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**GOVERNMENT NOTICE**

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**DEPARTMENT OF TRADE AND INDUSTRY**

No. R. 17

3 February 2010

**NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT, 1993  
(ACT NO. 87 OF 1993)****REGULATIONS REGARDING THE APPLICATION OF PROVISIONS OF THE  
CHEMICAL WEAPONS CONVENTION**

The Minister of Trade and Industry has, under section 24(1)(l) of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), made the regulations in the Schedule.

**SCHEDULE****Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act or the Chemical Weapons Convention, as the case may be, shall have the meaning so assigned and, unless the context otherwise indicates—

**"Chemical Weapons Convention"** means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (including its Annexes), which was signed by the Government of the Republic of South Africa on 14 January 1993 and ratified by South Africa by the deposition of its instrument of ratification on 14 September 1995, and published for general information as Government Notice No. 754 of 2 May 1997;

**"consumption"**, in relation to a chemical, means its conversion into another chemical via a chemical, biochemical or biological reaction or the application of the chemical onto a medium from which it cannot be removed;

**"discrete organic chemical"** means any chemical belonging to a class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulphides and metal carbides or carbonates, identifiable by chemical structure, by structural formula, if known, and by the Chemical Abstracts Service (CAS) registry number, if assigned, and not contained in the chemicals listed in any Schedule appearing in the Annex on Chemicals of the Chemical Weapons Convention;

**"owner"** means the natural or legal person who is the registered legal owner of a facility or controlled goods;

**"person in control"** means the natural or legal person who is on a day-to-day basis responsible for any facility or any activity relating to controlled goods;

**"PSF discrete organic chemical"** means any discrete organic chemical containing one or more of the elements phosphorus, sulphur or fluorine, and not contained in the chemicals listed in any Schedule appearing in the Annex on Chemicals of the Chemical Weapons Convention;

**"the Act"** means the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);

**"the Notice"** means Government Notice No. 18 of 3 February 2010 published in *Government Gazette* No. 32893;

**"Verification Annex"** means the Annex on Implementation and Verification of the Chemical Weapons Convention.

#### **National authority**

2. The Council is hereby designated to be South Africa's national authority as prescribed in paragraph 4 of Article VII of the Chemical Weapons Convention.

**Declarations**

3. (1) Annual declarations of controlled goods specified in subregulation (2) shall be made to the Council by owners or persons in control of such controlled goods and persons conducting the activities specified in subregulation (2).

(2) The controlled goods and declarations contemplated in subregulation (1) are as follows:

- (a) The controlled goods listed in Annexure A to the Notice, with regard to the production, acquisition in any manner, use, stockpiling, transport, import, export, re-export or transit of such goods;
- (b) the toxic chemical ricin indicated in Annexure A to the Notice, when it is extracted from the plant material (crude extract). Ricin remains declarable as long as the A-S-S-B bond is not broken, irrespective of the isoform(s) present, and this also applies to the toxic mutants of ricin. Castor oil processing plants are not subject to the declaration procedures set out in Part VI of the Verification Annex;
- (c) the controlled goods listed in Annexure B to the Notice, with regard to the production, acquisition in any manner, processing, consumption, stockpiling, import, export, re-export or transit of such goods;
- (d) the controlled goods listed in Annexure C to the Notice, with regard to the production, import, export, re-export or transit of such goods;
- (e) the controlled goods contemplated in paragraphs (a) to (d) shall, for declaration purposes, include intermediates, by-products or waste products that are produced and consumed within a defined chemical production sequence, where such intermediates, by-products or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible;
- (f) the controlled discrete organic chemicals or the PSF discrete organic chemicals or their salts produced within a chemical facility;

- (g) the controlled goods listed in Annexure D to the Notice, with regard to the export or re-export of such goods; and
  - (h) the controlled goods listed in Part A of Annexure E to the Notice, with regard to the possession, production, import, export, re-export or transit of such goods.
- (3) The declarations contemplated in subregulation (2)(a) to (d) are, with regard to both past activities and anticipated future activities, required for each calendar year which extends from 1 January to 31 December.
- (4) The controlled goods listed in Annexure E to the Notice, whether in substantially pure form or in a mixture with any other substance, when identified as consumer goods packaged for retail sale for personal use or packaged for individual use, are exempted from the requirement of an annual declaration as contemplated in subregulation (1).

#### **Facility agreements**

4. (1) The Council, as the national authority, shall conclude a facility agreement with the Organization for each facility contemplated in subregulation (2)(d).
- (2) The facility agreement contemplated in subregulation (1) shall—
- (a) be based on a model agreement approved by the Organization;
  - (b) enable the Council to meet the obligations set out in Section A of Part III of the Verification Annex;
  - (c) enable inspected facilities within the Republic to be afforded the maximum possible protection with respect to their confidential business information during international inspections; and
  - (d) cover detailed inspection procedures for—
    - (i) each facility or location in the territory or in any other place under

the jurisdiction or control of the Republic that is engaged in the production, processing or consumption of Schedule 1 chemicals;

- (ii) each facility or location in the territory or in any other place under the jurisdiction or control of the Republic that is engaged in the production, processing or consumption of Schedule 2 chemicals, unless the Council and the Technical Secretariat of the Organization, subsequent to an on-site inspection, agree that this is not needed;
- (iii) any facility or location in the territory or in any other place under the jurisdiction or control of the Republic that is engaged in the production of Schedule 3 chemicals with regard to which it is agreed between the Council and the owner or person in control of the facility that a facility agreement with the Organization should be requested in terms of paragraph 19 of Section B of Part VIII of the Verification Annex; and
- (iv) any facility or location in the territory or in any other place under the jurisdiction or control of the Republic that is engaged in the production of discrete organic chemicals, including those containing the elements phosphorus, sulphur or fluorine, with regard to which it is agreed between the Council and the owner or person in control of the facility that a facility agreement with the Organization should be requested in terms of paragraph 16 of Section B of Part IX of the Verification Annex.

(3) The owner or person in control of the facility shall take all reasonable steps to cooperate with the Council in the conclusion of the facility agreement.

#### **Inspections by inspectors of the Organization**

5. (1) Pursuant to Part II of the Verification Annex, read together with the relevant provisions of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), inspectors and inspection assistants shall be afforded all the privileges and immunities as set forth in Section B of Part II of the Verification Annex, and be

subject to the obligations specified in Section E of Part II of the Verification Annex.

(2) Any qualified expert who is designated in terms of paragraph 7 of Section B of Part XI of the Verification Annex to be part of a team during an investigation of any case of alleged use of chemical weapons shall enjoy the same privileges and immunities as a designated inspector or inspection assistant employed by the Organization.

(3) Any person in control of a declared facility that may be subject to stipulated data monitoring and on-site verification measures shall be—

- (a) advised in writing by the Council within 30 days of the declaration being submitted by the Council to the Organization, that under specified circumstances, the declared facility may be subject to data monitoring or on-site verification measures by the Organization; and
- (b) notified expeditiously, in order to meet the time frames stipulated in the Chemical Weapons Convention, of the receipt by the Council of an inspection notification relating to the declared facility from the Organization pursuant to paragraph 31 of Section D of Part II of the Verification Annex, and of the available details of such a contemplated inspection.

(4) The Council shall, in order to meet the time frames set forth in the Chemical Weapons Convention, appoint an appropriate number of suitably qualified persons, including, as necessary, officials of other appropriate government departments, to be members of the in-country escort to accompany and assist the inspection team during the in-country period.

(5) The Council shall issue the necessary authorisation to all members of the in-country escort to enable them to facilitate, in a timely and effective manner, the inspection as specified in the Verification Annex.

(6) Any person in control of a declared facility subject to inspection by the Organization, who has been notified by the Council that the declared facility is to receive an inspection by inspectors of the Organization, shall take the necessary



steps to cooperate with the Council in the execution of the inspection in accordance with the provisions of the Verification Annex.

### **Correspondence**

6. All correspondence with the Council shall—

(a) when forwarded by post, be addressed to—

The Secretariat

South African Council for the Non-Proliferation of Weapons of Mass  
Destruction

Private Bag X 84

PRETORIA

0001; or

(b) when delivered by hand, be delivered to—

The Secretariat

South African Council for the Non-Proliferation of Weapons of Mass  
Destruction

77 Meintjies Street

Sunnyside

PRETORIA.

### **Repeal**

7. Government Notice No. R. 705 of 23 May 1997, as amended by Government Notice No. R. 77 of 29 January 2004, is hereby repealed.

### **Short title**

8. These regulations shall be called the Chemical Weapons Regulations.

No. R. 17

3 Februarie 2010

**WET OP DIE NIE-PROLIFERASIE VAN WAPENS VAN GROOTSKAALSE  
VERNIETIGING, 1993 (WET NO. 87 VAN 1993)**

**REGULASIES BETREFFENDE DIE TOEPASSING VAN BEPALINGS VAN DIE  
CHEMIESEWAPENSKONVENSIË**

Die Minister van Handel en Nywerheid het, kragtens artikel 24(1)(f) van die Wet op die Nie-proliferasie van Wapens van Grootse Vernietiging, 1993 (Wet No. 87 van 1993), die regulasies in die Bylae uitgevaardig.

**BYLAE**

**Woordomskrywing**

1. In hierdie regulasies het 'n uitdrukking waaraan die Wet of die Chemiesewapenskonvensie, na gelang van die geval, 'n betekenis heg, sodanige betekenis en, tensy uit die samehang anders blyk, beteken—

**"Chemiesewapenskonvensie"** die *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (ook sy aanhangsels) wat op 14 Januarie 1993 deur die regering van die Republiek van Suid-Afrika onderteken en op 14 September 1995 deur Suid-Afrika deur die indiening van sy bekragtigingsinstrument bekragtig is, en wat vir algemene kennisgewing as Goewermentskennisgewing No. 754 van 2 Mei 1997 gepubliseer is;

**"die Kennisgewing"** Goewermentskennisgewing No. 18 van 3 Februarie 2010 wat in *Staatskoerant* No. 32893 gepubliseer is;

**"die Wet"** die Wet op die Nie-proliferasie van Wapens van Grootse Vernietiging, 1993 (Wet No. 87 van 1993);

**"diskrete organiese chemikalie"** 'n chemikalie wat behoort tot 'n klas chemiese verbindings wat bestaan uit alle verbindings van koolstof, uitgesonderd sy oksiede, sulfiede en metaalkarbiede of –karbonate, wat identifiseerbaar is deur chemiese struktuur, deur struktuurformule, indien bekend, en deur die *Chemical Abstracts Service (CAS)*-registrasienommer, indien toegewys, en wat nie vervat is in die chemikalieë wat in enige bylae van die *Annex on Chemicals* van die Chemiese wapenskonsensie gelys is nie;

**"eienaar"** die natuurlike of regspersoon wat die geregistreerde, wettige eienaar van 'n fasiliteit of beheerde goedere is;

**"FSF- diskrete organiese chemikalie"** 'n diskrete organiese chemikalie wat een of meer van die elemente fosfor, swael of fluoor bevat, en wat nie vervat is in die chemikalieë wat in enige bylae van die *Annex on Chemicals* van die Chemiese wapenskonsensie gelys is nie;

**"persoon in beheer"** die natuurlike of regspersoon wat van dag tot dag verantwoordelik is vir 'n fasiliteit of 'n aktiwiteit wat met beheerde goedere verband hou;

**"verbruik"**, met betrekking tot 'n chemikalie, sy omsetting in 'n ander chemikalie via 'n chemiese, biochemiese of biologiese reaksie of die toepassing van die chemikalie op 'n medium waaruit dit nie verwyder kan word nie;

**"Verifikasieaanhangsel"** die *Annex on Implementation and Verification* van die Chemiese wapenskonsensie.

#### **Nasionale owerheid**

2. Die Raad word hierby aangewys as Suid-Afrika se nasionale owerheid soos in paragraaf 4 van Artikel VII van die Chemiese wapenskonsensie vereis word.

**Verklarings**

3. (1) Die jaarlikse verklarings betreffende beheerde goedere vermeld in subregulasie (2) word aan die Raad voorgelê deur die eienaars of persone in beheer van sodanige beheerde goedere en die persone wat die aktiwiteite uitvoer wat in subregulasie (2) uiteengesit word.

(2) Die beheerde goedere en die verklarings beoog in subregulasie (1) is soos volg:

- (a) Die beheerde goedere gelys in Aanhangsel A by die Kennisgewing, met betrekking tot die produksie, verkryging op enige wyse, gebruik, opberging, vervoer, invoer, uitvoer, heruitvoer of deurvoer van sodanige goedere;
- (b) die toksiese chemikalie risien vermeld in Aanhangsel A by die Kennisgewing, wanneer dit geëkstraheer word uit die plantmateriaal (ru-ekstrak). Risien moet verklaar word solank die A-S-S-B-binding nie verbreek is nie, ongeag die isovorm(e) aanwesig, en dit is ook van toepassing op die toksiese mutante van risien. Kasterolieverwerkingsaanlegte is nie onderworpe aan die verklaringsprosedures van Deel VI van die Verifikasieaanhangsel nie;
- (c) die beheerde goedere gelys in Aanhangsel B by die Kennisgewing, met betrekking tot die produksie, verkryging op enige wyse, verwerking, verbruik, opberging, invoer, uitvoer, heruitvoer of deurvoer van sodanige goedere;
- (d) die beheerde goedere gelys in Aanhangsel C by die Kennisgewing, met betrekking tot die produksie, invoer, uitvoer, heruitvoer of deurvoer van sodanige goedere;
- (e) die beheerde goedere bedoel in paragrawe (a) tot (d) is vir verklaringsdoeleindes ook tussenlopers, neweprodukte of afvalprodukte wat binne 'n bepaalde chemiese produksiesekwensie geproduseer en verbruik word, waar sodanige tussenlopers, neweprodukte of afvalprodukte chemies stabiel is en dus 'n voldoende tyd bestaan om

isolering van die vervaardigingstroom moontlik te maak;

- (f) die beheerde diskrete organiese chemikalieë of die FSF- diskrete organiese chemikalieë of hulle soute wat binne 'n chemiese-fasiliteit geproduseer word;
- (g) die beheerde goedere gelys in Aanhangsel D by die Kennisgewing, met betrekking tot die uitvoer of heruitvoer van sodanige goedere; en
- (h) die beheerde goedere gelys in Deel A van Aanhangsel E by die Kennisgewing, met betrekking tot die besit, produksie, invoer, uitvoer, heruitvoer of deurvoer van sodanige goedere.

(3) Die verklarings beoog in subregulasie (2)(a) tot (d) word, met betrekking tot beide vorige en verwagte toekomstige aktiwiteite, vereis vir elke kalenderjaar wat strek van 1 Januarie tot 31 Desember.

(4) Die beheerde goedere gelys in Aanhangsel E by die Kennisgewing, hetsy in stofflik suiwer vorm of in 'n mengsel met 'n ander stof, word, wanneer dit as verbruikersgoedere geïdentifiseer word wat verpak is vir kleinhandelsverkoop vir persoonlike gebruik of verpak is vir individuele gebruik, vrygestel van die vereiste van 'n jaarlikse verklaring soos in subregulasie (1) bedoel.

#### **Fasiliteitsooreenkomste**

4. (1) Die Raad, as die nasionale owerheid, moet 'n fasiliteitsooreenkoms met die Organisasie aangaan vir elke fasiliteit in subregulasie (2)(d) bedoel.

(2) Die fasiliteitsooreenkoms beoog in subregulasie (1) moet—

- (a) gebaseer word op 'n konsepooreenkoms wat deur die Organisasie goedgekeur is;
- (b) die Raad in staat stel om die verpligtinge na te kom wat in Afdeling A van Deel III van die Verifikasieaanhangsel uiteengesit is;

- (c) die geïnspekteerde fasiliteite binne die Republiek in staat stel om gedurende internasionale inspeksies die maksimum moontlike beskerming verleen te word ten opsigte van hul vertroulike sake-inligting; en
  - (d) die inspeksieprosedures in besonderhede uiteensit vir—
    - (i) elke fasiliteit of plek in die grondgebied of op enige ander plek onder die jurisdiksie of beheer van die Republiek wat besig is met die produksie, verwerking of verbruik van Bylae 1-chemikalieë;
    - (ii) elke fasiliteit of plek in die grondgebied of op enige ander plek onder die jurisdiksie of beheer van die Republiek wat besig is met die produksie, verwerking of verbruik van Bylae 2-chemikalieë, tensy die Raad en die Tegniiese Sekretariaat van die Organisasie ná 'n inspeksie ter plaatse ooreenkom dat dit nie nodig is nie;
    - (iii) enige fasiliteit of plek in die grondgebied of op enige ander plek onder die jurisdiksie of beheer van die Republiek wat besig is met die produksie van Bylae 3-chemikalieë, ten opsigte waarvan daar tussen die Raad en die eienaar of persoon in beheer van die fasiliteit ooreengekom word dat 'n fasiliteitsooreenkoms met die Organisasie aangevra moet word ingevolge paragraaf 19 van Afdeling B van Deel VIII van die Verifikasieaanhangsel; en
    - (iv) enige fasiliteit of plek in die grondgebied of op enige ander plek onder die jurisdiksie of beheer van die Republiek wat besig is met die produksie van diskrete organiese chemikalieë, met inbegrip van daardie wat die elemente fosfor, swael of fluoor bevat, ten opsigte waarvan daar tussen die Raad en die eienaar of persoon in beheer van die fasiliteit ooreengekom word dat 'n fasiliteitsooreenkoms met die Organisasie aangevra moet word ingevolge paragraaf 16 van Afdeling B van Deel IX van die Verifikasieaanhangsel.
- (3) Die eienaar of die persoon in beheer van die fasiliteit moet alle redelike stappe doen om met die Raad saam te werk wanneer die fasiliteitsooreenkoms aangegaan

word.

### **Inspeksies deur inspekteurs van die Organisasie**

5. (1) Ooreenkomstig Deel II van die Verifikasieaanhangsel, saamgelees met die tersaaklike bepalings van die Wet op Diplomatieke Immuniteite en Voorregte, 2001 (Wet No. 37 van 2001), word aan inspekteurs en inspeksieassistenten al die immuniteite en voorregte verleen wat in Afdeling B van Deel II van die Verifikasieaanhangsel uiteengesit is en word hulle onderwerp aan die verpligtinge wat in Afdeling E van Deel II van die Verifikasieaanhangsel uiteengesit is.

(2) 'n Gekwalifiseerde deskundige wat ingevolge paragraaf 7 van Afdeling B van Deel XI van die Verifikasieaanhangsel aangewys is as deel van 'n span gedurende 'n ondersoek van 'n saak van beweerde gebruik van chemiese wapens, geniet dieselfde immuniteite en voorregte as 'n aangewese inspekteur of inspeksieassistent wat in diens van die Organisasie is.

(3) 'n Persoon in beheer van 'n verklaarde fasiliteit wat aan bepaalde datamonitering en verifikasiemaatreëls op die terrein onderwerp kan word, word—

(a) binne 30 dae nadat die verklaring deur die Raad by die Organisasie ingedien is, skriftelik deur die Raad in kennis gestel dat die verklaarde fasiliteit, onder bepaalde omstandighede, deur die Organisasie aan datamonitering of verifikasiemaatreëls op die terrein onderwerp kan word; en

(b) ten einde te voldoen aan die tydraamwerke wat in die Chemiesewapenskonvensie uiteengesit is, ooreenkomstig paragraaf 31 van Afdeling D van Deel II van die Verifikasieaanhangsel onverwyld in kennis gestel van die ontvangs deur die Raad vanaf die Organisasie van 'n inspeksiekennisgewing betreffende die verklaarde fasiliteit en van die beskikbare besonderhede van sodanige beoogde inspeksie.

(4) Die Raad moet, ten einde te voldoen aan die tydraamwerke wat in die Chemiesewapenskonvensie uiteengesit is, die toepaslike getal paslik gekwalifiseerde persone aanstel, met inbegrip van, waar nodig, amptenare van ander toepaslike

Staatsdepartemente as lede van die binnelandse begeleidingspan om die inspeksiespan gedurende die binnelandse tydperk te vergesel en by te staan.

(5) Die Raad moet die nodige magtiging uitreik aan alle lede van die binnelandse begeleidingspan om hulle in staat te stel om die inspeksie op 'n tydige en doeltreffende wyse te fasiliteer soos in die Verifikasieaanhangsel uiteengesit word.

(6) 'n Persoon in beheer van 'n verklaarde fasiliteit wat deur die Organisasie aan inspeksie onderwerp word, wat deur die Raad in kennis gestel is dat die verklaarde fasiliteit deur inspekteurs van die Organisasie geïnspekteer gaan word, moet ooreenkomstig die bepalings van die Verifikasieaanhangsel die nodige stappe doen om met die Raad saam te werk in die uitvoering van die inspeksie.

#### **Korrespondensie**

6. Alle korrespondensie met die Raad word—

(a) . wanneer dit per pos aangestuur word, gerig aan—

Die Sekretariaat

Suid-Afrikaanse Raad vir die Nie-proliferasie van Wapens van  
Grootsekaalse Vernietiging

Privaat Sak X84

PRETORIA

0001; of

(b) . wanneer dit per hand afgelewer word, afgelewer by—

Die Sekretariaat

Suid-Afrikaanse Raad vir die Nie-proliferasie van Wapens van  
Grootsekaalse Vernietiging

Meintjiesstraat 77

Sunnyside

PRETORIA.



**Herroeping**

7. Goewermentskennisgewing No. R. 705 van 23 Mei 1997, soos gewysig by Goewermentskennisgewing No. R. 77 van 29 Januarie 2004, word hierby herroep.

**Kort titel**

8. Hierdie regulasies heet die Chemiesewapensregulasies.

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