

NOTICE 95 OF 2010**DEPARTMENT OF TRADE AND INDUSTRY****NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS
ACT, 2008 (ACT NO. 5 OF 2008)**

It is hereby made known under section 36 of the National Regulator for Compulsory Specifications Act (Act 5 of 2008), that the Minister of Trade and Industry, and after consultation with the Board, intends to make the regulations as set out in the attached schedule.

Any person who wishes to make comments to the intention of the Minister to thus introduce the regulations concerned, shall submit their comments, in writing, to the Chief Executive Officer, National Regulator for Compulsory Specifications, Private Bag X25, Brooklyn, 0075, on or before the date two (2) months after publication of this notice.



DR. ROB DAVIES, (MP)

MINISTER OF TRADE AND INDUSTRY

DATE: 14/12/09

SCHEDULE

DEFINITIONS

1. In these regulations -

any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned, unless the context otherwise indicates;

“CEO” shall mean the Chief Executive Officer of the National Regulator for Compulsory Specifications as appointed in terms of section 21 of the Act;

“evidence of conformity” shall mean the evidence provided for a commodity, product, or service, covered by a compulsory specification that supports compliance in terms of regulation 7;

“fees” shall mean any monetary amount that shall be paid to the National Regulator in terms of section 14 (3)(b) of the Act;

“levy” shall mean a fee, as a monetary amount, levied by, and paid to, the National Regulator, by a manufacturer or importer of commodities or products, or the provider of services, covered by a compulsory specification in terms of section 14 (3) (b) of the Act;

“levy payer” shall include a natural or juristic person being a manufacturer or importer of commodities or products, or the provider of services, covered by a compulsory specification;

“levy period” shall mean the period as set by the Minister by notice in the Gazette;

"service" shall mean any service, including a facility, provided in terms of the requirements of a compulsory specification; and

"technical regulation" shall mean any documented mandatory technical requirements for commodities, products or services.

PAYMENT OF FEES IN THE FORM OF LEVIES

2. (1) Fees in the form of levies are payable in respect of commodities or products manufactured or imported or services provided, that are subject to a compulsory specification.

(2)(a) A levy payer subject to levies to be paid on commodities or products manufactured or imported shall in respect of each levy period, submit to the National Regulator an accurate and detailed return on the prescribed form, of the total quantities of any commodity or product manufactured or imported by such person: Provided that the National Regulator may also require any person who is reasonably suspected to be a levy payer to submit such return.

(b) The levy payer, a designated person in the employ of a levy payer, or an auditor authorised by the levy payer to act on the levy payers' behalf, shall certify the return.

(3) Levy payers other than those contemplated in subregulation (2) shall submit to the National Regulator a levy return in which they declare the services provided and the period for which they were in operation.

(4) All levies as prescribed by the Minister in terms of section 14 (3) (b) of the Act for commodities, products or services, referred to in subregulations (2) or (3), shall for each defined levy period, be paid to the National Regulator.

(5) A levy in respect of a levy period shall become due and payable on the first day of the month following the expiry of such period.

(6) If a levy payer fails to submit the return referred to in sub regulations (2) or (3) to the National Regulator, or submits an inaccurate return, the CEO may estimate the manufactured or imported amounts of commodities or products or determine the period of services provided, to a maximum of the last 5 years, and hold the levy payer liable for the levy calculated in accordance with the estimate: Provided that the payment of a levy on the basis of an estimate shall not absolve the levy payer from settling in full any additional amount that may be due to the National Regulator.

(7) An estimate issued in terms of subregulation (6) shall for the purpose of court proceedings be *prima facie* proof of a levy due and unpaid.

(8) A levy payer that has not paid levies due to the National Regulator within three months of the date contemplated in subregulation (5) shall pay interest on those outstanding levies in terms of the Prescribed Rate of Interest Act, No. 55 of 1975, to the National Regulator.

(9) The amount of levy to be paid to the National Regulator and the applicable levy periods contemplated in subregulation (4) shall be recommended by the Board to the Minister following the National Regulator's consultation with levy payers.

(10) The fees and the levy periods contemplated in subregulation (9) shall be published by the Minister by notice in the Gazette.

FEES FOR SERVICES PROVIDED

3. Any fee, other than a levy for payment for services provided by the National Regulator, shall be set in terms of section 14 (3) (b) of the Act.

REDUCTION IN PAYMENT OF FEES IN THE FORM OF LEVIES

4.(1) Notwithstanding anything to the contrary in these regulations, the Board may recommend that levies prescribed in terms of section 14(3)(b), be reduced if the commodity or product is subject to the requirements of acceptability of evidence of conformity as contemplated in regulation 7.

(2) Notwithstanding anything to the contrary in these regulations, the Board may, in cases where the regulatory activity has been reduced, recommend that specific levy payers in the possession of a sales permit for commodities or products specifically manufactured for export only, be subject to a reduced levy from that prescribed in terms of section 14(3)(b).

(3) Any determination with regard to payment of a reduced levy, made by the Minister after consultation with the Minister of Finance, shall be published by notice in the Gazette at the same time of the publication of the levies contemplated in subregulation 2(10).

(4)(a) Where the Minister has published requirements for any reduction in fees contemplated in section 14(3)(b), a levy payer to which such reduction may be applicable, shall apply to the National Regulator with proof of participation in a scheme contemplated in regulation 4(1) or proof of possession of a sales permit contemplated in regulation 4(2), in order to be registered by the National Regulator for the receipt of such reduction.

(b) The application shall be accompanied by a registration fee set in terms of regulation 3.

(c) If any evidence is established by the National Regulator to the effect that a levy payer is no longer eligible for registration for a reduction of levy, the registration and levy reduction shall be withdrawn.

SALES PERMITS

5.(1) A manufacturer or importer in possession of a commodity or product that does not fully comply with the compulsory specification that applies to it, may apply to the National Regulator for a sales permit in terms of section 14 (4) of the Act.

(2) Any application for a sales permit contemplated in subregulation (1) shall be accompanied by the appropriate non-refundable fee as set by the Minister in accordance with regulation 3, and paid to the National Regulator.

(3)(a) Applications for a sales permit as contemplated in subregulation (1) or (4) shall be submitted in writing to the National Regulator.

(b) Each application shall be reviewed by a review committee for a decision on whether or not to recommend approval by the CEO or any specific conditions that should be applicable.

(c) If satisfied with the recommendation of the review committee, the CEO shall approve the sales permit by signature.

(d) The CEO must notify the applicant of the outcome of the application in writing.

(4)(a) A sales permit may be granted for commodities or products to which a compulsory specification applies, that do not comply with certain requirements of such specification, provided that those commodities or

products are specifically manufactured for export to a country outside the RSA.

(b) Subregulation 4(a) shall only apply to commodities or products manufactured to alternative requirements specified in technical regulations applicable to such country, and where such exportation is assured in writing by the manufacturer.

(c) The assurance contemplated in subregulation 4(b) shall be binding on the manufacturer and any deviation therefrom shall invalidate the said sales permit.

(5) The manufacturer or importer of a commodity or product, for which a sales permit has been granted, shall be bound by any conditions stipulated therein and failure to adhere to such conditions shall invalidate the said sales permit.

(6) Except where resale is specifically prohibited in the conditions, subject to which a sales permit is issued, the sales permit shall also cover the resale of the commodity or product by a person other than the sales permit holder: Provided that the existence of any restrictive condition of sale shall be disclosed in any successive sales document.

(7) A sales permit issued for a commodity or product shall not be transferable.

DIRECTIVES

6 (1)(a) A directive issued by the CEO in terms of section 15(1) of the Act, shall be withdrawn in writing by the CEO if no steps have been taken by

the Board in terms of section 15(3) or 34(4) of the Act within 120 days from the date of issue of the directive by the CEO.

(b) Should evidence of conformity of the commodities or products covered in the directive be produced to the National Regulator, the CEO shall duly withdraw the said directive in writing within 30 days.

(c) If a directive contemplated in terms of section 15(1), or any step taken in terms of section 15(3) or 34(4) of the Act, cannot be served on the manufacturer or importer for any reason, such directive or step shall remain valid regardless.

6(2) Any person to whom a directive has been issued, as contemplated in section 15(1) of the Act, shall be responsible for the safe keeping including security of such commodity or product and for any costs or losses incurred in keeping such commodities or products in his or her possession, or under his or her control at or on any premises specified in the directive.

6(3) Any costs or losses incurred in complying with section 15 of the Act, shall be for the account of the person in whose possession or under whose control, the commodities or products are.

ACCEPTABILITY OF EVIDENCE OF CONFORMITY

7(1) A manufacturer, importer or any person who offers for sale a commodity or product, or provides a service, covered by a compulsory specification, shall on the written request of the National Regulator, or as specifically defined in the compulsory specification, submit evidence of conformity of such commodity, product or service to the National Regulator.

(2) The evidence contemplated in subregulation (1) shall satisfy the criteria for acceptability of evidence of conformity as published by the National Regulator.

PROCESS PRIOR TO THE COMMENCEMENT OF THE CONSULTATIVE PROCESS AS PROVIDED FOR IN SECTION 13(8)

8. (1) A request to declare or amend a compulsory specification as contemplated in section 13 (1) (c) of the Act, shall be submitted in writing to the Board and motivated by the proposer.

(2) Where a feasible request contemplated in subregulation (1) is received, the National Regulator shall-

(a) request SABS to draft a SANS that is applicable for regulating the proposed commodity, product or service; and

(b) agree on a time limit with SABS, by which time such SANS shall be duly published by SABS.

(3) Where no such SANS as contemplated in subregulation (2)(b) is published by SABS, the National Regulator shall proceed to develop a compulsory specification in accordance with the consultative process contemplated in section 13(8) of the Act and set out in regulation 9.

CONSULTATIVE PROCESS DURING THE DEVELOPMENT OF COMPULSORY SPECIFICATIONS IN TERMS OF SECTION 13(1) (c) AND 13 (8) OF THE ACT

(9)(1) The consultative process between the National Regulator and relevant stakeholders for the development of a compulsory specification as contemplated in section 13(1)(c) shall take place through stakeholder meetings and technical working group meetings of stakeholders at specific stages of the development process as set out in subregulation (2).

(2)(a) Initial meeting with stakeholders to discuss the process intervention.

(b) Second meeting with the technical working group from stakeholders to discuss the first draft compulsory specification.

(c) Third meeting with the technical working group from stakeholders to discuss the second draft compulsory specification.

(d) Final meeting with stakeholders to finalise the compulsory specification for submission to the Minister.

RECORDS

10.(1)(a) A levy payer shall keep an accurate record of any commodity or product manufactured or imported by such person, for which a compulsory specification applies, in such a manner that the precise type of that commodity or product, and the quantities manufactured or imported, and to where they were subsequently sold, can be determined at any time.

(b) The record contemplated in subregulation (1)(a) shall be made readily available to the National Regulator on request.

(2)(a) Manufacturers or importers shall keep additional separate records of specific commodities or products sold under a sales permit that provide suitable evidence detailing how they are marked for traceability, and precisely who they were sold to.

(b) The records contemplated in subregulation (2)(a) shall be maintained and be made readily available to the National Regulator on request.

(3) Records contemplated in terms of subregulation (1) shall be maintained for a period of five (5) years, and additional records contemplated in terms of subregulation (2) shall be maintained for a period of two (2) years.

(4)(a) The registration certificate issued by the National Regulator in terms of regulation 10(3) shall be kept on record by the relevant certificate holder for as long as such holder is in the business of manufacturing, importing of any commodity or products, or providing a service, subject to a compulsory specification.

(b) The certificate contemplated in subregulation (4)(a) shall be made readily available to an inspector on request.

REGISTRATION OF MANUFACTURERS, IMPORTERS AND SERVICE PROVIDERS

11.(1) Any person who manufactures or imports any commodity or product, or provides a service, subject to a compulsory specification, shall register with the National Regulator within six months from the effective date of these regulations coming into force. Thereafter all manufacturers or importers of any commodity or product, or provider of a service subject to a compulsory specification, shall register with the National Regulator within 30 days of commencing operation as a manufacturer, importer or a provider of services.

(2) Application for registration in terms of subregulation (1) shall be done on a duly completed form provided by the National Regulator.

(3) The National Regulator shall issue a registration certificate to a person registering in terms of subregulation (1).

(4) Any change in the information provided to the National Regulator in terms of subregulation (2) shall be notified to the National

Regulator within 30 days of such change taking place and an amended registration certificate shall be issued. Such change shall be notified by completion of the form contemplated in subregulation (2).

COMMENCEMENT

12. These regulations shall come into effect on XXXXX 2009 on which date the regulations published in Government Notice R999 of 3 May 1985, and Government Notice 1630 of 27 October 1995, shall be repealed.