



South African Revenue Service

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4. Questions

INTRODUCTION

- Comments were received on almost all the published Chapters
- Some of the comments from the previous publication phase were repeated
- **All comments were considered** and the necessary “cleaning” will be undertaken
- The comments can be divided into 3 categories relating to
 - **Corrections** - Referencing errors or other “cosmetic” deficiencies in the text
 - **Misreading** of the provisions - where the matter is already dealt with or defined but somehow escaped the reader
 - **Substantive Issues** - comments which led to the consideration of either a section or a rule amendment
- The last category will form the basis of today’s engagement
- We would like to request that we restrict today’s meeting to the law and not delve into an implementation discussion

TOPICAL MATTERS - ELECTRONIC COMMUNICATION

CLARITY WAS REQUESTED AS TO WHETHER AN ALTERNATIVE TO EDI WAS PROVIDED FOR IN RESPECT OF CHAPTER 3 REPORTING – RULE 3.1

- No alternative to EDI is provided for. Since 31 July 2009, EDI has been the prescribed method of communication with SARS for both customs declarations and reporting in terms of the Customs and Excise Act, 1964
 - Carriers who do not have the EDI system themselves, can make use of a representative in terms of section 920 of the CCA, or a customs broker, or in the case of a non-local carrier, a registered agent to submit on their behalf

SUBMISSION OF DOCUMENTS OTHER THAN CHAPTER 3 REPORTS THROUGH EDI OR eFILING

(For example acknowledgement of receipt of stores taken on board – rule 15.5)

- Clarity was sought on the format for reporting stores taken on board and a proposal was made to provide for submission through EDI
 - The channel for submission depends on system capabilities
 - Currently the requirement for submission is through eFiling. When certainty exists with regards to the system capabilities, the rule could be amended accordingly

TOPICAL MATTERS - RECORDING OF DELIVERY AND RECEIPT NOTIFICATIONS

RECEIPT AND DELIVERY NOTIFICATIONS – RULES 5.2 AND 5.3

- Concerns were raised that the requirement to **submit** receipt and delivery notifications to the customs authority within the required 3 hour timeframe was not practical, will be administratively burdensome and costly
 - Recording of receipt and delivery of goods in the prescribed format will remain a requirement
 - To address practical issues and reduce the administrative burden and cost, rules will be amended to oblige licensees and other persons delivering or receiving goods to **record** the delivery and receipt of goods and to submit such record **on request** by the customs authority
 - Note that these amendments will also apply in respect of delivery and receipt notifications referred to in other Chapters

TOPICAL MATTERS - TRANSFER OF OWNERSHIP

- Many issues arose in respect of the transfer of ownership regime in the Rules (rules 4.21, 4.22 & 4.23)
 - SARS is reviewing the provisions in order to make them more trade facilitative and less onerous
 - The requirement of the submission of **multiple** clearance declarations to effect transfer is being reconsidered
 - The requirement of the transmission of draft clearance declarations **between** the transferor (importer), customs authority and transferee (prospective owner) is being reconsidered
- For transfer of ownership of goods under the warehousing procedure the following principles are being considered -
 - Where **all** goods covered by the same clearance declaration are to be transferred and will **remain** in the same premises (public warehouse), an **amended** clearance declaration submitted by the prospective owner will serve as an application for permission
 - Where **all** goods covered by the same clearance declaration are to be transferred and will be **removed to another** premises (public or private warehouse), **another warehouse clearance declaration** to be submitted by the prospective owner or each prospective owner

TOPICAL MATTERS - TRANSFER OF OWNERSHIP

- Where a **portion** of the goods covered by the same clearance declaration are to be transferred and will **remain** in the same customs warehouse, **another** warehouse clearance **declaration** must be submitted by the prospective owner
- Where a **portion** of the goods covered by the same clearance declaration are to be transferred and will **be removed to another** customs warehouse, **another** warehouse clearance declaration must be submitted by the prospective owner
- Where **portion** of the goods covered by the same declaration are to be transferred to **multiple owners** and will be removed to other customs warehouses, a warehouse clearance declaration must be submitted by **each** prospective owner

TOPICAL MATTERS - OTHER COMMENTS

EXCLUSION OF BAGGAGE

- A request was received from the airline industry that “baggage” be excluded from the provisions in Chapter 25 of the CCA and its rules
 - Accepted. Baggage will be excluded

SYSTEMS BREAKDOWN

- Section 913(4)(a) (as amended) provides for an automatic extension of the timeframe for submission of documents referred to in rule 41.4 in the case of a systems breakdown (SARS)
- Section 913(4)(b) makes provision for the customs authority to allow manual submission in other circumstances, for example where the client’s system fails
- Questions were raised as to how trade will be alerted of a systems breakdown
 - A message will be posted on SARS EDI bulletin board
- Questions were raised as to the status of clearances that have been submitted but not finalised before the systems breakdown occurs
 - Messages are queued for when the system is operational again
 - There will therefore be no need for client to resubmit
 - However if the breakdown is on the part of the client he will get a “failure status” and will need to resubmit

CHAPTER 1 INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT

ENFORCEMENT FUNCTIONS

- A comment was made that rule 1.10 should be expanded to include a requirement that officers should act in terms of their mandate
 - Not accepted. Section 12(1)(a) of the CCA provides that officers must perform their enforcement functions in accordance with instructions issued by the Commissioner, subject to any limitations and in accordance with any procedures as may be prescribed by rule or determined by the Commissioner

SPECIAL CUSTOMS SERVICES

- A comment was made that Customs should ensure that customs officers are available at the specified time if 24 hours notice is given (rule 1.11)
 - The purpose of the notice period is to ensure resource availability for the provision of the special customs service

CHAPTER 1 INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT

SPECIAL CUSTOMS SERVICES

- A number of comments were received that the fee for special customs services should be charged from the arrival of the officer at the specific premises, and that clients should not be charged where the officers do not return to the office after performing the customs service (rule 1.12(1) and 1.13(b))
 - Accepted. The rule will be amended to reflect that the fee will be charged from arrival at the premises.
Also note that the hourly rate will be increased by applying an inflationary effect as the rate has not been amended for more than 10 years
- A further comment was made that the office hours for Customs Offices be specified so that clients are aware of what the normal operating hours are
 - The office hours for Customs Offices will be published on the SARS website
- A recommendation was made that the current DA73 be programmed into eFiling to facilitate the implementation of rule 1.14(1) relating to the payment of special customs service fees
 - This rule provides that a client who requires special customs services on a regular basis may apply for a payment arrangement
 - Payment must be made in terms of Chapter 32 of the Rules

CHAPTER 1 INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT

DISCLOSURE OF PRIVATE OR CONFIDENTIAL INFORMATION

- A question was raised as to the necessity of rule 1.15(2) and its applicability to trade
 - The rule applies to “authorised recipients” as defined in section 20 of the CCA and is therefore not applicable to trade

CHAPTER 3 REPORTING REQUIREMENTS

Commentators questioned the reporting benefits for the customs authority

- Internationally in modern customs administrations (for e.g. USA, Canada, Australia, New Zealand, China and the EU) emphasis is placed on the reporting of third party information
- Reporting enables Customs to risk assess information about the vessels, aircraft, trains, vehicles, travellers, crew and cargo entering or leaving South Africa
- Some of the **benefits** of reporting for Customs include:
 - Enhances **supply chain security**
 - Contributes to **fiscal assurance**
 - Supports effective customs control, processing of and facilitation over the **movement** of means of transport, cargo and travellers
 - Enables **planning** by the customs authority
 - Establishes **cargo visibility** to determine the physical status of goods
 - Confirms that cargo is **landed, short shipped, missing, broken, damaged or in excess**

CHAPTER 3 REPORTING REQUIREMENTS

DUPLICATION OF TRANSPORT DOCUMENT NUMBER - RULE 3.2

- Comments reflected that the 2 year period for the re-use of a transport document number is not feasible due to the volume of transport documents generated in a short time
 - Accepted. The 2 year period will be amended to 12 months in line with the International Air Transport Association recommendation in respect of a minimum timeframe for the resubmission of a transport document using the same transport document number

CHAPTER 3 REPORTING REQUIREMENTS

ADVANCE TRAVELLER INFORMATION - RULES 3.11, 3.14

- Requests were made for SARS to exempt airline carriers whose advance traveller information (including crew) has been reported to another state agency
 - Accepted. Provision will be made to exempt airline carriers from the requirement to submit advance traveller information if the information is obtained from another state agency

APPLICATIONS FOR PERMISSION TO DEPART FOR AIRCRAFT – RULE 3.16

- Concerns were raised that this requirement may result in unintended consequences and costs due to the quick turnaround times and urgency within which the air environment operates
 - Accepted. The requirement to apply for permission to depart for aircraft will be deleted

CHAPTER 3 REPORTING REQUIREMENTS

ADVANCE NOTICES – certain commentators objected to the requirement of advance reporting

- It must be noted that **advance reporting of inbound** vessels – (**rules 3.4 and 3.5**), aircraft (**rules 3.11 and 3.12**), trains (**rule 3.18**), trucks (**rule 3.27**) and their cargo is an established requirement in many jurisdictions worldwide such as the US, Canada, Australia, New Zealand, China, Japan, Mexico and the EU etc.
- It is also recommended by the SAFE Framework which South Africa has committed to implement in order to secure and facilitate global trade
- Furthermore, the current Customs and Excise Act, 1964 contains a long - established requirement for advance reporting of inbound vessels, aircraft, trains and cargo
- Therefore, in line with international best practice , the requirement of advance reporting of **inbound** information will remain a requirement
- Because advance reporting for **outbound** vessels (**rules 3.7 and 3.8**) , aircraft (**rules 3.14 and 3.15**), trains (**rules 3.20 and 3.21**) and their cargo is yet to be established internationally (only the USA is running a pilot on advance export manifest data), this requirement will be postponed in terms of section 943 of the CCA and will commence on a date to be determined by the President by proclamation in the *Gazette*
- **Instead**, sea, air and rail cargo **departure notices** for sea, air, rail cargo to be submitted after departure, will be provided for in order to enable the customs authority to acquit cargo cleared for export

CHAPTER 3 REPORTING REQUIREMENTS

ARRIVAL AND DEPARTURE REPORTS IN RESPECT OF VESSELS AND AIRCRAFT- RULES 3.6, 3.10, 3.13 AND 3.17

- The rules currently require both the port authority and the carrier to submit arrival and departure reports for vessels and aircraft
- To avoid duplication of the same information the rules will be amended to require arrival and departure reports only from the port authority, and, in the case of a vessel or aircraft not operated by a carrier, from the on-board operator
- **Clarity was sought as to what is considered to be the arrival of an aircraft at a customs airport**
 - In terms of section 2(c) of the CCA an aircraft arrives at a customs airport when the aircraft lands at that airport
- **Concerns were raised that the requirement of the transport ID (registration number of the aircraft) will result in the delay of submission of arrival and departure reports in relation to aircraft**
 - The requirement for inclusion of the transport ID for the purposes of reporting the arrival and departure of aircraft will be made optional

CHAPTER 4 GENERAL PRINCIPLES GOVERNING CLEARANCE AND RELEASE OF GOODS AND CUSTOMS PROCEDURES

- Clarification was sought regarding recordkeeping obligations of rule 4.24(1)(b)
 - The intention of the requirement that persons who are not registered or licensed in terms of the CCA and who deal in, sell or offer for sale imported goods, or use such goods in manufacturing, is to enable such persons to comply with a request by the customs authority in terms of section 722(6) of the CCA

- Clarification was sought regarding the implementation of section 97 of CCA - clearance substitutions before release of goods (Rule 4.15(1)(a))
 - Section 97 will be deleted
 - Persons will have the option to substitute after release for home use (section 107) or to clear for another procedure (section 110)

CHAPTER 4 GENERAL PRINCIPLES GOVERNING CLEARANCE AND RELEASE OF GOODS AND CUSTOMS PROCEDURES

- There was general confusion regarding the applicability of rules 4.11 and 4.12 dealing with applications for permission to load goods for export and notifications of failure to load goods
 - The relevant rules apply only to the loading of goods **excluded from** export clearance requirements e.g. human remains. In other words, **no clearance declaration** has to be submitted in respect of such goods. (See section 95 of the CCA.) For equivalent provision regarding goods excluded from import requirements, see section 91 of the CCA
- A proposal was made that the payment of the attendance fee contemplated in rule 4.17 for inspection conducted at importers premises should be managed via the deferment facility
 - Not accepted. "Deferment" in the CDA is limited to "duty" (see section 24)
 - See rule 1.14(3) for payment arrangements in relation to special customs services required on a regular basis

CHAPTER 5 GENERAL PRINCIPLES GOVERNING TRANSPORT, SEALING & LOADING

CARRIERS DO NOT RECEIVE A RELEASE NOTIFICATION – RULES 5.2 AND 5.3

- Comments raised the concern that carriers do not receive release notifications and therefore will not be able to provide the information required for receipt and delivery notifications
 - Not accepted. It is important for carriers to obtain copies of release notifications in terms of contracts with their clients, because of the liability in respect of the goods if the goods are not cleared and released for customs purposes

CHAPTER 5 GENERAL PRINCIPLES GOVERNING TRANSPORT, SEALING & LOADING

SEAL VERIFICATION AND REPORTING OF SEAL DISCREPANCIES – RULE 5.10

- Concerns were raised that that SARS may implement a system in accordance with which only electronic seals will be allowed thereby resulting in additional costs
 - According to the SAFE Framework of Standards, Customs should apply a seal integrity programme based on the use of high-security **mechanical** seals as prescribed in ISO 17712
 - Rule 5.10 will be amended to certify that mechanical or electronic seals may be used
- Request made to amend rule 5.10(1)(a) to read “current applicable ISO 17712 standard in the case of mechanical seals” to ensure current version of the standard is applicable
 - Accepted. Rule will be amended
 - In the case of electronic seals, no specific ISO standard will be prescribed

CHAPTER 5 GENERAL PRINCIPLES GOVERNING TRANSPORT, SEALING & LOADING

- Request made for only terminals to do seal verification and reporting of seal discrepancies
 - Not accepted. The obligation is not only on terminal licensees, but on every person in the supply chain that receives physical control of a container containing goods not in free circulation

CHAPTER 7 STANDARD PROCESSES AND REQUIREMENTS FOR CLEARANCE AND RELEASE OF GOODS

- Concerns were raised that certain provisions relating to clearance instructions proposed for consideration during the previous workshop were not included in the second draft of the Rules (rule 7.6)
 - The delay was due to consideration of a potential amendment to the CCA prior to publication of the second draft of the Rules
 - Rules have subsequently been amended to provide that -
 - a single clearance instruction may cover all clearances submitted by a customs broker during a specified period of time, provided the circumstances and purposes of each clearance are identical
 - a draft clearance declaration prepared by a customs broker and endorsed by the principal or person authorised to issue clearing instructions prior to submission of the declaration to customs authority, may serve as a clearance instruction
 - A power of attorney was not included as serving as a clearance instruction because it does not provide the customs broker with the required information to complete the clearance declaration and he/she would in this instance become personally liable

CHAPTER 9 TRANSIT

- Comments revealed some confusion as to the time periods relevant for purposes of international transit (rules 9.4 & 9.14)
- Important to understand the difference between international transit **procedure** and international transit **operation**:
 - Goods come under the **procedure** when goods are **cleared**
 - The **operation** is the **actual transport of the goods** from point A to point B. It starts at the **starting point** and ends **when the goods are delivered at the delivery point**
 - The starting point is the customs controlled area referred to in section 205(1) of the CCA
 - The delivery point is the customs controlled area referred to in section 205(3)
 - Subsection (4) must however be noted which affords Customs the authority to direct that another place must be the starting or delivery point

CHAPTER 9 TRANSIT

- There are **three** time periods relevant for purposes of international transit:
 - ❖ The period **within which** the international transit **operation** must **commence** (“commencement period”) (s 206(1) read with rule 9.4)
 - The first time period measures the time from **release** of the goods for transit procedure until the commencement of the **transit operation** from the starting point
 - ❖ The period measuring the **duration** of the international transit **operation** (s 206(2) read with rule 9.4)
 - The second time period measures the duration of the transit operation i.e. period from commencement of the operation until the delivery point where goods will be exported from the Republic is reached
 - ❖ The period **within which** the goods must be **exported** (section 217(2) read with rule 9.14)
 - The international transit procedure is completed when goods are exported from the Republic
 - The third time period runs from the commencement of the transit operation until the export of goods, e.g. when vehicle exits the land border post or when goods are loaded on board the vessel or aircraft

As the customs authority’s automated systems will record export by way of e.g. outturn reports and scanning of customs documentation at place of exit, **proof of export will only be requested in case of a systems breakdown**

CHAPTER 9 TRANSIT

- Proposals were once again received to extend the time periods for transit (rule 9.4)
 - During the previous round of comments, motivations were considered and the time periods were extended
 - SARS is satisfied that those time periods are reasonable, except for transit by rail
 - A separate provision will be inserted to provide for timeframes for transit by rail
 - Compliance with timeframes will be monitored to assess whether a need for amendment exists

CHAPTER 9 TRANSIT

- Concerns were raised that the time periods for transit will not be sufficient when goods are detained by Customs or on behalf of other government agencies (rule 9.4)
 - Any intervention by other government agencies to establish compliance with their legislation will in terms of the CCA be done **prior to release** by Customs
 - The transit time periods will only commence **after release** by Customs
- Concerns were also raised regarding the **general** limitation of routes for transit operations to National Roads (rule 9.6)
 - The rule will be amended to prescribe routes only for specific categories of goods (high risk goods)

CHAPTER 9 TRANSIT

- Concerns were raised regarding the obtaining of **prior** Customs permission before goods under international transit can be redirected to a delivery point while in transit (section 208 read with rule 9.7 and 5.7)
 - An amendment will be considered to address these concerns in circumstances where the need for redirection arises **after commencement** of the international transit operation
- Clarification was sought on whether the technical specifications in relation to vehicles referred to in rule 9.8 apply to car carriers used in transit of goods
 - The rule will be amended to include car carriers to the extent that it is possible for such vehicles to comply with those specifications, taking into account its purpose
- Clarification was sought on whether the licensee of a customs controlled area constituting a delivery point has to notify the customs authority of receipt where that licensee was also the carrier that delivered the goods (rule 9.12)
 - The rule will be amended to provide that compliance with rule 9.11 must in such circumstances be regarded as compliance with rule 9.12

CHAPTER 9 TRANSIT

- Comments revealed concern regarding the requirement of an endorsed air waybill serving as a document that constitutes proof of export (rule 9.16)
 - Par (b) of the rule will be amended to extend the types of documents that will be acceptable for export by air, to any document stamped and signed by the air carrier which can evidence loading of the goods on board the aircraft
 - A footnote will also be added to the rule to draw attention to the fact that the list contained in the rule is not exhaustive

CHAPTER 11 TRANSHIPMENT

- The comments indicated some confusion in relation to the transfer of imported goods from one foreign going vessel at a customs seaport to another foreign going vessel at **another customs seaport** served by the same Customs Office
 - Please note that section 241 of the CCA was amended by the Tax Administration Laws Amendment Act, 2014, to provide for transshipment whether the exporting vessel is docked at the **same** customs seaport as the importing vessel, or at **another** customs seaport served by the **same Customs Office**
 - A **transshipment clearance declaration** will be required
 - An additional clearance for national transit will not be required where goods intended for transshipment must be moved to a vessel, docked at **another** customs seaport served by the **same Customs Office**, on which it will be exported
 - The transshipment procedure in the above circumstances (i.e. transfers to vessels docked at another seaport) is limited in terms of rule 11.1(1)(b) to the transfer of goods between the customs seaports of Port Elizabeth and Port of Ngqura
 - Where the importing vessel and the exporting vessel berth at **different terminals** of the same seaport, the movement of goods between the terminals is allowed

CHAPTER 11 TRANSHIPMENT

- Concerns were raised regarding the requirement of an endorsed air waybill serving as a document that constitutes proof of export (rule 11.3)
 - Par (b) of the rule will be amended to extend the types of documents that will be acceptable as proof of export by air, to any document stamped and signed by the air carrier that can evidence loading of the goods on board the aircraft
 - A footnote will also be added to the rule to draw attention to the fact that the list contained in the rule is not exhaustive
- Comments were received objecting to the timeframe for submission of transshipment clearance declarations (air environment) (rule 11.2)
 - the reasons for the requirement that the clearance declaration must be submitted prior to arrival of the aircraft, is because off-loading of the transshipment goods can only commence after release for transshipment procedure
 - A clearance declaration submitted after arrival will delay the off-loading process and consequently the departure of the aircraft
 - Note, however, that a formal clearance declaration need not to be submitted, as the advance air cargo arrival notice referred to in rule 3.12 will in terms of rule 11.3(c) serve as the transshipment declaration

CHAPTER 11 TRANSHIPMENT

- Clarification was required in respect of the timeframes in rules 11.7 and 11.8 dealing with commencement and completion periods for transshipment operations and export of transshipment goods
 - The 72 hours timeframe in rule 11.7(1) relates to the time within which the transshipment **operation** must **commence after release** of the goods
 - The transshipment **operation** must be **completed** (i.e. the goods must be **loaded**) within 21 days after the operation commenced
 - The “every 24 hours” timeframe in rule 11.8 relates to the timeframe for submission of **regular updates** to the customs authority after extension for the commencement of the transshipment operation has been granted
 - The updates must be submitted until the actual commencement of the transshipment operation

CHAPTER 12 TEMPORARY ADMISSION

- Clarification was sought regarding the security requirement for temporary admission clearances
 - Security is risk based and, if required, will be requested by the customs authority as a condition of release in terms of section 103(c) of the CCA, after the clearance declaration has undergone a process of risk assessment in relation to the registered entity as well as the relevant commodity
- Comments indicated some confusion regarding containers that come under the temporary admission procedure automatically, and the customs procedure for which the goods in such containers must be cleared
 - **Containers**, as reusable transport equipment, come under the temporary admission procedure **automatically** when entering the Republic (i.e. without any regular clearance or release process) The **goods inside** the container must be cleared for home use or a customs procedure
 - The carrier or the carrier's registered agent must record the movements of containers entering or leaving the Republic

CHAPTER 12 TEMPORARY ADMISSION

- Some reservations were expressed regarding the role of the customs authority in respect of the approval of applications for extension of validity period of CPD or ATA carnets (rule 12.7)
 - Rule will be amended to remove the reference to the customs authority's approval as this is not a requirement in terms of the Istanbul Convention
- Concerns were raised regarding the list of documents that are acceptable as proof of re-export of goods under temporary admission in terms of international clearance arrangements (rule 12.11)
 - A footnote will be added to the rule to draw attention to the fact that the list contained in the rule is not exhaustive

CHAPTER 13 WAREHOUSING PROCEDURE

PERSONS OTHER THAN CARRIERS PERMITTED TO TRANSPORT GOODS UNDER WAREHOUSING PROCEDURE – RULE 13.1

- Clarification was sought as to:
 - Who are permitted to transport new imported vehicles under warehousing procedure under own power
 - Registered importer
 - Licensee of storage warehouse (private and public)
 - Registered owner
 - Whether the person permitted to transport is permitted to enlist the services of a third party to undertake such transportation
 - Yes. Provided the third party is under the direct instruction of the person permitted to transport. “Using own transport” will be defined in order to clarify this
 - Who will be required to lodge security
 - The person permitted to transport, could be covered by the licensee’s or importer’s bond, or Customs can request additional security if the risk is not adequately covered by that bond

CHAPTER 13 WAREHOUSING PROCEDURE

RULE 13.1 (CONT.)

- A proposal was received to also allow the licensee of a public storage warehouse to transport in terms of rule 13.1
 - Accepted. The licensee of a public warehouse will be included provided that the licensee is authorised to transport by the owner of the goods

TRANSPORT OF NEW IMPORTED VEHICLES CLEARED FOR WAREHOUSING – RULE 13.2

- A proposal was received to:
 - Define “own power”
 - Not accepted. Ordinary dictionary meaning applies
 - Remove ‘designed’ from the wording “a truck or trailer designed for the transport of vehicles” in rule 13.2(2)
 - Not accepted. It is the intention to limit the kind of vehicles on which other vehicles may be transported. It must be of a specific type i.e. a truck or trailer designed for the transport of vehicles

CHAPTER 13 WAREHOUSING PROCEDURE

REDIRECTION OF GOODS CLEARED FOR WAREHOUSING – RULE 13.3

- Clarification was sought as to how rule 13.3 will be applied
 - If a person intends to redirect goods cleared for warehousing to a place other than the warehouse indicated on the warehouse clearance declaration, the amended clearance declaration indicating that other place will serve as the application for redirection (see rule 5.7)

MAXIMUM WAREHOUSING PERIODS FOR RESTRICTED GOODS AND EXTENSIONS OF SUCH PERIODS – RULE 13.8

- Clarification was sought as to:
 - When an updated P&R list will be made available
 - As stated previously in the workshop of 26 November 2014, the list will be amended to differentiate between prohibited, restricted and sectorally controlled goods, and once finalised, will be published
 - Whether restricted goods may remain in a warehouse for two years if the required permit was submitted at the time of clearance
 - Yes. The goods may remain in the warehouse for the full authorised period

CHAPTER 13 WAREHOUSING PROCEDURE

INVENTORY CONTROL SYSTEM FOR GOODS IN STORAGE WAREHOUSES – RULE 13.9

- A proposal was received to amend the definition of “stock inventory code” to read “a unique identifying code assigned by the licensee of the storage warehouse to the packing unit of the goods as received in that warehouse”
 - Not accepted. The rules will be amended to clarify that the stock inventory code must be assigned according to the packing unit reflected on the release notification
- A recommendation was received in relation to liquid bulk goods, to amend rule 13.9(2)(a) to state that the distinction between goods not in free circulation and those in free circulation need only be documentary
 - Not necessary to amend
 - See rule 13.22(1) from which it is clear that the distinction between unpacked dry or liquid homogeneous goods in free circulation and such goods not in free circulation stored in the same warehouse, is documentary

CHAPTER 13 WAREHOUSING PROCEDURE

APPLICATION FOR PERMISSION TO CARRY OUT SORTING, PACKING ETC – RULE 13.14

- Clarification was sought as to whether the definition of “warehoused goods” includes goods in free circulation
 - For purposes of rule 13.14, “warehoused goods” does not include free circulation goods
- A question was posed whether the loading of road tankers or “drumming off” of liquid bulk qualifies as “repacking” for purposes of this rule
 - Loading of road tankers does not qualify as repacking, but “drumming off” amounts to repacking

CHAPTER 13 WAREHOUSING PROCEDURE

RULE 13.14 (CONT.)

- Clarification was sought whether multiple clearance declarations are required where goods imported on one vessel is pumped into more than one tank -
 - This is dependent on how the tanks are licensed
 - If licensed separately as customs warehouses, a clearance declaration must be submitted **per tank**, as clearances for warehouses relate to **a specific warehouse**
 - If the tanks are licensed collectively under a **single** warehouse **license**, a **single** warehouse clearance **declaration** will be required

CHAPTER 13 WAREHOUSING PROCEDURE

APPLICATION FOR STANDING PERMISSION TO CARRY OUT SORTING, PACKING ETC – RULE 13.15

- A recommendation was received to extend the provision to allow applications for standing permissions in relation to public storage warehouses as well
 - Accepted. The rule will be amended to provide for applications for standing permission by public warehouse licensees, provided that the application is supported and authorised by the owner/importer

APPLICATION FOR APPROVAL TO REMOVE GOODS FOR REPAIR OR PRESERVATION OPERATIONS – RULE 13.16

- A proposal was received to shorten the seven day period for **submission** of the application for approval referred to in rule 13.16(1)
 - Accepted. The subrule will be amended to shorten the timeframe
- A proposal was received to extend the three day period for the **return** of goods removed, referred to in rule 13.16(7)
 - Accepted. The subrule will be amended to extend the timeframe

CHAPTER 13 WAREHOUSING PROCEDURE

TIMEFRAMES FOR RETURN OR CLEARANCE OF GOODS REMOVED FROM STORAGE WAREHOUSES – RULE 13.19

- A recommendation was received to allow a longer timeframe for the return of vehicles moved to a facility to convert such vehicles to fire and rescue vehicles
 - Not accepted. Conversions that change the classification of a vehicle will not be allowed under warehousing procedure. This will require a clearance out of the warehouse
- A proposal was received to delete the words "...three working days after removal of the goods" in rule 13.19 and insert "as per application"
 - The rule will be amended to extend the timeframe

CHAPTER 13 WAREHOUSING PROCEDURE

MEASURES TO ENSURE EFFECTIVE CUSTOMS CONTROL DURING TEMPORARY REMOVAL OF GOODS AS CONTEMPLATED IN SECTION 310 – RULE 13.21

- A statement was received that it should be sufficient that the licensee has a guarantee and complies with SARS requirements (including the required permission in order to move goods to other premises), without the need for compliance with rule 13.21 prescribing security standards for the other premises
 - Not accepted. Compliance with rule 13.21 may be taken into account by Customs for mitigation of the quantum of security

CHAPTER 14 TAX FREE SHOP PROCEDURE

GOODS THAT MAY BE SOLD IN TAX FREE SHOPS – RULE 14.7

- A concern was raised that rule 14.7 narrows the scope of preferential treatment for diplomats and constitutes a breach of South Africa's international commitments
 - The rule does not narrow the scope of diplomats' preferential treatment because rebate item 406.00 applies to imported goods for use by diplomats
 - Allowing "special shops for diplomats" is a facilitative measure on SARS's part. The customs authority has the right in terms of the CCA to control activities on licensed premises

CHAPTER 14 TAX FREE SHOP PROCEDURE

PERSONS TO WHOM GOODS MAY BE SOLD IN SPECIAL SHOPS FOR DIPLOMATS – RULE 14.28

- Clarification was sought on rule 14.28 regarding the DIRCO certification requirement
 - The **rule** does not require DIRCO certification. This is a requirement in terms of rebate item 460.00
 - The DIRCO certificate serves a dual purpose, namely to confirm -
 - that the person is listed on the register that is kept by DIRCO in accordance with the Diplomatic Immunities and Privileges Act, 2001
 - the decision by DIRCO regarding the extent of relief to be granted (conditional upon reciprocity)
- A concern was raised that the rules are inconsistent with South Africa's commitments under the Vienna Treaties
 - The rules are not inconsistent with the Vienna Treaties
 - The relevant articles of the Convention referred to by the commentator clearly state that the receiving state shall "**in accordance with such laws and regulations as it may adopt** permit entry of and grant exemption...from all customs duties, taxes..."

CHAPTER 15 STORES PROCEDURE

DELIVERY NOTIFICATIONS BY CARRIERS WHEN DELIVERING STORES TO FOREIGN-GOING VESSELS, AIRCRAFT OR CROSS-BORDER TRAINS – RULE 15.3

- A recommendation was received to extend the timeframe provided for submitting the notification
 - Note that **submission** of the notification will not be required anymore, delivery must be **recorded** and submitted **on request**
 - Rule 15.3 will be amended to require the record of delivery to reflect the particulars of the vessel, aircraft or train to which the goods were delivered

CHAPTER 15 STORES PROCEDURE

DELIVERY NOTIFICATIONS BY CARRIERS WHEN DELIVERING STORES TO FOREIGN-GOING VESSELS, AIRCRAFT OR CROSS-BORDER TRAINS – RULE 15.3 (CONT.)

- Concern was raised that the wrongly numbered rule 15.4 appears redundant, as rule 15.3 provides for a delivery notification to be submitted to the customs authority (there appears to be dual reporting by the carrier and stores supplier)
 - The delivery notification (which will in future be “a record of delivery”), must be kept by the **stores supplier**
 - The acknowledgement of receipt (rule 15.5 as renumbered) must be submitted by the **on-board operator**
- Concern was raised that on-board operators will not be able to comply with the requirement of rule 15.4 and a recommendation was made that the timeframe prescribed for submission of the acknowledgement should be extended
 - Consideration will be given to extend the timeframe

CHAPTER 15 STORES PROCEDURE

ADDITIONAL PURPOSES FOR WHICH STORES MAY BE REMOVED FROM VESSELS, AIRCRAFT OR TRAINS – RULE 15.13

- A proposal was received to amend rule 15.13 to allow for unused stores to be removed for cleaning and repacking
 - Rule 15.13 will be widened to include cleaning, re-packing and sanitizing

APPLICATION FOR APPROVAL TO REMOVE STORES FROM VESSELS, AIRCRAFT OR TRAINS – RULE 15.14

- A recommendation was received to amend section 350(4) of the CCA to remove the requirement to return removed stores to **the same** vessel, aircraft or train
 - Section 350(4) will be amended to remove the requirement to return stores to **the same** vessel, aircraft or train

CHAPTER 15 STORES PROCEDURE

TIMEFRAME FOR RETURN OF STORES REMOVED FROM VESSELS, AIRCRAFT OR TRAINS – RULE 15.15

- Concern was raised that the timeframe provided for in rule 15.15(b) for the return of goods to a vessel, aircraft or train is too short
 - Accepted. The rule will be amended to increase the timeframe to five calendar days

APPLICATIONS FOR PERMISSION TO REMOVE STORES FROM VESSEL OR AIRCRAFT FOR PURPOSE OF STORAGE ELSEWHERE – RULE 15.16

- Clarity was sought as to how long it will take for Customs to adjudicate applications for permission
 - SARS will respond expeditiously, however note that turn-around times will be dealt with in Standard Operating Procedure documents that will be published on the SARS website

CHAPTER 15 STORES PROCEDURE

SUBMISSION OF, AND INFORMATION TO BE REFLECTED ON, STORES ARRIVAL REPORTS – RULE 15.22

- A recommendation was received that the report be submitted 24 hours or three working days after arrival of an aircraft
 - A longer timeframe will be considered
- Currently the requirement is that a stores arrival report must be submitted **together with or as part of the arrival report**
 - As mentioned in relation to Chapter 3 rules, the arrival report will now only be required from the **port authority** and not the carrier, therefore provision will be made for a **separate stores report** to be submitted by the carrier
 - Section 346(2) of CCA will be amended to require submission of a stores arrival report in a manner and within a timeframe as may be prescribed by rule

CHAPTER 16 EXPORT PROCEDURE

EXPORT TIMEFRAMES FOR AIRFREIGHT

- **Rule 16.1** prescribes timeframes for the delivery of goods cleared for export to depots and terminals
- Commentators requested reasons for prescribing timeframes and suggested that timeframes should be removed or reduced
- Timeframes are prescribed to allow the customs authority sufficient time to conduct an inspection of goods at the depot or terminal before the goods are loaded on board the aircraft should an inspection be required
- The request for the timeframes to be removed can therefore not be accepted
- It was determined from research done in respect of nine airlines, that the average timeframe within which cargo must be delivered is 3 hours before the aircraft on board of which the goods are to be loaded, is scheduled to depart. In line with this, the timeframe of 5 hours will be reduced to 3 hours

CHAPTER 16 EXPORT PROCEDURE

NOTIFICATION OF FAILURE TO EXPORT GOODS AND THE REASONS FOR THE FAILURE - RULE 16.5

- **Section 370 (1) (a)** of the CCA requires the person clearing goods for export to notify the customs authority of a failure to export and the reasons for the failure
- Proposal to only require **outturn report** from the **licensee** of the terminal confirming goods not loaded for export rather than requiring **notification** of failure to export from the **person clearing** the goods
 - Not accepted. Outturn reports from the licensee of the terminal is third party information used for reconciliation purposes. The legal obligation is on the person clearing the goods (the exporter) to inform Customs of failure to export

CHAPTER 19 HOME USE PROCESSING

- Clarification was sought regarding the MRN requirement on applications for approval to appoint subcontractors (rule 19.5)
 - The MRN requirement in rule 19.5(2)(e) will be deleted as the application to appoint a subcontractor relates to all clearance declarations submitted over a period of time
- Clarification was sought regarding the Customs permission required in terms of rule 19.8 for the movement of goods between home use processing premises
 - No permission will be required where a number of premises at the same location are covered by a single home use processing premises license
- Concerns were raised regarding the requirement of displaying a unique code on goods (rule 19.13)
 - The rule will be reformulated to accommodate these concerns
- Concerns were raised by APDP participants in relation to the approval of a conversion rate and the register requirements for item 317.03 (rule 19.12)
 - Rules will be amended to exclude the requirement of maintaining a processing register and approval of conversion rate for 317.03 licensees as the APDP has an adequate legal regulatory framework to mitigate risk

CHAPTER 21 CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

REQUIREMENTS IN RELATION TO TRAVELLER CARD (RULES 21.2(a), 21.2(2), 21.3 and 21.5)

- Objections were received in relation to the submission of traveller cards, stating that it is a duplication of the Department of Home Affairs process
 - The requirement to submit a traveller card when entering or leaving the Republic will be deleted

TRAVELLER DECLARATIONS FOR PERSONS LEAVING THE REPUBLIC – RULE 21.6

- A comment was received that the information required from the traveller is a duplication of the information required from the carrier in terms of Chapter 3
 - This declaration (on entering and leaving the Republic) is in effect a **clearance declaration** in respect of goods on which duty payable will be determined and therefore it has to be done in the name of the traveller
 - Note that it is only to be done if the traveller has something in his or her baggage that must be cleared

CHAPTER 23 ACCESS TO AND SAMPLING OF GOODS

APPLICATION FOR PERMISSION TO ACCESS GOODS SUBJECT TO CUSTOMS CONTROL - RULE 23.1

- A comment was received questioning the purpose of this rule and stating that SARS should avoid inserting provisions that have already been covered by other rules
 - Not accepted. Chapter 23 of the CCA regulates the right of importers, exporters and other persons who have a material interest in goods which are subject to customs control, to access and take samples of the goods after notice to the customs authority
 - Section 512 of the CCA specifically provides that Chapter 23 should not be read to affect the powers of any law enforcement agency or other persons accessing or taking samples of or performing other actions in relation to goods in terms of any legislation
- Proposals were received that the liquid bulk industry be allowed a dispensation whereby applications to draw samples in respect of each shipment are not required
 - Accepted. Consideration will be given to provide for a standing approval limiting the quantity to be drawn per shipment

CHAPTER 23 ACCESS TO AND SAMPLING OF GOODS

(RULE 23.1 CONT.)

- Comments were received proposing that the timeframe for submission of an application of “at least one working day” before the date when access for the intended purpose is required, be amended to “one to two hours” or “the same day”
 - Not accepted. The timeframe has already been reduced after the first comment phase
 - Operationally it will be too challenging to shorten timeframes even further

ACTIONS THAT MAY BE PERFORMED IN RELATION TO GOODS SUBJECT TO CUSTOMS CONTROL - RULE 23.2

- Questions were raised whether this provision pertains to the same requirements in relation to incomplete information when making a clearance declaration, as for a sight bill of entry
 - Chapter 23 provides for some of the principles of section 42 of the 1964 Act, but in a more comprehensive manner. It is not a sight bill of entry or clearance, but an application to access goods and to perform any of the actions referred to in section 513 of the CCA read with rule 23.2
 - Sampling of goods by **customs officers** is dealt with in Part 5 of Chapter 33

CHAPTER 24 EXPEDITED CLEARANCE AND RELEASE OF GOODS

FORMAL APPLICATIONS TO CLEAR AND OBTAIN RELEASE OF GOODS ON INCOMPLETE OR PROVISIONAL CLEARANCE INFORMATION – RULE 24.3

- A recommendation was received to reduce the timeframe in rule 24.3(2)(a) to 1 hour in respect of land transport
 - Not accepted. One hour is not sufficient time for SARS to consider the application and assess risk
 - This period is meant to afford the person clearing adequate time to submit a **regular** clearance, should SARS not grant permission to clear on incomplete or provisional clearance information
- A recommendation was received for the timeframe in rule 24.3(2)(c) to be reduced in alignment with section 90 and 94
 - The timeframe in (c) will be shortened
 - Note that this is a formal application for a standing permission to clear a specific class or kind of goods on incomplete or provisional information during a specific future time
 - Clients still have the option to apply for ad hoc approval by submission of an incomplete/provisional clearance declaration
 - The timeframe for submission of the clearance declaration in respect of imported goods or goods to be exported, remain the same as in sections 90 and 94
- Proposals were received for the deletion of the tax clearance certificate requirement in rule 24.3(5)(c)
 - Accepted. This requirement will be deleted

CHAPTER 24 EXPEDITED CLEARANCE AND RELEASE OF GOODS

TIMEFRAME FOR SUBMISSION OF SUPPLEMENTARY CLEARANCE DECLARATIONS – RULE 24.7

- A proposal was received to amend rule 24.7 to provide for a longer timeframe for submission in respect of specific types of bulk commodities
 - Accepted. The rule will be amended to make provision for longer periods for submission of supplementary declaration in respect of liquid and dry bulk cargo

CERTAIN LICENCES TO BE REGARDED AS PERMISSIONS FOR SIMPLIFIED CLEARANCE OF GOODS DURING VALIDITY PERIOD OF LICENCE – RULE 24.25

- A proposal was received to amend rule 24.25(2)(a) to extend the provision to a public warehouse
 - Accepted. The rule will be amended to include simplified clearances into public warehouses

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

NOTIFICATIONS BY PERSONS REFERRED TO IN SECTION 542(2) AND 542(3) OF GOODS DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR- RULE 25.1

- Clarification was requested whether Chapter 25 of CCA applies to all goods or only to goods not in free circulation
 - The requirements apply to goods not in free circulation. Section 541(1) of the CCA provides that “this Part applies to all goods **not in free circulation** that have become damaged, destroyed or lost or are unaccounted for”
- Proposals were made that the rule be amended to require the first phase notification to be submitted immediately after the relevant persons **became aware** of the **facts** that are required to be notified – rules 25.1(2) and 25.2(2)
 - Not accepted. “Immediately after” will not be interpreted as “instantaneously”. It must be without undue delay after the basic information necessary for the notification has been gathered in the circumstances of the case
 - First phase notification information prescribed in subrule (3) will be limited to information that is essential, and the second phase notification information prescribed in subrule (4) will be expanded
- Clarification was requested on what constitutes “damage”
 - The term “damage” is intended to be wide. It is defined in section 1 of the CCA. The footnote to the definition states that it is to be noted that “damage” retains its ordinary grammatical meaning and that the definition, by using the word “includes”, merely extends and does not replace the ordinary grammatical meaning

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

NOTIFICATIONS BY PERSONS REFERRED TO IN SECTION 542(2) AND 542(3) OF GOODS DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR- RULES 25.1 AND 25.2

- Clarification was requested on the need for outturn reports in terms of Part 6 of Chapter 3 of the CCA in respect of damaged goods, in view of the requirement of notification of goods damaged, destroyed, lost or unaccounted for in terms of Chapter 25
 - Outturn reports serve a specific purpose and detail, amongst others, any excess or shortage found in the quantity of goods off-loaded as measured against the applicable transport documents
 - Chapter 25 notifications are additional to outturn reports and the latter could serve as part of the documentary proof as required in sections 544, 545, 546 or 547 of the CCA
- A question was raised on whether members will be penalised by SARS for goods damaged in transit
 - No
- Proposals were received that rule 25.1(5) be amended to the effect that the customs broker must be advised of the damage, destruction or loss and that the **customs broker** must notify the customs authority
 - Not accepted. Rule 25.1(3)(b) and (4)(b) provide for **submission** by customs brokers, registered agents and ordinary representatives. The person referred to in section 542(2) or 542(3) can elect to use either a customs broker, registered agent or ordinary representative to submit the notification on his/her behalf

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

DOCUMENTARY EVIDENCE TO PROVE THAT GOODS BECAME DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR - RULE 25.3

- Proposals were made that rule 25.3 should be amended to state that the agent clearing the goods must submit documentary evidence to Customs
 - Not accepted. Provision is made for submission by customs brokers, registered agents or ordinary representatives on behalf of the person required to notify
- Proposals were made that rule 25.3(e) be revised to state that the insurer's appraisal is only required if the cost of the damaged goods are to be paid out to the insured person
 - Not accepted. The appraisal assesses the extent to which any parts or materials are salvageable. Anything salvageable must be cleared or abandoned to the Commissioner, or destroyed under Customs supervision

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

DOCUMENTARY EVIDENCE TO PROVE THAT GOODS BECAME DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR - RULE 25.3

- Proposals were made that rule 25.3(b) should be amended due to the additional cost of obtaining an independent appraisal or analysis by a qualified appraiser that should be produced when losses are claimed
 - Not accepted. An independent appraisal is one of the documents that is required for purposes of claiming an actual loss
- Confirmation was sought as to the declaration process of liquid bulk products with regard to the provisions of Chapter 25
 - Goods may with the approval of the customs authority be cleared on a provisional clearance declaration, followed by a supplementary clearance declaration
 - The invoiced quantities may be reflected as provisional and may be corrected by way of the supplementary declaration reflecting the actual quantities received (supported by surveyors report). Pumping into a tank is subject to release granted in respect of the provisional clearance declaration. The provisional clearance process may be utilised on a case by case basis, or for a period of time on authority of a standing permission
Goods may also be cleared on a regular clearance declaration in terms of Chapter 7. Any information incorrectly reflected must be corrected by way of an amended clearance declaration reflecting the correct quantities received, supported by a surveyors report
- Clarification was sought on rule 25.3 in relation to the value that must be reflected, as amended invoices are not provided by the supplier of liquid bulk products
 - The transaction value i.e. invoiced value must be reflected on the provisional clearance declaration

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

TIMEFRAME FOR COMPLYING WITH SECTION 544(2)(d) IN RELATION TO DAMAGED GOODS- RULE 25.4

- Proposals were received that the timeframe of three calendar days be amended to seven calendar days
 - Not accepted. Timeframe will be changed to three working days. This timeframe commences after Customs has **accepted** the documentary proof that the goods were damaged. An extension in terms of section 908 can be applied for

TIMEFRAME FOR PURPOSES OF SECTION 545(2)(d) IN RELATION TO PARTS OR MATERIALS SALVAGED OR SALVAGEABLE FROM DESTROYED GOODS- RULE 25.5

- Proposals were received that the timeframe of three days be extended to 21 days to allow the scrap yard to do an assessment
 - Not accepted. The scrap should have been evaluated in the 10 working days prior to the second phase notification. If more time is required an application can be brought for extension in terms of section 908
- Proposals were received that the timeframes indicated in rules 25.4, 25.5 and 25.11 should be "working" days and not "calendar" days
 - Accepted

CHAPTER 25 DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

REPORTING OF ACCIDENTS INVOLVING VESSELS, AIRCRAFT OR TRAINS OPERATED BY CARRIERS - RULE 25.14

- Proposals were received that the wording "...immediately upon becoming aware of the accident..." be amended to "immediately after receiving the facts relating to the damaged goods"
 - Not accepted. In terms of rule 25.14(3) a report submitted to Customs in terms of subrule (1) must for purposes of rule 25.2 or 25.7 be regarded to be a first phase notification
 - First phase notification information prescribed in subrule (3) will be limited to information that is essential, and the second phase notification information prescribed in subrule (4) will be expanded
 - Subrule 2(f) will be deleted

CHAPTER 26 ABANDONMENT OF GOODS TO COMMISSIONER AND DESTRUCTION OF GOODS UNDER CUSTOMS SUPERVISION

APPLICATION FOR PERMISSION TO ABANDON GOODS TO COMMISSIONER - RULE 26.1

- A proposal was made by the liquid bulk industry that the “person authorised to act on behalf of the owner” is defined to include the warehouse licensee in the event that the owner absconds – (section 562(1) of the CCA read with rule 26.1)
 - Not accepted. Identical comment was raised during the first comment phase. SARS responded that the licensee should mitigate the risk through his/her contractual relationship
 - In a situation where the owner of the goods in a warehouse has “absconded”, the goods are, after the two year period referred to in section 305 of the CCA (or longer period granted in terms of section 908 of the CCA), subject to the **consequences referred to in section 115**
 - In the case of liquid bulk, the goods could remain in the warehouse (tank) under a direction of the customs authority in terms of section 580
 - The goods will then be included in the list of state warehoused goods published in terms of section 589
 - If goods are not reclaimed within the timeframe referred to in rule 27.14, the goods could be sold by the customs authority and the proceeds applied to pay any of the claims referred to in section 595
- A question was raised on what would happen to goods that have been “cleared already but not distributed” and abandoned by the importer
 - Goods cleared and released are no longer under customs control, and therefore “in free circulation”
 - Comment unclear, but Chapter 26 only applies to goods **not in free circulation**

CHAPTER 26 ABANDONMENT OF GOODS TO COMMISSIONER AND DESTRUCTION OF GOODS UNDER CUSTOMS SUPERVISION

CONSEQUENCES OF REFUSAL OF APPLICATION FOR ABANDONMENT - RULE 26.3

- Clarification was sought as to the grounds on which an application for abandonment of goods can be refused – rule 26.3(2)
 - In terms of the footnote to the heading of rule 26.1 abandonment would, 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, not be in the best interest of the State. In such cases applicants should rather consider an application in terms of rule 26.4 for the destruction of the goods
 - Another instance where abandonment can be refused, is where there is doubt that the applicant is the owner of the goods or duly authorised to make application for permission to abandon

TIMEFRAME FOR CLEARANCE OF WASTE OR SCRAP REMAINING AFTER DESTRUCTION - RULE 26.6

- Comments were received that the timeframe be extended to 21 days to allow for the scrapyards to do an assessment – rule 26.6
 - The timeframe will be extended from three to seven working days, which is subject to extension in terms of section 908 of the CCA

CHAPTER 27 STATE WAREHOUSES

CIRCUMSTANCES IN WHICH STORAGE FEES MAY NOT BE RECOVERED FROM PERSONS ENTITLED TO RECLAIM GOODS - RULE 27.29

- A recommendation was made that paragraph (b) of rule 27.29 be amended to also refer to settlement of a dispute - rule 27.29(b)
 - Accepted. A reference to settlement will be included in paragraph (b)

CHAPTER 28 REGISTRATION

REGISTRATION TYPES FOR EXPORTERS – RULE 28.3

- Clarification was sought as to why no mention of the Japan GSP is made under rule 28.3
 - The Japan GSP is not administered by SARS Customs. It is administered by SACCI

REGISTRATION TYPES FOR ELECTRONIC USERS – RULE 28.6

- Clarification was sought whether multiple registration as electronic user is required for
 - an importer/exporter and a person acting on his/her behalf (i.e. customs broker, registered agent or ordinary representative); or
 - a carrier and a person acting on his/her behalf (i.e. customs broker, registered agent or ordinary representative)

(Note that whether a carrier's "ground handling agent" will be considered a customs broker, registered agent or ordinary representative depends on the facts and the functions performed by the ground handling agent)

- Section 606 will be amended to reflect that only the person who actually uses the electronic channel to communicate with SARS will be required to register as an electronic user
- Clarification was sought whether a third party may submit an application for registration as electronic user on behalf of another entity and register on behalf of that entity
 - Yes
 - A third party cannot make an application but can **submit** the application on behalf of the applicant

CHAPTER 28 REGISTRATION

REGISTRATION OF PRODUCERS OF GOODS OF SOUTH AFRICAN ORIGIN AND REGISTRATION TYPES – RULE 28.7

- Concern was raised that it is not in the best interests of the economy to insist that all producers must register
 - Not all producers are obliged to register, only those required to be registered by an international agreement or arrangement, and who wish to benefit from such an agreement or arrangement
- Clarity was sought whether persons who procure goods from local suppliers and then export would be allowed to apply in terms of rule 28.7(1)
 - These persons must be registered as exporters for preferential tariff treatment under the applicable trade agreements (see rule 28.3) and not as producers

CHAPTER 28 REGISTRATION

PERSONS WHO MAY APPLY FOR REGISTRATION OR RENEWAL OR AMENDMENT OF EXISTING REGISTRATIONS – RULE 28.8

- Clarification was sought whether a customs broker will be considered as an “ordinary representative”
 - A customs broker is not “considered” an ordinary representative, but may in the capacity of ordinary representative **submit** applications on behalf of applicants subject to Part 5 of Chapter 41 of the Rules
- Clarification was sought as to the practical application of rule 28.8(2)(a)(ii), in particular relating to the use of profile credentials and usernames
 - See rule 28.15(1)(a) which provides for a registered person to authorise or allow any other person to use on the registered person’s behalf the customs code issued by the customs authority to the registered person. This is only allowed where a provision in the rules **expressly requires or permits** such use

CHAPTER 28 REGISTRATION

APPLICATIONS FOR REGISTRATION AND RENEWAL OR AMENDMENT OF EXISTING REGISTRATION – RULE 28.9

- Clarification was sought as to when the system for registration and licensing and its forms will be changed to cater for all the new registrations and licensing types
 - The registration and licensing systems and forms are being developed and trade will be informed timeously when this process is finalised
- Clarification was sought whether all new application information required will be included in the new form
 - Yes

CHAPTER 28 REGISTRATION

APPLICATIONS FOR REGISTRATION AND RENEWAL OR AMENDMENT OF EXISTING REGISTRATION – RULE 28.9

- A recommendation was received to delete the requirement of the physical and postal address of the authorised officer from rule 28.9(1)(b)
 - Not accepted. The physical address is necessary for enforcement purposes
- A proposal was made to amend rule 28.9 (3)(c)(ii) to allow for more than one person to issue clearing instructions
 - Not necessary. Where the singular form is used it includes the plural
- A recommendation was received to delete the requirements in 28.9(2)(d) in relation to the tax matters of the applicant, since SARS has all records of outstanding taxes, interest, penalties or other amounts owing to SARS
 - Not accepted. This amounts to a declaration by the applicant to SARS and furthermore the requirement could afford the applicant the opportunity to prove compliance in instances where there is a misalignment of facts

CHAPTER 28 REGISTRATION

APPLICATIONS FOR REGISTRATION AND RENEWAL OR AMENDMENT OF EXISTING REGISTRATION – RULE 28.9

- Clarification was sought whether the rule requires two addresses where the records “are or will be kept” for the 1 year period and then after (rule 29.9(3)(j))
 - No, two addresses are not required - “are” is used with reference to an application for amendment or renewal of an existing registration, and “will be” applies to new applications for registration
- Clarification was sought in the case of records stored electronically, whether the “address of the documents in the server” should be indicated or the address of the place where the server is kept
 - The address where the server is kept should be indicated
- Clarification was sought whether the supporting document referred to in rule 28.9(5)(e) will be a separate annexure, attached to the DA185 citing the reasons for the amendment, or whether the reasons must be contained in a free format letter
 - Both are acceptable, it depends on system capabilities
- Clarification was sought whether a casual importer should in terms of rule 28.9(7) follow the same registration process as a local importer
 - Subrule (7) will be deleted

CHAPTER 28 REGISTRATION

APPLICATIONS FOR NEW REGISTRATION OR RENEWAL OF REGISTRATION FOR SACU-EFTA – RULE 28.10

- Clarification was sought as to the practical application of rule 28.10(a)(ii) which requires the applicant to have exported more than one shipment per annum
 - A person must first register as exporter for SACU-EFTA
 - If that exporter exports more than one shipment under the registration “local or non-local exporter for SACU-EFTA”, the exporter becomes eligible to apply for **approved** local or non-local **exporter** for SACU-EFTA
- Clarification was sought as to how the requirement in rule 28.10(a)(iii) requiring a record of compliance with the SACU-EFTA Agreement, is aligned with rule 1.8(2)
 - Rule 1.8 deals with what constitutes a record of compliance
 - The criteria for determining a record of compliance is stated in rule 1.8(2)
 - If an applicant has committed a breach or contravention of the Agreement which resulted in circumstances referred to in rule 1.8(2)(a) - (d), that applicant does not have a record of compliance as required in terms of rule 28.10(a)(ii), and therefore cannot apply for approved status

APPLICATIONS FOR REGISTRATION OF AGENTS OF NON-LOCAL LICENSEES OR REGISTERED PERSONS – RULE 28.12

- A recommendation was received to offer the customs sufficient knowledge test monthly
 - This will be considered

CHAPTER 28 REGISTRATION

GENERAL CONDITIONS APPLICABLE TO ALL REGISTRATIONS – RULE 28.15

- Clarification was sought whether the registration certificate must be visibly displayed on the premises or whether it may be kept electronically
 - It does not have to be visibly displayed and can be kept electronically

ADDITIONAL CONDITIONS APPLICABLE TO REGISTERED USERS – RULE 28.17

- A proposal was received to delete the word “appropriately” from rule 28.17(a)
 - Not accepted. The word “appropriately” is used because the registered person must ensure that that he is using an electronic system that is compatible with SARS electronic systems

CHAPTER 28 REGISTRATION

RECORDS TO BE KEPT BY REGISTERED PERSONS – RULE 28.18

- Clarification was sought as to the format in which records must be kept
 - Section 919 of the CCA provides that where a provision of this Act requires a person to keep records, it must be kept by means of an appropriate computer based system. The customs authority may however allow an appropriate paper-based system subject to conditions or requirements it may determine
- A proposal was received to delete the phrase “fully and accurately” from rule 28.18(1)
 - Not accepted. This refers to adherence to a standard of reasonable care
- Clarification was sought whether CUSRES 13 messages should be kept as records referred to in rule 28.12
 - Yes – it is a record created by SARS and received by the registered person which must be kept

CASUAL IMPORTERS AND EXPORTERS – RULE 28.21

- Clarification was sought whether a casual importer and exporter must be registered prior to the declaration being submitted
 - No, the clearance declaration serves the purpose of the application for registration
- Clarification was sought whether provisional payment will still be required in respect of casual importers and exporters
 - Security is risk based, provisional payment **may** therefore be required depending on the risk

CHAPTER 28 REGISTRATION

CUSTOMS SUFFICIENT KNOWLEDGE TEST – RULE 28.24

- A proposal was received that the word “may” should be changed to “must” in rule 28.24(1)
 - No. The requirement of compliance with sufficient knowledge is contained in rule 28.16(a). This rule deals with the persons who **may** take the test for purposes of complying with the requirement
- Clarification was sought whether all customs officers will be subjected to this test
 - customs officers will be held to a higher standard and will be subject to appropriate training and refresher training

NOTIFICATION OF CHANGE IN CIRCUMSTANCES MATERIAL TO GRANTING OF REGISTRATION – RULE 28.26

- A recommendation was received that clients should instead of three working days, be allowed ten or more working days within which to notify SARS of the change in circumstances as contemplated in rule 28.26
 - The rule will be amended to provide for a longer period

CHAPTER 29 LICENSING

GENERAL

- Clarification was sought in relation to the purpose of SARS's "licence requirements"
 - Licenses are in terms of the CCA required for purposes of customs control over goods and persons entering or leaving the Republic, to ensure effective collection of import and export tax in terms of the CDA
 - Furthermore, licensed premises are "customs controlled areas" in terms of the CCA which facilitates the performance of enforcement functions

LICENCE TYPES FOR PREMISES – RULE 29.2

- A proposal was received to delete the words "specific purpose" in rule 29.2 (1)(o)(i) & (ii)
 - Not accepted. The purposes for which goods may be cleared for warehousing in public storage warehouses are set out in section 300 of the CCA and the purposes for which goods may be cleared for warehousing in a private warehouse are set out in section 301

CHAPTER 29 LICENSING

DOCUMENTS REQUIRED FOR SUPPORTING ALL APPLICATIONS FOR NEW LICENCES AND RENEWAL OR AMENDMENT OF EXISTING LICENCES – RULE 29.11

- A proposal was received to amend rule 29.11 (1) by inserting the words “other than in circumstances where the following documents have already been submitted, within a period of three years from the date when such documents were submitted, an application for a new license type must be supported by the following...”
 - The rule will be amended by the deletion of “together with” and the insertion of “supported by”
 - The effect will be that supporting documents must be submitted on request (Also see rule 41.26)
- Clarification was sought as to which documents would suffice in support of security and back-up capabilities as referred to rule 29.11(1)(g)
 - Documents setting out back-up capabilities for electronic systems
 - Security management plans etc.

CHAPTER 29 LICENSING

ADDITIONAL SUPPORTING DOCUMENTS REQUIRED FOR APPLICATIONS FOR LICENSING OF PREMISES – RULE 29.12

- A proposal was received to delete the requirement in rule 29.12(c)(ii) in relation to the location of electronic security sensors
 - Not accepted. SARS does not place an obligation on the applicant to install security sensors, but if installed the location must be indicated
- Clarification was sought as to which “other” legislation is referred to in rule 29.12(d)
 - Other legislation applicable to imported goods, requiring permits or certificates in respect of such goods, or requiring that certain goods may only be stored in a specific way (for example, health and safety legislation)
- Clarification was sought whether Standard Operating Procedures and process maps will be sufficient documentation for purposes of rule 29.12(f)
 - Yes – any document setting out the relevant procedure to ensure physical security of the premises, goods and records will suffice

APPLICATIONS FOR NEW LICENCES OR RENEWAL OF LICENCES OF PREMISES AS PUBLIC OR PRIVATE STORAGE WAREHOUSES – RULE 29.15

- Clarification was sought whether a waste policy document would suffice for purposes of rule 29.15(a)(iii) and what specifics of the inventory system would be required
 - Any document describing the waste inventory system or procedures relating to waste control or management will suffice

CHAPTER 29 LICENSING

COMPLIANCE WITH REQUIREMENT OF SUFFICIENT KNOWLEDGE OF CUSTOMS LAWS, GUIDES, INTERPRETIVE NOTES, OPERATIONAL MANUALS AND PRACTICES – RULE 29.25

- A recommendation was received to add a timeframe in rule 29.25(1)
 - Not accepted. Subrule (1) implies that the person applying for licensing must have complied with the sufficient knowledge requirement
 - Subrule (2) “softens” the application of the requirement by allowing an applicant to submit the application **before complying**, but subject to the proviso that the application may not be **granted** before compliance. The applicant is in terms of subrule (3) allowed 90 days from submission of the licensing application to comply

ADDITIONAL GENERAL CONDITIONS APPLICABLE TO LICENSED CARGO TERMINALS – RULE 29.27

- A recommendation was made that the requirement relating to the provision of **permanent** space at a terminal in rule 29.27(b) be amended to provide for a similar requirement as referred to in rule 29.30(1)(c), which requires a licensee to provide such space **whenever necessary**
 - Not accepted. The space requirement at a terminal differs from the requirement at a storage warehouse due to the nature and frequency of enforcement functions performed there

CHAPTER 29 LICENSING

ADDITIONAL GENERAL CONDITIONS APPLICABLE TO LICENSED CARGO TERMINALS – RULE 29.27

- Clarification was sought whether liquid bulk operators must license their premises at terminals as terminals or as storage warehouses, and as to what the reporting obligations would be
 - The activity at the premises will determine what type of licence it will be. In respect of liquid bulk operators, licencing could be for a special sea cargo terminal or a storage warehouse, or both (see definitions of “special sea cargo terminal” and “storage warehouse”)
 - Once licensed, the obligations applicable to the specific licensing type must be complied with
- Clarification was sought as to what “adequate security measures” need to be in place
 - An exhaustive list of security features is not provided for
 - It depends on what is adequate and suitable in the circumstances for the specific structure to ensure the physical security of the goods

CHAPTER 29 LICENSING

ADDITIONAL GENERAL CONDITIONS APPLICABLE TO LICENSED STORAGE WAREHOUSES – RULE 29.30

- A proposal was received to insert a footnote in rule 29.30(2)(g) to clarify “separate area”
- Furthermore concern was raised that the requirement of a separate area for temporary storage of detained or seized goods is an impractical requirement for liquid bulk storage facilities due to the variety of products stored
 - Accepted
 - The rule does not state that there must be a dedicated separate area that must always be the same area, provided that the detained goods can be kept separate from the other goods at the time of detention
 - A footnote will be inserted to clarify

CHAPTER 31 SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

FORM AND FORMAT OF, AND PARTICULARS TO BE REFLECTED ON, SURETY BONDS - RULE 31.6

- The requirement that surety bonds or addendums to surety bonds must be submitted manually was questioned - rules 31.6(1)(d) and 31.10(3)(b)
 - Surety bonds (and addendums to surety bonds) are legal contracts. Originals thereof must be in possession of and secured by SARS

APPLICATION FOR AMENDMENT OF BOND AMOUNT - RULE 31.10

- Concerns were raised that the timeframe of 14 working days for submission of a new surety bond or addendum is too short and should be extended – rules 31.10(3)(b) and 31.11(1)(b)
 - Not accepted. Application can be made for extension of the timeframe in terms of section 908 of the CCA

AMENDMENTS OF BOND AMOUNTS ON INITIATIVE OF CUSTOMS AUTHORITY- RULE 31.11

- Clarity was requested in relation to the grounds on which Customs can instruct a person to amend his/her bond amount
 - If, for example, it appears that the risk is not adequately covered by the bond or where a client obtains accreditation and the bond amount is decreased as a benefit of accreditation

CHAPTER 31 SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

CANCELLATION OF GUARANTEES ONLY BY WRITTEN AGREEMENT - RULE 31.14

- A proposal was made that the client should be advised of such cancellation
 - The client will be informed. However, because the client is not a party to the guarantee, the client does not enter into an agreement with SARS as to the cancellation of that guarantee

AMENDMENT OF GUARANTEES ONLY BY WRITTEN AGREEMENT - RULE 31.15

- A proposal was made that the client must be included in and advised of any such amendments
 - The client will be informed. Because the client is not a party to the guarantee, the client does not enter into an agreement with SARS as to the amendment of that guarantee

CHAPTER 32 RECOVERY OF DEBT UNDER THE CONTROL ACT

APPLICATIONS FOR INSTALMENT PAYMENT AGREEMENTS - RULE 32.8

- Proposals were made that manual applications should be allowed
 - Application in terms of rule 32.8(1)(a) is subject to rule 41.13 which provides for submission in paper format
 - Manual submission will be allowed in limited circumstances as set out in section 913(4) of the CCA
- Comments were received that in instances where the debtor is a natural person who may not have financial statements or an auditor, the rule should be amended to allow for the submission of alternative or other credible evidence – rule 32.8(3)(b)
 - Rule 41.27 caters for submission of alternative documents

APPLICATION FOR REFUND OF ADMINISTRATIVE PENALTIES, INTEREST AND OTHER PAYMENTS - RULE 32.13

- Proposals were made that manual applications should be allowed
 - Application in terms of rule 32.13 is subject to rule 41.13 which provides for submission in paper format
 - Manual submission will be allowed in limited circumstances set out in section 913(4) of the CCA

CHAPTER 32 RECOVERY OR DEBT UNDER THE CUSTOMS CONTROL ACT

CONSIDERATION OF APPLICATIONS - RULE 32.15

- Clarification was sought on what makes an applicant “competent” to submit a refund application – rule 32.15(2)(a)
 - “Competent” in this context refers to a person acting in the circumstances referred to in rule 32.12. Therefore it means a person who is “capable” or “who may submit” with reference to the circumstances in 32.12
- A recommendation was made that a subrule (5) be inserted providing for the applicant to be notified of the approval of the refund application and the date of such approval
 - Not accepted. Recommendation already catered for in rule 32.15(3)(b)
- A recommendation was made that the meaning of “technical grounds” be incorporated as “rectifiable shortcomings” - rule 32.15(4)(c)
 - Not accepted. Rule 32.16(1) makes it clear that the “technical grounds” in rule 32.15(4)(c) are restricted to rectifiable shortcomings only

CHAPTER 32 RECOVERY OR DEBT UNDER THE CUSTOMS CONTROL ACT

RE-SUBMISSION OF REJECTED APPLICATIONS - RULE 32.16

- A concern was raised that the five working days for re-submission of a rejected application is insufficient and that the timeframe should be extended to at least 10 working days – rule 32.16(2)
 - Not accepted. A technical rectification and resubmission of the application should, due to the technical nature of the correction, not take longer than five working days

SET-OFF OF REFUND AGAINST AMOUNT OWING – RULE 32.19

- A comment was made that SARS should indicate the reasons for setting off a refund against an amount owing by a client in instances where the customs broker's deferment account was utilised for payment of duties
 - Not accepted. Set-off takes place by operation of law if there is an amount owing
 - **Notice** of the set-off will be given to the customs broker

CHAPTER 33 GENERAL ENFORCEMENT FUNCTIONS

FIREARMS

- A comment was made that firearms are, in terms of entities' health and safety regulations, not allowed on certain premises
 - In terms of section 708(2)(b) of the CCA, a customs officer performing an enforcement function must do so with due regard to other applicable legislation. Where specific health and safety legislation is applicable to a particular entity, customs officers must comply with the relevant legislation
- A question was raised as to how often psychometric evaluation and practical training sessions will be reviewed and a recommendation made that it should be in line with the Firearms Control Act (rule 33.5)
 - The issuing and control of firearms to customs officers is subject to the Firearms Control Act and customs officers will also be required to comply with the applicable requirements
- A concern was raised as to the necessity for customs officers to carry firearms
 - Current customs legislation provides for firearms and more importantly, international best practice indicates that Customs as an enforcement agency requires tools such as firearms, patrol boats and the like to effectively perform its enforcement functions, particularly at places of entry and exit

CHAPTER 33 GENERAL ENFORCEMENT FUNCTIONS

SAMPLES

- A comment was made in relation to rule 33.19(1)(g), that all samples must be returned by Customs and that timeframes for returns must be specified
 - SARS does not have a discretion as to whether samples are returned or not, it must be returned and SARS is willing to return the samples. However, there will be instances where a sample cannot be returned, such as when it is fully utilised in analytical testing
- A comment was made in relation to rule 33.19(1)(h), that the client or representative must always be present when samples are taken
 - Not accepted. It may not always be possible to locate the client or representative, and in certain circumstances it may not be expedient to do so

CHAPTER 34 DETENTION, SEIZURE & CONFISCATION/ P&R GOODS

REQUEST TO BE PRESENT AT INSPECTION

- A recommendation was made that rule 34.3 be deleted as a person with an interest in the goods should not be barred from being present when the goods are inspected
 - The legislation does not bar a person or that person's representative from being present when the goods are inspected. This provision merely provides for the administrative process in accordance with which the relevant person arranges with the customs authority to be present during the inspection
- A comment was received that rule 34.3(e) be amended to reflect the current practice that the representative or broker advises customs where the examination will take place
 - We believe the rule adequately covers this scenario

CHAPTER 34 DETENTION, SEIZURE & CONFISCATION/ P&R GOODS

TERMINATION OF DETENTION

- A recommendation was made that rule 35.2(5) be deleted as it would not be reasonable to impose a penalty where goods have been detained in error
 - This rule must be read with section 774(a) of the CCA and applies to the situation where prohibited goods were imported into the Republic. In this scenario the detention would likely not have been in error. In the event that customs authority detains in error, penalties will not be imposed. Where penalties have been imposed and paid in error, provision is made for refunds in terms of rule 32.12
- A similar recommendation was received regarding rule 35.4(5)
 - This is not accepted as the rule needs to be read with sections 783(a) and 789(2)(a) of the CCA
 - It applies where restricted goods are imported into the Republic without the necessary permit or authorisation

CHAPTER 37: RECONSIDERATION OF DECISIONS & DISPUTE RESOLUTION

- The content of this Chapter is still under internal consideration and will be published for comment as soon as the internal consideration has been finalised

CHAPTER 39 ADMINISTRATIVE PENALTIES

LIST OF NON-PROSECUTABLE BREACHES

- A comment was raised that the mentioned list should not include breaches that do not result in revenue prejudice, particularly when consisting of the submission of incorrect or partially incomplete information not resulting in revenue prejudice
 - Section 877 was amended in TALAA 2015:

“(3) The customs authority may for a non-prosecutable breach of this Act listed in terms of section 876 (1) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in revenue prejudice, impose in terms of subsection (1) a fixed amount penalty for the breach **only after it has issued a warning** for the same or a similar type of breach to the person who committed the breach.”
- A comment was raised that rule 39.1 does not refer to the penalty amount to be imposed
 - Rule 39.1(h) refers to the penalty amount to be reflected on the notice and this amount will be contained in the list of fixed amount penalties

CHAPTER 39 ADMINISTRATIVE PENALTIES

ADMINISTRATIVE PENALTIES

- A question was raised whether SARS will continue to issue letters of intent for fixed amount penalties
 - A list of fixed amount penalties for certain breaches will be published in terms of section 876, so that the client will be aware of the **imposition** of penalty and the **amount** of that penalty in relation to a specific breach of the legislation. No notice of intent will be issued, only a notice imposing the penalty. This notice will inform the client of his right to object against the penalty
- Clarification was sought whether the customs broker will receive a copy of the penalty notice
 - A penalty notice will be issued to the person who has committed the breach. If that person is for example the importer or exporter, the customs broker will not receive a copy of the notice. Note that it is also not current practice for a copy to be sent to the customs broker as this is confidential information

CHAPTER 39 ADMINISTRATIVE PENALTIES

PROSECUTION AVOIDANCE PENALTIES - RULE 39.2

- A comment was made that SARS must state what the quantum of a prosecution avoidance penalty is and clarify issues relating to it
 - The quantum of the prosecution avoidance penalty will be decided on a case by case basis, since this penalty will relate to a particular prosecutable offence. This means that these penalties would be imposed for serious contraventions of customs legislation. Section 883 of the CCA specifies the extent to which the Chapter 37 proceedings are applicable to prosecution avoidance penalties
 - Only the amount of a prosecution avoidance penalty is subject to Chapter 37 proceedings and not the imposition thereof (section 883(2)) of the CCA). The reason for this is that the client has the option to go to court which he chooses by not paying the penalty

MISSING GOODS PENALTY – RULE 39.3

- A concern was raised that the terms “cannot readily be found” and “missing goods” are not defined
 - Both phrases retain their ordinary dictionary meaning

CHAPTER 39 ADMINISTRATIVE PENALTIES

MISSING GOODS PENALTY

- A question was raised whether this penalty will apply to goods stored in a storage facility or short shipped importation and, if this is the case, whether the rule needs to be amended
 - Short shipped goods will be liable to a missing goods penalty only if those goods are liable to confiscation in terms of section 766(1) of the CCA
- A recommendation was made to amend rule 39.3(a) to read “the name and customs code of the person who cleared the goods” and to insert a footnote making reference to section 166 of the CCA
 - Not accepted. The penalty notice and the information contained therein are meant to cover many scenarios and the proposed amendment would limit the application of the notice. Furthermore, section 882 of the CCA lists the persons to whom it may be issued and includes “the person who committed the act which rendered the goods liable to confiscation”

CHAPTER 40 JUDICIAL MATTERS

NOTIFICATION TO EXONERATE REGISTERED AGENTS – RULE 40.1

- A comment was made that SARS should elaborate on who would fall into the categories of registered agent, director, administrator and trustee
 - “Registered agent” is defined
 - Consideration will be given to clarify “persons managing juristic entities”

CHAPTER 41 MISCELLANEOUS MATTERS

COMMUNICATIVE SYSTEMS – RULE 41.6

- A recommendation was made that rule 41.6(a) be amended to include clearance declarations
 - Clearance declarations are covered in rule 41.6(b)

GENERAL CONDITIONS FOR ELECTRONIC COMMUNICATION – RULE 41.7

- A question was raised as to why an importer / exporter should be registered if they are using an ordinary representative
 - An amendment to section 606 will be effected to require only the person who is actually using the electronic channel to communicate with SARS, to register as an electronic user

CHAPTER 41 MISCELLANEOUS MATTERS

DIGITAL SIGNATURES FOR EDI – RULE 41.8

- A comment was made that rule 41.8(1) does not refer to eFiling and the question asked whether a digital signature is required for eFiling. A detailed definition of “digital signature” is not provided
 - The eFiling terms and conditions as contained on the SARS website deal with authentication for purposes of that system and hence are not duplicated in the rules. The specific requirements for EDI are contained in the user agreement
- A question was raised whether each individual in an organisation who communicates with Customs needs to register as an EDI user
 - No, it is the juristic entity that must register as an electronic user
 - Note the proposed amendment to section 606 of the CCA referred to above

REQUIREMENTS FOR SUBMISSION OF DOCUMENTS / COMMUNICATIONS

- A recommendation was made to allow directors and the financial manager to provide the written authorisation referred to in rule 41.18(1)(a)
 - Yes, provided these persons have the authority within the organisation to issue instructions to representatives

CHAPTER 41 MISCELLANEOUS MATTERS

CONTENTS OF REPRESENTATIVES' AUTHORISATIONS – RULE 41.21

- A question was raised whether a contract between the representative and the principal would suffice as the authorisation referred to in rule 41.18(1)(a)
 - This could be acceptable provided it contains the required information
 - However, it should be kept in mind that contracts could be too voluminous for Customs to scrutinise in order to find the particulars of the representative's mandate. To avoid unnecessary administrative burden on Customs a resolution is preferred because it is a concise document providing all the information relevant to the appointment
- A question was raised whether the authorisation would include a clearing declaration
 - The term clearing declaration is not understood

CHAPTER 41 MISCELLANEOUS MATTERS

TIMEFRAMES FOR SUBMISSION OF SUPPORTING DOCUMENTS – RULE 41.23

- A recommendation was made that the three working days timeframe for submission of documents other than documents supporting a clearance declaration in rule 41.23(1)(b) be amended to five working days
 - Not accepted. Application for extension of the timeframe can be made
 - It is also to be noted that this rule only applies where no timeframe is stated on the request for submission

CERTIFIED DOCUMENTS - RULE 41.28

- A question was raised whether certified hard copies are still required and it was proposed that the rule requires alignment with the current electronic environment
 - Yes it is still required. The certified hard copy of a supporting document may be scanned and submitted
 - Note this rule requires that the date of certification of the certified hard copy of a supporting document kept by a client must not be older than three months

CHAPTER 41 MISCELLANEOUS MATTERS

KEEPING RECORDS OUTSIDE THE REPUBLIC - RULE 41.33 READ WITH RULE 41.35 AND 41.36

- A question was raised as to whether documents kept in a “cloud” environment would be considered storage outside the Republic
 - Application must in such a case be made to store records either elsewhere than the prescribed premises, or at a place outside the Republic, depending on where the server is located

RETENTION OF RECORDS - RULE 41.37

- A recommendation was made that the words “at least” be removed from rule 41.37
 - Not accepted. If an entity wants to keep records for longer it may do so. The provision merely requires that those records not be kept for less than a 5 year period commencing at the end of the transactional year

OTHER COMMENTS

COMMENT	RESPONSE
Rule 3.9(2)(d) - Clarification was requested as to what a "Department of Home Affairs Certificate" is and why this is necessary	This certificate is a requirement in terms of section 7(1)(g) read with section 35(8) of the Immigration Act No. 13 of 2002, read with Regulation 34 (13) of the Regulations under that Act. A footnote to clarify will be inserted
Rule 3.11 - Timeframes for submission of advance aircraft, crew and air travellers notices should take into account over border flights that are less than 1 hour	Accepted. Rules will be amended to take this into account
Rule 3.31 - Reduce timeframe for the submission of outturn reports in respect of containers off-loaded from a vessel, from not later than 24 hours after last container off-loaded to 4 hours after last container off-loaded. This was requested due to fears that the outturn report will determine the status of the clearance declaration	Not Accepted. This is a current requirement in terms of the 1964 Customs and Excise Act. The outturn report does not determine the status of the declaration
Part 6 of the rules to Chapter 3 (outturn reports) - Concerns were raised that it would not be possible to submit outturn reports within the required timeframes	Not Accepted. The same timeframes are currently prescribed in the 1964 Act
Part 6 of the rules to Chapter 3 (outturn reports) - Concerns were raised that release of cargo was dependent on completion of outturn reporting	Release of cargo is not subject to the completion of outturn reporting

OTHER COMMENTS

COMMENT	RESPONSE
Rule 3.43 - The licensee of a depot will not be in a position to report on cargo received with no transport documents, since receipt of cargo in licensed depots is facilitated by a manifest	Accepted. The rule will be amended to “has no transport document number with which the cargo can be associated”
Rule 5.1 - Clarity requested as to “separately identifiable” in relation to goods not in free circulation transported with other goods in the same vehicle	This will be clarified in external standards and guides
Rule 5.2 - Will receipt and delivery notifications be required for transport of goods from one SVM extension to another	Not required if the extensions are covered under a single licence
Rule 5.7 - How will application for redirection be made	Submission of amended clearance declaration reflecting amended particulars is required – new release notification must be regarded as permission for the redirection
Rule 5.4 - Clarity requested on reporting of breakdowns, accidents and other unforeseen events	Addressed on pages 14 -15 of presentation at workshop held on 29 August 2014

OTHER COMMENTS

COMMENT	RESPONSE
Rule 16.3 - Clarity requested on whether international postal articles handled by the South African Post Office are excluded from the provisions of section 369(1) of CCA	Rule 16.3(c) read with section 369(2) of the CCA, excludes international postal articles handled by the South African Post Office from the application of section 369(1)
Rule 16.4 - In respect of timeframes for notification of failure to export goods. Clarity requested on whether the “plus 2 calendar days” period referred to in paragraph (b) is applicable after the goods have reached the air cargo terminal	Yes
Rule 16.4 - In respect of timeframes for notifications of failure to export goods. It was suggested that the “plus one hour” period in the case of goods moved by road is impractical, and a recommendation was made that the period be increased to 2 to 3 days after the goods reached the border post	Accepted. The timeframe will be increased to 2 days

OTHER COMMENTS

COMMENT	RESPONSE
LCL containers not provided for in rule 16.4 (2)(a)- notification of failure to export	Rule 16(4)(a) includes containerised goods
Rule 16.6 - Concerns raised that request for documents constituting proof that goods were exported is a duplication of reporting	Not a duplication because this request is directed to a person clearing goods for export i.e. the exporter. A report is third party information received electronically from a carrier or other party
Rule 16.6 - Concerns raised in relation to requirement that a release notification stamped by Customs will constitute proof that goods were loaded for export	Customs will only stamp a release notification in the event of a systems breakdown. See footnote 324. Rule 16.1 will be amended to clarify that this is not an exhaustive list of documents constituting proof
Rule 17.12 - How will taking a sample of imported goods upon their return help SARS match it to goods exported under the temporary export procedure?	The words “upon their return” relate to the comparison that will take place upon the return of the goods, it does not imply that the samples will only be taken upon return
Rule 30.13 - Would applicants have to re-apply for their SARS licences after being accredited to allow SARS to reassess the security amount required for each license type?	No. The security will be reassessed after accreditation status is conferred

OTHER COMMENTS

COMMENT	RESPONSE
Rule 1.1 – Various comments requested clarity on data elements to be reflected on reporting documents	Detailed information on data elements to be reflected on reporting documents will be clarified in the EDI user manual and technical specs
No details with respect to penalties in Chapter 3	The fixed amount penalties are listed by the Minister in terms of section 876. The list is still being finalised
Will the movement of consolidated air cargo from an air cargo terminal to an air cargo depot be accommodated through “gate out” and “gate in” reports	Will be controlled through the outturn reports for goods transported between depots and terminals served by the same customs office (Also see section 120(c) of CCA)

OTHER COMMENTS

COMMENT	RESPONSE
Comment in relation to additional information to be reflected on clearance declaration (rule 7.2(d)) - the exact date of arrival of the goods is not known	Par (d) will be deleted as the expected time of arrival is covered in section 167(1)(d) of the CCA
What is the “message function” (rule 7.2(a))?	See definition in rule 1.1
Clarification sought whether the documents listed in section 176 of the CCA must be available for submission in respect of manual clearances	Yes
Proposal to require only the customs code of the principal and not the ID number on the clearance instruction (rule 7.6(1)(a))	Accepted
Clarification sought whether the clearance instruction may reflect ordered quantities in terms of rule 7.6(1)(h) - in the case of liquid bulk for e.g. the received quantity will not be the same as the ordered quantity	Agree, quantity as per invoice
Whether more than one invoice number can be accommodated on a clearance declaration	The clearance declaration can accommodate up to 999 invoice numbers and dates

OTHER COMMENTS

COMMENT	RESPONSE
Within which timeframe must amended clearance declarations be submitted (rule 7.7)	An amended clearance declaration must in terms of section 174 of the CCA be submitted “promptly” upon becoming aware of incorrect or outdated information. What constitutes a “prompt” response depends on the circumstances of each case. Note that the customs authority can instruct a person to submit within specified timeframe
Clarification sought as to whether goods under the warehousing procedure can be cleared and released for excise warehouse transit	Yes, see footnote 203 to section 221 of the CCA
Proposal to include PE International Airport as a customs airport where goods may be off-loaded or loaded onto aircraft under the international transit procedure (rule 9.2)	Accepted
Proposal to include Grand Central Airport as a customs airport where goods may be off-loaded or loaded onto aircraft under the international transit procedure (rule 9.2)	Not accepted. When Grand Central Airport receives designation by Cabinet as an international airport, the request will be considered

OTHER COMMENTS

COMMENT

Whether the definition of “packing material” includes containers for purposes of temporary admission procedure

RESPONSE

Containers and pallets are excluded from the definition of “packing material” (Istanbul Convention). Containers are reusable transport equipment which automatically come under temporary admission procedure. Rule 12.14(b) provides for containers under the temporary admission procedure to be used once for internal transport in the Republic before re-export

OTHER COMMENTS

COMMENT

RESPONSE

Clarification required as to whether a release notification for international transit constitutes proof of export (rule 9.16)

No, a release notification does not evidence exit from the Republic unless stamped by the customs authority upon exit in event of a systems breakdown (where exit cannot be recorded electronically). Rules dealing with documents constituting proof of export will be amended to indicate that the lists contained in such rules are not exhaustive

Clarification was required as to whether rule 9.17(2) dealing with transport of vehicles in transit applies to both national and international transit

Rule will be amended to clarify that -

- Imported new vehicles under national transit may be transported under its own power, or be carried on board another vehicle
- Imported new vehicles under the international transit procedure must be carried on board another vehicle
- Imported second hand vehicles under international transit must be carried on board another vehicle

Actual quantities delivered or received (excise warehouse transit goods) cannot be reflected on delivery and receipt notifications

Accepted, for liquid or dry bulk goods. Provisional quantity can be recorded and updated upon confirmation. (Please note proposed changes in respect of submission of notifications of delivery and receipt)

OTHER COMMENTS

COMMENT	RESPONSE
Rule 9.5 - Proposal to extend timeframe within which to notify of failure to comply with commencement and completion periods to 24 hours (transit operation)	Accepted
Provide definitions for "exportation voucher" and "certificate of location"	Accepted, will be clarified
Rule 12.17 - "description of the sound - and satellite navigation system" needs to be clarified	The word "sound" will be replaced by "audio" (i.e. audio system)
Rule 12.17(b) - proposal that the information linked to a case should be stored electronically	Information and images will be stored electronically and linked to the relevant case/clearance declaration
Proposal that all home use processing subcontractors should be licensed	Government's policy is to facilitate participation of SMMEs in supply chains by reducing the cost of compliance and red tape. The liability in case of non-compliance remains with the licensee of the home use processing premises. See footnote 327 to section 449 of the CCA
Suggestion that the word "approval" in heading of rule 19.12 should read "approved"	Not accepted, "approval" in this context is correct

THANK YOU
Questions?