
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS**NOTICE 74 OF 2017****NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004
(ACT NO. 10 OF 2004)****DRAFT REGULATIONS FOR THE DOMESTIC TRADE IN RHINOCEROS HORN, OR A PART,
PRODUCT OR DERIVATIVE OF RHINOCEROS HORN**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations relating to the domestic trade, namely the selling or otherwise trading in, giving, donating, buying, receiving, accepting as a gift or donation, or in any way disposing or acquiring, and the export from the Republic of South Africa, of rhinoceros horn, or a part, product or derivative of such rhinoceros horn, belonging to the species *Diceros bicornis* (black rhinoceros) and *Ceratotherium simum* (white rhinoceros), in terms of section 97(1)(b)(ii), (iii), (iiiA) and (iv), read with section 100 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), set out in the Schedule hereto.

Members of the public are invited to submit, within 30 days after the publication of the notice in the *Gazette*, written representations or objections to the following addresses:

By post to: The Director-General
 Department of Environmental Affairs
 Attention: Ms Magdel Boshoff
 Private Bag X447
 PRETORIA
 0001

By hand at: Environmental House, 473 Steve Biko Street, Arcadia, Pretoria, 0083.

By email: mboshoff@environment.gov.za

Any enquiries in connection with the notice can be directed to Ms Magdel Boshoff at 012 399 9604. Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE**TABLE OF CONTENTS**

1. Definitions
2. Purpose and application of these Regulations
3. Carrying out of certain restricted activities involving rhinoceros horn without a permit
4. Application relating to the carrying out of certain restricted activities involving rhinoceros horn
5. Issuance of a permit in respect of the carrying out of certain restricted activities involving rhinoceros horn
6. Issuance of a permit in respect of the export of rhinoceros horn
7. Special provisions relating to powdered or shaved rhinoceros horn
8. Special provisions relating to the selling of rhinoceros horn by means of an auction
9. General provisions
10. Offences
11. Penalties
12. Short title and commencement of these Regulations

Definitions

1. (1) In these Regulations—

“AIS Regulations” means the regulations pertaining to alien and listed invasive species, as promulgated in terms of section 97 of the Biodiversity Act;

“Biodiversity Act” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“CITES” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

“CITES Regulations” means the regulations pertaining to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as promulgated in terms of section 97 of the Biodiversity Act;

“DNA” means deoxyribonucleic acid, and refers to the molecules that carry the unique genetic information in the cells of a specific specimen of rhinoceros;

“duly authorized” means authorized by means of a permit issued in terms of Chapter 7 of the Biodiversity Act;

“genetic profiling” means the use of biotechnology to identify the unique characteristics of a live rhinoceros or rhinoceros horn for forensic or diagnostic purposes;

“microchip” means a device that assigns a unique identification code to the rhinoceros or rhinoceros horn;

“national database” means a database developed by the Department and used by an issuing authority for the recording of information relating to rhinoceros horn stock piles;

“TOPS Regulations” mean the regulations pertaining to listed threatened or protected species, as promulgated in terms of section 97 of the Biodiversity Act; and

“Republic” means the Republic of South Africa;

“rhinoceros horn” means the whole horn, or any part or cut piece of the horn, whether polished or unpolished, in any form whatsoever or howsoever changed from its original form, and includes rhinoceros horn in its powdered form or shavings of rhinoceros horn.

(2) In these Regulations, a word or expression or any derivative or other grammatical form of such word or expression to which a meaning has been assigned in subregulation (1) or in the Biodiversity Act, has the corresponding meaning, unless the context indicates otherwise.

Purpose and application of these Regulations

2. (1) The purpose of these Regulations is to regulate the domestic selling or otherwise trading in, giving, donating, buying, receiving, accepting as a gift or donation, or in any way disposing or acquiring, rhinoceros horn within the borders of the Republic, and the export of rhinoceros horn for personal purposes, from the Republic.

- (2) These Regulations apply in respect of rhinoceros horn originating from the following sub-species—
- (a) *Ceratotherium simum simum*
 - (b) *Diceros bicornis bicornis*;
 - (c) *Diceros bicornis minor*; and
 - (d) *Diceros bicornis michaeli*.
- (3) These Regulations, to the extent specified, apply to—
- (a) a whole rhinoceros horn;
 - (b) a part or a piece of rhinoceros horn,
 - (c) any product or derivative of rhinoceros horn; including—
 - (i) rhinoceros horn in powdered form; and
 - (ii) shavings of rhinoceros horn.
- (4) These Regulations must be applied alongside with—
- (a) the species listing notice published in terms of section 56 of the Biodiversity Act;
 - (b) a prohibition notice published in terms of section 57(2) of the Biodiversity Act;
 - (c) the TOPS Regulations;
 - (d) the CITES Regulations, as far as it relates to the import, export or re-export of rhinoceros horn;
 - (e) the AIS Regulations as far as it relates to the import of rhinoceros horn;
 - (f) applicable provincial conservation legislation; and
 - (g) any applicable norms and standards issued in terms of section 9 of the Biodiversity Act.

Carrying out of certain restricted activities involving rhinoceros horn without a permit

3. (1) A person may not sell or otherwise trade in, give, donate, buy, receive, accept as a gift or donate, or in any way dispose of or acquire, a rhinoceros horn, unless a permit has been issued in terms of Chapter 7 of the Biodiversity Act.
- (2) The requirement contemplated in subregulation (1) must be read alongside the prohibition notice published in terms of section 57(2) of the Biodiversity Act, as far as it relates to the powdering or shaving of rhinoceros horn.
- (3) A person contemplated in regulation 6(2) of these Regulations may export a maximum of two rhinoceros horns, and then only for personal purposes.

- (4) A person may not export rhinoceros horn via any port of entry or exit other than OR Tambo International Airport.
- (5) A person may not export rhinoceros horn as hand baggage.
- (6) A person, other than a duly authorised freight agent, may not export a rhinoceros horn.
- (7) A duly authorised freight agent contemplated in subregulation (6) must report on a monthly basis the following information to the Department—
 - (a) the name of the owner of the rhinoceros horn or person causing the rhinoceros horn to be exported;
 - (b) the number of the export permit;
 - (c) the markings of each individual rhinoceros horn (serial number and microchip number);
 - (d) the genetic profile information (reference number or DNA sampling kit number) of each individual rhinoceros horn;
 - (e) the date of export of the rhinoceros horn; and
 - (f) the physical address of the recipient of the rhinoceros horn in the country of import.
- (8) A rhinoceros horn may not be exported, unless the export permit has been endorsed by an environmental management inspector, or by an official from any other border law enforcement agency, mandated to perform this function.

Application relating to the carrying out of certain restricted activities involving rhinoceros horn

4. (1) An application relating to the selling or otherwise trading in, giving, donating, buying, receiving, accepting as a gift or donation, or in any way disposing or acquiring, of rhinoceros horn, must be referred by the relevant issuing authority to the Department for recording of the information on the national database.
- (2) A person who intends to carry out the restricted activities contemplated in subregulation (1) must complete, sign and submit an application form.
- (3) The application form contemplated in regulation (2) must be accompanied by—
 - (a) a certified copy of the identity document, permanent residence permit, work permit or passport of the applicant;
 - (b) proof of the payment as prescribed in the TOPS Regulations;
 - (c) a checklist containing the information as may be required by the issuing authority;
 - (d) proof of legal possession, namely a copy of a permit for the possession of the rhinoceros horn, issued in terms of—
 - (i) Chapter 7 of the Biodiversity Act; and
 - (ii) provincial conservation legislation (if required);

- (e) a certified copy of a permit issued in terms of Chapter 7 of the Biodiversity Act for the selling or otherwise trading in, giving, donating or in any way disposing of, if the application relates to the buying, receiving, accepting as a gift or donation, or in any way acquiring of rhinoceros horn;
 - (f) proof that the rhinoceros horn has been subject to genetic profiling by a scientific institution that has been registered in terms of the TOPS Regulations (original profiling report);
 - (g) clear photographs of the individual rhinoceros horns;
 - (h) details of the marking of the individual rhinoceros horns, including—
 - (i) serial number (ZA number) of each rhinoceros horn;
 - (ii) microchip number of each rhinoceros horn;
 - (i) measurement of each individual rhinoceros horn, including—
 - (i) circumference at the base of the rhinoceros horn;
 - (ii) length measured along the inner curve of the rhinoceros horn;
 - (iii) length measured along the outer curve of the rhinoceros horn; and
 - (iv) weight.
- (4) An affidavit may not be accepted as proof of legal acquisition contemplated in subregulation (3)(d).
- (5) A rhinoceros must be marked in a manner as prescribed in the TOPS Regulations, and as indicated in the Norms and Standards for the marking of rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes.
- (6) When a person applies for a permit to buy, receive, accept as a gift or donation, or in any way acquire rhinoceros horn, he or she must at the same time also apply for a permit to possess the rhinoceros horn that he or she intends to buy, receive, accept as a gift or donation, or in any way acquire.

Issuance of a permit in respect of the carrying out of certain restricted activities involving rhinoceros horn

5. (1) A permit for the selling or otherwise trading in, giving, donating or in any way disposing of a rhinoceros horn may not be issued, unless the following conditions have been met—
- (a) a complete application with all supporting information has been received by the relevant issuing authority;
 - (b) an inspection by an official from the relevant issuing authority has been conducted upon receipt of the application, to verify the—
 - (i) information provided by the applicant; and

- (ii) place of safe-keeping (if the application relates to the buying, receiving, accepting as a gift or donation, or in any way acquiring of rhinoceros horn);
 - (c) the information of the owner of the rhinoceros horn who intends to sell or otherwise trade in, give, donate or in any way dispose of such rhinoceros horn, has been included in the national database compiled and maintained by the Department; and
 - (d) the report of the official contemplated in paragraph (b) includes a confirmation that the information of the owner of the rhinoceros horn in the national database is correct.
- (2) A permit to buy, receive, accept as a gift or donation, or in any way acquire rhinoceros horn may be issued to an applicant who is not a citizen of the Republic of South Africa, or who is not a permanent resident within the Republic of South Africa, subject to the following conditions—
 - (a) an import permit has been issued by the Management Authority of the applicant's country of import or usual residence, or a letter has been issued by such Management Authority, confirming that the Management Authority will issue the import permit, of which a certified copy must be provided to the relevant issuing authority;
 - (b) the Management Authority contemplated in paragraph (a) confirms in writing that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provisions of CITES that apply to the importation of specimens of species included in Appendix I of the Convention; and
 - (c) the rhinoceros horn remains in the Republic of South Africa until the purchaser or receiver of such rhinoceros horn leaves the Republic of South Africa.
- (3) A person who buys, receives, accepts as a gift or donation, or in any way acquires rhinoceros horn may not take possession of such rhinoceros horn, until such time that—
 - (a) the information of the buyer or receiver, as well as the detail of the rhinoceros horn, has been verified by an official from the relevant issuing authority; and
 - (b) a possession permit has been issued in terms of Chapter 7 of the Biodiversity Act, to the buyer or receiver, in respect of the rhinoceros horn that has been bought, received, accepted as a gift or donation, or in any way acquired.

Issuance of a permit in respect of the export of rhinoceros horn

- 6. (1) A person who is not a citizen or a permanent resident of the Republic of South Africa, but who owns a rhinoceros within the Republic of South Africa, and who intends to export the horn of such rhinoceros of which he or she is the owner, must submit the following documents to the relevant issuing authority, together with the application for an export permit—
 - (a) an import permit issued by the Management Authority from his or her country of import or usual residence, or a letter from such Management Authority, confirming that it will issue the import; and
 - (b) written confirmation from the Management Authority contemplated in paragraph (a) that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provisions of CITES that

apply to the importation of specimens of species included in Appendix I of the Convention.

- (2) A person from a foreign state who visits the Republic of South Africa, regardless of the purpose of such visit, and who has bought, received, accepted as a gift or donation, or who has in any way acquired rhinoceros horn, must submit the following documents to the relevant issuing authority, together with the application for an export permit—
- (a) an import permit issued by the Management Authority from his or her country of import or usual residence, or a letter from such Management Authority, confirming that it will issue the import permit; and
 - (b) written confirmation from the Management Authority contemplated in paragraph (a) that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provisions of CITES that apply to the importation of specimens of species included in Appendix I of the Convention.

Special provisions relating to powdered or shaved rhinoceros horn

7. (1) In the case where powdered rhinoceros horn have been formed in the circumstances set out in the prohibition notice contemplated in regulation 3(2) of these Regulations, the owner of the powdered rhinoceros horn must keep such powdered rhinoceros horn in a place of safe-keeping in accordance with the provisions of the Norms and Standards for the marking or rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes, or donate it to the State.
- (2) In the case where shavings of a rhinoceros horn have been formed in the circumstances set out in the prohibition notice contemplated in regulation 3(2) of these Regulations, the owner of the shavings of the rhinoceros horn must—
- (a) keep such rhinoceros horn shavings in a place of safe-keeping, or destroy such rhinoceros horn shavings in accordance with the provisions of the Norms and Standards for the marking or rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes; or
 - (b) donate such rhinoceros horn shavings to the State.
- (3) A permit for the keeping of the powder or shavings of rhinoceros horn in the circumstances contemplated in subregulation (1) and (2), must specify the genetic profile information (reference number or DNA sampling kit number).

Special provisions relating to the selling of rhinoceros horn by means of an auction

8. (1) A rhinoceros horn may be sold by auction, only if the—
- (a) seller is in possession of a permit authorising the selling of a particular rhinoceros horn; and
 - (b) buyer is in possession of a permit authorising the buying of the rhinoceros horn contemplated in paragraph (a);

on the day or at the time of the auction.

- (2) A permit to buy rhinoceros horn through an auction may be issued to a person who is not a citizen or a permanent resident of the Republic of South Africa, provided that the Management Authority of the country of import or usual residence of the buyer—
 - (a) has issued a letter confirming that an import permit will be issued; and
 - (b) has confirmed in writing that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provisions of CITES that apply to the importation of specimens of species included in Appendix I of the Convention.
- (3) The selling permit and the buying permit contemplated in subregulation (1) must be issued with a validity period that corresponds with the date or period, as the case may be, of the auction.
- (4) A buyer contemplated in subregulation (1)(b) may not take possession of the rhinoceros horn, until such time that—
 - (a) the information of the buyer or receiver, as well as the detail of the rhinoceros horn, has been verified by an official from the relevant issuing authority; and
 - (b) a possession permit has been issued in terms of Chapter 7 of the Biodiversity Act, to the buyer or receiver, in respect of the rhinoceros horn that has been bought, received, accepted as a gift or donation, or in any way acquired.
- (5) A seller of the rhinoceros horn is responsible for the safe-keeping, in accordance with the provisions of the Norms and Standards for the marking of rhinoceros and rhinoceros horn and for the hunting of rhinoceros for trophy hunting purposes, of the rhinoceros horn that he or she has sold, until the possession permit has been issued to the buyer.

General provisions

9. (1) A person who has sold, donated, given as a gift or donation, or who has disposed of rhinoceros horn, and who is no longer in possession of such rhinoceros horn, must return the original possession permit to the relevant issuing authority for cancellation of such permit.
- (2) The possession permit of a person who has sold rhinoceros horn by auction, remains valid for the purpose of safe-keeping of such rhinoceros horn, until the possession permit has been issued to the buyer and the buyer has taken possession of the rhinoceros horn.

Offences

10. A person is guilty of an offence if that person contravenes or fails to comply with a provision of regulation 3(1), 3(3), 3(4), 3(5), 3(6), 3(7), 3(8), 5(3), 7(1), 8(1), 8(4), 8(5) or 9(1).

Penalties

11. A person convicted of an offence in terms of regulation 10 of these Regulations is liable upon conviction to—
 - (a) imprisonment for a period not exceeding five years; or

- (b) a fine not exceeding five million rand, and in the case of a second or subsequent conviction, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and imprisonment; or
- (c) both a fine and such imprisonment.

Short title and commencement of these Regulations

12. These regulations are called the Regulations for the domestic trade in rhinoceros horn, and products or derivatives of rhinoceros horn, 2017, and take effect on a date determined by the Minister by notice in the *Gazette*.