

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

Topic: Standards

IN A CALABASH

Introduction

In order to ensure the safety and uniform quality of goods and services in South Africa, certain compulsory standards and specifications have been prescribed and must be complied with.

The law giving effect to these standards is the National Regulator for Compulsory Specifications Act (NRCSA), which, through a body known as the South African Bureau of Standards (SABS), provides for the development, promotion and maintenance of standardisation and quality in connection with commodities in South Africa, and the rendering of related conformity assessment services.

The SABS has been tasked with developing and maintaining a national norm for the development of South African National Standards (SANS) and an appeal procedure for the resolving of disputes and deadlocks pertaining to standards.

Objectives of the Act

The NRCSA provides a legal framework for the administration and maintenance of compulsory specifications in the interests of public safety, health and environmental protection in South Africa.

Application of the Act and its implication to Tourism

The NRCSA and any standards issued thereunder apply to any person or entity who manufactures, exports, imports, supplies, sells or uses any commodities, goods or services to which compulsory SANS codes or SABS standards apply.

Summary of the provisions of the Act

Compulsory specifications under the NRCSA

The national regulator may, in respect of any commodity, product or service which may affect public safety, health or the environment, by notice in the Gazette—

- declare a SANS or a provision of a SANS to be a compulsory specification by referring to the title and the number of that standard only, without indicating the year or edition number or by referring to the title, number and year or edition number of that SANS;
- declare an amended SANS or an amended provision of a SANS to be a compulsory specification; or
- withdraw a compulsory specification.

The notice must contain full particulars of the specification, provision or amendment. It will come into operation on a date fixed in the notice, but may not be less than two months after the date of publication of the notice, or may come into operation on different dates as indicated in the notice.

Effect of a declaration under the NRCSA

As a result of the declaration, no person may import, sell or supply a commodity, product or service to which a compulsory specification applies, except in accordance with that specification.

Any person who imports, sells or supplies a commodity, product or service to which a compulsory specification applies, must—

- keep or supply to the national regulator such records as may be prescribed by the Minister; and
- pay such fees to the national regulator as may be prescribed by the Minister after consultation with the Minister of Finance.

The national regulator may issue a sales permit exempting the person to whom it has been issued from complying with the above requirements.

The national regulator may issue a permit exempting the person to whom it has been issued from complying with the above requirements for an experimental-type approval commodity or product to which a compulsory specification applies.

Payment of fees in the form of levies

Fees in the form of levies are payable to the national regulator in respect of commodities or products manufactured, built or imported or services provided that are subject to a compulsory specification.

Registration of manufacturers, builders, importers and service providers

Any person who manufactures, builds or imports any commodity or product or provides a service which is subject to a compulsory specification must register with the national regulator within 30 days of commencing operation.

Non-conformance with a compulsory standard

Where a commodity, product, consignment or batch of a commodity or product does not conform to or has not been manufactured in accordance with an applicable compulsory specification, the Chief Executive Officer may issue a directive to the person who is in possession or control of the commodity or product, consignment or batch directing such person to retain the commodity in question and not to tamper with or dispose of it until the directive is withdrawn.

If the national regulator finds that a commodity or product does not conform to the compulsory specification concerned, it may–

- recall the commodity or product;
- direct in writing that the importer of the consignment must return it to its country of origin; or
- 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.

Inspectors under the NRCSA

In order to ensure compliance with the NRCSA, certain suitably qualified employees of the national regulator have been appointed as inspectors. Such inspectors will hold a certificate signed by the Chief Executive Officer.

In order to monitor and enforce compliance, an inspector may at any reasonable time and without prior notice enter any premises, other than a private dwelling, in which an article in respect of which there is a compulsory specification or record of such is–

- stored, manufactured or sold;
- used in the course of any business; or
- stored for any purpose in connection with the import or export of the commodity or product.

An inspector may enter a private dwelling only with the consent of the owner or occupier or if he or she is authorised to do so by a warrant issued by a judge or a magistrate if it appears from written information given by the inspector that there are reasonable grounds for believing that a contravention of the Act has been or is being committed within the area of jurisdiction of that judge or magistrate.



WHAT HAPPENS IF YOU DO NOT COMPLY?

When any person fails to comply with a compulsory standard despite being ordered to do so, such a person is guilty of an offence and liable on conviction to a fine or to imprisonment for a period of up to one year.

If any person is again convicted of an offence, whether for the same or some other offence, that person will again be liable to a fine or imprisonment for a period of up to four years.

In addition to any penalty imposed in respect of an offence, a court may also–

- order that a commodity, a consignment or batch of a commodity, any other article or any material or substance in respect of which that offence was committed be forfeited to the State; and
- enquire into and assess the monetary value of any advantage gained or likely to be gained by such person as a consequence of that offence and impose on that person a maximum fine equal to the amount so assessed and, in default of payment, imprisonment for a period not exceeding one year.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Ascertain which compulsory and non-compulsory standards apply to any commodity manufactured, sold or used by one's operation;
- Obtain copies of these standards from the SABS;
- Compile and kept an up to date listing detailing all applicable SANS codes and corresponding products, services or goods;
- Applicable standards available and assurances that SANS codes are being complied with;
- Quality Management System to ensure SANS codes complied with;
- Checklist to ensure standards of quality or SANS codes complied with;
- If required, register with the national regulator where you make, sell, distribute a commodity to which a compulsory standard applies;
- Where required, submit and pay levies as prescribed; and
- If music is played to one's staff or public, register with SAMRO and pay royalties as prescribed.

FURTHER INFORMATION

Regulators

Department of Trade and Industry
South African Bureau of Standards
South African Music Rights Organisation

Websites

www.thedti.gov.za
<https://www.sabs.co.za>
www.samro.org.za