

Policy and Procedures for actions taken concerning non compliant products or commodities in terms of the NRCS Act, 2008 (Act 5 of 2008)

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1 Introduction

1.1 Purpose

This document is intended to provide direction to all employees of the NRCS involved in the execution of sanctions where products or commodities are suspected or proved not to comply with mandatory requirements of a compulsory specification.

It has also been developed to promote administrative fairness and uniformity in the application of sanctions.

1.2 Scope

This procedure is applicable to all products and commodities that are required to comply with mandatory requirements of a compulsory specification promulgated in terms of the NRCS Act.

2 Abbreviations and definitions

In this document, the words and terms used have the same meaning as those given to them under the NRCS Act, and the regulations promulgated pursuant thereto and -

“Conformity assessment service provider” means a service provider, which is acceptable to the NRCS

“Board” means the Board of the NRCS appointed in terms of section 6 or any authorized delegate in terms of section 25;

“CEO” means the Chief Executive Officer of the National Regulator for Compulsory Specifications as appointed in terms of Section 21 or any authorized delegate in terms of section 25.

“Foodstuffs Act” means the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 (as amended).

“Inspector” means a person appointed in terms of section 16 of the Act and holds a certificate as proof of appointment that is signed by the CEO

“National Regulator” means the National Regulator for Compulsory Specifications of South Africa, established by section 3(1) of the NRCS Act;

“NRCS Act” means the National Regulator for Compulsory Specifications Act, 5 of 2008;

“Possessor” means the person who is in possession or control of the commodity or product, consignment or batch as described in section 15(1) of the NRCS Act, but shall, in appropriate circumstances be interpreted to include the owner or person who bears the risk of loss in respect of an article;

“Regulations” means the NRCS Act regulations published in Government Notice R924 in Government Gazette 33615 of 15 October 2010;

“Sale” and “sell” means sell as defined in the NRCS Act but also implies inclusion of import, sell or supply as set out in section 14(1) of the NRCS Act.

Note 1 A reference to a section means a reference to a section of the NRCS Act, unless otherwise indicated and references to the Act shall mean the NRCS Act.

Note 2 A reference to a regulation means a reference to a regulation in the Regulations

3 Normative and informative References

3.1 Normative

Standards Act, 2008 (Act 8 of 2008)

National Regulator for Compulsory Specifications Act, 2008 (Act 5 of 2008)

Foodstuff Cosmetics and Disinfectant Act

Trade Metrology Act 1973, (Act 77 of 1973)

National Road Traffic Act 1996, (Act 93 of 1996)

Hazardous Substances Act, 1973 (Act No. 15 of 1973)

3.2 Informative

CPO 124 Records Management policy

CPO 111 Quality policy Manual

4 General rules

4.1 An inspector in carrying out inspections to monitor and enforce compliance with the NRCS Act, is entitled, in terms of section 19(1) (a) to examine and take samples of products or commodities (referred to in section 17(1)) or components, materials or substances in or upon the premises concerned, used or suspected to be intended for the use in the manufacture of such a product or commodity. An inspector may take sufficient quantities of products or commodities which may not be compliant, as well as any other related item, as would be reasonably required by the NRCS to assess or make a finding as to whether there has been a contravention of or non-compliance with the NRCS Act or a compulsory specification.

4.2 The inspector shall ensure that samples are drawn according to the sampling requirements of the applicable compulsory specification, divisional quality procedure or the organizational quality policy document. Any sample preparation protocols shall be adhered to.

4.3 When an inspector takes samples of products or commodities or any other item, he shall, in writing, do the following as a minimum:

4.3.1 Bring to the attention of the possessor the provisions of sections 15(1), 15(3), 17(1), 19(1) (a), 20(2), 20(3) and 33.

4.3.2 Identify all the items taken from the possessor and issue a receipt (see annexure C) to the possessor of such items;

4.3.3 Indicate to the possessor from where the products or commodities taken may be returned from the NRCS, where applicable;

4.3.4 Indicate the liability for cost of sampling and examination (see clause 7);

4.4 Where non-compliance is suspected, the inspector shall specifically record the grounds upon which it is reasonable to suspect that the product or commodity does not comply with compulsory specifications. In other words, the inspector shall explain why he believes the products are not compliant. This is for purposes of making a recommendation to the CEO that he issue a directive and

also serves as evidence if a possessor attempts to challenge the validity of the CEO's decision to issue a directive.

4.5 In circumstances where an inspector has grounds to suspect that an article does not conform to a compulsory specification or has identified a non safety critical non compliance, which could reasonably easily be rectified but circumstances are such that the inspector is of the view that it is not necessary to immediately recommend that the CEO issue a directive in terms of section 15(1), a process set out in 4.6 should be followed. The circumstances in which such process should be followed are:-

4.5.1 It is clear to the inspector via a written undertaking by the possessor that he/she will not dispose of or otherwise tamper with the products or commodities or continue to provide the service until the issue of conformity has been resolved;

4.5.2 In the case of identified non compliance which is relatively minor, and does not require testing and the products or commodities can be altered or rectified to ensure that they are compliant;

Note: The purpose of utilizing an informal process in the circumstances is not to allow the possessor to import, distribute or sell products or commodities, or provide services which appear to be non-compliant. The purpose is simply to establish a mechanism to more efficiently utilize the resources of the National Regulator in dealing with non-compliance issues.

4.6 If the inspector finds potentially non compliant or obviously non compliant products, commodities or services and the conditions in 4.5 apply the inspector shall:

4.6.1. Inform the possessor that the products or commodities which are or are suspected to be non-compliant and specify such non compliance or suspected non compliance;

4.6.2. Request, in writing, the possessor to either deliver evidence of conformity or remedy the non-conformance within a specified time period;

4.6.3. Obtain a written undertaking by the possessor that he/she will not dispose of or otherwise tamper with the products or commodities, or continue to provide the service, until the issue of conformity has been resolved;

4.6.4. Inform the possessor that if evidence of conformity is not provided, or if the, defects in the products commodities are not within the specified time period or if the possessor does not adhere to the inspector's instructions, this may result in the issuing a directive in terms of section 15(1) or (3) .

4.6.5. Draw the possessor's attention to the penalties contained in Section 34 the criminal liability to which the possessor may expose himself for failing should the relevant products or commodities be proved not to comply with the requirements of section 14 of the Act, or the possessor fails to comply with Sections 19 and/or 20.

5 Issuing of directives by the CEO.

5.1 The inspector shall complete form requesting the issuing of a CEO directive which shall contain the following;

5.1.1 A clear statement of the grounds upon which it is reasonable to suspect that the product or commodity does not comply with compulsory specifications.

5.1.2 Any additional, documented evidence to substantiate the statement in 5.1.1,

5.1.3 A copy of the inspection record,

5.1.4 Two originals of the directive (Annex C) for the CEO to sign. The directive shall inform the possessor of the reason for the issuing of the directive e.g. no valid LOA, test report or certificate of

compliance and bring to the attention of the possessor the provisions of section 15(1), 15(3), 17(1), 19(1)(a), and 33 of the NRCS Act; and

5.1.5 A recommendation to the line manager for support and final submission via the Head of Division to the CEO.

5.2 All documents associated with the request for a Directive required in paragraph 4.1 shall be placed on record.

5.3 The CEO, or a duly designated authority, if satisfied with the recommendation, shall sign the directive.

5.4 The inspector shall take an inventory of the number of commodities concerned, enter it in the directives and shall serve both originals of the directives in person to the possessor or representative. Both original copies shall be signed by the possessor. One signed copy shall be returned for office records and filing.

5.5 All visits when delivering or serving a directive shall be recorded in the inspection record. If a directive cannot be served, the reason shall be stated in the inspection record. If the possessor or a representative refuses or is not available to sign the original directives the inspector shall obtain the presence of a witness to counter sign the inspection record. A directive that cannot be served or signed is valid provided that the above steps are followed. Should the possessor copy not be left at the premises of the possessor, all reasonable steps shall be taken to inform him/her of the directive e.g. e-mail, registered mail etc.

5.6 Any person who is in possession or control of the commodity or product to which the CEO directive applies or before a recommendation is made to the board regarding products that are proved not to comply shall be entitled to make submissions in this regard to the responsible inspectorate as set out in the standard directive form.

5.7 Where evidence of conformity submitted to the NRCS, by the possessor, is not regarded as acceptable the NRCS may submit samples of the product or commodity for evaluation for conformity in terms of the Conformity Assessment policy.

5.8 Within 5 working days of receipt of satisfactory evidence of conformity of the commodities or products covered in the directive by the National Regulator in terms of Regulation 7(1) (b), the inspector shall recommend the withdrawal of the directive to the CEO. The steps as set out in clause 5 shall be taken.

5.9 If the product is found to be not compliant, the inspectorate shall notify the possessor of the non compliance and that it intends to recommend to the Board that a decision be taken regarding disposal of the non-compliant product/s or commodity in terms of section 15(3) of the NRCS Act. The NRCS shall notify the possessor that he has 5 working days in which to provide reasons why it should not recommend to the board that it take action in terms of Section 15(3).

5.9.1 On the submission of the reasons given in 5.9 the NRCS shall consider the validity thereof and decide either to discard or accept them in part or in totality.

5.9.2 If accepted, notify the possessor to produce an action plan to address or rectify the non-compliance or provide proof of compliance. Once the NRCS is satisfied with the evidence of compliance or action plan provided the directive:

5.9.2.1 May be withdrawn as set out in clause 6 to allow for corrective action on the products as per the corrective action plan.

5.9.2.2 Shall be withdrawn as set out in clause 6 where evidence of conformance is provided and acceptable to the NRCS.

5.9.2.3 Shall not be withdrawn in cases where a sales permit will be applied for until such time it is issued.

5.9.3 If not accepted, notify the possessor that the reasons provided are not acceptable and why, and that a recommendation will be made to the board in terms of Section 15(3). The steps as set out in paragraph 7 shall be taken.

6 Withdrawal of CEO directives

6.1 The inspectorate shall submit a written motivation to the *CEO* to withdraw a directive, stating the reasons for the request as well as any conditions relevant to the withdrawal. A draft letter of withdrawal shall accompany the motivation.

6.2 The *CEO*, if satisfied with the motivation, shall approve the draft letter withdrawing the directive.

6.3 The inspectorate shall file a copy of the approved letter of withdrawal.

6.4 The inspectorate shall forward the approved letter to the possessor electronically and by certified mail.

7 Issuing of Board directives

7.1 The relevant line manager shall ensure that a pack containing the following is prepared:

7.1.1 A copy of the inspection record and supporting documents;

7.1.2 A copy of the relevant CEO directive;

7.1.3 A motivation containing a recommendation for the issuing of a directive in terms of section 15(3) for signature by the divisional head;

7.1.4 A sworn affidavit prepared by the inspector in the event where no test report is applicable/available;

7.1.5 Test report/s (if applicable/available);

7.1.6 Two originals of the Board directive (Annexure F) for the Board to sign;

7.1.7 A copy of the possessor's written submission to address the non-compliance including time lines.

7.2 The relevant line manager shall forward the prepared pack to the Divisional head for review.

7.3 Once satisfied, the Divisional head shall sign the motivation in paragraph 6.1.3 and forward the pack to the Board secretariat for review and submission to the Board;

7.4 Once satisfied with the recommendation for the issuing of a directive, the Board shall sign both originals of the directive and return it to the applicable inspectorate.

7.5 The relevant line manager shall ensure that both originals of the directive are served in person to the possessor or representative. Both original copies shall be signed by the possessor. One signed copy shall be returned for office records and to be filed.

7.6 All visits when delivering or serving a directive shall be recorded in the inspection record and in the case of a refusal that prevents the directive to be served, the reason shall be stated for not serving the directive. If the possessor or a representative refuses or is not available to sign the original

directives the inspector shall obtain the presence of a witness to counter sign the inspection record. A directive as contemplated and which for the stated reason cannot be served will remain valid regardless {see regulation 7(1) (c) as published by Government Notice No. R. 924 (Government Gazette No. 33615) of 15 October 2010}.

Should the possessor copy not be left at the premises of the possessor, all reasonable steps shall be taken to inform him/her of the directive e.g. e-mail, registered mail etc

7.7 The inspectorate shall ensure that the actions as set out in the directive are taken.

7.7.1 When sourcing service providers for destruction of commodities or products, it shall be ensured that all legal requirements as set out in Act No. 15 of 1973 pertaining to hazardous substances as contained in these commodities or products, shall be complied with.

8 Liability for costs in the investigation process

8.1 Cost of testing

The National Regulator is liable for the costs of testing samples drawn by inspectors.

8.2 Cost of losses or disposal

Regulation 7(3) provides that 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. Consequently, the possessor may be held liable for the costs incurred in destroying the product.

When disposing of the goods, the costs thereof shall be claimed from the possessor

9 Criminal offences

If a person is found in possession of products or commodities under the circumstances contemplated in the definition of sale, which are non-compliant, or commits any other offence in terms of section 34 (1), such possessor is committing a criminal offence and the NRCS may lay a formal charge with the South African Police Service for investigation and possible prosecution..

Criminal procedures shall be instituted in terms of section 34 of the act in the following instances:

- a) Where an instruction or request from an inspector is ignored or not adhered to.
- b) Where non-compliances contain a safety risk.

ANNEX A

Guidelines for dealing with instances where the jurisdiction of the NRCS Act overlaps that of other applicable legislation.

A.1 The NRCS Act regulates the sale of products, commodities or services by the issuing of compulsory specifications or technical regulations to which products, commodities or services shall comply with before they can be sold.

A.2 There are other specific Acts that regulate the sale of products or commodities by also prescribing the standards to which such products or commodities shall comply before they may be sold. Consequently, there may be an overlap in the application of the NRCS Act with these specific Acts.

A.3 The Foodstuffs Cosmetics and Disinfectants Act regulate the sale of foodstuffs. The Foodstuffs Act is administered by the National Department of Health and powers and functions hereunder are exercised by the Director General of the National Department of Health as well as, *inter alia*, inspectors appointed by the Director General in terms of section 10(1) of the Foodstuffs Act.

A.4 In terms of section 10(3)(e) of the Foodstuffs Act, an inspector appointed by the CEO under the NRCS Act is authorized to exercise or perform the powers, duties and functions of an inspector in terms of the Foodstuffs Act;

A.5 Difficulties may arise when there is an overlap due to the regulation of selling of products, commodities or services under the Foodstuffs Act which are also regulated by a compulsory specification under the NRCS Act.

A.6 The first step in addressing this problem is to identify whether the powers or functions being exercised are for purposes of enforcement in relation to a potential contravention of the Foodstuffs Act or in relation to a potential contravention of a compulsory specification under the NRCS Act. Once this has been identified the official can then decide which Act should be followed. If for example, the non-compliance relates to a contravention of a compulsory specification, then the inspector or functionary should exercise the powers and functions and take the steps and procedures as are prescribed in the NRCS Act and Regulations;

A.7 In cases where there is an overlapping, for example when there is potential non-compliance with the Foodstuffs Act as well as with a compulsory specification under the NRCS Act, the powers and functions to be exercised and the procedures to be followed should as far as possible be reconciled to form a coherent understanding of the powers and functions of the officials. In other words, the inspector or functionary should exercise the powers and functions and carry out the procedures as prescribed under the two Acts simultaneously.

A.8 In cases of overlap where the powers and functions to be exercised and/or the procedures to be followed under the two Acts cannot be reconciled, then regard may be given to the following common law presumption: general provisions do not derogate from specific provisions. What this means is that general provisions do not trump, override or derogate from specific ones. The effect of this presumption will usually be that, where there is a contradiction between the Foodstuffs Act and the NRCS Act or a compulsory specification, the Act which deals specifically with such contraventions, i.e. the Foodstuffs Act, should take precedence and thus be followed. This is a generalized guideline and care should be taken in all circumstances to firstly, ensure that the two Acts cannot be reconciled and secondly, that the presumption can be applied, i.e. that there is a specific provision and a conflicting general provision which regulate the same set of facts. In the final analysis, two conflicting provisions may be completely irreconcilable with the result that a court would find that one provision is invalid. It is therefore recommended that the inspector or official seek legal advice in these circumstances.

A.9 The Board has also assumed responsibilities under the Trade Metrology Act, 77 of 1973, and what was stated above with regard to the Foodstuffs Act applies equally in this regard.

Annex B

Guidelines for consideration by the board when a request for any action in terms of Section 15(3) is received.

B.1 A decision as to what action should be taken by the Board with regard to products, commodities or services which are non-compliant, should be informed by a risk assessment that considers:-

B.1.1 The seriousness of the risk to the health and safety of the public and the environment.

B.1.2 The proportionality of the penalty to the offence;

B.1.3 The likelihood that the decision of the Board could be reversed on review by our civil courts, resulting in an award of punitive damages;

B.1.4. The principles of administrative justice;

B.1.5. The risks associated with the administrative action, including risks to neighbouring States, risks to the environment due to destruction of the products, risk to the country of origin and risks to the NRCS if the non-conforming product is destroyed;

B.1.6. A formal risk assessment may be justified before a decision is taken on disposal of non-conforming products.

B.1.7 The possessor shall be notified of the decision taken and the National Regulator shall always keep a record of the Board's decision and the grounds upon which the decision was made. Such record shall include:-

B.1.7.1 the inspector's investigations and recommendations to the CEO;

B.1.7.2 the directive issued by the CEO in terms of section 15(1);

B.1.7.3 Examinations, including test results from a conformity assessment service provider,

B.1.7.4 Submissions made by the possessor; and

B.1.7.5 The findings made by the National Regulator, including the reasons for its findings;

Annex C**RECEIPT FOR REMOVAL OF ITEMS BY INSPECTOR IN TERMS OF SECTION 17(7) OF THE NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS ACT, 5 OF 2008**

1. Inspector's identification number _____
2. Name of Inspector _____
3. Date _____
4. Time of inspection _____
5. Place of inspection _____
6. Inspection record reference number: _____
7. Description of Products, commodities or services and items removed _____

8. Reason for removal of goods _____

9. The possessor is referred to the powers, and functions of the inspector as well as the liabilities of the NRCS as set out in section 15(1), 17(1) , 19(1)(a) and 33 of the National Regulator for Compulsory Specifications Act, 5 of 2008 ("the NRCS Act")
10. Name and address of person to whom a copy of this receipt has been issued ("recipient").

11. The items, subject to 12 below may be collected from

12. The recipient's attention is drawn to the following sections of the NRCS Act reproduced hereunder:

Section 15. Non-conformance to compulsory specification

- (1) If the Chief Executive Officer on reasonable grounds suspects that a commodity or product, or a consignment or batch of a commodity or product, does not conform to or has not been manufactured in accordance with a compulsory specification that applies to it, the Chief Executive Officer may issue a directive to ensure that any person who is in possession or control of the commodity or product, consignment or batch, keeps it in his or her possession or under his or her control at or on any premises specified in the directive, and does not tamper with or dispose of it, until the directive is withdrawn by the Chief Executive Officer in writing.
- (2) The Minister may make regulations in terms of section 36 to set time limits for the withdrawal of the directive referred to in subsection (1).
- (3) If the National Regulator finds that a commodity or product referred to in subsection (1) does not conform to the compulsory specification concerned, the Board may-
 - (a) take action to ensure the recall of a commodity or product;
 - (b) direct in writing that the importer of the consignment returns it to its country of origin; or
 - (c) direct in writing that the consignment or batch of the article concerned be confiscated, destroyed or dealt with in such other manner as the Board may consider fit.

17. Powers of inspector to enter, inspect, search and seize

(1) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, an inspector may at any reasonable time and without prior notice enter any premises, other than a private dwelling, in or upon which-

(a) an article in respect of which there is a compulsory specification is-

(i) Manufactured or sold;

(ii) Stored or used in the course of any business; or

(iii) Stored for any purpose in connection with the import or export of the commodity or product;

(b) Any manufacture, sale, use or storage is reasonably suspected; or

(c) Any records with regard to the import, manufacture or sale of an article referred to in paragraph (a) or (b) are kept.

“Section 20

(2) The National Regulator may examine any sample obtained in terms of this Act, or have it tested or analysed, in order to determine whether the article, component, material or substance concerned complies with or has the characteristics of or has been manufactured in accordance with the requirements of any compulsory specification applicable in terms of this Act.”

“(3) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the National Regulator is not liable for the damage to or destruction of that sample, except where the damage is due to negligence of the National Regulator.”

“Section 33 Liability of National Regulator

(1) The State Liability Act, 1957 (Act 20 of 1957), applies in respect of the National Regulator, and in such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chief Executive of the National Regulator.

(2) No person is liable for anything done or omitted in good faith when performing a function in terms of this Act.”

Signature of possessor

Date

Annex D

NOTICE BY INSPECTOR OF POTENTIAL NON-COMPLIANCE WITH COMPLUSORY SPECIFICATION ISSUED UNDER THE NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS ACT, 5 OF 2008

1. Inspector's identification number _____
2. Name of Inspector _____
3. Date _____
4. Time of inspection _____
5. Place of inspection _____
6. Description of items ("the items") _____
7. _____
8. Name and address of person to whom a duplicate original of this Notice has been issued ("recipient").

9. The inspector is of the view that the items may not comply with the following compulsory specification(s) identified as such under section 13(1) of the National Regulator for Compulsory Specifications Act, 5 of 2008 ("the NRCS Act")

_____ ("the compulsory specification(s)")

10. The items may not comply with the compulsory specifications for the following reasons:

The items may be rectified or evidence of conformity (as defined in the Regulations published under the NRCS Act) as follows

_____ shall be delivered to the inspector by no later than _____

11. The recipient shall not sell, or otherwise dispose of the items until the inspector informs the recipient otherwise. Specific directions to the recipient with regard to disposal and/or safekeeping of the items: _____

12. If the recipient fails to comply with 11 above, then this may result in a directive being issued in terms of section 15(1) of the NRCS Act which provides as follows

13. "Section 15(1)

If the Chief Executive Officer on reasonable grounds suspects that a commodity or product, or a consignment or batch of a commodity or product, does not conform to or has not been manufactured in accordance with a compulsory specification that applies to it, the Chief Executive Officer may issue a directive to ensure that any person who is in possession or control of the commodity or product, consignment or batch, keeps it in his or her possession or under his or her control at or on any premises specified in the directive, and does not tamper with or dispose of it, until the directive is withdrawn by the Chief Executive Officer in writing."

14. The recipient's attention is drawn to the following section of the NRCS Act reproduced hereunder:

“Section 34 Offences and penalties

(1) A person is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year if that person-;

(d) Fails to co-operate and furnish assistance to an inspector as contemplated in section 18 (2);

(i) make any relevant statement to an inspector which is false in any material respect, knowing it to be false;

(j) Refuses or fails to answer to the best of his or her knowledge any relevant question which an inspector has in the exercise of his or her powers put to him or her;

(k) Refuses or fails to comply to the best of his or her ability with any lawful requirement, demand or order of an inspector; or

(l) Hinders or obstructs an inspector in the exercise of his or her powers.”

Signature of inspector

Date

ANNEX E

DIRECTIVE ISSUED TO POSSESSOR IN TERMS OF SECTION 15(1) OF THE NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS ACT, 5 OF 2008 (“DIRECTIVE”)

1. Inspection Records Number: _____
2. Name and address of person to whom this Directive has been issued.

 (“Possessor”)
3. Description of products or commodities _____

4. The Chief Executive Officer of the National Regulator for Compulsory Specifications (“the NRCS”), appointed as such in terms of section 21 of the National Regulator For Compulsory Specifications Act, 5 of 2008 (“the NRCS Act”), or his/her duly authorized delegate, has grounds to suspect that the commodities and products as defined in the NRCS Act and described in 3 above, in the possession of the Possessor, do not comply with the following compulsory specification(s) identified as such under section 13(1) of the NRCS Act) _____ (“the compulsory specification(s)”) _____
5. Consequently, in terms of section 15(1) the following Directive is hereby issued to the Possessor: _____

6. The Possessor is hereby informed that the NRCS will examine and/or test and/or analyse (“the examination”) the products or commodities described in 3 for purposes of making a finding in terms of section 15(3) of the NRCS Act. The results of the examination will, prior to a finding being made by the NRCS, be made available to the Possessor, where after the Possessor will be entitled to make submissions to the NRCS, including the submission of evidence of conformity as defined in the Regulations published pursuant to the NRCS Act.
7. The Possessor’s attention is drawn to the following sections of the NRCS Act and the regulations reproduced hereunder:

Section “15(3)

If the National Regulator finds that a commodity or product referred to in subsection (1) does not conform to the compulsory specification concerned, the Board may-
(a) Take action to ensure the recall of a commodity or product;
(b) Direct in writing that the importer of the consignment returns it to its country of origin; or
(c) Direct in writing that the consignment or batch of the article concerned be confiscated, destroyed or dealt with in such other manner as the Board may consider fit.

Section “20(2)

The National Regulator may examine any sample obtained in terms of this Act, or have it tested or analysed, in order to determine whether the article, component, material or substance concerned complies with or has the characteristics of or has been manufactured in accordance with the requirements of any compulsory specification applicable in terms of this Act.”
“(3) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the National Regulator is not liable for the damage to or destruction of that sample, except where the damage is due to negligence of the National Regulator.”

“Section 33 Liability of National Regulator

(1) The State Liability Act, 1957 (Act 20 of 1957), applies in respect of the National Regulator, and in such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chief Executive of the National Regulator.

(2) No person is liable for anything done or omitted in good faith when performing a function in terms of this Act.”

“Section 34 Offences and penalties

(1) A person is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year if that person-

(b) fails to keep a commodity or product or consignment or batch in his or her possession or under his or her control at or on specified premises as contemplated in section 15 (1);”

“Regulation 7 Directives

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

(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.

(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.

Signed:

Chief Executive Officer of the National Regulator for Compulsory Specifications
(or his duly authorized Delegate in terms of section 25)

Date _____

Annexure F

DIRECTIVE ISSUED TO POSSESSOR IN TERMS OF SECTION 15(3) OF THE NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS ACT, 5 OF 2008 (“DIRECTIVE”)

1 Inspection record number _____

2 Name and address of person to whom this Directive has been issued.

 (“Possessor”)

3 Description of products or commodities _____

4 The Board of the National Regulator for Compulsory Specifications (“the NRCS”), appointed as such in terms of section 6 of the National Regulator For Compulsory Specifications Act, 5 of 2008 (“the NRCS Act”), or it’s duly authorized delegate, has grounds to believe that the commodities and products as defined in the NRCS Act and described in 3 above, in the possession of the Possessor, do not comply with the following compulsory specification(s) identified as such under section 13(1) of the NRCS Act) _____ (“the compulsory specification(s)”)

5 Consequently, in terms of section 15(3) the following Directive is hereby issued to the Possessor: _____

6 The Possessor is hereby informed that the that the board decided that the noncompliant products be:

- a) Recalled,
- b) The imported consignment be returned to its country of origin; or
- c) That a batch of the consignment be confiscated, and be destroyed

7 The Possessor’s attention is drawn to the following sections of the NRCS Act and the regulations reproduced hereunder:

Section “15(3)

If the National Regulator finds that a commodity or product referred to in subsection (1) does not conform to the compulsory specification concerned, the Board may-

- (a) Take action to ensure the recall of a commodity or product;*
- (b) Direct in writing that the importer of the consignment returns it to its country of origin; or*
- (c) Direct in writing that the consignment or batch of the article concerned be confiscated, destroyed or dealt with in such other manner as the Board may consider fit.*

Section “20(2)

The National Regulator may examine any sample obtained in terms of this Act, or have it tested or analysed, in order to determine whether the article, component, material or substance concerned complies with or has the characteristics of or has been manufactured in accordance with the requirements of any compulsory specification applicable in terms of this Act.”

“(3) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the National Regulator is not liable for the damage to or destruction of that sample, except where the damage is due to negligence of the National Regulator.”

“Section 33 Liability of National Regulator

- (1) *The State Liability Act, 1957 (Act 20 of 1957), applies in respect of the National Regulator, and in such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chief Executive of the National Regulator.*
- (2) *No person is liable for anything done or omitted in good faith when performing a function in terms of this Act.”*

“Section 34 Offences and penalties

- (1) *A person is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year if that person-*
- (b) *fails to keep a commodity or product or consignment or batch in his or her possession or under his or her control at or on specified premises as contemplated in section 15 (1);”*
- “Regulation 7 Directives*
- (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 sections 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) of the Act, or any step taken in terms of section 15(3) or 34(4) of the Act, cannot be served on the manufacturer, builder or importer for any reason, such directive or step shall remain valid regardless.*
- (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.*
- (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.*

Signed:

Chairperson of the board of the National Regulator for Compulsory Specifications
(or his duly authorized Delegate in terms of section 25)

Date _____