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**GOVERNMENT NOTICES**

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**SOUTH AFRICAN REVENUE SERVICE****No. R. 699****29 June 2009****CUSTOMS AND EXCISE ACT, 1964  
AMENDMENT OF RULES (No. DAR/54)**

Under sections 38, 39, 101A and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto with effect from **4 July 2009**.

**GEORGE NGAKANE VIRGIL MAGASHULA  
ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

**SCHEDULE**

- (a) By the substitution for the heading of and for rules 38.08 to 38.12 of the following headings and rules:

**“Release of entered imported goods or goods for export**

- “38.08 (a) For the purposes of the rules numbered 38.08 to 38.12, unless otherwise specified or the context otherwise indicates

—  
“**accredited declarant**” means a declarant who has been accredited as contemplated in section 64E;

“**declarant**” means a person who makes due entry of goods as contemplated in sections 38 and 39;

**“declarant release message”** means the electronic communication by an accredited declarant of all the information contained in an electronic message to a release authority;

**“electronic message”** means an electronic communication in accordance with the provisions of section 101A, its rules, the user agreement and user manual from the Commissioner to –

- (i) a declarant or accredited declarant who entered by means of electronic communication any –
  - (aa) imported goods or goods for import, including goods for storage in a customs and excise warehouse, or goods for export as contemplated in sections 38 and 39; or
  - (bb) any goods for removal from a customs and excise storage warehouse; or
- (ii) the declarant or accredited declarant and the release authority,

for release or detention of the goods concerned;

**“goods”** means imported goods, goods for export, as may be applicable, whether or not containerized, or goods in a customs and excise storage warehouse, but excluding accompanied personal effects of a passenger or a member of a crew, that –

- (i) in the case of imported goods, have been carried by a ship or vehicle from a port or place outside the common customs area to a port or place in the Republic and have been unloaded at that port or place;
- (ii) in the case of goods for export, are goods at a port or place in the Republic ready for loading on to a ship or vehicle for carriage to a port or place outside the common customs area;
- (iii) in the case of goods in a customs and excise storage warehouse, are goods which after due entry are removed from such warehouse for any purpose authorised by this Act;

“**release**” means that for the purposes of the Act or any other law goods are allowed to pass from the control of the Commissioner as contemplated in section 107(2)(a);

“**release authority**” means –

- (i) any master, pilot or other carrier in respect of any goods for which such a master, pilot or carrier is liable until lawful delivery of the goods, after due entry thereof to an importer or his agent as contemplated in section 44(5)(a);
- (ii) a container operator approved by the Commissioner in terms of section 96A in respect of goods contained in a FCL container to be released from a container terminal contemplated in section 6(1)(hA) or a container depot contemplated in section 6(1)(hB);
- (iii) the depot operator of a container depot licensed in terms of section 64A, in respect of any goods contained in a LCL container or FCL (groupage) container defined in the rules for section 8 to be released from a such a container depot;
- (iv) the degrouping operator who is a licensee of a degrouping depot licensed in terms of section 64G, in respect of any air cargo to be released from such depot;
- (v) the licensee of a customs and excise storage warehouse in respect of any goods released from a customs and excise storage warehouse contemplated in section 19, 19A or section 21; or

“**the Act**” includes any provision of “this Act” as defined in the Customs and Excise Act, 1964.

- (b) In these rules any word or expression to which a meaning has been assigned in the rules for section 8 of the Act bears the meaning so assigned.

(c) Subject to section 12 and the rules made thereunder, section 18(1)(d) or (e) or 38(3) and rule 38.14, any provision relating to customs and excise storage or manufacturing warehouses, as may be applicable, no –

- (i) imported goods landed in the Republic may be delivered from the place of landing;
- (ii) goods may be loaded on a ship or vehicle for export at the place of shipment;
- (iii) goods may be removed from a customs and excise storage warehouse,

except upon due entry and after release is authorised as prescribed in these rules.

(d) If any person delivers, loads or removes any goods contemplated in paragraph (c) before release thereof is authorised, such goods shall, if the Controller so requires, at the expense of the person concerned, be returned to the place from which the goods were so delivered, loaded or removed or delivered to any other place the Controller may determine.

#### **Electronic release or detention of goods**

- 38.09 (a) The Commissioner may authorize the release or detention of all or any part of goods entered by a declarant by transmitting an electronic message releasing or detaining such goods to both the declarant and the relevant release authority in control of such goods.
- (b) Where the declarant and the release authority have both received an electronic message from the Commissioner authorizing the release of all or part of any goods entered by the declarant, such goods may only be delivered, loaded or removed, as may be applicable, subject to compliance with the provisions of subparagraphs (c) and (d).

- (c) (i) Where the goods have been electronically entered by a person who is an accredited declarant the person concerned –
- (aa) must print out the complete electronic release message and present it to the release authority in order to obtain release of the goods; or
  - (bb) in instances where he or she and the release authority are able to electronically communicate with each other, transmit a declarant release message to the release authority concerned in order to obtain release of the goods.
- (ii) Where the goods –
- (aa) have been manually entered by an accredited declarant; or
  - (bb) by a person who is not an accredited declarant; or
  - (cc) is under the control of a release authority that is not a registered user as contemplated in section 101A,  
the goods may only be delivered, loaded or removed, as may be applicable, subject to compliance with the provisions of rule 38.10.
- (d) A release authority in control of goods for which it has received an electronic message may only deliver, load or remove goods or cause such goods to be delivered, loaded or removed if the electronic message received by it confirms that –
- (i) the goods may be released;
  - (ii) no SARS computer printed release notification is required; and
  - (iii) subject to paragraphs (f) and (g) all the information contained in the electronic message corresponds to –
    - (aa) all the information reflected on the printed release message contemplated in rule 38.09(c)(i)(aa) presented by the accredited declarant; or

- (bb) all the information contained in the declarant release message received from the relevant accredited declarant, and the goods concerned.
- (e) Electronic release is not valid and the release authority may not release the goods where the release message does not comply with the requirements of paragraph (d)(iii).
- (f) (i) An accredited declarant may apply to the Commissioner to be exempted from the requirement contemplated in paragraph (c)(i)(aa) or (bb) where the accredited declarant and the release authority are related to each other in business, by shareholding or in any other manner that the Commissioner may determine.
- (ii) The exemption contemplated in subparagraph (i) shall be subject to such conditions as the Commissioner may consider reasonably necessary to ensure proper compliance with these rules.
- (g) Where an exemption referred to in rule 38.09(f) is granted the release authority may deliver, load or remove goods or cause such goods to be delivered, loaded or removed on notification by the accredited declarant that he or she has received an electronic message releasing the goods.

**Goods not released or detained by electronic message**

- 38.10 (a) Where goods are not released or detained by electronic message as contemplated in rule 38.09 –
- (i) release of any duly entered goods may be authorised by the Controller only by –
- (aa) endorsing any copy of the relevant SAD form to that effect;
- (bb) issuing a computer printed release notification on a SARS letterhead; or



- (ii) may only be delivered if release is authorised by –
  - (aa) the Controller on form DA 74;
  - (bb) the authority contemplated in subparagraph (i)(bb); or
  - (cc) an electronic release message that releases goods previously detained as contemplated in rule 38.09(a) or in rule 38.10(a)(ii).

#### **Keeping of records**

- 38.12 (a) An accredited declarant and release authority must keep all electronic messages, declarant release messages, or any other documents referred to in these rules for a period of five years from the date that that message was transmitted or that document generated.
- (b) Any such electronic message, declarant release message, or any other documents must be produced to a customs officer on demand.”