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AIDS HELPLINE: 0800-123-22 Prevention is the cure

GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. R. 705

23 May 1997

NOTICE

NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT, 1993 (ACT NO. 87 OF 1993)

The Minister of Trade and Industry has, under section 24 (1) of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), read together with the text of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention), published in the *Gazette* as Notice No.754 of 1997 on 2 May 1997, made the regulations in the Schedule.

SCHEDULE

Regulations relating to the Implementation and Administration of the Chemical Weapons Convention in the Republic.

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned in the Act or the Convention has that meaning and, unless the context otherwise indicates -

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

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

"PSF-chemical" means a discrete organic chemical containing the elements phosphorus, sulphur or fluorine;

"specified area" with respect to an inspection by an inspector or inspectors of the Council, means the premises or portion of the premises which are to be inspected as stipulated in the document of authorization of the inspector(s) with regard to the specific inspection;

"text of the Chemical Weapons Convention" means the full text (Corrected Version) of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (including its Annexes), published in the *Gazette* as Notice No 754 dated 2 May 1997 and any subsequent modifications to this text in terms of Article XV of the Convention;

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

"the Chemical Weapons Convention" or "the 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;

"unscheduled discrete organic chemical" (unscheduled DOC) means any discrete organic chemical which is not listed in any Schedule appearing in the Annex on Chemicals of the Convention;

"unscheduled PSF-chemical" means any PSF-chemical which is not listed in any Schedule appearing in the Annex on Chemicals of the Convention;

"Verification Annex" means the Annex on Implementation and Verification of the Convention.

National Authority

2. (1) The Council is hereby designated to be South Africa's National Authority, as required by paragraph 4 of Article VII of the Convention.
- (2) The Council shall serve as the national focal point for effective liaison with the Organization and other States Parties.

Registration

3. (1) Any person in the territory, or in any other place under the jurisdiction or control of the Republic, who is in control of any activity as specified in Notice No. 704 dated 23 May 1997, with regard to the chemicals, chemical plant sites or riot control agents, declared to be controlled goods, in quantities equal to or exceeding the threshold quantities specified in the said Notice, shall register with the Council by completing the form developed for the purpose and submitting it to the Secretariat of the Council by not later than 60 days after the date of publication of this Notice in the *Gazette*, or by not later than 60 days after becoming obliged to register if this occurs at a later date.
- (2) The Council shall acknowledge in writing the receipt of such a registration form within 60 days of its receipt by the Secretariat of the Council and shall allocate a unique registration number to each person so registered.

- (3) Any person who is registered with the Council shall inform the Council in writing of any change of circumstances relating to his registration obligation within 30 days of such change occurring.

Declarations

4. (1) Any person who is required to register or is already registered with the Council in term of regulation 3, shall, make a declaration or declarations to the Council with regard to the activities (as contemplated in Notice No. 704, dated 23 May 1997) relating to such chemicals, chemical plant sites or riot control agents, subject to the threshold quantities set out in Notice No. 704, dated 23 May 1997.
- (2) Such declarations shall be required with respect to both past activities and to anticipated future activities as shall be specified in the form or forms.

Facility agreements

5. (1) In order that the Council, as National Authority, shall meet the obligations set out in Section A of Part III of the Verification Annex and in order that inspected facilities within the Republic shall be afforded the maximum possible protection with respect to their confidential business information during international inspections, the Council shall conclude a facility agreement with the Organization, based on a model agreement approved by the Organization and covering detailed inspection procedures for -
 - (a) 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;
 - (b) 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 it is not needed;
 - (c) 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
 - (d) 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 unscheduled discrete organic chemicals (DOC's), including those containing the elements phosphorus, sulfur or fluorine (PSF-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 16 of Section B of Part IX of the Verification Annex.

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

Inspections by inspectors of the Organisation

6. (1) An inspector or inspection assistant employed by the Organization who, after acceptance by the Council, is duly designated by the Organization in terms of Section A of Part II of the Verification Annex to data monitoring and on-site verification duties, shall be furnished with a document, signed by the chairperson of the Council, confirming his or her appointment as an inspector or inspection assistant.
- (2) Such document shall be produced by the inspector or inspection assistant at the request of any person who has a material interest in the functions of that inspector or inspection assistant.
- (3) Pursuant to Part II of the Verification Annex, read together with the relevant provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961 and of the Diplomatic Immunities and Privileges Act, 1989 (Act No. 74 of 1989), as amended, inspectors and inspection assistants shall be afforded all the privileges and immunities and be subject to the obligations specified in the Convention.
- (4) Any qualified expert who is designated by the Organization 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, shall enjoy the same privileges and immunities as a designated inspector or inspection assistant employed by the Organization.
- (5) Any person who is in control of a declared facility or place which 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 that his or her activity has been declared to the Organization and that his or her activity may, under specified circumstances, be subject to data monitoring and/or on-site verification measures by the Organization; and
 - (b) notified expeditiously, in order to meet the timeframes stipulated in the Convention, of the receipt by the Council of an inspection notification relating to his or her activity 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.
- (6) Upon receipt of an inspection notification from the Organization, the Council shall, in order to meet the timeframes set forth in the 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.

- (7) The Council shall issue the necessary authorization to all members of the in-country escort to enable them to facilitate, in a timeous and effective manner, the inspection as specified in the Verification Annex.
- (8) Such authorization shall state, as a minimum, a description of the inspection site, a description of the specified area in which the inspection is to be conducted, the type of inspection and the names of the members of the inspection team and of the in-country escort and, in the case of a challenge inspection, the name of the observer.
- (9) Any person who is in control of an inspection site which is subject to inspection by the Organization and who has been notified by the Council that that inspection site is to receive an inspection by inspectors of the Organization, shall -
 - (a) take all reasonable steps to co-operate with the Council and/or its authorised officials in making the necessary preparations for the inspection of the inspection site, within the timeframes stipulated in the Convention;
 - (b) forthwith grant unimpeded access to the inspection site to the Organization's inspectors, accompanied by the Council's in-country escort together with their approved equipment and, in the case of a challenge inspection, the observer;
 - (c) in the case of a facility which is yet to be subject to a facility agreement between the Council and the Organization, take all reasonable steps to co-operate, within the timeframe permitted, with the Council and the Organization in the drafting and conclusion of the said agreement;
 - (d) provide amenities for the use of the inspectors and the in-country escort during inspection of the inspection site, including, as appropriate, parking, transportation within the perimeter of the site, communication means, safe and secure working space and secure storage space for the approved equipment of the inspection team;
 - (e) on arrival of the inspection team at the inspection site, ensure that they receive a pre-inspection briefing;
 - (f) take all reasonable steps to co-operate with the in-country escort and with the inspection team to ensure the timeous and effective discharge of the objectives of the inspection within the bounds of the inspection mandate [which shall be issued by the Director-General of the Organization for each and every inspection] and the Organization's inspection manual, and in conformity with the provisions of any facility agreement which may be in force and, to this end, any book, document, data or thing which may be pertinent to the inspection shall immediately be made available on demand;
 - (g) permit the inspectors of the Organization to interview facility personnel, to inspect documentation and records, and to have photographs taken;
 - (h) provide clarification in connection with ambiguities that arise during an inspection;

- (i) take samples or, if necessary, permit samples to be taken by the in-country escort or, if so agreed, by the inspectors of the Organization, according to methods approved by the Organization;
- (j) take all reasonable steps to assist with the analysis of such samples, where possible on-site, or with the transfer of the samples for analysis off-site if it is deemed necessary by the inspectors of the Organization;
- (k) participate in the debriefing;
- (l) permit, where applicable, the installation of continuous monitoring instruments and systems and seals and ensure that such equipment is not interfered with.

Offences and penalties

7. Any person contravening a provision of or failing to comply with a provision of these regulations, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding ten years.

Extra-territorial extension of regulations

8. These regulations shall extend to acts done or omitted to be done by any citizen of the Republic outside the territory of the Republic or any other place under the jurisdiction or control of the Republic or on board South African ships and aircraft, in conformity with international law.

Address for submission of documents

9. Any application or document or anything else pertaining thereto, which is required in terms of these regulations to be submitted to 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;

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

The Secretariat,
South African Council for the Non-Proliferation of Weapons of Mass
Destruction,
House of Trade and Industry,
corner Prinsloo and Pretorius Streets,
Pretoria.

Short Title

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

**A ERWIN
MINISTER OF TRADE AND INDUSTRY**