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## GENERAL NOTICE

### NOTICE 1495 OF 1999

#### SOUTH AFRICAN REVENUE SERVICE

##### **DRAFT SECTION 37A OF THE CUSTOMS AND EXCISE ACT No.91 OF 1964 AND DRAFT RULES THERETO**

A revised draft Section 37A of the Customs and Excise Act No.91 of 1964 and the draft rules thereto are hereby published for comment.

The drafts are published in English only, but comment may be submitted in any of the official languages.

Persons concerned are invited to comment in writing on the drafts and to send comments to:

The Commissioner for the South African Revenue Service, Private Bag X923, Pretoria, 0001, for attention:  
Mr. A Joubert, Fax No. (012) 422-9128, E-mail [chenning@sars.gov.za](mailto:chenning@sars.gov.za)

The comments must reach the South African Revenue Service by not later than 26 July 1999.

Please also provide the name, address, telephone number, fax number and e-mail address of the person or organisation responsible for submitting the comment.

**THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

**DRAFT SECTION 37A OF THE CUSTOMS AND EXCISE ACT No.91 OF 1964  
AND DRAFT RULES THERETO 1999**

**DRAFT**

The purpose of the draft legislation is to improve the control over, regulation of and law enforcement in regard to the illegal use of solvents, paraffin and other hydrocarbon and synthetic products in blends with other products to produce substitutes for Diesel fuel in engines and products for other uses.

“Special provisions in respect of marked goods and certain goods that are free of duty

**37A.(1)(a)** Notwithstanding anything to the contrary in this Act contained, where—

- (i) any goods are classified under any heading or subheading of Chapter 27 of Part 1 of Schedule No 1;
- (ii) such goods are also specified in any item of Part 2 and Part 5 of Schedule No. 1;
- (iii) such heading or subheading has been expressly quoted in any such item ; and
- (iv) a free rate of duty is prescribed in respect of each such heading or subheading and such item,

such goods shall, as may be prescribed by rule, on importation into or manufacture in the Republic or on being marked, be accounted for in any customs and excise warehouse licensed in terms of this Act.

(b) For the purposes of this section the Commissioner may, on such conditions as he may impose in each case in order to ensure the proper control over the storage, marking and removal of the goods contemplated in paragraph (a), approve any such warehouse and any licensee or class of licensee of such warehouse,

(c) Unless so approved by the Commissioner, no person shall deal with any such goods in any manner whatsoever.

(2)(a) If any goods are described in any heading or subheading or item referred to in subsection (1)(a) as marked, the unmarked goods concerned shall be marked by the approved licensee in the approved warehouse by the addition of such marker; in such proportion which is equal to or exceeds, and in accordance with such procedure and control measures, as may in each case be prescribed by rule.

(b) Any goods contemplated in subsection (1) shall each be stored separately from all other goods and shall be subject *mutatis mutandis* to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse, as may be prescribed by rule.

(c)(i) Subject to the provisions of subparagraph (iii), any reference to ‘marked goods’ or ‘marker’ in this or any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to unmarked goods referred to in paragraph (c)(ii) which have been marked and the marker which is required to be added as contemplated in paragraph (a).

(ii) Any reference to ‘unmarked goods’ in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or 5 of Schedule 1 or in any note to such Chapter or Part or in any rule shall be deemed to be a reference to goods which, except for the reference to marked, are of the same description as marked goods

and are specified as unmarked goods of such description in any such heading, subheading or item;

(iii) Whenever it is necessary for the purpose of establishing any contravention of any provision of this section, any goods shall be deemed to contain marked goods when such goods contain a proportion of the marker equal to or exceeding that as may be prescribed by rule.

(d) The addition of a marker shall not constitute mixing or blending for the purposes of—

(i) section 37; and

(ii) the classification of any goods in any heading, subheading or item of Schedule No. 1, except as provided in this section.

(e) The application of the free rate of duty specified in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 and Part 5 of Schedule No. 1 in respect of any goods described as marked goods, shall be subject to the provisions of this section.

(3)(a) Any person who sells or disposes of in any manner, whether or not for any consideration, any marked goods at any one time in excess of the quantity prescribed by rule, shall issue to the purchaser, or to any other person to whom the goods are so disposed of, an invoice containing [such statement and] such [other] particulars as may be prescribed by rule.

... (b) The provisions of paragraph (a) shall not apply to transfers between approved licensed customs and excise warehouses.

(c) Any person who so sells or disposes of marked goods shall keep a copy of such invoice and any person to whom such invoice is issued shall keep such invoice for such period as may be prescribed by rule.

(d) Any person referred to in paragraph (a) and any other person who is at any time in possession of or has under his control any marked goods in excess of the quantity prescribed by rule, shall complete and keep such books, accounts and other documents in such form reflecting such particulars and for such period and shall comply with any such other requirements, as may be prescribed by rule.

(4)(a) No person shall—

(i) mix any marked goods in any proportion with distillate fuel or petrol;

(ii) mix any marked goods in any proportion with any lubricity agent for use as fuel in any engine;

(iii) mix any marked goods in any proportion with any lubricity agent, or be in possession of any marked goods mixed in any proportion with any lubricity agent, or be in possession of marked goods for mixing with any lubricity agent in any circumstances or for any purpose, otherwise than in accordance with this section and the rules;

(iv) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any engine;

(v) sell or dispose of in any manner whether or not for any consideration or acquire any marked goods or any marked goods mixed with any lubricity agent for use as fuel in any engine;



- (vi) be in possession of any marked goods mixed in any proportion with distillate fuel or petrol;
- (vii) be in possession of any marked goods or marked goods mixed in any proportion with any lubricity agent for use as fuel in any engine;
- (viii) remove or neutralise or attempt to remove or neutralise any marker in any marked goods;
- (ix) add any substance to any marked goods which can prevent or impede the detection of the marker;
- (x) be in possession of any marked goods or sell or dispose of in any manner whether or not for any consideration or acquire any marked goods in which is present any substance which or the colour of which can prevent or impede the detection of the marker;
- (xi) mix any unmarked goods with any marked goods; or
- (xii) import any goods containing the marker.

(b) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so adds any substance to any marked goods or so removes or neutralises or attempts to remove or to neutralise any marker or any person to whom any invoice referred to in subsection (3)(a) has been issued in respect of the marked goods concerned, shall, in addition to any other liability incurred in terms of this Act, be liable, as the Commissioner may determine, for the payment of an amount not exceeding treble the sum of such duties as may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, in respect of all marked goods which—

- (i) are in the possession or under the control of such person or on any premises in the possession or under the control of such person; and
- (ii) if the Commissioner so determines, were previously sold or disposed of or purchased or were in the possession or under the control of such person or on any premises in the possession or under the control of such person at any time, unless it is proved within 30 days from the date of any demand for payment of any amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of paragraph (a).

(c)(i) If different rates of duty on such distillate fuel, petrol, lubricity agents or unmarked goods were in force during any period in respect of which the duties are calculated for the purposes of the payment referred to in paragraph (b), the highest rate in force at the relevant time shall be applied for the purposes of calculating the duty payable as provided in paragraph (b).

(ii) For the purposes of calculating the duty payable on any marked goods mixed with distillate fuel, petrol, unmarked goods or lubricity agent in any tank including the fuel tank of any engine, such duty shall be calculated on the total quantity of such mixed goods in accordance with the provisions of paragraph (b).

(d) Notwithstanding anything to the contrary in this Act contained any person who, contrary to subsection (3) and the rules, fails to—

- (i) keep any invoice issued or copy thereof;
- (ii) issue any invoice;
- (iii) complete and keep the books, accounts and documents; or

- (iv) forthwith furnish any officer at such officer's request with such invoice or copy thereof and with the books, accounts and documents, required to be completed and kept,

shall, in addition to any other liability incurred in terms of this Act, in respect of the goods to which such failure relates, be liable, as the Commissioner may determine, for the payment of an amount not exceeding treble the sum of such duties as may be leviable on any distillate fuel, petrol, lubricity agents or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, unless it is proved within 30 days of the date of any demand for payment of such amount in terms of the section that the goods concerned have not been dealt with contrary to the provisions of this section.

(e) Any amount for which any person is liable in terms of this subsection shall be payable upon demand by the Commissioner.

(f) Payment of any amount in respect of the marked goods referred to in paragraph (b)(i) shall not absolve the person concerned from compliance with the provisions of paragraph (a).

(5)(a) For the purposes of this section an officer may—

- (i) take samples of any goods in any tank or other container or in any fuel tank of any engine;
- (ii) analyse or send any such samples to any designated person for analysis;
- (iii) stop and detain any vehicle or mobile apparatus in terms of section 88(1)(a) with or without the assistance of any traffic officer or member of the South African Police Service or the South African National Defence Force;
- (iv) detain any ship in terms of section 88(1)(a) with or without the assistance of any member of the South African Police Service or the South African National Defence Force.

(b) The provisions of section 106(2) shall *mutatis mutandis* apply to any sample taken under this subsection.

(c) The Commissioner may—

- (i) by rule prescribe the form for reporting any vehicle or mobile apparatus stopped or premises visited, or any person concerned with such vehicle, mobile apparatus or premises, or on any procedure or method for the taking or analysis of any sample by an officer, or on the results of such analysis and any other particulars as may be required on such form;
- (ii) designate any person to analyse any such sample;
- (iii) by rule prescribe the form for reporting on the analysis of such sample by such designated person, the results of such analysis and
- (iv) any other particulars as may be required on such form; by rule prescribe the method for sealing any tank or container.

(d) Any person who is in any way concerned with any marked goods or any vehicle or mobile apparatus or any premises where any tank or other container is situated shall furnish an officer on demand with any particulars which he or she is able to provide for the purposes of the report referred to in paragraph (c).

(6)(a) If the contents of any report on the prescribed form by the person designated by the Commissioner or by any person in the employ of and authorised by such designated person indicate that the goods concerned have been dealt with contrary to the provisions of this section—

- (i) such goods and any tank or other container thereof;
- (ii) any ship or vehicle used in the removal or carriage of such goods or any ship or vehicle in which such goods are used as fuel as contemplated in section 87(2);
- (iii) any marked goods or any mixture of marked goods with other goods conveyed in any manner by such vehicle;
- (iv) any engine in which such goods are used as fuel and any apparatus operated by such engine,

shall be liable to forfeiture.

(b) Any person who is in any way concerned with such goods as contemplated in subsection 4(b) shall be liable in respect thereof for payment of an amount calculated on the same basis as provided in that subsection.

(c) Any goods otherwise found to have been dealt with contrary to the provisions of this section and any goods which have been used in so dealing with those goods shall likewise be liable to forfeiture.

(d) The owner or whoever has possession or control of any goods, vehicle, mobile apparatus, engine, tank or other container, shall be liable for any costs or expenses, including the cost of analysis of any sample by the designated person, incurred by and charges due to the Commissioner in handling or dealing with any such goods, vehicle, mobile apparatus, engine, tank or other container for the purposes of this section.

(7)(a) Notwithstanding the provisions of subsection (4) and anything to the contrary in any other provision of this Act whenever any marked goods have become mixed with or contaminated by unmarked goods or any other goods, by an act or omission which by the exercise of reasonable care could not have been avoided, such mixing or contamination shall, in the event that the proportion of the marker present in such mixed or contaminated goods is less than the proportion prescribed by rule in terms of subsection 2(a), but is equal to or exceeds the proportion prescribed by rule in terms of subsection (2)(c)(iii), be reported immediately to the Commissioner.

(b) Such goods shall, subject to the approval of and to such conditions as the Commissioner may in each case impose—

- (i) be blended or mixed with other goods by the licensee of a customs and excise warehouse until the proportion of the marker is less than the proportion prescribed by rule in terms of subsection (2)(c)(iii) in which case the total quantity of such mixed or blended goods shall be liable to the duty applicable to such goods in terms of Schedule No. 1 on removal from such warehouse; or
- (ii) be delivered to any person who is registered as required by the rules, for mixing or blending with other goods where such mixed or blended goods are not capable of use as a fuel in any engine.

(c) If the Commissioner for any reason finds that such mixed or contaminated marked goods cannot be dealt with as contemplated by paragraph (b), within any reasonable period determined by the Commissioner, such goods shall on expiry of such period be

regarded as having been abandoned to the Commissioner and may thereafter be disposed of in whatever manner the Commissioner considers reasonable in the circumstances.

(d) The licensee of the customs and excise warehouse, the purchaser or any other person to whom the marked goods were disposed of or whoever had control thereof when such mixing or contamination occurred shall be liable for any costs or expenses incurred by and charges due to the Commissioner in respect of any handling of or dealing with such goods in accordance with the provisions of paragraphs (b) or (c).

(e) Any person who deals with such mixed or contaminated goods contrary to the provisions of paragraph (b), shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the total quantity of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b) and the goods shall be liable to forfeiture.

(8)(a) Where any goods may be disposed of in terms of section 90, the Commissioner may, notwithstanding the provisions of that section, but subject to such conditions as the Commissioner may in each case impose, which may include conditions requiring payment of any amount determined by the Commissioner—

- (i) dispose of such goods for mixing or blending with other goods as contemplated in subsection (7)(b);
- (ii) dispose of such goods in any other manner which the Commissioner considers reasonable in the circumstances; or
- (iii) order the destruction of such goods.

(b) The person from whom the goods were seized shall be liable to pay for any costs and expenses incurred by and charges due to the Commissioner in respect of the handling of or dealing with such goods as contemplated in paragraph (a).

(9)(a) No person shall acquire or sell or dispose of in any manner whether or not for any consideration or be in possession of or have under his control or use—

- (i) any goods, other than marked goods, for which provision is made free of duty in Schedule No. 1 as contemplated in subsection (1)(a); or
- (ii) any marked goods mixed with any lubricity agent, except in accordance with the provisions of this section and the rules.

(b) In addition to the provisions of this subsection and any rule made thereunder, except as otherwise specified in any rule, any marked goods mixed or intended to be mixed with any lubricity agent shall be subject to the provisions of this section and the rules relating to marked goods.

(c) Where any person is required by any rule made under paragraph (d) to register with the Commissioner, the Commissioner may—

- (i) require before registration that such person furnishes security in such form, nature or amount as the Commissioner may determine;
- (ii) at any time require that such security be altered or renewed in such manner as the Commissioner may determine;
- (iii) determine the particulars to be furnished on application for registration and the requirements to be complied with before such application is considered;
- (iv) register such person subject to such conditions as the Commissioner may in each case impose;



- (v) refuse to register any person or class of persons and cancel the registration of any person who has dealt with any such goods contrary to the provisions of this section or the rules or any other provision of this Act and refuse re-registration of such person.

(d) The Commissioner may by rule for the purposes of this section prescribe—

- (i) the persons who are required to register and the goods and activities for which they are required to register;
- (ii) the quantities which shall be subject to any such rule;
- (iii) the conditions on which and purposes for which any marked goods may be mixed with any lubricity agent;
- (iv) the conditions on which and the purpose for which any person may sell or dispose of in any manner whether or not for any consideration, or be in possession of or use any such goods;
- (v) any invoice to be issued, the particulars on such invoice, the person who shall keep such invoice or copy thereof, the persons who are required to complete and keep books, accounts and other documents, the form in which they shall be kept, the particulars to be reflected therein and the period for which they are required to be kept;
- (vi) restrictions in respect of the removal and export of any goods to which this section relates;
- (vii) all matters which by this section are required or permitted to be prescribed by rule;
- (viii) any other matter which the Commissioner may consider necessary and useful to regulate the lawful and prevent the unlawful distribution and consumption of any goods to which this section relates.

(e)(i) Any goods referred to in paragraph (a)(i) shall not be used for any other purpose than that for which they are removed from a customs and excise warehouse and in accordance with the conditions imposed by the Commissioner and those prescribed in the rules except with the prior permission of the Commissioner and on payment of the duties leviable in terms of Schedule No. 1 in respect of unmarked goods: Provided that if the Commissioner so permits, the goods may be mixed or blended with other goods in which case the provisions of subsection (7) shall *mutatis mutandis* apply to such goods.

(ii) If any goods referred to in paragraph (a)(i) are dealt with contrary to the provisions of this section and the rules, any person who had possession or control of such goods at the time the goods were so dealt with, shall, in addition to any other liability incurred in terms of this Act, be liable in respect of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b) and the goods shall be liable to forfeiture.

(10) No person shall be entitled to any compensation for any loss or damage arising out of any bona fide action of an officer or any person who assists him under the provisions of this section.

(11) For the purposes of this section—

'engine' referred to in subsection (4)(a) and (c)(ii) and subsection (5)(a)(i) includes any engine of any machine, machinery, plant, equipment, apparatus, vehicle or ship, classified under any heading or subheading of Chapters 84 to 87 or 89 of Schedule No.1;

'vehicle' includes any vehicle as classified under any heading or subheading of Chapters 86 and 87 of Schedule No.1;

'ship' includes any ship as classified under any heading or subheading of Chapter 89 of Schedule No.1."



## RULES FOR SECTION 37A OF THE ACT

### Special provisions in respect of marked goods and certain goods that are free of duty

#### Goods to be marked and marked goods

- 37A.01 (a) Only unmarked goods referred to in section 37A(2)(c)(ii) when marked by the addition of a marker by a licensee of a customs and excise warehouse as required by section 37A(2)(a) and prescribed in these rules shall constitute marked goods referred to in section 37A(2)(c)(i).
- (b) The marker to be so added shall be the substance supplied under the trade name Mortrace MP by the Morton Dyes Division of Morton International Limited in a proportion equal to or exceeding 20 milligrams of the marker per litre of the unmarked goods.
- (c) Any goods shall be regarded as containing marked goods when containing a proportion of such marker exceeding 1 milligram of the marker per litre of such goods.
- 37A.02 (a) Any imported unmarked goods intended to be marked and any imported goods which are free of duty as contemplated by section 37A(1)(a) shall be entered for storage in a customs and excise warehouse on form DA500 (purpose code WH).
- (b) When any quantity of imported unmarked goods have been marked such form DA500 shall be amended by voucher of correction reflecting the description and tariff heading or subheading and item for marked goods in respect of such quantity.
- (c) Such voucher of correction shall be supported by a declaration by the licensee of the customs and excise warehouse where the unmarked goods were marked similar in form and content to the declaration to be furnished as required by paragraph (f).
- (d) (i) If any imported goods referred to in paragraph (a) are mixed with locally manufactured goods of the same class or kind in the circumstances contemplated by section 37(7), such goods may be accounted for in accordance with the provisions relating to locally manufactured goods.
- (ii) In addition to the record required to be kept in terms of rule 37A.03(b), a licensee of a customs and excise warehouse shall keep additional records and stock accounts of unmarked goods and goods marked and aviation kerosene referred to in rule 37A.12, accounting for all such goods manufactured, received or marked in, and removed from such warehouse.

- (e) For the purposes of section 37A(2)(b)—
- (i) Any unmarked imported goods which have been marked and any other imported goods which are free of duty as contemplated by section 37A(1)(a) shall be deemed to be and referred to in these rules as specified imported goods for the purposes of application of sections 38(4) and 39(2A);
  - (ii) In applying the provisions of sections 38(4) and 39(2A) the rules relating to the removal of excisable mineral oils from a customs and excise warehouse shall *mutatis mutandis* apply to the removal from such warehouse of any marked goods or other goods which are free of duty as contemplated by section 37A(1)(a), whether specified imported goods or goods manufactured in the Republic except that—
    - (aa) the *mutatis mutandis* application of the provisions of rules 36.04, 36.05(a) and 36.06, in respect of any invoice issued for excisable mineral oils as provided in rule 27.31, shall be subject to the provisions of rule 37A.06 if the goods concerned are marked goods;
    - (bb) separate invoices, accounts and other documents relating to the removal of each of such goods shall be completed and presented to the Controller as required;
    - (cc) if specified imported goods are removed from such warehouse for rewarehousing, removal in bond or for export such goods shall be entered according to the provisions applicable to any such removal of dutiable imported goods;
    - (dd) a bill of entry (ex warehouse) imported goods (DA600) or a bill of entry (ex warehouse) South African product (DA610), as the case may be, shall be presented to the Controller with each of the monthly accounts for such goods.
- (f) Every licensee of a customs and excise warehouse shall include with every such account and bill of entry presented to the Controller in respect of marked goods declared as having been removed from such warehouse during the stated period that at the time of removal all such marked goods—
- (i) were properly marked and contained a proportion equal to or exceeding 20 milligrams of the marker per litre of the unmarked goods as required by rule 37A. 01;
  - (ii) did not have any substance present therein or were of such a colour that could prevent or impede the detection of such marker;
  - (iii) did not have any substance present therein that could remove or neutralise such marker.

- 37A.03 (a) The licensee of the customs and excise warehouse shall, before use, keep the marker—
- (i) separate from all other substances and in a secured storage area; and
  - (ii) except when removed for immediate use, either in a tank or in other containers, in either case bearing or labelled with a description of the contents.
- (b) Such licensee shall keep—
- (i) a certified record of the quantity of the marker which is received, stored and used in which is recorded not later than the close of business on the working day following that on which the marker has been received and used—
    - (aa) the date of receipt, the person from whom received and the description and quantity of the marker received, and
    - (bb) the quantity of marker used each day or whenever marking takes place and the quantity in litres of unmarked goods to which those quantities of marker have been added.
  - (ii) a certified balanced stock account made up to the end of each calendar month showing the quantity and description of the marker which is stored for use or is in use at the time of stocktaking, the quantity used, and the quantity of unmarked goods marked with such marker.
- (c) Unless the Commissioner may otherwise allow, the record shall be kept at the said customs and excise warehouse and at all reasonable times be produced on demand to any officer.
- (d) Such licensee shall keep such record available for at least three years from the date of the last entry therein for inspection on demand by an officer.
- 37A.04 (a) Marking of goods must be by one of the following methods—
- (i) in line on receipt into main storage;
  - (ii) in bulk direct into main storage;
  - (iii) in line on removal from main storage to segregated storage;
  - (iv) subject to such conditions as the Commissioner may in each case impose, by injector on delivery from the customs and excise warehouse.
- (b) The licensee of the customs and excise warehouse must ensure that equipment used for adding the marker to unmarked goods is—
- (i) maintained in good working order;
  - (ii) secured against interference;
  - (iii) regularly tested and recalibrated if necessary.
- 37A.05 Marked goods shall at all times be stored in tanks or containers separate from those tanks or containers used for the storage of unmarked goods.



**Completing and retaining of documents**

- 37A.06 (a) Any person who sells or disposes of, in any manner, whether or not for any consideration, except in respect of any transaction between one licensee and another as contemplated in the proviso to section 61(4), any marked goods in any transaction or series of related transactions, in which the total quantity exceeds 210 litres at any one time shall complete and issue an invoice, dated and serially numbered, which shall include at least the following—
- (i) the name or business name (if any) and address of the person who so sells or disposes of the marked goods;
  - (ii) the name or business name (if any) and address of the purchaser or other person to whom the marked goods are disposed of;
  - (iii) a description of the marked goods;
  - (iv) a statement: "marked goods: use in mixtures restricted and as fuel in engines prohibited in terms of section 37(A)4 of the Customs and Excise Act, 1964";
  - (v) the quantity of marked goods.
- (b) (i) Any invoice completed and issued in terms of this rule shall be retained by the purchaser or other person to whom the marked goods are disposed of and copies thereof retained by the person who so sells or disposes of the marked goods.
- (ii) Such invoice or copy thereof shall be retained for a period of at least three years after the date of dispatch of the marked goods during which period any such person shall keep available the said invoice or copy thereof for inspection on demand by an officer.
- 37A.07 (a) Any person, except a licensee of a customs and excise warehouse, who acquires and stores or sells, disposes of, purchases or uses, or has under his control or in his possession a quantity of marked goods which exceeds 1000 litres at any one time shall keep a record relating to the storage and disposal of such marked goods and any other goods which shall include at least the following—
- (i) the capacity of each storage tank or tanks;
  - (ii) the location of the tank or tanks;
  - (iii) if the tanks are joined, particulars as to how the tanks are joined and the total number of bowsers or outlets;
  - (iv) a description of the goods stored in each tank;
  - (v) number and date of each invoice, and quantity of goods received;
  - (vi) if the marked goods are sold or otherwise disposed of, as referred to in rule 37A.06, the quantity of marked goods so sold or disposed of and the number and date of each invoice issued;

- (vii) if the goods are sold or otherwise disposed of without invoices where invoices are not required to be issued as envisaged by rule 37A.06, the total quantity of marked goods so sold or disposed of;
  - (viii) if the goods are used, the quantity used and every purpose of use;
  - (ix) a stock account, balanced monthly, of quantities of goods received, used and disposed of, including goods lost or destroyed.
- (b) Such person shall keep available such record for a period of at least three years after the date of acquisition, storage, sale, disposal or use of any marked goods for inspection by an officer.
- (c) Any licensee of a customs and excise warehouse shall, in addition to the requirements in the Act or any rule relating to the storage of dutiable goods, keep such records in respect of marked goods as the Controller may require.

#### **Sampling procedures and sealing of tanks and containers**

**37A.08** An officer who, for the purpose of Section 37A, has—

- (a) stopped any vehicle or mobile apparatus shall complete form DA000(A) and form DA000(C) in respect of the said vehicle or mobile apparatus and of the person appearing to the officer to be the person for the time being in charge of the vehicle or mobile apparatus;
- (b) has entered any premises in order to examine a tank or container shall complete form DA000(B) and form DA000(C) in respect of the said premises and of the person appearing to the officer to be the occupier of the premises or person for the time being in charge of the part of the premises where the tank or container is situated.

**37A.09** (a) When an officer takes a sample of goods in terms of section 37A(5)—

- (i) from a motor vehicle or mobile apparatus, the officer shall, whenever reasonably practicable, do so in the presence of the person appearing to him to be the person for the time being in charge of the vehicle or mobile apparatus;
- (ii) on any premises but not from a motor vehicle or mobile apparatus, the officer shall, whenever reasonably practicable, do so in the presence of the person appearing to him to be the occupier of the premises or person for the time being in charge of the part of the premises from which it is taken;
- (iii) the officer shall analyse a portion of the sample taken and complete form DA000(C) and if after such analysis considers for reasons stated in such report that a sample

- should be analysed by a designated person the remainder of the sample shall be dealt with as provided in paragraph (b);
- (iv) the officer shall issue a receipt therefor to be handed to the person referred to in paragraph (i) or (ii), as the case may be, reflecting full particulars of such samples taken, duly signed and dated with an official customs and excise stamp, and the name of the said officer reflected in clear capital letters under the signature of the officer.
- (b) The remainder of the sample referred to in paragraph (a)(iii) shall at that time be divided into three parts. Each part shall comprise a quantity of not less than 100 ml, each bearing the same serial number and labelled with details of its contents and sealed, and—
- (i) the first part shall be delivered to the person referred to in paragraphs (a)(i) or (a)(ii), as the case may be, if that person requires it;
- (ii) the second part shall be retained by the officer for future comparison;
- (iii) the third part shall be forwarded for analysis by a designated person.
- (c) Where it is not reasonably practicable to comply with the requirements of paragraphs (a)(i), (ii) and (iv) and (b)(i) relating to the persons concerned, the officer taking the sample shall, by registered mail, or in person, notify the owner or person in charge of the vehicle or mobile apparatus or the occupier or the person in charge of the premises, as the case may be, informing him that the sample has been taken and that one part of it (and the receipt therefor) is available for delivery to him, if he requires it, at such time and place as may be specified in the notice.
- (d) Any designated person who has analysed a sample referred to in rule 37A.09(b)(iii) shall furnish a statement to the Commissioner on form DA000.
- 37A.10(a)** When an officer seals any tank or container, he shall—
- (i) use a customs and excise seal;
- (ii) if reasonably practicable, do so in the presence of any person referred to in rule 37A.08(a) or 37A.08(b) as the case may be;
- (iii) report the reasons for sealing the container or tank.
- (b) A customs and excise seal on any tank or container shall only be broken by or under the supervision of an officer for reasons stated in such report.
- 37A.11** (a) Any person referred to in section 37A(7)(b)(ii) and any other person who uses marked goods, or marked goods mixed with or contaminated by other goods, for mixing or blending with other goods in the production of goods not capable of use as fuel in any



engine, for own use or sale or disposal in any manner whether or not for any consideration, shall register as a producer of such goods, and no person shall so mix or blend such goods for such use, sale or disposal unless so registered.

- (b) Any such mixed or blended goods may contain a lubricity agent, and for the purpose of this rule "lubricity agent" includes any contaminated or used mineral oil such as used lubricating oil, defective fuel oil, contaminated waste oil and the like.
- (c) The provisions of rule 37A.06 shall *mutatis mutandis* apply to the sale or disposal by such registered producer of such mixed or blended goods in respect of invoices to be completed and issued, retained and kept, except that the statement referred to in rule 37A.06(a)(iv) shall read 'not capable of use as a fuel in any engine'.
- (d) The provisions of rule 37A.07 except paragraph (a)(vii) thereof shall *mutatis mutandis* apply to the record to be kept by the registered producer in respect of any marked goods or any marked goods mixed with or contaminated by other goods, as the case may be, received and used in such mixing or blending, and in addition such record shall reflect the proportion in which such marked goods are mixed with other goods and shall in the stock account referred to in rule 37A.07(ix) include the quantities of mixed or blended goods produced and so used, sold or disposed of.

#### 37A.12

(a) Subject to the provisions of rule 37A.11 no person shall mix any marked goods with a lubricity agent or be in possession of or have under his/her control any marked goods mixed with a lubricity agent, unless—

- (i) such person is registered where the quantity so mixed exceeds 1,000 litres at any one time;
- (ii) such mixture is solely used for domestic or industrial applications as a burning fuel in boilers, ovens, heaters or furnaces or as a mould release agent, or any other such application approved by the Commissioner;
- (iii) such mixing takes place in the tank connected to the burners if used as a burning fuel or on the premises where the mixture is used if used for any other domestic or industrial application.

- (b) In addition to the record to be kept as required in terms of rule 37A.07(a), a daily record shall be kept of the invoice number and date and quantity of lubricity agent received, the quantity used, the relative proportions of marked goods and lubricity agent in the mixture and a stock account balanced monthly of quantities mixed and the quantity of the mixture used during the month concerned.

- (c) The provisions of rule 37A.07(b) shall apply *mutatis mutandis* in respect of any lubricity agent used or acquired for use in a mixture with marked goods.

## 37A.13

- (a) For the purposes of section 37(9)(a)(i), no person shall acquire or sell or dispose of in any manner, whether or not for any consideration, or be in possession or have under his control, aviation kerosene, except—
- (i) for use or supply for use as fuel in aircraft;
  - (ii) if any such person who supplies fuel to aircraft, other than the licensee of a customs and excise warehouse, is registered as a supplier of aviation kerosene to aircraft Any (whether or not for supply to own private aircraft).
- (b) such licensee or registered supplier shall—
- (i) complete and issue an invoice or delivery note for each quantity supplied bearing a statement that the aviation kerosene is to be used solely as fuel in aircraft, and reflecting in addition at least the name and address of the licensee or the name and address of the registered supplier who supplied the aviation kerosene, the registered name and address of the supplier who acquired it, the delivery address if it is not the same as the registered address, and when supplied for fuelling aircraft the registration number of the aircraft;
  - (ii) obtain a signed receipt from the pilot for any such supply;
  - (iii) keep a copy of such invoice or delivery note for aviation kerosene supplied to any registered supplier or for fuelling aircraft, or keep such invoice or delivery note issued in respect of any aviation kerosene acquired from any such licensee or other registered supplier, for a period of at least three years after the date of such supply during which period the said invoice or delivery note or copy thereof shall be kept available for inspection on demand by an officer.
- (c) The provisions of rule 37A.07 except paragraph (a)(vii) thereof shall *mutatis mutandis* apply in respect of any quantity of aviation kerosene stored or supplied to or by such registered supplier or licensee.
- (d) Any application in terms of section 37A(9)(e)(i) to dispose of aviation kerosene for any other purpose may be made through the nearest Controller and such goods shall be subject to such customs and excise control as the Controller may require.

## 37A.14

- (a) No person other than a licensee of a customs and excise warehouse, or a person registered with the Commissioner, shall remove from the Republic to any other territory within the common customs area or export from the Republic any marked goods or aviation kerosene.

(b) For the purpose of such removal or export such goods shall be regarded as unmarked goods and such person shall furnish security in the form of a cash deposit or a surety bond as envisaged by rule 120.08.

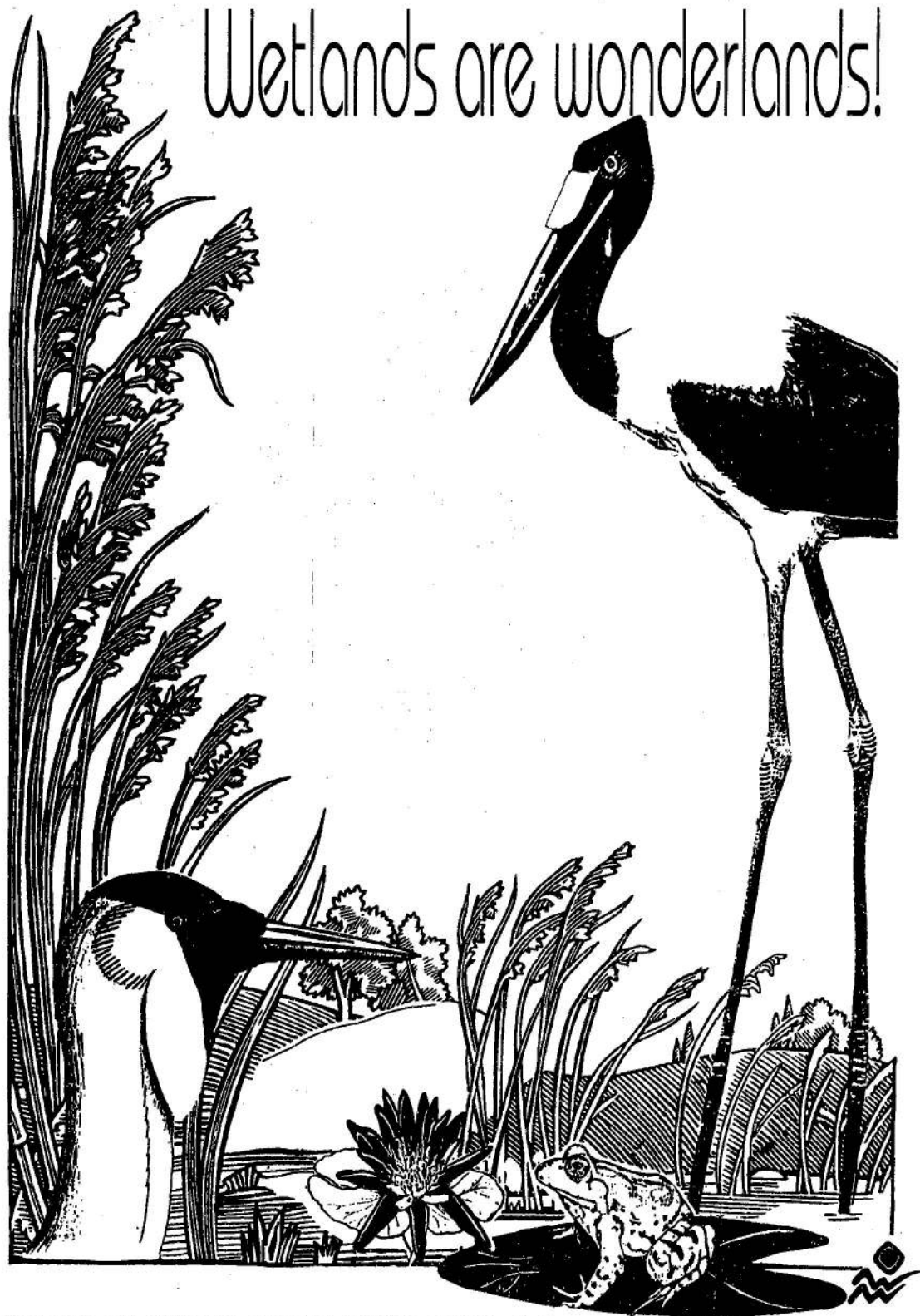
37A.15

Any application to register in terms of these rules shall be made on the form obtainable from the nearest Controller and any application shall only be considered on compliance with the requirements therein specified and as may be determined by the Commissioner in each case.

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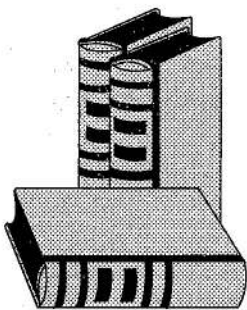
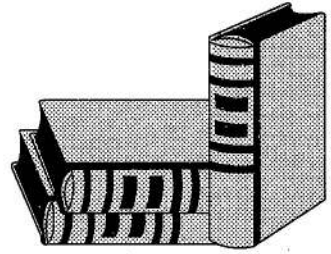


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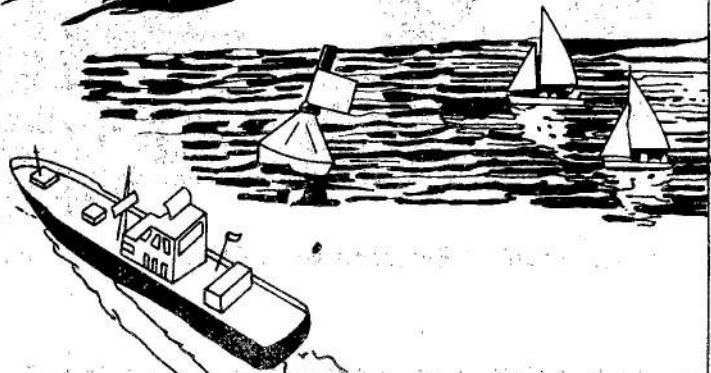
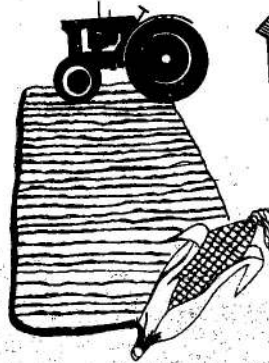
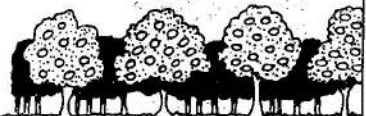
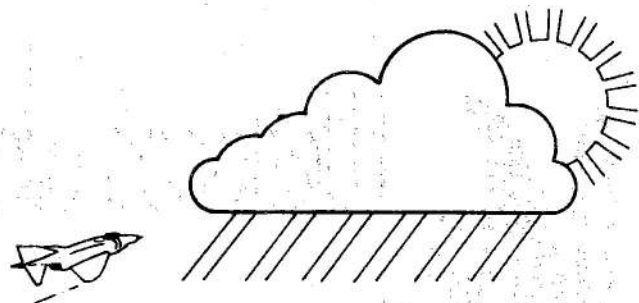
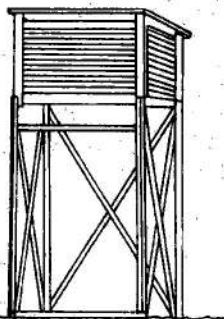
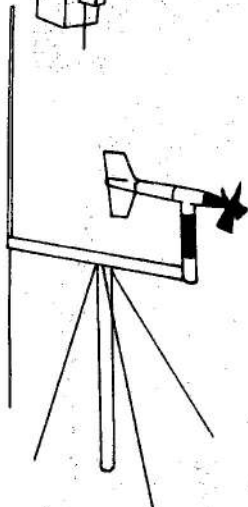


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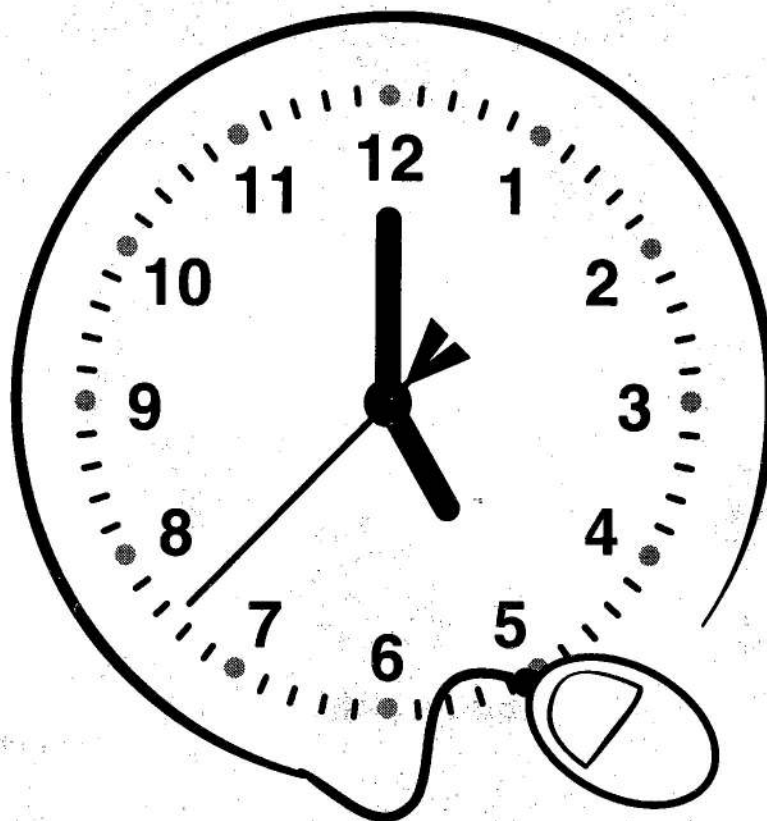
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