclosures**

**29.54** (1) A disclosure in terms of rule **29.51(1)(a)** or *(b)* must be supported by—

- (a) any agreement entered into between the parties to govern the customs relationship;



- (b) any authorisations given by the parties for purposes of the customs relationship; and
- (c) the documents listed in rule **29.12** to the extent that any of those documents is relevant to the disclosure.

(2) A document supporting a disclosure must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.<sup>716</sup>

(3) A licensee making a disclosure must on request by the customs authority submit to it any other documents that may be required for purposes of noting a customs relationship.

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<sup>716</sup> See rule **41.27** for supporting documents already in possession of Customs.

## CHAPTER 30

### ACCREDITATION

#### Definitions

**30.1** In this Chapter, unless the context otherwise indicates –

“**accredited client status**” means a Level 1 or Level 2 accredited client status, depending on the applicant’s degree of compliance with accreditation criteria as set out in section 670 of the Control Act read with rule **30.8**;

“**applicant**”, in relation to an application, means a person who intends to submit or has submitted an application;

“**application**” means an application in terms of Chapter 30 of the Control Act for—

- (a) accredited client status;
- (b) the renewal of an accredited client status certificate; or
- (c) the amendment of an accredited client status certificate;

“**Customs Accreditation Self-evaluation**” means a self-evaluation completed by an applicant on a form as prescribed as a rule on the SARS website for the purpose of establishing whether the applicant has the ability to comply with accredited client requirements;

“**Customs Competency Assessment for Accreditation**” or “**Competency Assessment**” means an assessment administered by the customs authority to a person referred to in rule **30.10** to establish whether that person has sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices for purposes of accredited client status; and

“**Customs Relationship Manager**” means a SARS official tasked with facilitating the relationship between an accredited client and the customs authority.

**Part 1: Applications for accredited client status and for renewal or amendment of accredited client certificates**

**Persons who may apply for accredited client status (section 668(1))**

**30.2** (1) (a) Only registered importers or exporters located in the Republic and licensed customs brokers may apply for accredited client status, subject to subrules (2), (3) and (4).

(b) Only the registered importer or exporter or licensed customs broker to whom an accredited client status certificate has been issued may apply for the renewal or amendment of that certificate, subject to subrules (2), (3) and (4).

(2) (a) An application may be submitted either by—

- (i) the person applying; or
- (ii) that person's ordinary representative acting on that person's behalf in terms of Part 5 of Chapter 41 of these Rules, subject to paragraph (b).

(b) No licensed customs broker or registered agent may in their capacity as customs broker or registered agent make or submit an application on behalf of another person but may in a capacity as ordinary representative in terms of paragraph (a)(ii) submit an application.<sup>717</sup>

(3) A registered importer or exporter referred to in subrule (2)(a)(i) that is a juristic entity<sup>718</sup> may apply in terms of subrule (1)—

- (a) if the entity is a company or co-operative, only through a duly authorised director or manager, or the authorised officer, of the company or co-operative;
- (b) if the entity is a close corporation or partnership, only through a duly authorised member of or partner in or a manager, or the authorised officer, of the close corporation or partnership;
- (c) if the entity is an association, club or other body of persons, only through the chairperson or manager, or the authorised officer of, that association, club or other body of persons;

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<sup>717</sup> The effect of this provision is that a customs broker or registered agent is not barred from submitting an application on behalf of another as an ordinary representative, provided Part 5 of Chapter 41 of these Rules applicable to ordinary representatives is complied with.

<sup>718</sup> See definition of "juristic entity" in section 1 of the Control Act.

- (d) if the entity is a trust or trust fund, only through the administrator, trustee or authorised officer of the trust or trust fund; or
- (e) if the entity is an organ of state, only through an official of that organ of state in an executive position.

(4) If an ordinary representative referred to in subrule (2)(a)(ii) applies on behalf of a juristic entity, the authorisation required in terms of rule **41.20(1)(a)** must be granted and signed by a person authorised in terms of subrule (3) to act for the entity.

**Applications for accredited client status and renewal or amendment of accredited client certificates**<sup>719</sup> (sections 668, 677 and 678)

**30.3** (1) An application for accredited client status or renewal or amendment of an accredited client status certificate must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.<sup>720</sup>

- (2) An application referred to in subrule (1) must reflect the following:
  - (a) Whether the application is for—
    - (i) an accredited client status certificate, and if so, the level of accredited client status applied for;
    - (ii) the renewal of an accredited client status certificate; or
    - (iii) the amendment of an accredited client status certificate;
  - (b) the name and customs code of the applicant;
  - (c) if the applicant is a juristic entity—
    - (i) the name of the individual authorised in terms of rule **30.2(3)** to act for the entity;
    - (ii) that person's SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of that person's identification document; and
    - (iii) that person's physical address, contact details and capacity;
  - (d) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14**.<sup>721</sup>

<sup>719</sup> See preconditions for submission of applications as set out in Part 2 of this Chapter.

<sup>720</sup> Section 668(2)(e) of the Control Act provides that an application may be submitted to any Customs Office.

- (e) whether the tax matters of the applicant are in order as contemplated in section 917 of the Customs Control Act; and
- (f) the additional information prescribed in subrule (3), (4) or (5), as may be applicable.

(3) An application for an accredited client status certificate referred to in subrule (2)(a)(i) must reflect the following additional information:

- (a) A statement that the applicant complies with section 670(1) of the Control Act, read with rule **30.8**;
- (b) if the applicant relies on section 670(3) as an explanation for non-compliance with section 670(1)(a)—
  - (i) the applicant's period of exposure to the South African customs and excise environment;
  - (ii) whether the applicant has a record of compliance with customs and excise requirements in other customs and excise jurisdictions, and if so, in which jurisdiction and for how long;
  - (iii) whether the applicant has any evidence of such a record of compliance, and if so, which evidence; and
  - (iv) whether the applicant has been convicted of an offence involving fraud or dishonesty in another jurisdiction;
- (c) the reference number of any Customs Accreditation Self-evaluation and Accreditation Competency Assessment relevant to the application; and
- (d) a statement that the applicant's tax matters are in order.

(4) An application for the renewal of an accredited client status certificate referred to in subrule (2)(a)(ii) must reflect the following additional information:

- (a) The reference number and expiry date of the certificate;
- (b) a statement that the applicant complies with section 670(1) of the Control Act, read with rule **30.8**,<sup>722</sup>
- (c) the reference number of any Customs Accreditation Self-evaluation and Accreditation Competency Assessment relevant to the application; and

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<sup>721</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the licensee, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of Customs Control Rules.

<sup>722</sup> See section 677(2) of the Control Act.

(d) particulars of any change in the registration or licence details of the applicant.

(5) An application for the amendment of an accredited client status certificate referred to in subrule (2)(a)(iii) must reflect the following additional information:<sup>723</sup>

- (a) The reference number and expiry date of the existing certificate;
- (b) full particulars of the amendment applied for; and
- (c) the reason for the amendment, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

**Documents required for supporting applications for accredited client status and for renewal or amendment of accredited client certificates** (*section 668(2)(d)*)

**30.4** (1) An application must be supported by the following documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) Proof that the applicant has sufficient financial resources, which may consist of—
  - (i) a copy of audited financial statements of the applicant for the financial year preceding the date of application; or
  - (ii) in the absence of such financial statements, an auditor's certificate to this effect;
- (b) an auditor's opinion on the effectiveness of the applicant's internal accounting, record keeping and operational system and its consistency with generally accepted accounting principles; and
- (c) in the case of an applicant referred to in section 670(3) of the Control Act, any evidence of a record of compliance with customs and excise requirements in another customs and excise jurisdiction.

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<sup>723</sup> Note that in the case of an amendment of an accredited client status certificate referred to in section 678(2)(d) or (e), completion of a Customs Accreditation Self-evaluation and the taking of a Competency Assessment is not required. See rule 30.7(3).

(2) A supporting document referred to in subrule (1)(a)(ii) or (b) may not be older than three months.

(3) An applicant must on request by the customs authority make available to it—

(a) any information, books, accounts and other documents necessary for the purpose of considering the application or verifying any statements made by the applicant in the application; and

(b) any other documents or information as the customs authority may request in a particular case.

(4) Subrules (1), (2) and (3)(a) do not apply in respect of an application for amendment of an accredited client status certificate referred to in section 678(2)(d) or (e).

## ***Part 2: Pre-conditions for submission of applications***

### **Pre-conditions for submission of applications for accredited client status**

*(section 668(1))*

**30.5** In order to establish the ability of an applicant to comply with the criteria for accreditation contemplated in section 670 of the Control Act, read with rule **30.8**, no application for accredited client status may be submitted to the customs authority unless—

(a) the applicant has completed the Customs Accreditation Self-evaluation; and

(b) the applicant or another person referred to in rule **30.10(1)** nominated by the applicant to take the Competency Assessment, has passed the Competency Assessment and an Accreditation Competency Certificate has been issued to the applicant or that person.

### **Pre-conditions for submission of applications for renewal of accredited client status certificates** *(sections 667 and 683)*

**30.6** (1) In order to establish whether an applicant applying for renewal of an accredited client status certificate will have the ability to maintain under the renewed certificate compliance with the criteria for accreditation set out in section 670 of the

Control Act, read with rule **30.8**, no application for the renewal of such a certificate may be submitted to the customs authority unless—

- (a) the applicant has completed the Customs Accreditation Self-evaluation; and
- (b) the applicant or another person referred to in rule **30.10(1)** nominated by the applicant to take the Competency Assessment, has passed the Competency Assessment and an Accreditation Competency Certificate has been issued to the applicant or that person.

(2) Subrule (1)(b) does not apply if the applicant or a person within the applicant's organisation is the holder of a valid Accreditation Competency Certificate.

**Pre-conditions for submission of applications for amendment of accredited client status certificates** (*sections 678 and 683(e)*)

**30.7** (1) In order to establish whether an applicant applying for the amendment of an accredited client status certificate referred to in section 678(2)(a), (b) or (c) of the Control Act will have the ability to maintain under the amended certificate compliance with the criteria for accreditation set out in section 670, read with rule **30.8**, no application for the amendment of such a certificate may be submitted to the customs authority unless—

- (a) the applicant has completed the Customs Accreditation Self-evaluation; and
- (b) the applicant or another person referred to in rule **30.10(1)** nominated by the applicant to take the Competency Assessment, has passed the Competency Assessment and an Accreditation Competency Certificate has been issued to the applicant or that person.

(2) Subrule (1)(b) does not apply if the applicant or a person within the applicant's organisation is the holder of a valid Accreditation Competency Certificate.

(3) There are no pre-conditions for an application for amendment of an accredited client status certificate referred to in section 678(2)(d) or (e) and such an application may be submitted forthwith.

**Part 3: Criteria of and conditions for accredited client status**



**Degree of compliance with required criteria for accredited client status**  
(sections 668, 670 and 683)

**30.8** The degree of compliance with section 670 of the Control Act for accredited status is as follows, as may be applicable:

- (a) The applicant must for purposes of section 670(1)(a) have a record of compliance with the Control Act, the Customs and Excise Act, 1964, and the tax levying Acts, for a period of at least –
  - (i) three years preceding the date of application in the case of an application for Level 1 accredited client status;<sup>724</sup> or
  - (ii) five years preceding the date of application, in the case of an application for Level 2 accredited client status;<sup>725</sup>
- (b) the applicant may not have a previous conviction for any offence involving fraud or dishonesty;
- (c) the applicant must for purposes of section 670(1)(b) have and maintain an effective internal accounting, record keeping and operational system which is consistent with generally accepted accounting principles, and which must—
  - (i) reflect a full audit trail of all the applicant's customs transactions and activities for a period of at least –
    - (aa) three years preceding the date of application, in the case of an application for Level 1 accredited client status; or
    - (bb) five years preceding the date of application, in the case of an application for Level 2 accredited client status;
  - (ii) have procedures for verifying the accuracy of clearance declarations submitted by or on behalf of the applicant; and
  - (iii) have internal controls for detecting illegal or irregular transactions and activities;
- (d) the applicant must for purposes of section 670(1)(c) have a computerised system which—

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<sup>724</sup> For applications submitted during the three years following the effective date for the commencement of the Control Act, the record of compliance must include compliance with the Customs and Excise Act, 1964, during that portion of the period when the 1964 Act was still in force.

<sup>725</sup> For applications submitted during the five years following the effective date for the commencement of the Control Act, the record of compliance must include compliance with the Customs and Excise Act, 1964, during that portion of the period when the 1964 Act was still in force.

- (i) has stored, backed-up and archived all the applicant's business records for a period of at least five years preceding the date of application; and
- (ii) has the capacity for—
  - (aa) prompt retrieval or recovery of all those records; and
  - (bb) securing those records and protecting them from unauthorised access;
- (e) the skills required for the accredited client or that client's staff must for purposes of section 670(1)(d) include sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices to implement and maintain an effective accredited client compliance system;
- (f) the applicant must have sufficient financial resources, as must be evidenced by—
  - (i) audited financial statements for –
    - (aa) the financial year preceding the date of application, in the case of an application for Level 1 accredited client status; or ; or
    - (bb) the two financial years preceding the date of application, in the case of an application for Level 2 accredited client status; or
  - (ii) other proof of financial resources for the applicable period as the customs authority may allow in a specific case; and
- (g) bills of entry in terms of the Customs and Excise Act, 1964, and clearance declarations in terms of the Control Act submitted by or on behalf of the applicant that were incorrect because of errors in the fields for quantity, classification, value or origin of goods, may not exceed 5% of all bills of entry and clearance declarations submitted by or on behalf of the applicant during a period of –
  - (i) three years preceding the application, in the case of an application for Level 1 accredited client status; or
  - (ii) five years preceding the application, in the case of an application for Level 2 accredited client status.

**General conditions subject to which accredited client status is granted (section 674)**

**30.9** All accredited client certificates are issued subject to the following general conditions:

- (a) The accredited client must promptly notify the customs authority in accordance with rule **30.13** of—
  - (i) any breach or contravention of the Control Act or a tax levying Act which affects the client's record of compliance<sup>726</sup> for purposes of this Chapter; or
  - (ii) any conviction of that client for an offence involving fraud or dishonesty.
- (b) The accredited client must—
  - (i) have sufficient knowledge of customs laws, guides, interpretive notes, operational manuals and practices to implement and maintain an effective accredited client compliance system by having available at all times within that client's organisation at least one person who is the holder of an Accreditation Competency Certificate; and
  - (ii) promptly notify the customs authority in accordance with rule **30.13** if subparagraph (i) is at any stage not complied with.

#### ***Part 4: Customs Competency Assessment for Accreditation***

##### **Persons that may take Competency Assessments** *(section 683(d))*

**30.10** (1) Any of the following persons may take the Competency Assessment to establish whether an applicant has sufficient knowledge for purposes of rule **30.8(e)**:

- (a) If the applicant is an individual, the applicant or a person in the permanent employ of the applicant nominated by the applicant to be responsible for ensuring compliance with customs legislation and requirements; or
- (b) if the applicant is a juristic entity, any of the following persons nominated and duly authorised by the applicant to be responsible for ensuring compliance with customs legislation and requirements:
  - (i) In the case of a company or co-operative, a director or manager, or the authorised officer, of the company or co-operative;

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<sup>726</sup> See rule **1.8**.

- (ii) in the case of a close corporation or partnership, a member of or partner in, or a manager or the authorised officer of, the close corporation or partnership;
- (iii) in the case of an association, club or other body of persons, the chairperson or a manager, or the authorised officer, of that association, club or other body of persons;
- (iv) in the case of a trust or trust fund, by the administrator or trustee of the trust or trust fund; or
- (v) a person in the permanent employ of—
  - (aa) any of the entities referred to in subparagraphs (i) to (iv); or
  - (bb) an administrator or trustee referred to in subparagraph (iv), if that administrator or trustee is a juristic entity.

(2) There is no restriction on the number of times the Competency Assessment may be repeated in order to achieve the score required to establish sufficient knowledge.

#### **Replacement of holders of Accreditation Competency Certificates** (*section 683(a)*)

**30.11** If an accredited client intends to replace a person referred to in rule **30.10** who holds the Accreditation Competency Certificate for purposes of compliance with rule **30.8(e)**, the accredited person must—

- (a) nominate another person referred to in rule **30.10** to be responsible for ensuring compliance with customs legislation and requirements; and
- (b) make arrangements for that person to take the Competency Assessment.

#### **Issue and validity period of Accreditation Competency Certificates** (*section 683*)

**30.12** (1) The customs authority must issue an Accreditation Competency Certificate to each person who achieves the score required to establish sufficient knowledge.

(2) An Accreditation Competency Certificate issued in terms of subrule (1) remains valid for a period of three years as from the date of issue.

## **Part 5: Other matters**

### **Notification of change of circumstances on which applications for accredited client status were granted (section 683)**

**30.13** (1) An accredited person must notify the customs authority of any change of circumstances which were material to the granting of that person's accredited client status,<sup>727</sup> within three working days of the change having occurred, read with section 908 of the Control Act.

(2) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(3) A notification referred to in subrule (1) must state—

- (a) the name and customs code of the accredited person;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**,<sup>728</sup> and
- (c) particulars of the changed circumstances, which may be submitted in a separate supporting document subject to and in accordance with Part 6 of Chapter 41 of these Rules.

### **Benefits of accredited client status (section 682)**

**30.14** (1) (a) A person with Level 1 or Level 2 accredited client status is, subject to paragraph (b), entitled to any one or more of the following benefits, as may be determined by the customs authority generally or in a particular case:

- (i) The services of a Customs Relationship Manager;
- (ii) less frequent routine document and physical inspections by customs officers;
- (iii) prioritisation by the customs authority of requests by the accredited client

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<sup>727</sup> See section 670 of the Control Act read with rule **30.8** for the criteria for granting of application of accredited client status.

<sup>728</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the accredited person, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit notifications on behalf of accredited persons in that capacity.

- for tariff and valuation determinations;
- (iv) reduction of the amount of any security required in terms of Chapter 31 of the Control Act;
  - (v) priority access to non-intrusive inspection techniques when goods are stopped or detained for inspection;
  - (vi) exemption from customs supervision in specific circumstances;
  - (vii) reduction of charges for special customs services referred to in rule 1.12;
  - (viii) prioritisation of applications for special customs services in terms of rule 1.11; or
  - (ix) prioritisation of refund and drawback applications in terms of Chapter 4 of the Customs Duty Act.

(b) A customs broker<sup>729</sup> with Level 1 or 2 accredited client status is only entitled to the benefits contemplated in –

- (i) paragraph (a)(i) and (iv); and
- (ii) paragraph (a)(ix), provided that the benefit will only apply in respect of such applications that have been submitted by the customs broker in the capacity of applicant.

(2) A person with Level 2 accredited client status who is an importer located in the Republic or a customs broker may, as an additional benefit, in terms of rule 3.13 of the Customs Duty Rules apply for a deferment benefit for the payment of duty on goods cleared for home use out of a storage warehouse.

### **Procedure for amendment of accredited client status certificates on customs initiative<sup>730</sup> (section 678(b))**

**30.15** (1) If the customs authority intends to amend the accredited status certificate of an accredited client in terms of section 678(1)(b) of the Control Act, that person is entitled to—

- (a) prior notification by registered post or secured electronic means of—
  - (i) the proposed amendment; and

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<sup>729</sup> A customs broker is excluded from certain benefits because conferring such excluded benefits to a customs broker will have the effect of projecting accredited clients status on any persons on whose behalf that customs broker is acting.

<sup>730</sup> A decision by customs to amend an accredited client certificate is subject to the proceedings provided for in Chapter 37 of the Control Act.

- (ii) the reasons for the proposed amendment; and
- (b) an opportunity to submit representations on the proposed amendment within 30 calendar days of the date the notification referred to in paragraph (a) was posted or transmitted to that person.

(2) Subrule (1)(b) does not apply if the proposal is to effect technical amendments or corrections to the certificate.

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## CHAPTER 31

### SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

#### *Part 1: Determination and provision of security*

#### **Additional factors to be taken into account for purposes of determining amount of security** (*section 689(2)(c)*)

**31.1** When determining the amount of security to be provided by the person who is required in terms of section 686 of the Control Act to provide security, the following factors may, in addition to the factors referred to in section 689(2)(a) and (b), be taken into account:

- (a) Whether that person, or in the case of a juristic entity, a director, administrator or trustee of that entity, has ever been convicted of a criminal offence;
- (b) whether that person has ever been insolvent or in liquidation;
- (c) whether that person, in the case of a juristic entity, is listed on a licensed stock exchange;
- (d) whether that person, in the case of a juristic entity, qualifies for small business status, as evidenced by—
  - (i) an annual gross income of R 20 million or less;
  - (ii) the shareholders in or members of that person all being natural persons; and
  - (iii) the shareholders in or members of that person not holding any shares or interest in the equity of another company, excluding—
    - (aa) shares in a company listed on a licensed stock exchange;
    - (bb) a participatory interest in a collective investment scheme; or
    - (cc) an interest in a body corporate;
- (e) whether that person is an existing customs client, and if so—
  - (i) the period for which that person has been a customs client; and
  - (ii) that person's record of compliance with the Control Act, the Customs and Excise Act, 1964, and the tax levying Acts referred to in section 670(1)(a) of the Control Act during that period; and



- (f) whether that person is new to the South African customs and excise environment, and if so, whether that person has evidence of a record of compliance with customs and excise requirements in other customs and excise jurisdictions.

**Other forms of security** (*section 690(1)(c)*)

**31.2** For purposes of section 690(1)(c) other forms of security are—

- (a) a provisional payment in terms of rule **31.3**; and
- (b) a guarantee referred to in Part 3 of this Chapter, issued by a financial institution registered or approved by the South African Reserve Bank or the Financial Services Board.

**Security provided in the form of provisional payments** (*section 690(1)(c)*)

**31.3** (1) (a) A person who wishes to provide security in the form of a provisional payment must submit an application for provisional payment to the customs authority electronically through eFiling, subject to rule **41.13**.<sup>731</sup>

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the customs controlled area where the goods covered by the provisional payment are to be released for home use or a customs procedure.

(2) An application referred to in subrule (1) must in addition to the information referred to in section 691(a) and (b) of the Control Act, read with rule **31.4**, reflect—

- (a) the name and customs code of the person providing security; and
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>732</sup> on behalf of the applicant, the information specified in rule **41.14**.<sup>733</sup>

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<sup>731</sup> Note that section 918 of the Control Act which applies generally to the granting of i.a. applications, provides that applications may be granted on conditions and for a period as may be determined.

<sup>732</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>733</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

(3) In circumstances where security in the form of a provisional payment is linked to the clearance of goods, no application referred to in subrule (1) needs to be submitted, and the provisional payment may directly be lodged by –

- (a) indicating on the clearance declaration<sup>734</sup> that a provisional payment is being lodged as well as the amount of the provisional payment; and
- (b) paying the amount of the provisional payment by a payment method referred to in rule **32.1** (a), (c) or (d).<sup>735</sup>

**Additional details to be provided in respect of security** (section 691(c))

**31.4** In addition to the details referred to in section 691(a) and (b) of the Control Act, security provided in terms of section 690 or a document accompanying such security must contain—

- (a) a description of the kind of security; and
- (b) in the case of security covering specific goods, the movement reference number of any clearance declaration in relation to the goods.

**Notification of change in circumstances** (section 693)

**31.5** (1) A person who has provided security in terms of Chapter 31 of the Control Act must notify the customs authority of any change in circumstances—

- (a) that were material at the time when the customs authority—
  - (i) requested security in terms of Chapter 31 of the Control Act;<sup>736</sup> or
  - (ii) determined the amount of security, having regard to the factors referred to in section 689 read with rule **31.1**; or
- (b) that affects the continued validity of a surety bond or guarantee issued as security in terms of section 690.

(2) (a) A notification referred to in subrule (1) must be submitted electronically through eFiling, subject to rule **41.13**.

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<sup>734</sup> Regard must be had to any instructions relating to referencing of provisional payments contained in the Declaration Completion Manual as published on the SARS website.

<sup>735</sup> Note that in terms of rule **32.1**(2) the payment method referred to in rule **32.1**(d) must be used if a person making payment is a registered electronic user for eFiling, except in the case of a systems breakdown referred to in section 913 of the Control Act, in which case the payment method in subrule (1)(c) may be used.

<sup>736</sup> The decision to require security is risk based.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office where the surety bond or guarantee was submitted in terms of rule **31.6** or **31.12**.

(3) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the person notifying;
- (b) if the notification is submitted by a customs broker, registered agent or ordinary representative<sup>737</sup> on behalf of the person notifying, the information specified in rule **41.14**,<sup>738</sup>
- (c) details of the change in circumstances; and
- (d) the bond or guarantee number, in the case of a change in circumstances that affects a surety bond or a guarantee.

## **Part 2: Surety bonds**

### **Form and format of, and particulars to be reflected on, surety bonds** (sections 690(1)(a)(iii) and 691(c))

- 31.6** (1) A surety bond referred to in section 690(1)(a) of the Control Act must—
- (a) be issued on the surety bond form applicable to the particular activity in relation to the goods which the bond is intended to cover, as published as a rule on the SARS website;
  - (b) contain at least the security details referred to in section 691 (a) and (b);
  - (c) be signed by the parties to the bond; and
  - (d) be submitted manually, together with the supporting documents referred to in rule **31.7**, to the Customs Office indicated in the request for security.

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<sup>737</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>738</sup> If the notification is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the person notifying, the notification must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit notifications on behalf of persons notifying in that capacity.

**Supporting documents to be submitted with surety bonds** (*sections 690(1)(a) and 693*)

**31.7** The following supporting documents must be submitted manually together with a surety bond referred to in rule **31.6**:

- (a) In the case of a bond issued on behalf of a natural person, a certified copy of that person's identification document;
- (b) in the case of a bond issued on behalf of a juristic entity, a certified copy of the document authorising the person or persons who signed the bond on behalf of the entity, to act on behalf of the entity; and
- (c) a certified copy of the identification document of an authorised person referred to in paragraph (b).

**Withdrawal of surety bonds** (*section 693(a)(i)*)

**31.8** (1) (a) If a financial institution referred to in section 690(1)(a)(i) intends to withdraw a surety bond issued in terms of that subsection, that financial institution must at least 30 calendar days before the date of withdrawal referred to in subrule (2)(d), submit a notification of withdrawal to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office where the surety bond was submitted in terms of rule **31.6**.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name, physical and postal address and contact details of the financial institution;
- (b) the bond number;
- (c) the name and contact details of the person on whose behalf the bond was issued;
- (d) the date on which the withdrawal will become effective; and
- (e) the reason for the withdrawal, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) A notification in terms of this rule of the withdrawal of a surety bond does not affect any liability of the financial institution under that bond that has arisen or may arise in relation to goods—

- (a) imported before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of an importer;
- (b) cleared for export before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of an exporter;
- (c) received at any licensed premises before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of a licensee of licensed premises;
- (d) received by a licensed carrier before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of a licensed carrier;
- (e) in respect of which a customs broker has performed a service as such a broker on behalf of another before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of a customs broker;
- (f) supplied by a stores supplier as stores for a foreign-going vessel or aircraft or a cross-border train before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of a stores supplier;
- (g) processed under the inward or home use processing procedure before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of a licensee of inward or home use processing premises; and
- (h) manufactured in any licensed excise manufacturing warehouse before the date of withdrawal referred to in subrule (2)(d), in the case of a bond given on behalf of the licensee of an excise manufacturing warehouse.

**New security to replace bonds withdrawn in terms of rule 31.8** (*section 693(a)*)

**31.9** If a notification of withdrawal was submitted in terms of rule **31.8** in relation to a surety bond, the person on whose behalf that bond was issued must before the date of withdrawal referred to in rule **31.8(2)(d)**, ensure that new security, which must become effective upon withdrawal of the surety bond, is provided, unless the customs authority determines otherwise.

**Application for amendment of bond amount** (*section 693(a)(ii)*)

**31.10** (1) (a) A person on whose behalf a surety bond was issued must, if that person requires an amendment of the bond amount, submit an application for approval of the amendment of the bond amount to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to any Customs Office.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>739</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>740</sup>
- (c) the bond number;
- (d) the bond amount;
- (e) whether an increase or decrease of the amount is applied for; and
- (f) the reason for the increase or decrease, as the case may be.

(3) (a) If the customs authority approves the application, the applicant must ensure that either a new surety bond replacing the existing bond and complying with rule **31.6** or an addendum to the existing surety bond, as the customs authority may determine, reflecting the amended bond amount, is issued.

(b) A surety bond or addendum referred to in paragraph (a) must within 14 working days after the applicant was notified of approval of the application be submitted manually, together with the supporting documents referred to in subrule (4), to the customs authority at the Customs Office indicated in the approval.

(4) A surety bond or an addendum to a surety bond referred to in subrule (3) must be supported by the following documents, which must be submitted to the

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<sup>739</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>740</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The approval issued by the customs authority pursuant to the application referred to in subrule (1), indicating the recalculated bond amount;
- (b) a copy of the surety bond indicating the bond amount to be amended by the new bond or the surety bond addendum;
- (c) in the case of the applicant being a natural person, a certified copy of that person's identification document;
- (d) in the case of the applicant being a juristic entity, a certified copy of the document authorising the person or persons who signed the bond or addendum on behalf of the entity, to act on behalf of the entity; and
- (e) a certified copy of the identification document of any authorised person referred to in paragraph (d).

**Amendments of bond amounts on initiative of customs authority** (*section 693(a)*)

**31.11** (1) (a) If the customs authority on its own initiative instructs a person on whose behalf a surety bond was issued to amend the bond amount to an amount as recalculated by the customs authority, that person must ensure that either a new surety bond replacing the existing surety bond and complying with rule **31.6** or an addendum to the existing surety bond, as the customs authority may determine, reflecting the amended bond amount, is issued.

(b) A surety bond or addendum referred to in paragraph (a) must within 14 working days after the person was notified of the customs authority's instruction to amend the bond amount be submitted manually, together with the supporting documents referred to in subrule (2), to the customs authority at the Customs Office indicated in the instruction.

(2) A surety bond or an addendum to a surety bond referred to in subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The instruction issued by the customs authority indicating the recalculated bond amount;

- (b) a copy of the surety bond indicating the bond amount to be amended by the new bond or the surety bond addendum;
- (c) a certified copy of the authorisation authorising the person or persons who signed the bond or addendum on behalf of the applicant, to act on behalf of the applicant; and
- (d) a certified copy of the identification document of any authorised person referred to in paragraph (c).

### **Part 3: Guarantees** (sections 690(1)(c) and 693)

#### **Form and format of, and particulars to be reflected on, guarantees**

**31.12** (1) A guarantee referred to in rule 31.2(b) must—

- (a) be issued on the guarantee form applicable to the particular goods or the particular activity in relation to the goods which the guarantee is intended to cover, as published as a rule on the SARS website;
- (b) contain at least the security details referred to in section 691(a) and (b) of the Control Act;
- (c) be signed by the financial institution issuing the guarantee; and
- (d) be submitted manually, together with the supporting documents referred to in rule 31.13, to the Customs Office indicated in the request for security.

#### **Supporting documents to be submitted with guarantees**

**31.13** The following supporting documents must be submitted manually together with a guarantee referred to in rule 31.2(b):

- (a) In the case of a guarantee issued on behalf of a natural person, a certified copy of that person's identification document;
- (b) in the case of a guarantee issued on behalf of a juristic entity, a certified copy of the document authorising the person or persons who acted on behalf of the entity in obtaining the guarantee, to act on behalf of the entity; and
- (c) a certified copy of the identification document of an authorised person referred to in paragraph (b).

#### **Cancellation of guarantees only by written agreement**



**31.14 (1)** A guarantee referred to in rule **31.2(b)** may be cancelled only by written agreement between the financial institution that issued the guarantee and the Commissioner.

(2) If a guarantee is cancelled in accordance with subrule (1), the cancellation does not affect any liability of the financial institution under that guarantee that has arisen or may arise in relation to goods—

- (a) imported before the date of cancellation, in the case of a guarantee for the benefit of an importer;
- (b) cleared for export before the date of cancellation, in the case of a guarantee for the benefit of an exporter;
- (c) received at any licensed premises before the date of cancellation, in the case of a guarantee for the benefit of the licensee of licensed premises;
- (d) received by a licensed carrier before the date of cancellation, in the case of a guarantee for the benefit of a licensed carrier;
- (e) in respect of which a customs broker has performed a service as such a broker on behalf of another before the date of cancellation, in the case of a guarantee for the benefit of a customs broker;
- (f) supplied by a stores supplier as stores for a foreign-going vessel or aircraft or a cross-border train before the date of cancellation, in the case of a guarantee for the benefit of a stores supplier;
- (g) processed under the inward or home use processing procedure before the date of cancellation, in the case of a guarantee for the benefit of a licensee of inward or home use processing premises; and
- (h) manufactured in any licensed excise manufacturing warehouse before the date of cancellation, in the case of a guarantee for the benefit of the licensee of an excise manufacturing warehouse.

#### **Amendment of guarantees only by written agreement**

**31.15** A guarantee referred to in rule **31.2(b)** may be amended only by written agreement between the financial institution that issued the guarantee and the Commissioner.

## CHAPTER 32

### RECOVERY OF DEBT UNDER CONTROL ACT<sup>741</sup>

#### *Part 1: Methods of payment and conditions for such payment*

##### **Methods that may be used to pay debt to Commissioner** (section 706(a))

**32.1** (1) The following payment methods may, subject to the conditions and requirements set out in respect of each method in terms of rules **32.2** to **32.6**, respectively, be used to pay a debt to the Commissioner, subject to subrule (2):

- (a) Cash payment;
- (b) cheque payment;
- (c) payment by electronic funds transfer, including payment effected by using SWIFT message in the case of international payments;
- (d) credit push payment initiated through eFiling; and
- (e) debit or credit card payment.

(2) If a person making payment in terms of this Chapter is a registered electronic user for eFiling, the payment method referred to in subrule (1)(d) must be used, except in the case of a systems breakdown referred to in section 913 of the Control Act in which case the payment method in subrule (1)(c) may be used.

##### **Conditions and requirements for cash payments** (section 706(a)(i))

**32.2** (1) Cash payments referred to in rule **32.1**(1)(a) may be made at—

- (a) any Customs Office during the office hours determined for that Customs Office in terms of section 14(1)(c)(i) of the Control Act; or
- (b) a bank.

(2) (a) The maximum amount of cash that may be paid per transaction at a Customs Office is limited to—

- (i) R 2000,00 in bank notes;

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<sup>741</sup> Note that this Chapter applies only to the recovery of debt that becomes payable to the Commissioner under the Control Act. The recovery of tax and other debt, including the payment of refunds, under the Customs Duty Act and the Excise Duty Act is regulated by those Acts.

- (ii) R 50,00 in R5 coins;
- (iii) R 20,00 in R2 coins;
- (iv) R 20,00 in R1 coins; and
- (v) R 5,00 each in 10c to 50c coins.

(b) Paragraph (a) does not apply to cash payments at a place of entry or exit made by travellers and crew members entering or leaving the Republic.

(3) All cash payments made at a Customs Office are rounded off to the nearest 10 cents, to the benefit of the person making payment.

- (4) A cash payment must, in the case of a payment made at—
- (a) a Customs Office as contemplated in subrule (1)(a), be accompanied by a payment reference number; and
  - (b) a bank as contemplated in subrule (1)(b), be accompanied by a payment advice notice that is not older than seven calendar days.

#### **Conditions and requirements for payment by cheque** (*section 706(a)(i)*)

- 32.3** (1) Cheque payments referred to in rule 32.1(1)(b) may be made at—
- (a) any Customs Office during the office hours determined for that Customs Office in terms of section 14(1)(c)(i) of the Control Act; or
  - (b) at a bank.

- (2) The following conditions apply to payments made by cheque:
- (a) A cheque must be signed and made out to “South African Revenue Service” in any of the official languages of the Republic and the payment must be reflected in Rand;
  - (b) no cheque payment by a person in respect of whom two cheques made out to the South African Revenue Service had been “referred to drawer” in the three years preceding the date of payment will be accepted, unless that person can show cause why the cheque payment should be allowed in the circumstances;
  - (c) a cheque exceeding an amount of R10 000 must be bank guaranteed;

- (d) the total amount for payment made by cheque by the same person per day is R50 000, irrespective of the number of cheque payments required to be made on that day;
- (e) post-dated cheques are not acceptable; and
- (f) a cheque payment must, in the case of a payment made at—
  - (i) a Customs Office as contemplated in subrule (1)(a), be accompanied by a payment reference number; and
  - (ii) a bank as contemplated in subrule (1)(b), be accompanied by a payment advice notice that is not older than seven calendar days.

**Conditions and requirements for payments by electronic funds transfer**  
(section 706(a)(ii))

**32.4** The following conditions apply in respect of payments made by electronic funds transfer through internet banking facilities referred to in rule **32.1(1)(c)**:

- (a) Electronic funds transfers may be done only through internet banking facilities of banks where SARS is listed on the bank's preconfigured beneficiary ID listing, by selecting the applicable SARS beneficiary identification code;
- (b) in the case of electronic fund transfers effected by using SWIFT message—
  - (i) payments may be done only through the internet banking facilities of a bank which supports payment effected by using SWIFT message; and
  - (ii) the SARS beneficiary identification code for foreign payments must be indicated; and
- (c) a payment by electronic funds transfer must be supported by a payment reference number.

**Conditions and requirements for credit push payment initiated by eFiling**  
(section 706(a)(iii))

**32.5** (1) A person who wishes to make use of the credit push payment method referred to in rule **32.1(1)(d)** must—

- (a) be registered for eFiling; and
- (b) make use of a bank that supports this payment method.

(2) A credit push payment must be supported by a payment reference number.

**Conditions and requirements for debit or credit card payments** (*section 706(a)(iii)*)

**32.6** The following conditions apply in respect of debit or credit card payments referred to in rule **32.1(1)(e)**:

- (a) Payments by debit or credit card may be made by a traveller or a crew member when entering or leaving the Republic at the place of entry or exit or, in the case of rail travellers and crew, at the rail travellers terminal—
  - (i) where that traveller or crew member is processed through the Passenger Processing System; or
  - (ii) in the case of a trusted or frequent traveller, where that traveller is processed at a self-service facility for trusted or frequent travellers;
- (b) payment must be in Rand;
- (c) the traveller or crew member or other person tendering the card must be the authorised user of the card;
- (d) only approved debit or credit cards as indicated on notice boards at the relevant traveller terminal or Customs Office or on a list published on the SARS website may be accepted; and
- (e) payment by debit or credit card must be supported by a payment reference number.

***Part 2: Payment of debt in instalments*** (*section 702(b) and 706(d)*)

**Conditions for payment of debt in instalments**

**32.7** Debt referred to in section 702 of the Control Act may be paid in instalments only if—

- (a) the customs authority has granted an application referred to in rule **32.8** submitted by or on behalf of the person liable for payment of the outstanding debt; and
- (b) that person has in terms of this Part entered into an instalment payment agreement referred to in rule **32.11** with the Commissioner.

**Applications for instalment payment agreements**

**32.8** (1) (a) A person who is liable for debt referred to in section 702 of the Control Act and who cannot pay the debt in a single payment may apply to the Commissioner electronically through eFiling, subject to rule **41.13**, for permission to pay that debt in instalments.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to the Customs Office indicated on the SARS website for receipt of such applications.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant or, if the applicant does not have a customs code, the information required in terms of rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>742</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>743</sup>
- (c) the reference number of any document that demanded payment of the debt, if such a document has been issued;
- (d) the kind and amount of the debt owed to the Commissioner;
- (e) a concise motivation of the applicant's compliance with the qualification criteria set out in rule **32.9**, including the reason why the applicant cannot pay the debt in a single payment immediately, which may be submitted in a separate supporting document to the customs authority, subject to and in accordance with Part 6 of Chapter 41 of these Rules;
- (f) the instalments and repayment period, which may not exceed a period of twelve months, proposed by the applicant;<sup>744</sup> and
- (g) the name and contact details of the applicant's auditor or financial adviser, if any.

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<sup>742</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>743</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

<sup>744</sup> This period is subject to extension in terms of section 908 of the Control Act.

(3) An application referred to in subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) The applicant's bank statements for a period of six months preceding the application, certified by the bank;
- (b) documentary evidence of the applicant's financial resources and liabilities, which may consist of—
  - (i) a copy of the applicant's audited financial statements for the financial year preceding the date of application; or
  - (ii) in the absence of such financial statements, an auditor's certificate to this effect;
- (c) documentary evidence of the applicant's compliance with the qualification criteria set out in rule **32.9**, including lists of the following:
  - (i) The applicant's anticipated income and receipts during the proposed repayment period, indicating the dates when the income or receipts are expected;
  - (ii) the applicant's assets, investments and policies, including a description of the asset, the type of investment or policy, the name of the institution and the relevant values and, if applicable, maturity dates;
  - (iii) the applicant's debtors and creditors including names, contact details and amounts owed or owing; and
  - (iv) contracts or tenders awarded to the applicant, if any, including the name of the institution or contracting party, the contract or tender number, the contract or tender value and the commencement and completion dates;
- (d) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and
- (e) a certified copy of the identification document of an authorised person referred to in paragraph (d).

### **Qualification criteria for payment of debt in instalments**

**32.9** (1) Only persons satisfying any one or more of the following qualification criteria may apply in terms of rule **32.8** for the payment of outstanding amounts in instalments:

- (a) The applicant suffers from a deficiency in assets, funds or liquidity and it is reasonably certain that that deficiency will be rectified in the near future;
- (b) the applicant anticipates income or other receipts that will be available for satisfying the debt;
- (c) the prospect of immediate recovery of the debt is poor or uneconomical but is likely to improve in future; or
- (d) immediate recovery of the debt would be harsh in the particular case and the instalment payment agreement is unlikely to prejudice tax collection.

(2) An applicant whose application is approved must provide security as may be required by the customs authority.

### **Consideration of applications and notification of decisions**

**32.10** An application for permission to pay that debt in instalments referred to in rule **32.8** may be approved or refused, and the applicant is entitled to be notified of the decision.

### **Instalment payment agreements**

**32.11** (1) After being notified of the approval of an application in terms of rule **32.10** the applicant must complete the instalment payment agreement published as a rule on the SARS website for that purpose.

- (2) An instalment payment agreement must contain the following details:
- (a) The name and customs code of the person liable for payment of the outstanding amount, or if that person does not have a customs code, the information specified in rule **41.15**(1);
  - (b) if the person liable for payment of the outstanding amount is a juristic entity, the name of the entity's authorised officer, as well as that officer's—
    - (i) SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of his or her identification document; and



- (ii) physical and postal address, contact details, and capacity;
- (c) the type of debt;
- (d) the amount of the debt;
- (e) the interest rate applicable;
- (f) the instalment amount;
- (g) the repayment period;
- (h) payment dates; and
- (i) conditions for—
  - (i) the repayment in instalments as may be determined by the Commissioner in the specific case to secure the collection of the debt; and
  - (ii) the amendment and termination of the agreement.
- (3) An instalment payment agreement must—
  - (a) be signed by the parties to the agreement; and
  - (b) after being signed by the applicant, be submitted manually together with the supporting documents referred to in subrule (4) to any Customs Office.
- (4) An instalment payment agreement must be supported by—
  - (a) in the case of a natural person, a certified copy of that person's identification document;
  - (b) in the case of a juristic entity, a certified copy of the document authorising the person who signed the agreement on behalf of the entity, to act on behalf of the entity; and
  - (c) a certified copy of the identification document of an authorised person referred to in paragraph (b).

***Part 3: Refunds of administrative penalties, interest on penalties, and other payments made to Commissioner in terms of Control Act (section 706(c))<sup>745</sup>***

**Circumstances in which refunds may be claimed**

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<sup>745</sup> Note that this Part deals only with refunds of payments made to the Commissioner in terms of the Control Act. Refunds of payments made in terms of a tax levying Act, are dealt with in the relevant tax levying Act.

**32.12** (1) A refund of any administrative penalty, interest or other payment made to the Commissioner in terms of the Control Act may be claimed only if—

- (a) the penalty, interest or other payment was paid in error—
  - (i) on or in respect of goods or in circumstances in respect of which it was not payable;
  - (ii) by a person not liable for that penalty, interest or payment; or
  - (iii) due to a clerical, typographical, electronic or other administrative fault or an incorrect assumption on which the calculation of the penalty, interest or other payment was based;
- (b) any action taken in terms of Chapter 37 of the Control Act against the penalty, interest or other payment or the amount of the penalty, interest or other payment is successful; or
- (c) a final judgement of a court creates an entitlement to a refund of a penalty, interest or other payment or a part of the amount of the penalty, interest or other payment.

(2) A person who has paid an administrative penalty or interest or has made any other payment to the Commissioner in terms of Chapter 32 of the Control Act in circumstances to which subrule (1) applies, may apply in terms of rule **32.15** to the customs authority for a refund of that penalty, interest or other payment.

### **Persons entitled to claim refunds**

**32.13** (1) Only the following persons are entitled to claim a refund in terms of this Part:

- (a) If the claim is for a refund of an administrative penalty or interest on such a penalty, the person on whom the penalty was imposed; or
- (b) if the claim is for a refund of any other money or interest on such money, the person who paid the money or interest or on whose behalf the money or interest was paid to the Commissioner.

(2) Subrule (1)(a) applies irrespective of whether the person entitled to the refund in terms of that subsection or another person on that person's behalf actually paid the penalty or interest.

## Payment of refunds

**32.14** (1) A refund that becomes payable in terms of this Part must, subject to rule **32.21**, be paid to the person entitled to the refund by depositing the amount of the refund into a bank account designated by that person—

- (a) in that person's registration or licence details;<sup>746</sup> or
- (b) if that person is not a registered person or licensee, in that person's refund application.

(2) A bank account designated in terms of subrule (1) may be the bank account of a person other than the person entitled to claim the refund.

## Application for refund of administrative penalties, interest and other payments

**32.15** (1) (a) A person may apply for a refund of an administrative penalty, interest or other payment made to the Commissioner by submitting an application within the timeframe referred to in rule **32.16** to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to any Customs Office.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the information specified in rule **41.15**(1);
- (b) if the application is submitted by a customs broker, a registered agent or ordinary representative<sup>747</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>748</sup>

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<sup>746</sup> The bank account into which the refunds of a registered or licenced person must be paid must be designated in terms of rules **28.9**(3)(e) or (f) and **29.11**(3)(f) or (g) of these Rules. Details of this bank account must be regularly updated. For definition of "registration details" and "licence details", see rule **1.1**.

<sup>747</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>748</sup> If the application is submitted in terms of section 920 of the Customs Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (c) in the case of an application for a refund of a penalty relating to goods that have been cleared, or of interest on such a penalty, the movement reference number of the clearance declaration;
- (d) details relating to the refund applied for, including—
  - (i) whether it is a refund of an administrative penalty, interest or other money;
  - (ii) the circumstance referred to in rule **32.12(1)** that justifies the application for a refund and, if rule **32.12(1)(b)** or *(c)* is relied on, the date and number of the decision in the Chapter 37 proceedings or of the final judgement of a court;
  - (iii) the amount of penalty, interest or other money paid and the date of payment; and
  - (vi) the amount of refund claimed;
- (e) a statement by the applicant indemnifying the Commissioner against any claim, loss or damage, cost and expenses arising as a result of payment of the refund to the applicant;
- (f) whether the applicant has any outstanding debt with the Commissioner and, if so, details of the debt;
- (g) a list of the documents relied on to substantiate the application for a refund;<sup>749</sup>
- (h) a statement that the applicant is the person entitled to claim the refund;
- (j) if the applicant is not a registered person or licensee, the banking details<sup>750</sup> of—
  - (i) the applicant's bank account in the Republic into which the refund must be paid; or
  - (ii) another bank account in the Republic into which the refund must be paid, if the applicant's bank account is not the bank account into which the refund must be paid; and
- (k) any other information that may be required by the customs authority for purposes of the application.

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<sup>749</sup> Policy guidelines may be consulted in order to assist in determining which supporting documents can be used to prove specific types of claims for refunds and drawbacks. These guidelines are not intended to limit an applicant in proving a claim.

<sup>750</sup> See definition of "banking details" in rule 1.1

(3) The information referred to in subrule (2)(f), (g) and (k) may be provided in separate supporting documents submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(4) An application referred to in subrule (1) must be supported by the following documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) A banking details confirmation document<sup>751</sup> confirming—
  - (i) the applicant's banking details, if the applicant is not a registered person or licensee; or
  - (ii) the banking details of the other bank account into which the refund must be paid, if the refund must be paid into that other account;
- (b) if the applicant is a juristic entity—
  - (i) a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and
  - (ii) a certified copy of the identification document of an authorised person referred to in subparagraph (i); and
- (c) documentary evidence of the circumstance referred to in rule **32.12(1)** which the applicant relies on for justification of the application, including—
  - (i) proof of payment reflecting an amount erroneously paid referred to in rule **32.12(1)(a)** and any documents evidencing the error;
  - (ii) a notification by the customs authority of the outcome of any action taken in terms of Chapter 37 of the Control Act referred to in rule **32.12(1)(b)**; or
  - (iii) the final judgement of a court referred to in rule **32.12(1)(c)**.

### **Time within which applications for refunds must be submitted**

**32.16 (1)** An application for a refund in terms of this Part must be submitted to the customs authority within a period of three years from the date on which the amount reclaimed in terms of the application was paid, or if the amount was paid in instalments, from the date the first instalment was paid.

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<sup>751</sup> See definition of "banking details confirmation document" in rule 1.1

(2) Subrule (1) does not apply if the entitlement to, or the extent of, a refund is determined or otherwise affected by—

- (a) a decision in any administrative appeal or dispute resolution proceedings or a dispute settlement, and in such a case an application for the refund must be submitted to the customs authority within 180 calendar days from the date the decision was given or the matter was settled, as the case may be; or
- (b) a final judgement of a court, and in such a case an application for the refund must be submitted to the customs authority within 180 calendar days from the date the final judgement was given.

(3) If the grounds for a decision given in any appeal or dispute resolution proceedings referred to in subrule (2)(a) or in a final judgement referred to in subrule (2)(b) will, when applied to administrative penalties, or to interest on administrative penalties, or to other payments made to the Commissioner in terms of Chapter 32 of the Control Act that were not the subject of those proceedings or judgement, also affect those other penalties, interest or payments, applications for a refund may in terms of subrule (2)(a) or (b) be submitted only in relation to those payments that were made after a date<sup>752</sup> three years prior to the date of payment of the penalty, interest or other payment that was the subject of those proceedings or judgement.

### **Consideration of applications**

**32.17** (1) In order for the merits of an application for a refund to be considered, the application must be a valid application.

- (2) An application is valid if—
- (a) the applicant is in terms of rule **32.13** competent to apply;
  - (b) the application complies with rule **32.15**;
  - (c) the application was submitted within the applicable timeframe referred to in rule **32.16**(1) and (2); and
  - (d) the application qualifies in terms of rule **32.16**(3), if that rule applies.

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<sup>752</sup> This covers all payments during the period from this date up to the date of the decision or final judgement and also payments made after the date of the decision or judgement which are not consistent with the decision or judgement.

(3) (a) If the customs authority invalidates an application in terms of subsection (2) it must notify the applicant of the invalidation, the date of invalidation and the reason for the invalidation.

(b) If the customs authority validates an application in terms of subsection (2), it must notify the applicant of the validation and the validation date.

(4) The customs authority must consider a validated application on the merits and, within 21 working days of validation of the application, either—

- (a) approve the application and pay the refund to the applicant;
- (b) refuse the application; or
- (c) reject the application on technical grounds.

### **Re-submission of rejected applications**

**32.18.** (1) An application for a refund referred to in rule **32.15** that was rejected in terms of rule **32.15(4)(c)** on technical grounds,<sup>753</sup> may be rectified and resubmitted to the customs authority.

(2) If an application referred to in subrule (1) is resubmitted to the customs authority within five working days from the date of rejection of the previous application, the resubmitted application must be regarded for purposes of rule **32.16** to have been submitted on the date the previous application was submitted.

(3) A resubmitted application must be dealt with in accordance with rule **32.17**.

(4) If an application referred to in this rule is not submitted within the timeframe referred to in subrule (2), a fresh application must be submitted if the applicant wishes to continue with the application.

### **Interest payable on refunds (section 706(c))**

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<sup>753</sup> A rejection on technical grounds would normally be a rejection otherwise than on the merits of the application, for example a rejection on the ground of a defect in the application itself which can promptly be rectified by the applicant.

**32.19** (1) If a person becomes entitled in terms of this Part to claim a refund of administrative penalties, including interest on such penalties, and of other payments paid to the Commissioner, no interest is payable on the amount of that penalty or interest, or of that other payment except as provided for in subsection (2).

(2) If the customs authority fails to pay a refund approved in terms of rule **32.17(4)** within the 21 working days' period referred to in that rule, the applicant is entitled to interest, at a rate determined by the Minister, on the amount of the refund or drawback, for a period commencing on the expiry of that 21 days' period up to the date of payment of the refund or drawback.

(3) Interest determined in terms of subsection (2) must be calculated on daily balances owing and compounded at the end of each month.

#### **Recovery of refunds paid in certain circumstances**

**32.20** (1) A person to whom a refund was paid in terms of this Part is obliged to repay the amount of the refund to the Commissioner if payment of the refund was made in error.

(2) A repayment referred to in subrule (1) must be made as the customs authority may direct in the demand for repayment.

#### **Set-off of refund against amount owing**

**32.21** (1) When a refund becomes payable in terms of this Part to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty levied or imposed under the Control Act or any other legislation administered by the Commissioner within the period required for payment of the amount, the customs authority may set off the amount of such refund against the amount which that person has failed to pay.<sup>754</sup>

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<sup>754</sup> Note that if payment of an amount of tax, duty, levy, charge, interest or administrative penalty has been deferred to a future date, that amount only becomes payable at that future date. Consequently there cannot be a "failure" to pay the amount before that date. It also follows that if a refund is paid before that date, the refund cannot be set off against the deferred amount before that date.



(2) Subsection (1) may not be applied to an amount of outstanding tax, duty, levy, charge, interest or administrative penalty if the customs authority has in terms of section 830 of the Control Act suspended or deferred payment of that amount pending institution or conclusion of proceedings in terms of Chapter 37.

DRAFT

## CHAPTER 33

### GENERAL ENFORCEMENT FUNCTIONS

#### Definitions

**33.1** In this Chapter—

“**official instruction**” means any instruction issued by—

- (a) the Commissioner; or
- (b) a customs officer in a supervisory capacity acting within his or her delegated mandate.

#### ***Part 1: Use of scanning equipment and other mechanical, electrical, imaging or electronic appliances for inspection of goods (section 751(1)(a))***

#### Conditions for use of scanning equipment and other appliances

**33.2** Scanning equipment and other mechanical, electrical, imaging or electronic appliances that may in terms of section 722(3)(b)(ii) of the Control Act be used for examining goods—

- (a) may be operated only by customs officers who have undergone appropriate training to operate such equipment or appliances; and
- (b) must, if used on a person, be of a non-intrusive nature.

#### Avoiding or interfering with scanning equipment and other appliances

**33.3** (1) If any scanning equipment or other mechanical, electrical, imaging or electronic appliance referred to in section 722(3)(b)(ii) of the Control Act is installed or being operated by customs officers at the entrance to any restricted area which is or forms part of a customs controlled area, no person may without permission of the customs authority enter that area otherwise than through that entrance.

(2) If any scanning equipment or other mechanical, electrical, imaging or electronic appliance referred to in section 722(3)(b)(ii) is installed or being operated by customs officers in a customs controlled area for purposes of examining goods, including goods on a person or in a package or container, no person may—

- (a) interfere or cause an interference with the equipment or appliance in order to deceive; or
- (b) do anything to prevent the equipment or appliance from producing—
  - (i) a true image of the goods or of the contents of the package or container; or
  - (ii) a true result of the purpose for which it is used.

### **Cargo scanning equipment**

**33.4** (1) Cargo scanning equipment may be used at—

- (a) the Durban customs seaport;
- (b) the Cape Town customs seaport; and
- (c) the land border-post at Beit Bridge.

(2) Any container imported or to be exported through a place of entry or exit referred to in subrule (1) which is selected by the customs authority for scanning must be presented for scanning at the place where the cargo scanning equipment is installed.

(3) Cargo scanning equipment must at all times be operated by at least two customs officers with the required training referred to in rule **33.2(a)**.

### ***Part 2: Carrying, custody and use of firearms and ammunition by customs officers (section 751(1)(b))***

#### **Issue of firearms to customs officers (sections 741(2) and 751(1)(b))**

**33.5** A customs officer falling in the category of customs officers that may carry firearms as contemplated in section 741(1) of the Control Act must comply with the following pre-qualifications before a firearm may be issued to the officer:

- (a) The officer must be in possession of a valid competency certificate issued in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000);
- (b) the officer must—
  - (i) have undergone psychometric evaluation; and
  - (ii) based on such evaluation, have been found fit to be issued with a firearm;

- (c) the officer must comply with the requirements of section 9(1) of the Firearms Control Act, 2000; and
- (d) the officer must give a written undertaking to control and use the firearm strictly in accordance with Part 6 of Chapter 33 of the Control Act, these Rules, the Firearms Control Act, 2000, and any official instructions.

### **Conditions subject to which firearms and ammunition are issued**

**33.6** A firearm and ammunition is issued to a customs officer subject to the following conditions:

- (a) During the officer's official working hours, the firearm and ammunition—
  - (i) must be carried by the officer on his or her person in accordance with official instructions or protocol; and
  - (ii) may be left in the custody of another person only if permission has been granted by the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment.
- (b) The firearm and ammunition must after every shift be returned to the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment, subject to paragraph (c).
- (c) When off-duty the officer may retain possession of the firearm and any ammunition issued to the officer only if—
  - (i) permission has been granted by the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment; and
  - (ii) the firearm and ammunition is secured at the officer's place of residence in a gun safe approved in terms of the Firearms Control Act, 2000.
- (d) The officer must attend at least four practical training sessions per year at a shooting range which complies with the applicable compulsory specification set in terms of the Standards Act, 2008 (Act No. 20 of 2008), and which is accredited in terms of the Firearms Control Act, 2000.
- (e) A training session referred to in paragraph (d) must include the actual firing of a firearm of the type issued to the officer.
- (f) The firearm or ammunition issued to the officer may not be used for hunting, recreational or other private purposes.

- (g) The Commissioner or the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment may at any time—
  - (i) request the officer to return the firearm or ammunition; or
  - (ii) instruct another customs officer to remove the firearm or ammunition from the officer's possession.

### **Shooting incidents**

**33.7** (1) Whenever a firearm issued to a customs officer is discharged, the officer must without delay submit a report on the incident to his or her supervisor.

- (2) A shooting incident report referred to in subrule (1) must—
  - (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state—
    - (i) the name, designation and contact details of the customs officer submitting the report;
    - (ii) the circumstances in which, and the reasons why, the firearm was discharged;
    - (iii) whether any person was injured in the incident and, if so—
      - (aa) the name and the physical and postal addresses and contact details of the injured person that are available to the officer; and
      - (bb) the nature of the injury and whether it was fatal or not;
    - (iv) whether any goods were damaged in the incident and, if so—
      - (aa) the name and the physical and postal addresses and contact details of the owner or person in whose possession the goods were, that are available to the officer; and
      - (bb) the nature and extent of the damage;
    - (v) whether the incident was reported to the South African Police Service, and if so, the number assigned to the case by the South African Police Service; and
    - (vi) any other information required on the form.

(3) This rule does not apply if the firearm is discharged for purposes of official target practice except if a person is injured or property is damaged as a result

of such target practice.

### **Use of ammunition**

**33.8** (1) A customs officer to whom a firearm has been issued must within five working days after the end of each calendar month report to his or her supervisor the amount of any ammunition rounds discharged during that month.

(2) An ammunitions report referred to in subrule (1) must—

- (a) be submitted on Form ....as published as a rule on the SARS website; and
- (b) state—
  - (i) the name, designation and contact details of the customs officer submitting the report;
  - (ii) the number of rounds discharged;
  - (iii) the calibre;
  - (iv) the purpose for which those rounds were discharged; and
  - (v) any other information required on the form.

### **Theft, loss or damage to firearms or ammunition**

**33.9** (1) A customs officer to whom a firearm has been issued must report to his or her supervisor any theft or loss of, or damage to, the firearm or any ammunition issued to the officer immediately upon becoming aware of it.

(2) A theft, loss or damage report referred to in subrule (1) must—

- (a) be submitted on Form ....as published as a rule on the SARS website; and
- (b) state—
  - (i) the name, designation and contact details of the customs officer submitting the report;
  - (ii) the circumstances in which the firearm or ammunition was stolen, lost or damaged and, if damaged, the nature of the damage;
  - (iii) whether the incident was reported to the South African Police Service, and if so, the number assigned to the case by the South African Police Service; and
  - (iv) any other information required on the form.

### **Non-compliance or negligence ground for disciplinary, dismissal or criminal proceedings**

**33.10** A customs officer to whom a firearm or ammunition has been issued is subject to disciplinary or dismissal proceedings and, when appropriate, criminal proceedings, if the officer—

- (a) contravenes or fails to comply with a provision of—
  - (i) Part 6 of Chapter 33 of the Control Act;
  - (ii) a rule contained in this Part; or
  - (iii) the Firearms Control Act, 2000; or
- (b) acts negligently in relation to the use of the firearm or his or her possession of the firearm or ammunition issued for official use.

### ***Part 3: Custody and use of non-lethal weapons and protective and defensive equipment by customs officers (section 751(1)(b))***

#### **Issue of non-lethal weapons to customs officers**

**33.11** A customs officer must comply with the following pre-qualifications before a non-lethal weapon may be issued to the officer:

- (a) The officer must successfully have undergone appropriate training in the use of non-lethal weapons of the type to be issued to the officer;
- (b) the officer must—
  - (i) have undergone psychometric evaluation; and
  - (ii) based on such evaluation, have been found suitable to handle non-lethal weapons; and
- (c) the officer must give a written undertaking to control and use the non-lethal weapon strictly in accordance with these Rules and any official instructions.

#### **Conditions subject to which non-lethal weapons and protective and defensive equipment are issued**

**33.12** A non-lethal weapon and any protective and defensive equipment are issued to a customs officer subject to the following conditions:

- (a) The non-lethal weapon and protective and defensive equipment may not without the permission of the SARS official responsible for the control of

SARS firearms, non-lethal weapons and protective and defensive equipment or that officer's supervisor be left in the custody of another person.

- (b) The non-lethal weapon and protective and defensive equipment must after every shift be returned to the SARS official responsible for the custody of firearms, non-lethal weapons and protective and defensive equipment, subject to paragraph (c).
- (c) When off-duty the officer may retain possession of the non-lethal weapon and any protective and defensive equipment issued to the officer only if—
  - (i) permission has been granted by the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment; and
  - (ii) the non-lethal weapon is properly secured at the officer's place of residence.
- (d) The officer is subject to periodic training in control and defensive tactics and scenario-based training as the Commissioner may require.
- (e) The non-lethal weapon and protective and defensive equipment may not be used for private purposes.
- (f) The Commissioner or the SARS official responsible for the control of SARS firearms, non-lethal weapons and protective and defensive equipment may at any time—
  - (i) request the officer to return the non-lethal weapon or protective and defensive equipment; or
  - (ii) instruct another customs officer to remove the non-lethal weapon or protective and defensive equipment from the officer's possession.

### **Use of non-lethal weapons in incidents where persons were injured**

**33.13** (1) Whenever a person is injured through the use of a non-lethal weapon issued to a customs officer, the officer must immediately submit a report on the incident to his or her supervisor.

- (2) An incident report referred to in subrule (1) must—
  - (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state—
    - (i) the name, designation and contact details of the customs officer



- submitting the report;
- (ii) the circumstances in which, and the reasons why, the non-lethal weapon was used;
- (iii) the name and the physical and postal addresses and contact details of the injured person that are available to the officer;
- (iv) the nature of the injury;
- (v) whether any goods were damaged in the incident and, if so—
  - (aa) the name and the physical and postal addresses and contact details of the owner or person in whose possession the goods were, that are available to the officer; and
  - (bb) the nature and extent of the damage;
- (vi) whether the incident was reported to the South African Police Service, and if so, the number assigned to the case by the South African Police Service; and
- (vii) any other information required on the form.

### **Theft or loss of non-lethal weapons and protective and defensive equipment**

**33.14** (1) A customs officer to whom a non-lethal weapon or any protective and defensive equipment has been issued must report to his or her supervisor any theft or loss of the non-lethal weapon or protective and defensive equipment immediately upon becoming aware of it.

- (2) A theft or loss report referred to in subrule (1) must—
  - (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state—
    - (i) the name, designation and contact details of the customs officer submitting the report;
    - (ii) the circumstances in which the non-lethal weapon or protective and defensive equipment was stolen or lost;
    - (iii) whether the incident was reported to the South African Police Service, and if so, the number assigned to the case by the South African Police Service; and
    - (iv) any other information required on the form.

## **Non-compliance or negligence ground for disciplinary or dismissal proceedings**

**33.15** A customs officer to whom a non-lethal weapon or any protective and defensive equipment has been issued is subject to disciplinary or dismissal proceedings if the officer—

- (a) contravenes or fails to comply with a provision of a rule contained in this Part; or
- (b) acts negligently in the use or in his or her possession of the non-lethal weapon.

### ***Part 4: Customs patrol boats (section 751(1)(b))***

#### **Crew of customs patrol boats**

**33.16** (1) A customs patrol boat must be operated by a team of customs officers consisting of a skipper and the minimum number of crew members required for the operation of the specific type of vessel.

(2) Customs officers operating a customs patrol boat must comply with any applicable legal requirements, and have the requisite skills and experience as determined by the Commissioner, to operate the boat and its equipment.

#### **Boarding of vessels from customs patrol boats**

**33.17** When boarding another vessel from a customs patrol boat, the customs officer boarding the other vessel must—

- (a) be clothed in the official customs uniform;
- (b) identify himself or herself by producing his or her identity card issued in terms of section 13 of the Control Act; and
- (c) state the reason for boarding the vessel.

#### **Incidents involving the firing of patrol boat weapons**

**33.18** (1) Whenever a customs patrol boat weapon is discharged, the skipper of the boat must immediately upon returning to base submit a report on the incident to his or her supervisor.

- (2) An incident report referred to in subrule (1) must—
- (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state—
    - (i) the name, designation and contact details of the customs officer submitting the report;
    - (ii) the circumstances in which, and the reasons why, and the date and time the weapon was discharged;
    - (iii) the name, nationality and other details of any vessel involved in the incident;
    - (iv) whether any person was injured in the incident and, if so—
      - (aa) the name and the physical and postal addresses and contact details of the injured person that are available to the skipper; and
      - (bb) the nature of the injury and whether it was fatal or not;
    - (v) whether any goods were damaged in the incident and, if so—
      - (aa) the name and the physical and postal addresses and contact details of the owner or person in whose possession the goods were that are available to the skipper; and
      - (bb) the nature and extent of the damage;
    - (vi) whether any person was arrested during the incident and, if so—
      - (aa) the name and the physical and postal addresses, nationality and contact details of the person arrested that are available to the skipper; and
      - (bb) the reason for the arrest;
    - (vii) whether the incident was reported to the South African Police Service, and if so, the number assigned to the case by the South African Police Service; and
    - (viii) any other information required on the form.

(3) This rule does not apply if the weapon is discharged for purposes of official target practice except if a person is injured or property is damaged as a result of such target practice.

## **Part 5: Other matters**

### **Taking and receiving of samples by customs officers** (*section 724(3)(b)*)<sup>755</sup>

**33.19** (1) A customs officer taking or receiving a sample of goods in the exercise of his or her powers in terms of section 724 of the Control Act must promptly issue a receipt for the sample to the person in physical control of the goods.

(2) A receipt referred to in subrule (1) must be issued on Form ...as published as a rule on the SARS website for that purpose.

(3) The receipt must reflect the following particulars:

- (a) The name and customs code of the person in physical control of the goods, if that person has a customs code;
- (b) the name of the customs officer who took or received the sample;
- (c) a description of the class or kind of goods from which the sample was taken;
- (d) the quantity, volume or weight of the sample;
- (e) the place where and the date on which the sample was taken;
- (f) the purpose for which the sample was taken;
- (g) the customs value of the sample, if a clearance declaration has been submitted and the value can be determined from the information on the declaration;
- (h) whether the sample is capable of being returned to the goods;<sup>756</sup> and
- (i) whether the client or representative of the client—
  - (i) requested to be present when the sample is taken; and
  - (ii) was present when the sample was taken.

(4) When taking or handling samples, a customs officer must follow any applicable—

- (a) health and safety guidelines; and
- (b) official instructions, including any standard operating procedures regulating

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<sup>755</sup> Rates applicable to special customs services will only apply when samples are taken on request by a client or as a result of a refund application, tariff classification application or value determination.

<sup>756</sup> Samples should as a general rule be returned unless the sample is damaged or consumed in the course of or as a consequence of testing, examination, analysis or other action taken as a result of the performance of an enforcement function.

the handling and safeguarding of samples.

**Directions to persons to formally appear before designated customs officers**  
(section 730(2)(a))

**33.20** (1) A notice issued by a customs officer to a person in terms of section 730 of the Control Act to appear before a designated customs officer to produce any goods or documents or to answer questions must—

- (a) be on Form ....as published as a rule on the SARS website for this purpose; and
- (b) state, in addition to the matters referred to in that section—
  - (i) the name of that person;
  - (ii) the name and contact details of the customs officer issuing the notice;
  - (iii) the name of the designated customs officer before whom the person must appear;
  - (iv) particulars of the failure by that person to comply with a request by a customs officer to produce goods or documents or to answer questions, including—
    - (aa) the date on which and the place where the failure occurred; and
    - (bb) the name of that customs officer; and
  - (v) the consequences for that person if he or she fails to appear before the designated customs officer at the time and place specified in the notice.

(2) A person appearing before a designated customs officer may during the proceedings be assisted by another person, including a legal practitioner.

**Offences**

**33.21** A customs officer to whom a firearm or a non-lethal weapon has been issued is guilty of an offence if that officer—

- (a) contravenes a condition relating to that firearm contained in rule **33.6(a)(ii)**, (b), (c) or (f) or rule **33.12(a)**, (b), (c) or (e), as may be applicable;
- (b) fails to comply with a request referred to in rule **33.6(g)(i)** or **33.12(f)(i)**; or
- (c) acts negligently in the use of that firearm and such negligence resulted in the death or wounding of a person.

## CHAPTER 34

### DETENTION, SEIZURE AND CONFISCATION OF GOODS

#### *Part 1: Detention of goods*

#### **Other circumstances in which goods or documents may be detained** (*section 754(1)(c) and (2)(c)*)

**34.1** A customs officer may, in addition to the purposes set out in—

- (a) section 754(1)(a) and (b) of the Control Act, detain goods also for the purpose of investigating or determining whether the goods are goods to which an international agreement or an international obligation binding on the Republic which prohibits, restricts or controls the import into or export from the Republic, relate; and
- (b) section 754(2)(a) and (b), detain any document also for the purpose of investigating or determining whether any goods to which the document relates are goods to which an international agreement or an international obligation binding on the Republic which prohibits, restricts or controls the import into or export from the Republic, relate.

#### **Notices of detention** (*section 757(4)(d)*)

**34.2** A notice of detention must in addition to the particulars set out in paragraphs (a) to (c) of section 757(4) of the Control Act, also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;
- (c) the physical address of the place where the goods are detained;
- (d) the name of the person referred to in section 757(1) to whom the notice is issued, and the customs code of that person if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration;
- (f) the transport document number in relation to the goods, if available;
- (g) a general description of the condition of the goods; and

- (h) the date and time when inspection of the goods is scheduled to take place, if known at the time of issuing of the notice.<sup>757</sup>

**Request to be present when detained goods are inspected or opened (section 758(1))**

**34.3** (1) A request by a person referred to in section 758(1)(a) of the Control Act, or that person's representative, to be present during an inspection of goods or during the opening of a package or container that has been detained, must be —

- (a) directed either orally or in writing to a customs officer; or
- (b) submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(2) If a request referred to in subrule (1)(b) is submitted to the customs authority in terms of rule **41.13** in paper format, the request must be submitted to the Customs Office that serves the place where the goods are detained.

- (3) A request submitted in writing or electronically must reflect—
- (a) the customs code of the person referred to in section 758(1)(a) or, if that person does not have a customs code, the information specified in rule **41.15**;
  - (b) if the request is submitted by a customs broker, registered agent or ordinary representative<sup>758</sup> on behalf of the person referred to in paragraph (a), the information specified in rule **41.14**;<sup>759</sup>
  - (c) the reference number of the notice of detention;
  - (d) if the person contemplated in paragraph (a) will be represented by another person during the inspection or the opening of the package or container, the name, capacity and contact details of that person; and
  - (e) any preference that the person requesting may have in respect of the place where the inspection should take place.<sup>760</sup>

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<sup>757</sup> If the date is not known at the stage when the notice is issued, Customs will inform the person to whom the notice was issued as soon as the date is known.

<sup>758</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>759</sup> If the request is submitted on behalf of the person by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit such requests in that capacity.

(4) A request in terms of this rule must be directed to a customs officer or submitted to the customs authority within one working day of issuing of a notice of detention in terms of section 757.

(5) A person who directed or submitted a request in terms of this rule is entitled to be informed of the place and time appointed for the inspection or the opening of the package or container.

**Application for permission to remove detained goods from place where kept or stored (section 759(2))**

**34.4** (1) (a) Permission contemplated in section 759(2) of the Control Act must be obtained by submitting to the customs authority an application for permission to remove detained goods electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** the application must be submitted to the Customs Office serving the area where the goods are detained.

(2) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the applicant or, if that person does not have a customs code, the information specified in rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>761</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>762</sup>
- (c) the current location of the detained goods;
- (d) the reference number of the notice of detention, if available;
- (e) in respect of goods for which a clearance declaration has been submitted, the movement reference number of the clearance declaration;

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<sup>760</sup> Note that although the person requesting may indicate a preference, the place where the inspection will take place always remains subject to the customs authority's direction.

<sup>761</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>762</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications in that capacity.



- (f) in respect of goods for which no clearance declaration has been submitted, the transport document number in relation to the goods;
- (g) if the application relates to only a portion of the detained consignment, a description of that portion of the consignment to identify the goods, which description must include—
  - (i) the tariff classification;
  - (ii) the quantity, volume or weight of the goods, as may be applicable; and
  - (iii) any marks and numbers on the goods, if applicable;
- (h) the physical address of the place to which the detained goods will be removed; and
- (i) the reason why the facilities at the current location are not suitable for the detention of the goods and why the goods should be removed, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

(3) An application referred to in subrule (1) must be supported by a statement setting out—

- (a) the security measures at the place to which the goods will be removed, to ensure that the integrity of the goods is not compromised; and
- (b) the infrastructure, personnel and equipment available at that place to enable the suitable or specialised storage and handling required in respect of goods of that class or kind.

(4) Supporting documents referred to in subrule (3) must be submitted on request, subject to Part 6 of Chapter 41 of these Rules.

## ***Part 2: Seizure of goods***

### **Other circumstances in which goods may be seized (section 762(1)(d))**

**34.5** The customs authority may, in addition to the circumstances set out in section 762(1)(a) to (c) of the Control Act, seize goods if the goods were imported or exported in contravention of an international agreement or an international obligation

binding on the Republic which prohibits, restricts or controls the import into or export from the Republic of those goods.

**Notice of seizure** (*section 763(4)(d)*)

**34.6** A notice of seizure must in addition to the particulars set out in paragraphs (a) to (c) of section 763(4) of the Control Act, also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;
- (c) if the goods were detained prior to seizure, the reference number of the notice of detention;
- (d) the physical address of the place where the seized goods are to be kept;
- (e) the name of the person referred to in section 763(1) to whom the notice is issued, and the customs code of that person if that person has a customs code;
- (f) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration;
- (g) the transport document number in relation to the goods, if available; and
- (h) the general condition of the goods.

**Applications for termination of seizure** (*section 765(3)(b) read with 770*)

**34.7** (1) (a) An application for termination of a seizure of goods as contemplated in section 765(1) of the Control Act, must within 30 calendar days of the date of seizure of the goods<sup>763</sup> be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the seized goods are kept.

(2) An application for termination of seizure must in addition to the information required in section 765(3)(a) reflect—

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<sup>763</sup> If no application for termination of seizure is received by the customs authority within 30 calendar days from the date of seizure of the goods, the customs authority must in terms of section 766(2)(a) of the Control Act confiscate the goods.

- (a) the name and customs code of the applicant or, if that person does not have a customs code, the information specified in rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>764</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>765</sup>
- (c) the reference number of—
  - (i) the notice of detention issued in respect of the goods, if any; and
  - (ii) the notice of seizure issued in respect of the goods; and
- (d) a statement that the applicant is the owner of the goods.

(3) An application referred to in subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) Documentary evidence that the applicant is the owner of the goods, which evidence may include—
  - (i) a copy of a contract of sale indicating the applicant as the buyer;
  - (ii) a copy of an invoice or sales receipt issued to the applicant; or
  - (iii) a copy of a court judgement indicating the applicant as the owner;
- (b) the motivation referred to in section 765(3)(a) of the reason why the seizure should be terminated;
- (c) any documentary evidence substantiating any facts mentioned in the motivation referred to in section 765(3)(a); and
- (d) in the case of an applicant that does not have a customs code and who is—
  - (i) an individual, a copy of the identification document of the applicant; or
  - (ii) a juristic entity, a copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity.

### ***Part 3: Confiscation of goods***

<sup>764</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>765</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit applications in that capacity.

### **Notices of confiscation** (*section 766(3)*)

**34.8** A notice of confiscation referred to in section 766(3) of the Control Act must—

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are confiscated;
- (c) reflect—
  - (i) the reference number of the notice of confiscation and the date of issue;
  - (ii) the reference number and date of the notice of seizure issued in relation to the goods;
  - (iii) the name, contact details and designation of the customs officer issuing the notice of confiscation; and
  - (iv) the name of the person referred to in section 763(1), and the customs code of that person, if available.

### **Applications for withdrawal of confiscation** (*section 768(3)(b) read with 770*)

**34.9** (1) (a) An application for withdrawal of the confiscation of goods as contemplated in section 768(1) of the Control Act must be submitted to the customs authority—

- (i) within 30 calendar days of the date of confiscation; and
- (ii) electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office serving the area where the confiscated goods are kept.

(2) An application for withdrawal of confiscation must reflect—

- (a) the applicant's name and customs code or, if the applicant does not have a customs code, the information specified in rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>766</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>767</sup>

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<sup>766</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

- (c) a statement that the applicant is the owner of the goods;
- (d) the reference number of the notice of confiscation issued in respect of the relevant goods; and
- (e) whether the applicant has submitted an application for termination of seizure in terms of rule **34.6** in respect of the goods which has been refused by the customs authority.<sup>768</sup>

(3) An application referred to in subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) Documentary evidence that the applicant was the owner of the goods prior to confiscation, which evidence may include—
  - (i) a copy of a contract of sale indicating the applicant as the buyer;
  - (ii) a copy of an invoice or sales receipt issued to the applicant; or
  - (iii) a copy of a court judgement indicating that the applicant is the owner;
- (b) the motivation referred to in section 768(3)(a) of the reason why the confiscation should be withdrawn;
- (c) any documentary evidence substantiating any facts mentioned in the motivation referred to in section 768(3)(a); and
- (d) in the case of an applicant that does not have a customs code and who is—
  - (i) an individual, a copy of the identification document of the applicant; or
  - (ii) a juristic entity, a copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity.

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<sup>767</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit applications in that capacity.

<sup>768</sup> An application for withdrawal of a confiscation based on the same grounds on which the refused application for termination of seizure was based, will obviously be futile.

## CHAPTER 35

### PROHIBITED, RESTRICTED AND SECTORALLY CONTROLLED GOODS

#### *Part 1: Prohibited goods*

#### **Additional particulars to be reflected on notices of detention** (*section 778(3)(d)*)

**35.1** A notice of detention issued in respect of prohibited goods in terms of section 778(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;
- (c) the physical address of the place where the prohibited goods are detained;
- (d) the name of the person referred to in section 778(1)(a) to whom the notice is issued, and the customs code of that person if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

#### **Applications for termination of detention** (*section 780(2)(a) and (b) read with section 903(1)(i)*)

**35.2** (1) If a person referred to in section 780(2)(a) or (b) of the Control Act intends to apply for the termination of a detention of prohibited goods<sup>769</sup> as contemplated in that section, that person must within three working days of the date of detention of the goods apply for such termination—

- (a) in the case of imported prohibited goods, through the submission of an export clearance declaration in respect of those goods; or

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<sup>769</sup> Note that only the importer or exporter, or the importer or exporter's registered agent, may apply for the termination of a detention of prohibited goods, and only in the circumstances set out in section 780(2)(a)(i) and (ii), for goods of which the import but not the possession is prohibited, and (b)(i) and (ii), for goods of which the export but not the possession is prohibited.

(b) in the case of prohibited goods that were in the process of being exported, through the submission of a request to withdraw the export clearance declaration.<sup>770</sup>

(2) (a) Submission of an export clearance declaration in terms of subrule (1)(a) must be regarded as an application contemplated in section 780(2)(a), and release by the customs authority must be regarded as approval of the application.

(b) A request for withdrawal of a clearance declaration in terms of subrule (1)(b) must be regarded as an application contemplated in section 780(2)(b), and acceptance of the withdrawal request by the customs authority must be regarded as approval of the application.

(3) An export clearance declaration referred to in subrule (1)(a) must—

(a) in addition to the information required in terms of section 367, indicate that it is a clearance declaration for the export of previously imported prohibited goods; and

(b) be supported by a copy of a letter or other document from the administering authority confirming that it has no objection to the goods being exported.<sup>771</sup>

(4) A request for withdrawal referred to in subrule (1)(b) must be supported a copy of a letter or other document from the administering authority confirming that it has no objection to the goods reverting to free circulation.

(5) If an application in terms of this rule is granted, the applicant must pay to the Commissioner—

(a) any administrative penalty that may be payable in respect of the goods; and

(b) any expenses incurred by the Commissioner in connection with the detention of the goods.

## ***Part 2: Restricted goods***

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<sup>770</sup> See section 175(1)(e) of the Control Act.

<sup>771</sup> See section 780(3) of the Control Act.

**Additional particulars to be reflected on notices of detention** (*section 787(3)(d)*)

**35.3** A notice of detention issued in respect of restricted goods in terms of section 787(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;
- (c) the physical address of the place where the restricted goods are detained;
- (d) the name of the person referred to in section 787(1)(a) to whom the notice is issued, and the customs code of that person if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

**Application for termination of detention** (*section 789(2)(a) and (b) read with section 903(1)(i)*)

**35.4** (1) If a person referred to in section 789(2)(a) or (b) of the Control Act intends to apply for the termination of a detention of restricted goods as contemplated in that section,<sup>772</sup> that person must within three working days of the date of detention of the goods apply for such termination—

- (a) in the case of imported restricted goods, through the submission of an export clearance declaration in respect of those goods; or
- (b) in the case of restricted goods that were in the process of being exported, through the submission of a request to withdraw the export clearance declaration.<sup>773</sup>

(2) (a) Submission of an export clearance declaration in terms of subrule (1)(a) must be regarded as an application contemplated in section 789(2)(a),

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<sup>772</sup> Note that only the importer or exporter, or the importer or exporter's registered agent, may apply for the termination of a detention of restricted goods, and only in the circumstances set out in section 789(2)(a)(i) and (ii), for goods of which the import but not the possession is restricted, and (b)(i) and (ii), for goods of which the export but not the possession is restricted.

<sup>773</sup> See section 175(1)(e) of the Control Act.



and release by the customs authority must be regarded as approval of the application.

(b) Request for withdrawal of a clearance declaration in terms of subrule (1)(b) must be regarded as an application contemplated in section 789(2)(b), and acceptance of the withdrawal request by the customs authority must be regarded as approval of the application.

(3) An export clearance declaration referred to in subrule (1)(a) must—

- (a) in addition to the information required in terms of section 367, indicate that it is a clearance declaration for the export of prohibited goods; and
- (b) be supported by a copy of a letter or other document from the administering authority confirming that it has no objection to the goods being exported.<sup>774</sup>

(4) A request for withdrawal referred to in subrule (1)(b) must be supported a copy of a letter or other document from the administering authority confirming that it has no objection to the goods reverting to free circulation.

(5) If an application is granted, the applicant must pay to the Commissioner—

- (a) any administrative penalty that may be payable in respect of the goods; and
- (b) any expenses incurred by the Commissioner in connection with the detention of the goods.

### ***Part 3: Sectorally controlled goods***

#### **Additional particulars to be reflected on notices of detention (section 796(3)(d))**

**35.5** A notice of detention issued in respect of sectorally controlled goods in terms of section 796(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;

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<sup>774</sup> See section 789(3) of the Control Act.

- (c) the physical address of the place where the sectorally controlled goods are detained;
- (d) the name of the person referred to in section 796(1)(a) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) the movement reference number of the clearance declaration submitted in respect of the goods; and
- (f) the transport document number in relation to the goods, if available.

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## CHAPTER 36

### COUNTERFEIT GOODS

#### Definitions

**36.1** In this Chapter, unless the context otherwise indicates—

“**Paris Convention**” has the meaning assigned to it in section 1 of the Trade Marks Act; and

“**Trade Marks Act**” means the Trade Marks Act, 1993 (Act No. 194 of 1993).

#### ***Part 1: Applications for detention of suspected counterfeit goods and notices of detention***

#### **Application by right-holders for detention of suspected counterfeit goods (section 805(2) and 809(2))**

**36.2** (1) (a) An application by a right-holder for the detention of suspected counterfeit goods in terms of section 805(2) and 809(2) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect—

(a) the applicant’s name and customs code, or if the applicant does not have a customs code, the information specified in rule **41.15**;

- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>775</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>776</sup>
- (c) sufficient particulars of the protected goods as required in section 805(2)(b) or 809(2)(b), as may be applicable, which must, as a minimum, include the following:
- (i) The brand name of the protected goods;
  - (ii) the tariff classification;
  - (iii) whether the intellectual property right in the protected goods is—
    - (aa) a registered trade mark;
    - (bb) a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark within the meaning of section 35(1) of the Trade Marks Act;
    - (cc) a copyright; or
    - (dd) a mark to which section 15 of the Merchandise Marks Act, 1941 (Act 17 of 1941), applies;
  - (iv) particulars of any official recognition of that right by any country and, in the case of a trade mark registered in the Republic, the registration number;
  - (v) the expiry date of that right, if any;
  - (vi) the name of the author, in the case of a copyright; and
  - (vii) the country in which those protected goods are produced;
- (d) information as required in section 805(2)(b) or 809(2)(b), as may be applicable, that describes the essential physical and other distinctive features, elements and characteristics of goods that may indicate that the goods are counterfeit goods infringing the rights attached to those protected goods; and
- (e) the minimum quantity of goods that should be detained by the customs authority to enable the right-holder to apply to a court for a finding that the goods are counterfeit goods that infringe that right-holder's intellectual property right.

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<sup>775</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>776</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications in that capacity.

(3) An application referred to in subrule (1) must, in addition to the documents referred to in section 805(2)(e)(i) and (ii) or section 809(2)(e)(i) and (ii), as may be applicable, be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules:

- (a) Photographs or brochures that may assist with describing—
  - (i) the protected goods which are the subject of the application; and
  - (ii) the alleged counterfeit goods, if available;
- (b) if the right-holder for purposes of the application is a person referred to in paragraph (d) of the definition of “right-holder” in section 803, a document authorising that person to act in relation to those protected goods in the Republic;
- (c) in the case of a trade mark registered in the Republic, a certificate of registration issued in terms of the Trade Marks Act or a copy of an entry in the trade mark register certified by the registrar of trademarks referred to in that Act;
- (d) in the case of a trade mark entitled to protection under the Paris Convention as a well-known trade mark within the meaning of section 35(1) of the Trade Marks Act, an affidavit deposited to by or on behalf of the applicant confirming that the trade mark falls within the meaning of section 35 of that Act and that the applicant is a right-holder in relation to that trade mark;
- (e) in the case of a copyright, an affidavit deposited to by or on behalf of the applicant confirming that the applicant is a right-holder in relation to that copyright;
- (f) in the case of a mark to which section 15 of the Merchandise Marks Act, 1941 (Act 17 of 1941), applies, an affidavit deposited to by or on behalf of the applicant confirming that the applicant is a right-holder in relation to that mark;
- (g) a list of persons authorised by the right-holder to import or export the protected goods, if any;
- (h) a list of persons that in the past imported or exported counterfeit goods that infringed the intellectual property right attached to the protected goods, if any; and

- (i) an indemnity referred to in section 805(2)(e)(i) or 809(2)(e)(i) and an undertaking referred to in section 805(2)(e)(ii) or 809(2)(e)(ii), as may be applicable.

(4) The administration fee for purposes of section 805(2)(e)(iii) and section 809(2)(e)(iii) is R 2000,00.

**Form and format of indemnity and undertaking to pay costs (section 822(e))**

**36.3** An indemnity referred to in sections 805(2)(e)(i) and 809(2)(e)(i) of the Control Act and an undertaking referred to in sections 805(2)(e)(ii) and 809(2)(e)(ii) of that Act must be—

- (a) submitted to the customs authority as a combined document on Form .....published as a rule on the SARS website for that purpose; and
- (b) be signed by the applicant and two witnesses.

**Detention notices in respect of suspected counterfeit goods (section 807(4)(d) and 810(2)(b))**

**36.4** (1) A detention notice in respect of suspected counterfeit goods referred to in section 807(4) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of section 807(4), also reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details and designation of the customs officer issuing the notice;
- (c) the physical address of the place where the suspected counterfeit goods are detained;
- (d) the name of the person to whom the notice is issued, and the customs code of that person if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

(2) A detention notice in respect of suspected counterfeit goods referred to in section 810(2)(b) must reflect—

- (a) the date from which the goods are detained;

- (b) the reason for the detention; and
- (c) the other information set out in subrule (1)(a) to (f).

**Notifications to right-holders that goods were detained** (*section 807(1)(c) read with section 822*)

**36.5** A notification to a right-holder referred to in section 807(1)(c) of the Control Act must, in addition to the information referred to in section 807(1)(c)(i) and (ii), also contain—

- (a) a description of the goods detained as suspected counterfeit goods, which description must include—
  - (i) the class or kind of goods;
  - (ii) the country of origin;
  - (iii) any essential or distinctive features, elements or characteristics of the goods; and
  - (iv) the quantity, volume or weight of the goods, as may be applicable; and
- (b) the physical address of the place where the detained suspected counterfeit goods are kept.

***Part 2: Procedures for detained suspected counterfeit goods***

**Inventory of suspected counterfeit goods detained** (*section 811*)

**36.6** (1) A customs officer who has detained suspected counterfeit goods must within three working days after a detention notice referred to in rule **36.4** was issued in terms of section 807(1)(b) or 810(2)(b) of the Control Act, compile an inventory of such goods as contemplated in section 811.

- (2) An inventory referred to in subrule (1) must reflect—
  - (a) the reference number of the inventory;
  - (b) the name, contact details and designation of the customs officer who detained the goods;
  - (c) the place, date and time of detention;
  - (d) the reference number of the detention notice referred to in rule **36.4** issued in respect of the goods;

- (e) the name, physical and postal address and contact details of the owner, importer or exporter of the goods;
- (f) a list of the goods detained, including a description of—
  - (i) the class or kind of goods;
  - (ii) the country of origin;
  - (iii) any essential or distinctive features, elements or characteristics of the goods that allegedly infringe a right attached to the relevant protected goods; and
  - (iv) the quantity, volume or weight of the detained goods as may be applicable;
- (g) a declaration by the customs officer referred to in paragraph (b) that the goods reflected in the list have been detained as suspected counterfeit goods;
- (h) the reference number of any authorisation pursuant to a request referred to in rule **36.8**; and
- (i) provision for an acknowledgement of receipt of the goods by the person in charge of a counterfeit goods depot, if the goods are removed to a counterfeit goods depot in terms of section 815.

(3) If the goods are removed to a counterfeit goods depot in terms of section 815, a copy of the inventory reflecting acknowledgement of receipt of the person in charge of the counterfeit goods depot must be provided to the person in charge of the depot.

**Requests for personal details of affected parties** (*section 812(1)*)

**36.7** (1) (a) A request in terms of section 812(1) of the Control Act by a right-holder to the customs authority for personal details of affected parties, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a request referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the request must be submitted to the Customs Office serving the area where the suspected counterfeit goods are detained.

(2) A request referred to in subrule (1) must reflect—



- (a) the right-holder's name and customs code, or if the right-holder does not have a customs code, the information specified in rule **41.15**;
- (b) if the request is submitted by a customs broker, registered agent or ordinary representative<sup>777</sup> on behalf of the right-holder, the information specified in rule **41.14**;<sup>778</sup>
- (c) the reference number of the notification sent to the right-holder in terms of section 807(1)(c) or 810(2)(c); and
- (d) a request to furnish the name and address and contact details of any person who is an affected party in relation to the suspected counterfeit goods detained.

**Requests for samples of detained suspected counterfeit goods** (*section 813(1)*)

**36.8** (1) (a) A request in terms of section 813(1) of the Control Act by a right-holder to the customs authority for the furnishing of samples of detained goods suspected to be counterfeit goods, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a request referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the request must be submitted to the Customs Office serving the area where the suspected counterfeit goods are detained.

- (2) A request referred to in subrule (1) must reflect—
- (a) the information referred to in rule **36.7(2)(a)** and (b);
  - (b) the number of samples requested;
  - (c) the proposed dates when the samples will be collected and returned; and
  - (d) the identity of the person who will be collecting the samples, including name, contact details, SARS tax reference number and designation or, if that person does not have a SARS tax reference number, his or her identification document type and number.

<sup>777</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>778</sup> If the request is submitted on behalf of the right-holder by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit documents in that capacity.

**Requirements in relation to samples furnished in terms of section 813 of the Control Act (813(2)(c))**

**36.9** If a request referred to in rule **36.8** is granted, sampling of goods must take place in accordance with the following requirements:

- (a) The right-holder or person acting on the right-holder's behalf collecting the samples, must produce to the customs authority at the place where the detained counterfeit goods are kept—
  - (i) that person's identification document;
  - (ii) in the case of a person acting on behalf of the right-holder, also an authorisation to act on behalf of the right-holder; and
  - (iii) the reference number of the authorisation granted pursuant to the request for the furnishing of samples in terms of rule **36.8**;
- (b) the quantity furnished as samples may not be more than the quantity necessary for inspection or analysis, and counter-analysis, if required; and
- (c) the right-holder or a person acting on the right-holder's behalf, must sign a sample register to confirm—
  - (i) the identity of the person taking delivery of the samples, including name, contact details, SARS tax reference number and designation or, if that person does not have a SARS tax reference number, his or her identification document type and number;
  - (ii) the date and time when delivery of the samples is taken;
  - (iii) a full description of the samples, including the quantity; and
  - (iv) the anticipated date when the samples will be returned.

**Notices of intention whether court action is to be lodged (section 814(1))**

**36.10 (1) (a)** A notice of intention which a right-holder must submit to the customs authority in terms of section 814(1) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notice referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, notice must be submitted to the Customs Office serving the area where the suspected counterfeit goods are detained.

- (2) A notice referred to in subrule (1) must reflect—
- (a) the date of the notification;
  - (b) the information referred to in rule **36.7(2)(a)**;
  - (c) the reference number of the notification sent to the right-holder in terms of section 807(1)(c) or 810(2)(c);
  - (d) whether the intention of the right-holder is—
    - (i) to apply to a court for a finding that the detained goods are counterfeit goods; or
    - (ii) not to apply for such a finding; and
  - (e) the name and contact details of the person that will remove the goods to the counterfeit goods depot.

(3) When giving notice in terms of this rule of the intention to apply to a court for a finding that the detained goods are counterfeit goods, the right-holder must in terms of rule **1.11** apply for the provision of special customs services in relation to the removal of the goods to the counterfeit goods depot under customs supervision.

**Application for permission to discharge goods from counterfeit goods depots**  
(section 819(1)(b))

**36.11** (1) (a) An application by the person in charge of a counterfeit depot for the customs authority's permission to discharge goods from the depot as contemplated in section 819(1)(b) of the Control Act, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

- (2) An application referred to in subrule (1) must reflect—
- (a) the name and contact details of the person in charge of the counterfeit goods depot;
  - (b) the physical address of the counterfeit goods depot;

- (c) the reference number of the inventory referred to in section 815(2)(b) read with rule **36.6** in respect of the goods to be discharged; and
- (d) the reason for the discharge of the goods from the counterfeit goods depot.

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**Note that the content of this Chapter will only be finalised once Chapter 37 of the CCA is finalised.**

## CHAPTER 37

### DISPUTE RESOLUTION<sup>779</sup>

#### Definitions

**37.1** In this Chapter—

**“disputed or affected payment”** means a payment that is or will be in dispute, or is or will otherwise be affected by proceedings referred to in section 827(1) of the Control Act;

**“TAA Dispute Resolution Rules”** means the rules published in terms of the Tax Administration Act in Government Notice 550 of 2014, as may from time to time be amended.

#### **Application for suspension or deferment of amounts payable to Commissioner** (*section 830*)

**37.2** (1) If a person aggrieved by a decision<sup>780</sup> of the Commissioner, a customs officer or a SARS official intends to lodge an objection against the decision in terms of section 827(1)(a) of the Control Act, an application referred to in section 830(3) to suspend or defer a disputed or affected payment pending conclusion of the objection and any other proceedings referred to in section 827(1) that may follow disallowance of the objection, must be submitted to the customs authority—

(a) not later than the expiry of the period within which that person may lodge the objection in terms of rule 7 of the TAA Dispute Resolution Rules; or

<sup>779</sup> Note that Chapter 9 of the Tax Administration Act and the regulations issued under that Chapter regulate all dispute resolution proceedings available to persons aggrieved by decisions taken in terms of the Customs Control Act, the Customs Duty Act and the Excise Duty Act and that no rules under Chapter 37 of the Control Act other than those dealt with above are accordingly necessary.

<sup>780</sup> See definition of “decision” in section 824 of the Control Act.

(b) if reasons for the decision are requested in terms of rule 6 of the TAA Dispute Resolution Rules, not later than the expiry of the period within which reasons for the decision may in terms of that rule be requested.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format, the application must be submitted to the SARS office which communicated the decision to the applicant.

(3) An application referred to in subrule (1) must state the following information:

- (a) The applicant's name and customs code or, if the applicant does not have a customs code, the information specified in rule **41.15**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>781</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>782</sup>
- (c) particulars of the decision complained against;
- (d) particulars of the disputed or affected payment which the applicant seeks to have suspended; and
- (e) the reason why the suspension of the payment is sought, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of these Rules.

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<sup>781</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>782</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications in that capacity.

**CHAPTER 38**

**TO BE INSERTED LATER**

**Note that in terms of section 943 of the Control Act, this Chapter does not take effect on the effective date**

DRAFT

## CHAPTER 39

### ADMINISTRATIVE PENALTIES

#### **Contents of notices imposing fixed amount penalties** (*sections 877 and 884*)

**39.1** A fixed amount penalty notice issued in terms of section 877(1) of the Control Act to a person who committed a listed non-prosecutable breach must contain the following information:

- (a) The name or customs code of the person who committed the breach;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) the number of the section of the Control Act or number of the rule that has been breached;
- (e) particulars of the breach and the date on which the breach was committed;
- (f) the category in which the breach falls;
- (g) the number of times the same non-prosecutable breach has been committed within the applicable three years' cycle;<sup>783</sup>
- (h) the penalty amount;
- (i) due date for payment of penalty;
- (j) the name and contact details of the customs officer issuing the notice; and
- (k) a notice drawing attention to the fact that an objection may in terms of section 883 be lodged against the imposition of the penalty.

#### **Contents of notices imposing prosecution avoidance penalties** (*sections 879 and 884*)

**39.2** A prosecution avoidance penalty notice issued in terms of section 879(1) of the Control Act to a person who allegedly committed a prosecutable breach must contain the following information:

- (a) The name or customs code of the person who allegedly committed the breach;
- (b) that person's physical address;
- (c) the penalty notice number;

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<sup>783</sup> See section 876(2) and (3) for applicable three year cycle.



- (d) the number of the section of the Control Act or number of the rule that has allegedly been breached;
- (e) particulars of the alleged breach and the date on which the breach was committed;
- (f) the penalty amount;
- (g) due date for payment of penalty;
- (h) the name and contact details of the customs officer issuing the notice; and
- (i) a notice drawing attention to the fact that—
  - (i) prosecution can be avoided if the person elects to have the matter summarily settled by paying the penalty before the due date; and
  - (ii) an objection may in terms of section 883 be lodged against the amount of the penalty.<sup>784</sup>

**Contents of notices imposing missing goods penalties** (*sections 882 and 884*)

**39.3** A missing goods penalty notice issued in terms of section 882(1) of the Control Act to a person referred to in that section must contain the following information:

- (a) The name or customs code of the person to whom the notice is issued;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) particulars of the missing goods;
- (e) the reason why the goods are to be seized;
- (f) the penalty amount;<sup>785</sup>
- (g) due date for payment of penalty;
- (h) the name and contact details of the customs officer issuing the notice; and
- (i) a notice drawing attention to the fact that—
  - (i) the goods cannot readily be found;
  - (ii) the penalty is imposed in lieu of the missing goods; and
  - (iii) an objection may in terms of section 883 be lodged against the imposition or the amount of the penalty.

<sup>784</sup> Note that an objection in terms of section 883 of the Control Act can only be lodged against the amount of the penalty and not against the imposition of the penalty.

<sup>785</sup> The penalty must be equal to the customs value of the goods or, in the case of goods manufactured in an excise manufacturing warehouse, the value of the goods as determined in terms of the Excise Duty Act.

## CHAPTER 40

### JUDICIAL MATTERS

#### **Notification to exonerate registered agents and directors, administrators and trustees from prosecution (section 893(1)(b) or (2)(b))**

**40.1** (1) (a) A notification referred to in section 893(1)(b) or (2)(b) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the notification must be submitted to the Customs Office that serves the area in which the act was committed.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) If the notification is submitted by a registered agent in terms of section 893(1)(b)—
- (i) the name and customs code of the registered agent; and
  - (ii) the name and customs code of the importer, exporter, carrier or other person not located in the Republic referred to in section 893(1) that committed the offence;
- (b) if the notification is submitted by a director, administrator or trustee of a juristic entity in terms of section 893(2)(b)—
- (i) the name, contact details and designation of the director, administrator or trustee; and
  - (ii) the customs code of the juristic entity that committed the offence, or if the entity does not have a customs code, the name and registration number or tax reference number of the juristic entity;
- (c) a description of the act or omission that constituted the offence, and the date of commission;
- (d) particulars of any steps taken by the person submitting the notification to prevent the act or omission referred to in paragraph (c) from being committed; and

- (e) if no steps were taken to prevent the act or omission, the reason for such inaction.

**Notice of intended judicial proceedings** (*section 896(2)*)

**40.2** (1) A notice referred to in section 896(1) of the Control Act must be submitted to the customs authority—

- (a) electronically through—
  - (i) eFiling, if this mode of submission is available for such notices; or
  - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c).

(2) A notice submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) be submitted by making use of the details provided in subrule (3).

(3) Details for submission of a notice in terms of subrule (1)(a)(ii) and (b) are the following:

- (a) if sent through e-mail, the e-mail must be directed to the Senior Manager: Litigation (Customs) at the e-mail address indicated on the SARS website for receipt of such notifications;
- (b) if delivered by hand, the notice must be handed to—
  - (i) the Senior Manager: Litigation (Customs) at 381 Middel Street, First floor Khanyisa, Nieuw Muckleneuk, Pretoria; or
  - (ii) to another person at that office authorised in writing to receive such notices;
- (c) if sent by post, the notice must be sent by registered post to the Senior Manager: Litigation (Customs), Private Bag X923, Pretoria, 0001; and
- (d) if telefaxed, the fax must be directed to the Senior Manager: Litigation (Customs) and sent to the fax number indicated on the SARS website for receipt of such notifications.

(4) A notice referred to in subrule (1) must, in addition to the information required in terms of section 896(1)(a) to (c), also reflect—

- (a) the name and customs code of the person intending to institute judicial proceedings or, if that person does not have a customs code, that person's name and contact details;
- (b) if the notice is submitted on behalf of a juristic entity by a person within the entity's organisation authorised to act on behalf of the entity, that person's name and designation;
- (c) the name and contact details of the attorney of the person intending to institute judicial proceedings;
- (d) details of the Customs Office where the cause of action arose or where the matter that gave rise to the cause of action was dealt with;
- (e) the name and contact details of the customs officer or committee that primarily dealt with the matter, if such details are available; and
- (f) the kind of judicial proceedings to be instituted.

(5) If a notice is submitted by registered post in accordance with subrule (3)(c), the 30 calendar day period referred to in section 896(1) is calculated from the date of receipt of the notice at the address mentioned in that subrule.

(6) A notice referred to in this rule must be supported by the following documents:

- (a) In the case of the person notifying being a natural person, a certified copy of that person's identification document; or
- (b) in the case of the person notifying being a juristic entity, a certified copy—
  - (i) of the document authorising the person referred to in subrule (4)(b) to act on behalf of the entity; and
  - (ii) of the identification document of that person.

**Application to enter into agreement to shorten notice period** (*section 896(3)(a)*)

**40.3** (1) A person intending to institute judicial proceedings against the Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official on a cause of action arising from the enforcement of the Control Act, the Duty Act or the Excise Duty Act, that wishes to enter into an agreement contemplated in section 896(3) of the Control Act to shorten the notice period referred to in section 896(1), must apply for such an agreement in terms of this rule.

- (2) An application referred to in subrule (1) must—
- (a) be submitted to the customs authority in accordance with rule **40.2(1)**;
  - (b) if submitted in accordance with rule **40.2(1)(a)(ii)** or (b)—
    - (i) be on Form ... as published as a rule on the SARS website for this purpose; and
    - (ii) be submitted by making use of the details provided in rule **40.2(3)**.
- (3) An application referred to in subrule (1) must reflect the following information:
- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the applicant's name, contact details and physical and postal addresses;
  - (b) if the application is submitted on behalf of a juristic entity by a person within the entity's organisation authorised to act on behalf of the entity, that person's name and designation;
  - (c) the name and contact details of the attorney or representative of the applicant;
  - (d) the proposed notice period for which agreement is sought; and
  - (e) a motivation for the shortening of the notice period.

**Application to enter into agreement to extend period for institution of judicial proceedings** (*section 897(2)(a)*)

**40.4** (1) A person who intends to institute judicial proceedings against the Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official on a cause of action arising from the enforcement of the Control Act, the Duty Act or the Excise Duty Act, that wishes to enter into an agreement contemplated in section 897(2)(a)(3) of the Control Act to extend the one year period for the institution of such proceedings referred to in subsection (1) of that section, must apply for such an agreement in terms of this rule.

- (2) An application referred to in subrule (1) must—
- (a) be submitted to the customs authority in accordance with rule **40.2(1)**; and
  - (b) if submitted in accordance with rule **40.2(1)(a)(ii)** or (b)—

- (i) be on Form ...as published as a rule on the SARS website for this purpose; and
- (ii) be submitted by making use of the details provided in rule **40.2(3)**.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the applicant's name, contact details and physical and postal addresses;
- (b) if the application is submitted on behalf of a juristic entity by a person within the entity's organisation authorised to act on behalf of the entity, that person's name and designation;
- (c) the name and contact details of the attorney or representative of the applicant;
- (d) the proposed extension for which agreement is sought; and
- (e) a motivation for the extension of the period.

**Notice of application for sale of arrested property** (*section 897(3)*)

**40.5** The address for purposes of section 897(3) of the Control Act is as follows:

The Senior Manager: Litigation (Customs) at 381 Middel Street, First floor Khanyisa, Nieuw Muckleneuk, Pretoria.

**CHAPTER 41**  
**MISCELLANEOUS MATTERS**

***Part 1: Departures from requirements, condonation of non-compliances and extension or shortening of timeframes***

**Application for approval of departures from, or for condonation of non-compliance with, rules, conditions or requirements (section 907(3))**

**41.1** (1) An application for approval of a departure from, or condonation of non-compliance with, a rule, condition or requirement referred to in section 907(3) of the Control Act must be submitted to the customs authority—

- (a) electronically through—
  - (i) eFiling, if this mode of submission is available for the relevant application; or
  - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c).

(2) An application submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form ... as published as a rule on the SARS website;
- (b) if sent by e-mail, be directed to the Customs Legislative Policy Division at the e-mail address indicated on the SARS website for receipt of such applications;
- (c) if delivered by hand, be delivered to the Customs Legislative Policy Division, at 381 Middel Street, First floor Khanyisa, Nieuw Muckleneuk, Pretoria;
- (d) if sent by post, be sent by registered post to the Customs Legislative Policy Division, Private Bag X923, Pretoria, 0001; and
- (e) if telefaxed, be directed to the Customs Legislative Policy Division and sent to the fax number indicated on the SARS website for the receipt of such applications.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) the name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15(1)**;

- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>786</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>787</sup>
- (c) whether—
  - (i) approval is sought for a departure contemplated in section 907(1)(a), (b) or (c); or
  - (ii) condonation is sought for a non-compliance contemplated in section 907(2)(a), (b) or (c);
- (d) particulars of the departure for which approval is sought or the non-compliance for which condonation is sought, referencing the relevant rule, condition or requirement;
- (e) a description of the departure or non-compliance; and
- (f) the reason why the circumstances that gave rise to the departure, or in which the non-compliance occurred, are considered to fall within the definition of “extraordinary circumstances” as set out in section 907(4), which may be motivated in a separate supporting document submitted together with the application subject to and in accordance with Part 6 of this Chapter.

(4) An application referred to in subrule (1) must be supported by any documents that can substantiate the information relied on by the applicant in terms of subrule (3)(f).

### **Application for extension of timeframes or periods or postponement of dates** (section 908)

**41.2** (1) A person that wishes to have a timeframe or period extended or a date postponed in terms of section 908 of the Control Act must apply for such extension or postponement in terms of this rule.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

<sup>786</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>787</sup> If the application is submitted in terms of section 920 of the Control Act by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit applications on behalf of applicants in that capacity.



(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office as may with reference to section 908(2) be appropriate in the circumstances, or as may be determined or directed by the customs authority in a specific case.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>788</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>789</sup>
- (c) the relevant section of the Control Act or rule prescribing the timeframe, period or date which is required to be extended or postponed;
- (d) the extended timeframe or period or postponed date applied for;
- (e) whether extension of the timeframe or period or postponement of the date applied for is for purposes of—<sup>790</sup>
  - (i) section 908(2)(a);
  - (ii) section 908(2)(b)(i);
  - (iii) section 908(2)(b)(ii)

<sup>788</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>789</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit such applications in that capacity.

<sup>790</sup> Section 908(2) of the Control Act provides the following:

(2) An extension of a timeframe or period or a postponement of a date may be granted or applied in terms of subsection (1)—

- (a) to a specific person or category of persons; or
- (b) in relation to—
  - (i) a specific vessel, aircraft, train, railway carriage or vehicle or category of vessels, aircraft, trains, railway carriages or vehicles;
  - (ii) a specific consignment of goods;
  - (iii) consignments of the same class or kind or other category of goods imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with—
    - (aa) by the same person during a specific period; or
    - (bb) at any specific premises during a specific period;
  - (iv) goods of a specific class or kind imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with during a specific period;
  - (v) goods loaded, off-loaded, handled, stored, processed or in any other way dealt with at any specific premises;
  - (vi) a specific class or kind or other category of goods or cargo; or
  - (vii) a specific matter to which this Act applies.”.

- (iv) section 908(2)(b)(iii)(aa);
  - (v) section 908(2)(b)(iii)(bb);
  - (vi) section 908(2)(b)(iv);
  - (vii) section 908(2)(b)(v);
  - (viii) section 908(2)(b)(vi); or
  - (ix) section 908(2)(b)(vii); and
- (f) the reason why the extension or postponement is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(4) An application in terms of this rule must, unless otherwise provided for in these Rules,<sup>791</sup> be submitted prior to the expiry of the timeframe, period or date to which the extension or postponement relates.<sup>792</sup>

(5) In the case of an extension of a period or postponement of a date to which section 908 applies and which is reflected on a clearance declaration—<sup>793</sup>

- (a) submission of a clearance declaration amending that period or date may be regarded to be an application in terms of subrule (1), provided subrule (3)(f) is complied with; and
- (b) issuing of a release notification by the customs authority may be regarded to be an approval of such an application.

#### **Applications for shortening minimum timeframes or periods** (*section 909*)

**41.3** (1) A person that wishes to have a minimum timeframe or period shortened in terms of section 909 of the Control Act, must apply for such shortening in terms of this rule.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

<sup>791</sup> See for instance rules **13.7** and **13.8** which prescribe a specific timeframe for warehousing extensions.

<sup>792</sup> Applications should be submitted timeously to enable Customs to dispose of the application before expiry of the timeframe. Late applications may expose applicants to penalties if the application is refused and there is no time left for compliance with the timeframe.

<sup>793</sup> For example in the case of a clearance for temporary admission procedure.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office as may with reference to section 909(2) be appropriate in the circumstances, or as may be determined or directed by the customs authority in a specific case.

(3) An application in terms of subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the application is submitted by a customs broker, registered agent or ordinary representative<sup>794</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>795</sup>
- (c) the relevant section of the Control Act or rule prescribing the timeframe or period which is required to be shortened;
- (d) the shortened timeframe or period applied for;
- (e) whether shortening of the timeframe or period applied for is for purposes of—<sup>796</sup>
  - (i) section 909(2)(a);
  - (ii) section 909(2)(b)(i);
  - (iii) section 909(2)(b)(ii);
  - (iv) section 909(2)(b)(iii)(aa);

<sup>794</sup> See definition of “ordinary representative” in rule **1.1** and explanatory footnote.

<sup>795</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents that submit such applications in that capacity.

<sup>796</sup> Note that section 909(2) of the Control Act provides as follows:

- “(2) A shortening of a minimum timeframe or period may be granted or applied in terms of subsection (1)—
- (a) to a specific person or category of persons; or
  - (b) in relation to—
    - (i) a specific vessel, aircraft, train, railway carriage or vehicle or category of vessels, aircraft, trains, railway carriages or vehicles;
    - (ii) a specific consignment of goods;
    - (iii) consignments of the same class or kind or other category of goods imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with—
      - (aa) by the same person during a specific period; or
      - (bb) at any specific premises during a specific period;
    - (iv) goods of a specific kind imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with during a specific period; or
    - (v) goods loaded, off-loaded, handled, stored, processed or in any other way dealt with at any specific premises.”.

- (v) section 909(2)(b)(iii)(bb);
  - (vi) section 909(2)(b)(iv); or
  - (vii) section 909(2)(b)(v); and
- (f) the reason why shortening of the timeframe or period is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(4) An application in terms of this rule must, unless otherwise provided for in these Rules, be submitted prior to the expiry of the timeframe or period for which the shortening is required.<sup>797</sup>

#### **Categories of documents to which automatic extension of timeframes apply in event of systems breakdown (section 913(4))**

**41.4** The timeframes applicable in terms of the Control Act or these Rules to the submission of the following documents are automatically extended in terms of section 913(4)(a)(i) of the Control Act in the event of a communications breakdown:

- (a) Clearance declarations;
- (b) reporting documents and reports;
- (c) notifications and notices; and
- (d) supporting documents to be submitted to support a document referred to in paragraph (a), (b) or (c).

### ***Part 2: Communication through electronic communicative systems***

#### **Communicative systems administered by SARS (section 903(1)(b))**

**41.5** SARS administers the following electronic communicative systems for purposes of implementing the Control Act and the Customs Duty Act in relation to the electronic submission of documents:

- (a) EDI, for the submission of the following documents that must be submitted electronically to the customs authority in terms of Chapter 3 of the Control Act:
  - (i) Advance loading, arrival and departure notices;

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<sup>797</sup> Applications should be submitted timeously to enable Customs to dispose of the application before the cut off time. Late applications may expose applicants to penalties if the application is refused and there is no time left for meeting the cut off time.

- (ii) arrival and departure reports;
  - (iii) manifests of inbound and outbound cargo;
  - (iv) updates of advance notices; and
  - (v) outturn reports;
- (b) EDI or eFiling, for the submission of all other documents that may or must be submitted electronically to the customs authority in terms of the Control Act or the Customs Duty Act and that can be submitted through EDI or eFiling; and
- (c) any other software applications available on the SARS website for the delivery of documents such as supporting documents and records.

**General conditions and requirements for electronic communication with customs authority** (*sections 903(1)(b),(q) and (r) and 913*)

**41.6** Accessing a computer system referred to in rule **41.5** is subject to the following conditions:

- (a) A person that uses a computer system referred to in rule **41.5(a)** or *(b)* for purposes of communicating electronically with the customs authority, either for own business or as a customs broker, registered agent or ordinary representative<sup>798</sup> on behalf of another person, must—
- (i) be registered as an electronic user in terms of section 606 of the Control Act for the specific computer system;
  - (ii) enter into an electronic user agreement with the Commissioner for the specific computer system as published on the SARS website or available on eFiling; and
  - (iii) access and use the applicable computer system in accordance with this Part and the applicable electronic user agreement.
- (b) An electronic user installing any software for purposes of electronic communication with the customs authority through a computer system referred to in rule **41.5(a)**, *(b)* or *(c)*, must install the software at own cost except where SARS provides it free of charge.

**Digital signatures and conditions and requirements applicable to digital signatures for EDI**

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<sup>798</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

**41.7** (1) A person communicating with the customs authority through EDI must have a digital signature allocated by the customs authority.

(2) When registering a person as an EDI electronic user, a digital signature must be allocated—

- (a) if the user is an individual, to the user and to each employee of the user nominated in the electronic user agreement as a person authorised to communicate with the customs authority on behalf of the user; or
- (b) if the user is a juristic entity, to each official or employee of the entity nominated in the electronic user agreement as a person authorised to communicate the customs authority on behalf of the entity.

(3) The digital signature must be used by a registered electronic user in relation to the electronic submission of documents that are in terms of the Control Act required to be signed.

(4) A valid digital signature linked or attached to an electronic communication and communicated to the customs authority in accordance with this Part must for all purposes be regarded to be the registered electronic user's signature.

### **Persons submitting communications and documents electronically**

**41.8** (1) A communication or document submitted to the customs authority electronically must be attributed to have been generated or transmitted by an electronic user if it was generated or transmitted by—

- (a) the user;
- (b) an official or employee of the user authorised to generate or transmit electronic messages on behalf of the user in writing or, if that user is a registered electronic user, in that user's electronic user agreement;
- (c) a customs broker, registered agent or ordinary representative authorised by the user to generate or transmit electronic messages on behalf of the user; or
- (d) a computer system programmed by or on behalf of the user to generate and transmit electronic messages automatically.

(2) (a) Only a person who is a registered electronic user for EDI or eFiling may access the EDI or eFiling system for the submission of a communication or document to the customs authority, subject to subrule (1).

(b) If a person who is not a registered electronic user for EDI or eFiling wishes or is required to submit a communication or document to the customs authority through such a computer system, the communication or document must be submitted on that person's behalf by a customs broker, registered agent or ordinary representative<sup>799</sup> who is a registered electronic user for the relevant system.

### **Electronic submission of forms prepopulated with information available to customs authority**

**41.9** (1) A person submitting electronically in terms of the Control Act or these Rules a form to the customs authority that has been prepopulated or partially prepopulated by the customs authority on behalf of that person with information available to it must before submitting the form—

- (a) verify the correctness of the prepopulated information;
- (b) correct any incorrect, outdated or incomplete information; and
- (c) provide any outstanding information not prepopulated on the form.

(2) Submission of the form with or without any corrections referred to in subrule (1)(b) must be regarded to be a statement by the person submitting the form that the information on the form is correct.

### **Reporting of security breaches in relation to electronic transmissions** (*section 903(1)(r)(iv)*)

**41.10** (1) A registered electronic user must upon becoming aware of any security breach in relation electronic transmissions to the customs authority, notify the customs authority of the breach.

(2) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling.

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<sup>799</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

- (3) A notification referred to in subrule (1) must reflect—
- (a) the customs code of the electronic user;
  - (b) particulars of the breach in security, including—
    - (i) an explanation of what caused the breach;<sup>800</sup>
    - (ii) the circumstances in, and date on which the breach occurred, if known; and
    - (iii) the impact of the breach on electronic communications with the customs authority;
  - (c) measures taken to contain or mitigate the risk associated with the breach; and
  - (d) whether the measures referred to in paragraph (c) have resolved the breach or not.

**Electronic communication through computer systems administered by SARS**  
(section 903(1)(q) and (r))

**41.11** (1) The rules published by Government Notice No. 644 dated 25 August 2014, excluding rule 5 thereof, apply for purposes of electronic communication between registered electronic users and the customs authority through a computer system referred to in rule **41.5**, subject to subrule (2).

- (2) The rules referred to in subrule (1) apply with any necessary changes as the context may require, and in such application any reference in those rules to—
- (a) a tax Act must be read as including a reference to the Control Act;
  - (b) an electronic filing system must be read as including a reference to a computer system referred to in rule **41.5**;
  - (c) an electronic filing transaction must be read as including a reference to an electronic communication required or permitted in terms of the Control Act or these Rules;
  - (d) an electronic communicator or registered electronic user must be read as including a reference to a person registered in terms of the Control Act as an electronic user;

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<sup>800</sup> I.e whether the breach was due to hardware or software failure, computer hacking, theft etc.



- (e) an electronic signature must in the case of electronic communication through EDI be read as including a reference to a digital signature as defined in rule **1.1**;
- (f) a registered tax practitioner must be read as including a reference to a person registered in terms of the Control Act as an electronic user and who communicates electronically with the customs authority as a customs broker, registered agent or ordinary representative<sup>801</sup> on behalf of another; and
- (g) a taxpayer must be read as including a reference to a licensee or a person registered for any purpose in terms of the Control Act.

(3) In the event of any inconsistency between a provision of these Rules and the rules referred to in subrule (1), the provision of these Rules prevail.

## **Offences**

**41.12** A person is guilty of a Category 1 offence if that person uses in any electronic communication to the Commissioner, the customs authority or a customs officer a digital signature allocated to any other person without that other person's consent.

### ***Part 3: Communication otherwise than through electronic communication systems***

#### **Submission of documents and communications in paper format**

**41.13** (1) If a declaration, report, statement, return, notice, notification, application, request, record or other document or communication is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>802</sup> the submission must be—

- (a) on a form as published as a rule on the SARS website for the relevant document or communication, subject to subrule (2); and

<sup>801</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>802</sup> See for instance sections 912 and 913(4) of the Control Act. Where there is a specific requirement in the Control Act or these Rules that a document must be submitted electronically, section 913 will apply and the document must be submitted through the applicable electronic communicative system referred to in rule **41.5** except in the situations described in section 913(4)(a)(ii) or (b). Where there is no such specific requirement that a document must be submitted electronically or where the Control Act or these Rules allow for other forms of communication, section 913 will not apply and the document may be submitted through any of the methods specified in section 912.

(b) made to any Customs Office except where provided otherwise in the Control Act or these Rules for a specific document or communication.

(2) Subrule (1)(a) does not apply if the document or communication to be submitted is a supporting document, record or another document for which no specific form or format has been published on the SARS website.

#### ***Part 4: General provisions regarding information to be submitted***

##### **Additional information to be stated in submissions by customs brokers, registered agents or ordinary representatives on behalf of principals**

**41.14** If a customs broker, registered agent or ordinary representative<sup>803</sup> submits a declaration, report, statement, return, notice, notification, application, request, record or other document or communication to the customs authority on behalf of a principal, that document or submission must, in addition to the information prescribed in the Control Act, a tax levying Act or these Rules for that document or communication, state—

- (a) that the document or communication is submitted on behalf of the principal;<sup>804</sup>
- (b) if the document or communication is submitted by a customs broker or registered agent, the name and customs code of the customs broker or registered agent; and
- (c) if the document or communication is submitted by an ordinary representative, the name of the representative, and—
  - (i) if the ordinary representative is an individual, his or her—
    - (aa) SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
    - (bb) contact details and any physical and postal addresses in the Republic; or
  - (ii) if the ordinary representative is a juristic entity—
    - (aa) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of

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<sup>803</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

<sup>804</sup> See rule 1.9.

- its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country and, if another country, the name of that country;
- (bb) its contact details and any physical and postal addresses in the Republic; and
- (cc) the name and contact details of a contact person.

**Information to be provided in communications where persons do not have customs codes**

**41.15** (1) When in terms of a provision of these Rules the customs code of a person is required to be stated in any declaration, report, statement, return, notice, notification, application, request or other document or communication that must or may be submitted to the customs authority and that person does not have a customs code, the following information must be provided in that document or communication in respect of that person, subject to subrule (2):

- (a) If that person is an individual, his or her—
  - (i) full name;
  - (ii) SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document;
  - (iii) physical and postal addresses; and
  - (iv) contact details; or
- (b) if that person is a juristic entity—
  - (i) the registered or official name of the entity;
  - (ii) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, the name of that country;
  - (iii) its physical and postal addresses;
  - (iv) its contact details; and
  - (v) the name and contact details of a contact person.

(2) Subrule (1) applies only where a person does not have a customs code and these Rules specifically require the information referred to in that subrule to be provided in respect of that person.<sup>805</sup>

### **Use of customs codes**

**41.16** (1) A customs code allocated to a registered person or licensee may not be used by any other person in order to submit a document on behalf of that registered person or licensee or to gain access to a SARS account of the registered person or licensee except where expressly—

- (a) permitted in terms of a provision of these Rules or any other applicable legislation; or
- (b) authorised in writing by the registered person or licensee and such authorisation has been disclosed to the customs authority in accordance with Part 7 of Chapter 28 or Part 7 of Chapter 29 of these Rules in cases where such disclosure is compulsory.

(2) Subrule (1) does not affect compliance by a person of an obligation in terms of these Rules or any other legislation to include the customs code of a registered person or licensee in information which that person is obliged to furnish to the customs authority.

### **Multiple customs codes**

**41.17** When in terms of a provision of these Rules the customs code of a person, premises or facility must be stated in any declaration, report, statement, return, notice, notification, application, request or other document or communication that must or may be submitted to the customs authority, and more than one customs code has been issued to that person or in respect of those premises or that facility, the customs code that must be stated is the one that applies to the activity in respect of which that document or communication must or may be submitted.

### **Customs authority to be notified if information provided in applications changes in material respect before finalisation of application**

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<sup>805</sup> This rule can obviously not apply where a submission is made by or on behalf of a person that must have a customs code, such as a licensee or registered person.

**41.18** A person who has applied to the customs authority for a registration, licence, authorisation, permission, approval, exemption or recognition that may be granted by the customs authority in terms of a provision of the Control Act must promptly notify the customs authority if any of the information provided by the applicant in or in support of the application has changed in a material respect at any time before the application has been decided or the applicant has been notified of the outcome of the application.

### **Submission of representations**

**41.19** (1) Whenever a person is in terms of a provision of the Control Act or these Rules entitled to submit representations to the customs authority in connection with any matter, the representations must be submitted—

- (a) through eFiling, if this method of submission is available for the relevant representations;
- (b) by e-mail; or
- (c) by any of the methods contemplated in section 912(2)(a) to (c) of the Control Act.

(2) Representations referred to in subrule (1) must—

- (a) if submitted by e-mail, be directed to the Division of SARS or Customs Office concerned at the e-mail address of that Division or Office indicated on the SARS website for the receipt of the relevant representations;
- (b) if delivered by hand, be delivered to Division of SARS or Customs Office concerned;
- (c) if sent by post, be sent by registered mail to the Division of SARS or Customs Office concerned; and
- (d) if submitted by telefax, be directed to the Division of SARS or Customs Office concerned and sent to the fax number of that Division or Office indicated on the SARS website for receipt of the relevant representations.

(3) Representations referred to in subrule (1) must reflect—

- (a) the name or customs code of the person making the representations;

- (b) if the representations are submitted by a customs broker, registered agent or ordinary representative on behalf of the person making the representations, the information specified in rule **41.14**,<sup>806</sup>
- (c) the provision of the Control Act or these Rules in terms of which the representations are submitted; and
- (d) the arguments relied on by the person making the representations.

***Part 5: Submission of documents and communications through ordinary representatives<sup>807</sup> (section 920)***

**Requirements for submission of documents and communications through ordinary representatives<sup>808</sup>**

**41.20** (1) If a person in terms of section 920 of the Control Act makes use of an ordinary representative to submit a declaration,<sup>809</sup> report, statement, return, notice, notification, application, request, record or other document or communication to the Commissioner, the customs authority or a customs officer—

- (a) the representative appointed by the principal may make the submission on behalf of the principal only in accordance with a written authorisation setting out the representative's mandate and terms of appointment; and
- (b) the document or communication must be signed by the principal if the Control Act or these Rules require the document or communication to be signed by the person who may or must submit the document or communication.

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<sup>806</sup>If the representations are submitted by an ordinary representative in terms of section 920 of the Customs Control Act on behalf of a person, the representations must comply with the additional requirements set out in Part 5 of Chapter 41 of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit representations in that capacity.

<sup>807</sup> See definition of "ordinary representative" in rule 1.1 and explanatory footnote.

<sup>808</sup> Note that although section 920 is an enabling provision that applies generally to the submission of documents to Customs, its application is subject to the other provisions of the Control Act. This means that where the Act contains specific provisions on the submission of documents, the specific provisions will override section 920 to the extent of any inconsistency. For instance, section 165 specifically limits the persons entitled to submit clearance declarations, and this provision will accordingly override the general wording of section 920 and disallow a representative who is not a licensed customs broker or another authorised person contemplated in that section to submit clearance declarations. It follows that section 920 does not allow ordinary representatives to submit clearance declarations on behalf of clients.

<sup>809</sup> The reference to a "declaration" in this Part excludes a clearance declaration as ordinary representatives are not included in the list of persons who in terms of section 165 of the Control Act are entitled to submit clearance declarations.

(2) If a document or communication is submitted through EDI or eFiling by an authorised ordinary representative on behalf of a principal, a requirement that the document or communication must be signed by the principal, as contemplated in subrule (1)(b), must for all purposes regarded to have been complied with if submission of the document or communication by the representative is in accordance with the requirements of Part 2.

(3) Any submission of a document or communication by an ordinary representative on behalf of a principal must be supported by the written authorisation referred to in subrule (1)(a).

(4) A supporting document referred to in subrule (3) must be produced or submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

### **Liability of principals for submission of documents and communications through ordinary representatives**

**41.21** (1) Ordinary representatives may not make or submit a declaration, report, statement, return, notice, notification, application, request, record or other document or communication on behalf of another in their own name, and any such document or communication must be made and submitted in the name of the principal.

(2) When a person in terms of section 920 of the Control Act authorises an ordinary representative to submit a declaration, report, statement, return, notice, notification, application, request, record or other document or communication, the principal—

- (a) is not absolved from liability for any breach of the Control Act or a tax levying Act committed by the representative merely because the principal did not actually commit that breach; and
- (b) is liable as if that breach was committed by the principal.

### **Exclusions**

**41.22** This Part applies to customs brokers and registered agents submitting a declaration, report, statement, return, notice, notification, application, request, record

or other document or communication to the Commissioner, the customs authority or a customs officer on behalf of their clients only when the customs broker or registered agent submits the document or communication in their capacity as an ordinary representative.<sup>810</sup> If a document or communication is submitted in their capacity as customs broker or registered agent, this Part does not apply.

### **Contents of ordinary representatives' authorisations**

**41.23 (1)** An authorisation referred to in rule **41.20(1)(a)** must contain—

- (a) the principal's name and customs code or, if the principal does not have a customs code, the information specified in rule **41.15**;
- (b) the following information regarding the ordinary representative:
  - (i) If the representative is an individual, his or her—
    - (aa) full name and SARS tax reference number or, if he or she does not have a SARS tax reference number, the number and type of his or her identification document; and
    - (bb) contact details and any physical and postal addresses in the Republic; or
  - (ii) if the representative is a juristic entity—
    - (aa) the registered or official name of the entity;
    - (bb) its SARS tax reference number or, if it does not have a SARS tax reference number, its registration number or the number of its founding document, indicating whether the entity is incorporated, registered or recognised in terms of the laws of the Republic or another country, and if another country, the name of that country;
    - (cc) its contact details and its physical and postal addresses in the Republic or elsewhere; and
    - (dd) the name and contact details of a contact person;
- (c) particulars of the representative's mandate and terms of appointment; and

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<sup>810</sup> As customs brokers and registered agents are specifically regulated in terms of the Control Act, they operate in accordance with those specific provisions of the Act applicable to them when submitting documents and communications on behalf of their clients. Also note that customs brokers and registered agents are in terms of rules **28.8(2)(b)** and **29.10(2)(b)** not allowed to submit registration and licence applications on behalf of other persons in their capacity as customs broker or registered agent. If they want to **submit** such applications on behalf of clients, they must act as ordinary representative.



(d) the signatures of the principal and two witnesses and the date and place of signature.

(2) An authorisation must—

- (a) support the submission by the authorised ordinary representative of any communication or document on behalf of the principal to the Commissioner, the customs authority or a customs officer in terms of the Control Act or these Rules; and
- (b) be produced or submitted to the customs authority where such submission is required in terms of these Rules or by the customs authority.

### ***Part 6: General provisions regulating submission of supporting documents and records***

#### **Manner of submission of supporting documents and records**

**41.24** (1) Whenever any specific supporting document or record is in terms of a provision of the Control Act or these Rules required or permitted to be submitted to the Commissioner, the customs authority or a customs officer, the document or record must be submitted—

- (a) by means of any electronic communicative system referred to in rule **41.5** applicable to the submission of the documents or records of the kind in question or as the customs authority may direct; or
- (b) in circumstances where the submission of such documents or records otherwise than by means of an electronic communicative system referred to in rule **41.5** is permissible,<sup>811</sup> by means of a method as may be specifically prescribed in these Rules or provided for in section 912.

(2) An electronic submission of a document or record submitted in terms of subrule (1)(a) or a copy or printout of a document or record submitted in terms of subrule (1)(b) may for purposes the Control Act and these Rules be regarded to be the original of the relevant document or record unless the customs authority determines otherwise.

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<sup>811</sup> See for instance section 913(4)(a)(ii) or (b) of the Control Act.

### **Timeframes for submission of supporting documents and records**

**41.25** (1) If the customs authority or customs officer requests the submission of a supporting document or record, the document or record must be submitted within the timeframe stated in the request or, if no timeframe is stated in the request, within 24 hours from the time of the request, subject to subrule (3).

(2) Subrule (1) does not apply if another timeframe is prescribed in terms of a provision of the Control Act or these Rules for a specific supporting document or record.

(3) If a supporting document or record is to be submitted within 24 hours as required in terms of subrule (1) and those hours end either outside the ordinary business hours of the customs authority on a working day or on a day which is not a working day, the document or record must be submitted no later than three hours of the commencement of the business hours of the customs authority on the next working day.

### **Substantiation of disputable facts mentioned in documents submitted to customs authority**

**41.26** A document submitted to the customs authority in terms of these Rules which states a disputable fact must be supported by documentary evidence substantiating that fact, which must be submitted to the customs authority on request subject to and in accordance with the other provisions of this Part.

### **Supporting documents already in possession of Customs**

**41.27** No supporting document that must in terms of the Control Act, a tax levying Act or these Rules be submitted to support a declaration, report, statement, return, notice, notification, application, request, record or other document or communication needs to be submitted if the document is already in the possession of the customs authority, unless the customs authority specifically requests that the document must be submitted.

### **Submission of alternative documents instead of supporting documents**

**41.28** An alternative document may instead of a supporting document be used or submitted in support of a declaration, report, statement, return, notice, notification, application, request, record or other document or communication in terms of the Control Act, a tax levying Act or these Rules, provided that the alternative document is capable of being used for the purpose of confirming, substantiating or evidencing the same information for which the relevant supporting document is required.

### **Submission of certified copies of supporting documents, alternative documents and records**

**41.29** A certified copy of any supporting document, alternative document referred to in rule **41.28** or record submitted in terms of the Control Act or these Rules may not at the time of submission be older than three months.

### **Translation of particulars on supporting documents**

**41.30** (1) If the particulars on a supporting document required in terms of the Control Act, the Customs Duty Act or these Rules are not reflected in English, the person required to submit the document must, on request by the customs authority and at that person's own cost, provide the customs authority with an English translation of any unclear particulars on the supporting document.

(2) A translation referred to in subrule (1) must be submitted to the customs authority within a timeframe stated in the request or, if no timeframe is stated in the request, within three working days of the date of the request.<sup>812</sup>

## ***Part 7: Record keeping systems***

### **Record keeping systems to comply with this Part (sections 903(1)(g) and 919)**

**41.31** A record keeping system that a person must use for purposes of the Control Act, whether computer-based or paper-based, must be in accordance with and subject to the conditions and requirements contained in this Part.<sup>813</sup>

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<sup>812</sup> For manner of submission of documents, see rule **41.24**(1).

<sup>813</sup> The persons who are required to keep record and the information and documents to be kept record of are set out in specific provisions of the Control Act and the rules under the different chapters.

## Minimum requirements for record keeping systems

**41.32** (1) The computer- or paper-based system used for the keeping or retention of records must as a minimum enable the person required to keep record to obtain, without undue delay, access to the information and documents in the system, including access to information and documents pertaining to specific goods and specific transactions stipulated by the customs authority.

(2) If a computer-based system is used, electronic records must be kept and retained in an acceptable electronic form.

(3) For purposes of subrule (2), electronic records are in an acceptable electronic form if—

- (a) the integrity of the electronic records satisfies the standard contained in section 14(1)(a) and section 14(2) of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (b) the person keeping or retaining those records can without undue delay furnish the customs authority with—
  - (i) an electronic copy or extract of any of those records in a format that can be accessed, read and correctly analysed by a computer programme used by the customs authority, should the customs authority or a customs officer request such a copy or extract; or
  - (ii) a paper-based copy or extract of any of those records, should the customs authority or a customs officer request such a copy or extract; and
- (c) the customs authority or a customs officer can access such records for the purpose of performing an enforcement function.<sup>814</sup>

(4) The onus to establish which programmes the customs authority uses for purposes of subrule (3)(b)(i) is on the person keeping or retaining the electronic records.

## Measures to assist understanding of computer-based systems

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<sup>814</sup> See definition of “enforcement function” in section 1 of the Control Act.

**41.33** (1) A person keeping or retaining records by means of a computer-based system must—

- (a) prepare and keep a paper-based explanatory guide that accurately describes that person's computer-based system and how to access and understand that person's method of keeping or retaining electronic records; and
- (b) make the explanatory guide available to the customs authority on request.

(2) The explanatory guide must include an explanation of the following:

- (a) How transactions are created, processed and stored;
- (b) which reports are generated and how such reports are generated;
- (c) how often electronic records are stored;
- (d) the format used to store and archive the records, including a description of the media, software and hardware used;
- (e) the locality where records are stored or archived, or from where records can be accessed;
- (f) a data dictionary that explains how records are indexed when created, processed, stored or backed-up; and
- (g) the procedures and protocols in place to prevent the unauthorised deletion, alteration or destruction of records.

(3) If an electronic record consists of any non-electronic record converted into an electronic form, or of any existing electronic record converted into another electronic form, a separate record must be kept of the following:

- (a) A chronological record and explanation of all changes or upgrades to the software and hardware used, including explanations of how the new system can recreate an acceptable electronic form referred to in rule **41.32(3)**;
- (b) where applicable, explanations of migrations of data that may have taken place across either software or hardware;
- (c) a detailed record of the controls which maintain the integrity of the old system together with a record of the records processed to an electronic or another electronic format as applicable; and
- (d) an explanation of archival and back-up facilities under any obsolete or old electronic systems used.

(4) If a person carries out internet-based transactions, the explanatory guide referred to in subrule (1) and a record referred to in subrule (3) must also contain a description of—

- (a) the web-log created to identify individual transactions; and
- (b) the security measures used to maintain the identity and authenticity of transactions.

### **Location of records**

**41.34** (1) Records must, subject rule **41.36**, be kept and retained at a fixed physical address in the Republic which—

- (a) in the case of records kept by a licensee in connection with activities and goods on any licensed premises, must be the licensed premises;<sup>815</sup>
- (b) in the case of records kept by a person registered or licensed for a business or activity, must be the premises occupied by that person for the purposes of the business or activity for which that person is registered or licensed;<sup>816</sup>
- (c) in the case of records kept by the licensee of any licensed cross-border transmission line, pipeline, cable-car or conveyor belt, must be the premises occupied by the licensee for the purposes of the business or activity for which the transmission line, pipeline, cable-car or conveyor belt is licensed; or
- (d) in the case of records kept by a person who is not a registered person or licensee and who conducts a business contemplated in rule **4.27(1)(b)**, must be the premises occupied by that person for the purpose of carrying on that business.

(2) Records kept in terms of subrule (1) at premises referred to in that subrule may with the permission of the customs authority be moved to and kept at any other premises in the Republic, provided that such permission may be applied for only after the expiry of a period of twelve months—

- (a) in the case of records relating to imported goods cleared for home use, since the goods have unconditionally been released for home use;
- (b) in the case of records relating to goods under a customs procedure, since the customs procedure has been completed,<sup>817</sup> and

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<sup>815</sup> Customs has in terms of section 709(1)(a) of the Control Act access to these premises without a warrant.

<sup>816</sup> Customs has in terms of section 709(3)(b) of the Control Act access to these premises without a warrant.

(c) in the case of records relating to the transport of goods otherwise than under a customs procedure, since the goods were delivered at the destination.

(3) A permission granted in terms of subrule (2) is subject to—

(a) the condition that the owner or person in physical control of the premises where the records will be kept must provide a standing consent for purposes of section 709(3)(a) to warrantless entry of the premises by customs officers at any reasonable time for accessing and inspecting those records; and

(b) any other conditions as the customs authority may impose in terms of section 918.

(4) Records must be kept or retained in a secure place on the premises where it must be kept or retained in terms of subrule (1) or (2).

#### **Application for permission to move and keep records elsewhere than at premises prescribed in rule 41.34**

**41.35** (1) (a) An application for permission referred to in rule **41.34**(2) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect the following information:

(a) The name and customs code of the applicant, or if the applicant does not have a customs code, the information specified in rule **41.15**(1);

(b) if the application is submitted by a customs broker or ordinary representative<sup>818</sup> on behalf of the applicant, the information specified in rule **41.14**;<sup>819</sup>

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<sup>817</sup> See section 109 of the Control Act and the Chapters on the various customs procedures for the time when a customs procedure is completed.

<sup>818</sup> See definition of “ordinary representative” in rule 1.1 and explanatory footnote.

- (c) a description of the records to which the application relates, including whether the records are kept electronically or in paper format;
- (d) the current location of the records;
- (e) the physical address of the premises where the records are to be moved to and kept;
- (f) the name and contact details of the person in control of the premises referred to in (e);
- (g) a statement that—
  - (i) rule **41.34(2)** has been complied with;
  - (ii) the owner or person in physical control of the premises where the records are to be moved to and kept has given a standing consent referred to in rule **41.23(3)**; and
  - (iii) any login codes, keys or passwords necessary for the customs authority to access electronic records will be available as required in terms of rule **41.40**, if the application is granted; and
- (h) the reason why the records are to be moved to and kept at the premises referred to in paragraph (e), which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(3) An application referred to in subrule (1) must be supported by a standing consent by the owner or person in physical control of the premises where the records are to be moved to and kept referred to in rule **41.34(3)**, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(4) The customs authority may request any further relevant documentation necessary to consider the application and the applicant must submit such documentation within the timeframe indicated by the customs authority in the request.

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<sup>819</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit such applications in that capacity.



### **Keeping of electronic records outside Republic**

**41.36** A person may with the permission of the customs authority keep or retain electronic records at a location outside the Republic, provided—

- (a) those electronic records are accessible from a computer-based system on the premises referred to in rule **41.34**(1) or (2) where the records would otherwise have been kept or retained;
- (b) the locality where the records are proposed to be kept or retained will not obstruct that person's access to those records;
- (c) there is an international agreement in place between the Republic and the country in which that person proposes to keep those records, which will facilitate the customs authority in obtaining information from or through the government of that country on any matter concerning those records;
- (d) keeping or retaining the records at a location outside the Republic will not compromise compliance with rule **41.32**; and
- (e) such permission may be applied for only after the expiry of a period of twelve months
  - (i) in the case of records relating to imported goods cleared for home use, since the goods have unconditionally been released for home use;
  - (ii) in the case of records relating to goods under a customs procedure, since the customs procedure has been completed;<sup>820</sup> and
  - (iii) in the case of records relating to the transport of goods otherwise than under a customs procedure, since the goods were delivered at the destination.

### **Application to keep electronic records at places outside Republic**

**41.37** (1) (a) A person who wishes to obtain permission contemplated in rule **41.35** to keep or retain electronic records at a location outside the Republic must submit an application for such permission to the customs authority electronically through eFiling, subject to rule **41.13**.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application must be

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<sup>820</sup> See section 109 of the Control Act and the Chapters on the various customs procedures for the time when a customs procedure is completed.

submitted to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the information specified in rule **41.15(1)**;
- (b) if the application is submitted by a customs broker or ordinary representative<sup>821</sup> on behalf of the applicant, the information specified in rule **41.14**,<sup>822</sup>
- (c) a description of the electronic records to which the application relates;
- (d) the current location of the electronic records;
- (e) details relating to the locality where the electronic records are proposed to be kept or retained outside of the Republic, including—
  - (i) the physical address; and
  - (ii) the name of a contact person and that person's contact details;
- (f) the name or particulars of the computer software or electronic platform to be used by the applicant for the storage of the records;
- (g) the physical address of the premises referred to in rule **41.36(a)** from where the records will be accessible;
- (h) particulars of the relevant international agreement referred to in rule **41.36(c)** that will apply in relation to the records;
- (i) a statement that—
  - (i) rule **41.36(e)** has been complied with;
  - (ii) that the locality where the records will be kept or retained will not obstruct the applicant's access to those records;
  - (iii) keeping or retaining the records at that location outside the Republic will not compromise compliance with rule **41.32**; and

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<sup>821</sup> See definition of "ordinary representative" in rule **1.1** and explanatory footnote.

<sup>822</sup> If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, Part 5 of Chapter 41 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition excludes persons submitting documents as customs brokers. It follows that Part 5 does not apply to customs brokers that submit such applications in that capacity.

- (iv) that any login codes, keys or passwords necessary for the customs authority to access electronic records will be available as required in terms of rule **41.40**, if the application is granted; and
- (j) the reason why the records are to be kept at the premises referred to in paragraph (e), which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(3) An application referred to in subrule (1) must be supported by an extract of the applicant's electronic records as contemplated in rule **41.32(3)(b)(i)**, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of this Chapter.

(4) The customs authority may request any further relevant documentation necessary to consider the application and the applicant must submit such documentation within the timeframe indicated by the customs authority in the request.

### **Period and manner of retention of records**

**41.38** (1) A document or information that must be kept record of must be retained for a period of at least five years calculated from the end of the calendar year in which the transaction or activity to which the document or information relates was concluded or has occurred.

(2) If those records are retained by means of a computer-based system, the person who keeps the records must ensure that there is adequate storage capacity in the system for the duration of the period referred to in subrule (1), which includes—

- (a) the storage of the electronic records in a manner that is appropriate to the media used by the person;
- (b) the storage of all electronic signatures, keys and certificates where these are held; and
- (c) the storage of recovery procedure to decrypt electronic records that are encrypted.

### **Outsourcing of record keeping functions**

**41.39** If a person required to keep record of any information or documents procures a service provider to manage on that person's behalf that person's record keeping system, or any aspect of that system, that person—

- (a) is not relieved of responsibility to comply with this Part only because that person has procured a service provider to manage that system or aspect of that system; and
- (b) is liable for any breach of this Part by the service provider as if that person has committed the breach.

### **Inspection of records**

**41.40** (1) A person who keeps or retains records must allow a customs officer to inspect those records at any reasonable time on the premises—

- (a) where the records are kept or retained; or
- (b) from where those records are accessible, in the case of electronic records kept outside the Republic in terms of rule **41.36**.

(2) In the course of an inspection, the computer system used by the person who keeps or retains records in an electronic format, must be capable of demonstrating positively that the provisions of this Part are complied with, including validating that—

- (a) the electronic records meet the standard of integrity referred to in rule **41.32(3)(a)**; and
- (b) rule **41.32(3)(b)** and (c) can be complied with.

(3) Any login codes, keys or passwords required to access the electronic records must be available at all reasonable times to enable an inspection of the records to be carried out.

(4) The explanatory guide referred to in rule **41.33(1)** must be available at all reasonable times to enable an inspection of the records to be carried out.

(5) A person's electronic records must be capable of being copied to storage media required by the customs authority, if an electronic record, or part of an electronic record, is required to be produced or submitted.

### **Making electronic records available for audit**

**41.41** (1) Electronic records must be able to be made available for the purpose of an audit in terms of the Control Act, which includes having the following available on the date and at the time that an audit is scheduled to start:

- (a) Any login codes, keys or passwords required to access the electronic records for the purpose of an audit;
- (b) the explanatory guide and records referred to in rule **41.33**; and
- (c) any computer and software manuals that are relevant to accessing and understanding the relevant computer system.

### **Transitional provision relating to records kept in terms of Customs and Excise Act**

**41.42** This Part, does not apply to the retention of records kept in terms of the Customs and Excise Act up to the effective date as defined in section 926 of the Control Act, and such records must be retained after that date as if the Customs and Excise Act has not been amended by the Customs and Excise Amendment Act, 2014.

## ***Part 8: Other matters***

### **Computation of timeframes for purposes of these Rules**

**41.43** (1) When any particular timeframe is prescribed in terms of these Rules for performing any act, or for any other purpose, the timeframe must be calculated—

- (a) if the timeframe is prescribed in calendar days, in accordance with section 4 of the Interpretation Act, 1957 (Act No. 33 of 1957);<sup>823</sup>

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<sup>823</sup> Section 4 of the Interpretation Act reads as follows:

*“When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.”*

- (b) if the timeframe is prescribed in working days, by excluding the first and including the last working day and disregarding any days that are not working days that fall between the first and the last working day; and
- (c) if the timeframe is prescribed in hours or minutes, by determining time in exact terms.

(2) Subrule (1) applies irrespective of whether the timeframe must be calculated prospectively or retrospectively from the time or day of an actual or expected happening.

**Short title and commencement**

**41.44** These Rules are called the Customs Control Rules and take effect on the effective date as defined in section 926 of the Control Act.

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