

No. R. 818

9 July 2004

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (NO. DAR/95)

Under sections 64G and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995, are hereby amended to the extent set out in the Schedule hereto.

J J LOUW

Act. COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

(a) By the insertion of the following rules after the rules for section 64F:

"RULES FOR SECTION 64G OF THE ACT

Licensing of, and conditions and procedures applicable to, degrouping depots contemplated in sections 6(1)(hC) and 64G for goods imported by air

64G.01 Date of operation and effect on existing degrouping activities

From the date these rules come into operation -

- (a) no person shall carry on degrouping activities as contemplated in section 6(1)(hC), section 64G and these rules, except in a degrouping depot licensed in terms of the Act;
- (b) any goods which on that date -
 - (i) have been received on any premises so licensed for such degrouping activities;
 - (ii) are in possession or under the control of any person for such activities,shall, from the date of issue of such a licence be subject to the provisions of section 64G and the conditions and procedures prescribed in these rules.

64G.02 Definitions

In these rules, in the agreement, and in any form or other document relating to section 64G and such rules, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context indicates otherwise -

"agreement" means the agreement between the Commissioner and the degrouping operator contemplated in section 64G(2)(a)(ii);

"cargo" means goods imported by air;

"customs and excise laws and procedures" shall have the meaning assigned thereto in rule 60.01(1);

"discrepant package" includes any damaged, ullaged or pilfered package;

"electronically submitted" and cognate expressions relating to electronic communication means the electronic communication between a user and the Commissioner, the Controller or an officer in accordance with the provisions of section 101A, its rules, the user agreement contemplated in that section and the user manual referred to in such agreement;

"excess goods" means goods in excess of manifested activities or excess unmanifested goods;

"goods" means goods as defined in section 1 imported by air, which in relation to the activities in a degrouping depot are consolidated as contemplated in section 6(1)(hC) and are degrouped in such depot;

"person" includes a person as defined in rule 60.01(1);

"shortage" includes any goods shortlanded, shortshipped or shortpacked according to manifested quantities;

"the Act" includes any provision of 'this Act' as defined in section 1;

"transit shed" means a transit shed for goods imported by aircraft contemplated in sections 6(1)(g), 44(4) and 44(5C);

"transit shed operator" means the person in control of a transit shed;

64G.03 Application for a licence or renewal of a licence

- (a) A degrouping depot may only be licensed at a place appointed by rule in terms of section 6(1)(hC).
- (b) Except where otherwise specified in these rules and subject to any additional requirement prescribed in such rules for the relevant application form, the rules for section 60 shall apply *mutatis mutandis* to any application for licensing and the licensee of a degrouping depot.
- (c) Any applicant for a licence or renewal of a licence must apply on form DA64G.01 and comply with all the requirements contemplated in section 64G(1)(b).
- (d) The application must be supported by –
 - (i) the documents and information specified in the application form;
 - (ii) except where in the case of a renewal, the security is not affected, the security particulars specified in form DA64G.01A; and
 - (iii) the agreement completed in accordance with the *pro forma* agreement included in these rules.

64G.04 Security

- (a) Before any licence is issued a degrouping operator must –
 - (i) pay the prescribed licence fee;
 - (ii) furnish security as determined by the Commissioner in accordance with the provisions of section 60(1)(c)(i).
- (b) Such security may be altered as contemplated in section 60(1)(c)(ii).
- (c) If security is furnished in the form of a bond, such bond –
 - (i) is subject to the provisions of rules 120.08 and 120.09;
 - (ii) must be in the form of the *pro forma* bond prescribed in these rules.
- (d) In determining the amount of security, the Commissioner may take into account –
 - (i) the average amount of duty leviable monthly on imported cargo removed by the applicant for degrouping over a six-month period; or
 - (ii) an estimated amount of duty so leviable in respect of cargo that will be removed to the degrouping depot by the applicant over a six-month period after commencing of degrouping operations.

64G.05 Refusal of application for a licence or renewal, suspension or cancellation of a licence

The provisions of section 60(2) and the rules for section 60 shall apply *mutatis mutandis* to any refusal of an application for licensing of a degrouping depot or the renewal, cancellation or suspension of the licence issued in respect of a degrouping depot.

- 64G.06 Commissioner to be advised of changed particulars and issue of a new licence
- (a) (i) Whenever any of the particulars furnished in any application for a licence changes in any material way, the licensee shall advise the Commissioner within 7 days from the date of the occurrence of such event by submitting a completed application form DA64G.01 reflecting the changed particulars.
 - (ii) For the purpose of subparagraph (i) 'changes in any material way' shall include –
 - (aa) relocation, which will only be allowed if the new premises conform to the requirements specified in these rules; or
 - (bb) where the legal status or name of the degrouping operator changes for any reason.
 - (b) In any case where in the opinion of the Commissioner the security is compromised in any manner by such change, the form, nature or amount of such security shall be altered as the Commissioner may require in accordance with the provisions of section 60(1)(c)(ii).
 - (c) On approval of the application, the Commissioner will issue a new licence in respect of such change.
- 64G.07 Requirements with which the licensed degrouping operator must comply
- Any licence for a degrouping depot is issued subject to the licensee complying with -
- (a) section 64G, these rules, any requirement specified in any form or other document prescribed in these rules and any other customs and excise laws and procedures relating to the goods, the purposes and activities for which the degrouping depot is licensed;
 - (b) the terms and conditions of the *pro forma* agreement included in these rules.
- 64G.08 Degrouping depot to be operated on a non-discriminatory basis
- No degrouping operator shall, with regard to the services and facilities provided by him or her, practice any discrimination against any importer or the agent of such importer or any class of such importers or their agents.
- 64G.09 Requirements in respect of the premises, equipment and security of the degrouping depot
- (a) The applicant for a degrouping depot licence must be the owner or lessee of the premises of the proposed degrouping depot and must submit a certified copy of the title deed or lease with the application.
 - (b) In addition to the requirements of paragraph (a), an application for a degrouping depot licence will only be considered if the premises, security and equipment of the proposed depot, conform with and are declared in a certificate signed by the person authorized to apply for a licence as conforming to the following requirements:
 - (i) The buildings and other structures are constructed as shown on the plan submitted;
 - (ii) the buildings are structurally sound, safeguarded against fire, secure against burglary, and the whole premises are fenced with security fencing,
 - (iii) all windows, doors, gates and other means of access are fully secured with adequate locking devices;
 - (iv) the premises are protected by security measures to prevent illegal delivery of goods from the degrouping depot;
 - (v) a separate area is provided in a building for the safekeeping of goods which may not be released due to detention or seizure;
 - (vi) the degrouping depot is equipped with the necessary equipment and appliances to handle all goods contained therein and perform all relevant functions; and
 - (vii) a secure enclosed area or strong room facilities are provided in a building for the safe storage of broached packages and high risk articles.
 - (c) For the purposes of officers who may perform any function at the degrouping depot, the degrouping operator must provide at own cost when required -
 - (i) suitable accommodation, office furniture and parking and sanitary facilities;
 - (ii) sufficient space and facilities such as scales and other equipment for use by officers to conduct examinations;

- (iii) the necessary staff to ensure reliable service for the opening, unpacking, presenting for examination, repacking and closing of containers, boxes or packages;
- (iv) any other equipment as may be required for the safety or for any other purpose by officers for carrying out their duties,
- (d) The degrouping depot must be serviced by road transport and situated within 20 kilometres from a customs and excise airport appointed in terms of section 6 or such further distance as the Commissioner, on good cause shown, may allow.

64G.10 Standards to be maintained in respect of premises, equipment and security and services

- (a) The maintenance of premises and equipment and other requirements specified in the certificate required in terms of rule 64G.09 and submitted with the application, the services to clients, the conduct of customs business and the facilities provided for officers must be in accordance with the reasonable standards required by the Commissioner.
- (b) Compliance with any such standards may be evaluated annually by the Commissioner.

64G.11 Submission of reports required in terms of section 8 and electronic communication

- (a) A degrouping operator must register in terms of section 8 for the purpose of submission of any cargo report required to be submitted in terms of that section and its rules.
- (b) For the purpose of electronic communication with the Commissioner, the Controller or an officer as contemplated in section 101A, including any report referred to in paragraph (a), the degrouping operator must register as a user and enter into a user agreement as prescribed in the said section 101A and its rules.

64G.12 Removal of goods from the transit shed to the degrouping depot and from the degrouping depot to any other degrouping depot

- (a)
 - (i) No goods may be removed from a degrouping depot to a transit shed.
 - (ii)
 - (aa) Any goods removed from a transit shed to a degrouping depot or from a degrouping depot to any other degrouping depot must be entered, subject to paragraph (bb), prior to such removal on bill of entry form DA500 for removal in bond in terms of section 18 and its rules.
 - (bb) Where any goods are removed directly from the aircraft or any secure premises contemplated in section 6(1)(g), to a degrouping depot situated within the distance prescribed in rule 64G.11(d), such goods may be removed in bond in terms of section 18 on a form DA 500 reflecting for the purposes of identification of the goods so removed, only the relevant transport document numbers relating to the carriage of the goods to the place of landing and such other particulars as the Controller may determine.
- (b) The removal in bond of any goods by road from a transit shed to a degrouping depot or from a degrouping depot to another degrouping depot is subject to the provisions of section 64D and must be carried by -
 - (i) a licensed remover of goods in bond; or
 - (ii) the degrouping operator using own transport.
- (c) Any goods so removed in bond and received by a degrouping operator as contemplated in section 44(5C) must be taken into storage, verified, recorded and reported on as prescribed in these rules.

64G.13 Time of clearance of goods from a degrouping depot

- (a)
 - (i) For the purposes of sections 18, 38, 43(1)(b), 44(5C) and 64G, 'due entry' of goods removed in bond to a degrouping depot requires that the goods must be duly entered for home consumption or for warehousing in a licensed customs and excise warehouse.
 - (ii) Such due entry must be made in the case of -

- (aa) goods removed in bond from a transit shed to a degrouping depot, within 14 days from the date of landing of the goods concerned;
 - (bb) goods removed in bond from a degrouping depot to any other degrouping depot, within 14 days from receipt thereof in such degrouping depot.
- (iii) Goods so removed from one degrouping depot to another degrouping depot may not again be removed there from to any other such depot.
- (b) Where due entry has not been made as contemplated in paragraph (a), such goods must, for the purposes of sections 43 and 44(5C), on the first working day after expiry of such period of 14 days, be removed to the State warehouse or other place indicated by the Controller, which may include that the goods remain in the degrouping depot.
- (c) The provisions of paragraph (a) shall apply *mutatis mutandis* to uncleared excess goods contemplated in rule 8.10.
- (d) Any goods remaining in the degrouping depot after such due entry for home consumption or warehousing shall be subject to the provisions of section 107(1)(b).

64G.14 Issue of receipt for goods received and goods to be verified against manifests

- (a) The degrouping operator must acknowledge in writing the receipt of goods from a transit shed operator or other degrouping depot operator.
- (b) For the purposes of control of goods received –
 - (i) all consolidated cargo received must be verified against air cargo manifests;
 - (ii) all goods unpacked must be verified against the applicable consolidation manifest as well as the individual house manifests issued in respect of the individual consignments contained within the consolidation; and
 - (iii) any shortages against or surplus to manifest quantities, unmanifested cargo or discrepant packages must be endorsed on such manifests and further dealt with as contemplated in rule 64G.16.
- (c) The degrouping operator must submit outturn reports in respect of all goods received in the degrouping depot in accordance with the rules for section 8.

64G.15 Unpacking and sorting of cargo

- (a) Goods must be unpacked, sorted and arranged in the degrouping depot in the order of receipt therein.
- (b)
 - (i) Goods must be conclusively unpacked in that consolidations within consolidations must be unpacked to the level of the actual and individual importer of the goods.
 - (ii) No unpacking to a lower level than contemplated in subparagraph (i) is allowed.

64G.16 Shortages, goods in excess of unmanifested quantities, manifested excess goods and discrepant packages.

- (a) Any goods received into or removed to a degrouping depot, any shortages against or excess goods to manifested quantities, unmanifested excess goods or any discrepant packages must be –
 - (i) in the case of any excess goods and any goods shortshipped, shortlanded or shortpacked, specified on the outturn report as contemplated in rule 8.10;
 - (ii) in the case of goods landed but short received or any packages received in a discrepant condition from any transit shed operator or another degrouping operator, so qualified on the receipt issued to such transit shed or degrouping operator,
 - (iii) recorded and reported by the degrouping operator on a form approved by, and reflecting the particulars and declarations determined, by the Commissioner.
- (b) Discrepant packages shall be placed in the security area provided therefor as indicated on the plan submitted with the application immediately after removal from the consolidation.