

GOVERNMENT NOTICE

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

No. R. 466

29 April 2009

NATIONAL FORESTS ACT, 1998

REGULATIONS ON THE NATIONAL FORESTS ACT, 1998 ACT NO. 84 OF 1998

The Minister of Water Affairs and Forestry has under section 53 of the National Forests Act, 1998 (Act No. 84 of 1998), made the Regulations in the Schedule.

SCHEDULE

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CHAPTER 1: DEFINITIONS

Definitions

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

“access” means entry into and use of roads and other structures in State forests and other forests;

“applicant” means a person applying for a licence under these regulations;

“dispose of” means to get rid of in an environmentally acceptable way;

“licensee” means the holder of a licence under these regulations;

“notice” means a notice published in the *Government Gazette*;

“owner” includes a manager or lessee of the owner;

“road” means any road, slip path, sledge path or foot path in or leading into a State forest;

“**servitude**” means a right, less than ownership, over another’s property;

“**tariff**” means a table of fixed charges; and

“**the Act**” means the National Forests Act, 1998 (Act No. 84 of 1998);

CHAPTER 2 SUSTAINABLE FOREST MANAGEMENT

Research

2. (1) Before commissioning research, the Minister may—

- (a) give notice of the proposal to commission research and the subject matter of the research;
- (b) invite comments, suggestions and objections to be submitted within a specified period; and
- (c) consider the comments, suggestions and objections received in response to the notice.

(2) The Minister commissions research by publishing a notice—

- (a) recording the decision to commission the research,
- (b) naming the person, persons or organisation that will conduct the research; and
- (c) fixing the period for carrying out the research.

CHAPTER 3 MEASURES

Measures of area, dimension, volume and mass for forest produce and forest products

3. (1) Calculations and measurements of area, dimension, volume and mass of forest produce or forest products must follow—

- (a) units and symbols set by the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973) or applicable legislation;

- (b) internationally accepted forestry practices where these are not in conflict with South African law or practice; or
- (c) as directed by the Minister.

(2) Where forest produce or a forest product—

- (a) is irregularly shaped; or
 - (b) can for any reason not be accurately measured,
- the Minister may set rules and methods for—
- (i) calculating estimates of area, dimension, volume or mass; and
 - (ii) applying rounded-off fractions and conversion factors based on average dimensions.

CHAPTER 4 LICENCES

General

4. (1) In every application for a licence brought in terms of the provisions of the Act, the requirements set out in these regulations for a licence must be followed, as well as contain the following information—

(a) the personal details of the applicant, including—

- (i) the name;
- (ii) the addresses;
- (iii) identity number;
- (iv) contact telephone numbers;
- (v) email address;
- (vi) gender; and
- (vii) race.

(b) the activity for which the licence is being applied for;

(c) the area where the activity will take place; and

(d) the period for which the licence is required for.

(2) In every application for a licence brought in terms of the provisions of the Act by a person who claims to be applying on behalf of a community or other legal entity, the applicant must state—

(a) the name of the community or entity and its location or relationship with respect to the State forest;

(b) whether or not the community or entity is a party to a community forestry agreement under section 30 of the Act;

(c) whether or not the community is a communal property association under the Communal Property Associations Act, 1996 (Act No. 28 of 1996); or

(d) if it is not a communal property association, the nature of the legal entity.

(3) No application for a licence will be considered until an applicant submits proof that he or she has complied with the Acts referred to as a “specific environmental management Act” in the National Environmental Management Act, 1998 (Act No. 107 of 1998), or any other Act that is applicable to the application.

(4) Any fee payable under section 55(a) of the Act must be paid as soon as the licence is issued, and—

- (a) if the licence is issued for a fixed period, the total amount for that period, unless the Minister has agreed to different terms; or
- (b) if the licence is issued for an indefinite period, the total amount for that period or at intervals set by the Minister, but the period or intervals must be for at least three months.

(5) No licensee may—

- (a) in any way interfere with—
 - (i) the lawful exercise of any right granted to any person under licence issued under the Act or these regulations;
 - or
 - (ii) any forest officer or official of the Department in the performance of his or her duties under the Act or these regulations;
- (b) plant any weed or invasive plant in any area in respect of which a licence has been issued, unless permitted to do so in terms of the licence or any other law; and
- (c) burn any live or dead tree, plant or vegetation without the consent and supervision of a forest officer or other authorised official of the Department.

(6) Where a licensee has paid a fee as contemplated in section 55(a) of the Act for a licence which has been issued for a fixed period and the Minister amends, suspends or cancels the licence in terms of the provisions of section 25(2)(a) of the Act which amendment, suspension or cancellation was not due to any act or omission on the part of the licensee, the Minister must pay to the licensee the proportional amount of the unexpired period of the licence.

Establishment and management of plantation

5. (1) Any person, organ of State or organisation may apply to the Minister for a licence to establish and manage a plantation in a State forest.

(2) An application contemplated in subregulation (1)—

- (a) must be accompanied by a planting plan setting out—
 - (i) the name of the State forest;
 - (ii) the area proposed for planting trees;
 - (iii) the period for which the licence is needed; and
 - (iv) the type of trees to be planted; and

- (b) may include other relevant information—
 - (i) which the applicant considers necessary to support the application; or
 - (ii) which the Minister requires.

Felling of trees, removal of timber and cutting and removal of other forest produce

6. (1) Any person, organ of State or organisation may, if not a party to an agreement under sections 26, 27, 28 or 30 of the Act apply to the Minister for a licence to—

- (a) fell trees and remove timber from a State forest; and
- (b) cut and remove any other forest produce from a State forest.

(2) The Minister may direct that—

- (a) all timber or other forest produce that has been needlessly wasted in the felling, cutting or removal thereof must be valued; and
- (b) the value contemplated in subparagraph (a) must be included in the price of the tree or other forest produce.

(3) The Minister may direct any official in the Department to place a mark, electronic chip or any other form of identification on any standing tree or other forest produce already sold or being put up for sale.

(4) No person may remove, destroy, deface or otherwise interfere with the mark, electronic chip or other identification referred to in subregulation (3), unless they have the consent of a forest officer.

(5) Except for persons who are—

- (a) licensed under section 7(4) or 23(1)(b) of the Act;
- (b) exempted under section 7(1)(b)(ii) or 24(6) of the Act; or
- (c) parties to an agreement contemplated in sections 26, 27, 28 or 30 of the Act,

no person may remove any tree or other forest produce from a State Forest, unless—

- (i) it has been marked or otherwise identified by the Minister;
- (ii) the removal thereof has been authorised by a forest officer where the tree or other forest produce can for any reason not be marked or identified; or

- (iii) the contract of sale for the tree or other forest produce stipulates otherwise.

(6) Any trees or other forest produce that must be marked or identified under this regulation, must be stacked, or presented in such a manner that the trees or forest produce is easily and safely accessible to the forest officer.

(7) Where the trees or other forest produce is not stacked as set out in subregulation (6), the forest officer may—

- (a) refuse to mark or identify it; and
- (b) stop its removal until it has been properly stacked and marked or identified.

Use of land, structures or buildings for agricultural, domestic, residential, industrial, communications, transportation or commercial purposes

7. (1) Any person, organ of State or organisation may apply to the Minister for a licence for the use of land for agricultural, domestic, residential, industrial, communications, transportation or commercial purposes.

(2) An application contemplated in subregulation (1) must—

- (a) briefly describe the area prior to the commencement of the activity;
- (b) describe any anticipated environmental impacts and proposed mitigation measures; and
- (c) state whether the application for a licence falls under a servitude.

(3) The licensee must maintain the land, building or structure in a neat condition during the licence period.

(4) No licence which has been applied for under this regulation may be granted, unless—

- (a) tenders have been called for; or
- (b) the Minister has by notice done away with the requirement for tenders.

Use of roads in State forest

8. (1) Any person, organ of State or organisation may apply to the Minister for a licence to make use of roads in a State forest.

(2) An application for a licence brought in terms subregulation (1) must—

- (a) state the purpose for the use;
- (b) describe the type of vehicle that will be used on the road;
- (c) the period of the use; and
- (d) state how frequent the vehicle will use the road.

(3) Except for a State forest managed in terms of an agreement under section 27 of the Act and a licence granted under subregulation (1), the Minister may at any time, without being liable to any person for any damages—

- (a) close any road in a State forest;
- (b) prohibit or restrict the use of any road in a State forest—
 - (i) for a fixed or indefinite period;
 - (ii) by a particular type of vehicle, animal, equipment or machinery; or
 - (iii) for any particular purpose; and
- (c) regulate the use of any road within a State forest by traffic signs and other measures.

Construction of any road, building or structure

9. (1) Any person, organ of State or organisation may apply to the Minister for a licence to construct any road, building or other structure.

(2) The Minister must approve the building plan or plans for the construction of any road, building or structure.

(3) An application for a licence brought in terms of subregulation (1) must—

- (a) indicate whether the structure to be constructed will be a temporary or a permanent structure;
- (b) define the construction phases and the duration of each phase; and
- (c) include the design plans, a site map, specifications and a description of the construction method to be used.

Grazing or herding of animals

10. (1) Any person, organ of State or organisation may apply to the Minister for a licence to graze or herd animals in a State forest.

(2) An application for a licence brought in terms of subregulation (1) must—

- (a) state the number and describe the type of animals that will graze or be herded;
- (b) describe the mark with which the animals are branded; and
- (c) indicate whether the animals have been treated for pests or other diseases and if so, indicate when they were treated.

(3) No licence may be issued under this regulation in respect of a State forest which has a natural forest or protected area in it, unless—

- (a) the Minister is of the opinion issuing the licence will not have a harmful effect on the forest or area;
- (b) it is compatible with the management plan or rules of that forest or area; and
- (c) the management plan or rules of the forest or area allow otherwise.

(4) In addition to any other licence conditions, the Minister may—

- (a) set the number and type of animal that may graze or be herded;
- (b) demarcate the area where the grazing or herding may take place;
- (c) set out the manner in which the area referred to in paragraph (b) will be managed; and
- (d) fix seasons when grazing or herding may take place.

(5) A licence issued under this regulation must be regarded as having been cancelled if a State forest, or part of it, becomes a protected area under the provisions of the Act or any other law and the activity under subregulation (1) is in contravention of section 24(5) of the Act.

Use of land for cultivation purposes

11. (1) Any person, organ of State or organisation may apply to the Minister for a licence to clear, plough or cultivate land in a State forest for the growing of crops.

(2) A license issued under this regulation must—

- (a) define the area for which it is granted;
- (b) describe the types of crops that may be grown in the area;
- (c) indicate whether insecticides will be used, and if so, describe the type and amount to be used; and
- (d) set out conditions to ensure that the clearing, ploughing or cultivation is not harmful to the environment.

(3) No licence which has been applied for under this regulation may be granted if the land intended for clearing, ploughing or cultivation is in an area protected under the Act or any other law.

Hunting and Fishing

12 (1) Any person, organ of State or organisation may apply to the Minister for a licence to hunt, catch or kill any game, bird, insect, freshwater fish or other animal in a State forest.

(2) An application brought in terms of subregulation (1) must describe the purpose for which the activity is applied for.

(3) No licence will be granted under this regulation unless the applicant has complied with the requirements of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and any other applicable legislation dealing with the protection and preservation of species and habitats.

Use of State forest for recreational, educational, cultural or spiritual purposes

13. (1). Any person, organ of State or organisation may apply to the Minister for a licence to use State forest land, for recreational, educational, cultural or spiritual purposes.

(2) If the activity applied for is for the use of a State forest in order to conduct research for educational purposes, the applicant must—

- (a) describe the type and quantity of samples to be collected;
- (b) describe the possible environmental impact of the activities and planned mitigation; and
- (c) define the research topic and the institution under whose auspice the research is being conducted.

Mining

14. (1) Any person, organ of State or organisation may apply to the Minister for a licence to carry out any activity in a State forest that may lawfully be required for prospecting or mining of precious or base minerals.

(2) An application for a licence brought in terms of subregulation (1) must—

- (a) define the trees and forest produce to be affected; and
- (b) describe the method to be used for mining;
- (c) describe the mitigation measures to be employed when mining.

(3) No licence which has been applied for may be granted under this regulation unless the application is accompanied by a prospecting permit or mining authorisation, issued under the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002).

CHAPTER 5 PROTECTION OF TREES AND FORESTS

Licences for activities in respect of indigenous trees in natural forests or their products

15. (1) Any person, organ of State or organisation may apply to the Minister for a licence under section 7(4) of the Act to do anything referred to in section 7(1)(a) and (b) of the Act.

(2) An application for a licence brought in terms of subregulation (1) must—

- (a) state the purpose for engaging in the activity applied for; and
- (b) name and define the quantity of the trees.

Licences for activities in respect of protected trees or forest products derived from protected trees

16. (1) Any person, organ of State or organisation may apply to the Minister for a licence to do anything referred to in section 15(1) of the Act.

(2) An application for a licence brought in terms of subregulation (1) must—

- (a) state the purpose for engaging in the activity applied for; and
- (b) name and define the quantity of the trees.

Protection of forests, trees or group of trees

17(1) Any person, organ of State or organisation may apply to the Minister to protect a forest, tree or group of trees in terms of section 18 of the Act.

(2) An application brought under subregulation (1) must --

- (a) identify the forest or trees to be protected,
- (b) identify the land or area where the forest or trees to be protected occur;
- (c) attach a map showing the location; and
- (d) provide the reasons for applying for protection.

Setting aside of protected areas on private land

18. (1) A registered owner of land outside a State forest may—

- (a) request the Minister; or
- (b) give consent to the Minister,

to declare such land, or any part of it, a protected area in one of the categories listed in subparagraphs (i) to (iii) of section 8(1) of the Act.

(2) A request to the Minister under subregulation (1) must—

- (a) clearly identify the area;
- (b) set out in detail the nature of the fauna and flora in the area;
- (c) fully set out the reasons why the protection is needed;
- (d) identify the nature of any rights that other persons have over the land;
- (e) be accompanied by a map of the area;
- (f) state who will benefit from the protection and in what way; and
- (g) contain any further relevant information.

(3) If the owner needs financial or other assistance for the management of the protected area, he or she must, together with the request—

- (a) state the nature, extent and duration of the assistance;
- (b) set out how the assistance will be utilized;
- (c) fully explain how the assistance will benefit the area, the public or the environment; and
- (d) give all other relevant information.

(4) The consent by the owner under section 8(1)(c) of the Act must be in writing and may include suggestions on the proper management of the area.

CHAPTER 6 INFORMATION

Collection of data

19. (1) The Minister may request—

- (a) an owner, manager or lessee of a plantation, or any group of owners, managers or lessees; or
- (b) a person who harvests, saws, processes or sells forest produce,

to submit statistical returns on forms submitted to them by the Minister.

(2) Information submitted under subregulation (1) must be for—

- (a) the preceding period of one year from 1 July to 30 June;
- (b) the most recent financial year; or
- (c) such other period as the Minister may determine.

(3) The request referred to in subregulation (1) must—

- (a) state the date by which the information must be provided;
- (b) be made at least one month before the end of the periods referred to in subregulation (2); and
- (c) allow for a period of at least three months for the submission of the information.

Collection of data on natural forests and woodlands

20. The Minister may enter into an agreement with any Province for the Province to submit to the Minister statistical returns for natural forests and woodlands situated within the Province.

CHAPTER 7 SERVITUDES

Granting of servitudes and licensing of activities under servitudes

21. (1) Any person may apply to the Minister in terms of section 26(1) of the Act for the granting of a servitude in a State forest.

(2) No activity under a servitude may be carried out before a licence in respect of the activity or activities under that servitude has been issued.

CHAPTER 8 COMMUNITY FORESTRY

Community forestry assistance

22. (1) A community or a person engaged in activities referred to in section 32(1) of the Act may apply to the Minister for assistance.

(2) The application—

- (a) must—
 - (i) state the nature, extent and duration of the assistance;
 - (ii) state whether or not any assistance has been applied for or received from any other source;
 - (iii) set out how the assistance will be used; and
 - (iv) fully explain how the assistance will benefit the community, forest or the environment; and
- (b) may include other relevant information which according to the community is necessary to support the application.

CHAPTER 9 ENFORCEMENT

Proof of appointment of forest officers

23. (1) Proof of appointment of a forest officer must—

- (a) be in writing;
- (b) be headed with the words “Department of Water Affairs and Forestry”;
- (c) show the signatures of the Director-General or of an official delegated by the Director-General; and
- (d) include—
 - (i) the full names of the forest officer;
 - (ii) the date of his or her appointment;
 - (iii) the words “forest officer” in bold print; and
 - (iv) a clear photograph of the forest officer.

(2) The proof of appointment is not transferable and must be returned to the Director-General when a person is no longer a forest officer.

Inspections

24 (1) Any person or the incumbent of a post designated by the Minister may, for the purposes of an inspection contemplated in section 53(4)(a) of the Act—

- (a) enter any forest, vehicle or premises; and
- (b) obtain from the owner, possessor, driver, rider or person in control—

- (i) any information on the forest, trees, timber, vehicle, pack-animal or premises; and
- (ii) a statement about any issues to do with the forest, trees, timber, vehicle, pack-animal or premises.

(2) An inspection carried out under this regulation must be conducted after—

- (a) the designation referred to in section 53(4)(a) of the Act has been shown;
- (b) the reason for the inspection has been explained;
- (c) a request to consent to the inspection has been made, to the owner, possessor, driver, rider, or other person in control of the forest, trees, timber, vehicle, pack-animal or premises.

(3) If the consent under subregulation (2)(c) is in the discretion of the person carrying out the inspection unreasonably refused, the inspector may still proceed with the inspection.

(4) No inspection may be made outside the hours of 08h00 to 18h00.

CHAPTER 10 OFFENCES AND PENALTIES

Offences and penalties

25 (1) Any person who contravenes the prohibition on—

- (a) the interference with—
 - (i) the exercise of a right referred to in regulation 4(5)(a)(i); or
 - (ii) the performance of his or her duties by a forest officer or an official of the Department referred to in regulation 4(5)(a)(ii);
- (b) the planting of weeds or invasive plants as set out in regulation 4(5)(b); or
- (c) the burning of any live or dead tree, plant or vegetation as set out in regulation 4(5)(c),

is guilty of an offence and liable upon a first conviction of that offence to a fine or imprisonment for a period not exceeding one year, or to both fine and such imprisonment.

(2) Any person who contravenes the prohibition on the removal, destruction, defacement or interference with a mark electronic chip or identification, as set out in regulation 6(4), is guilty of an offence and liable upon a first conviction of that offence to a fine or imprisonment for a period not exceeding one year, or to both fine and such imprisonment.

(3) Any person who contravenes the prohibition on the removal of trees or other forest produce from a State forest as set out in regulation 6(5) is guilty of an offence and is liable upon a first conviction of that offence to a fine or imprisonment for a period not exceeding 6 months, or both fine and such imprisonment.

(4) Any person who contravenes the prohibition on the use of a road, as set out in regulation 11(3)(b), is guilty of an offence and liable upon a first conviction of that offence to a fine or imprisonment for a period not exceeding six months, or to both fine and such imprisonment.

(5) Any person who fails to submit information as requested in terms of regulation 19(1) is guilty of an offence and liable upon a first conviction of that offence to a fine or imprisonment for a period not exceeding six months, or to both fine and such imprisonment.

(6) Any person who contravenes the prohibition on the carrying on of activities under a servitude as set out in regulation 21(2) is guilty of an offence and liable upon on a first conviction of that offence to a fine or imprisonment for a period not exceeding six months, or to both fine and such imprisonment.

(7) Any person convicted for a second or subsequent offence—

- (a) under subregulation (4), (5) or (6) is liable to a fine or imprisonment for a period not exceeding one year, or to both fine and such imprisonment
- (b) under subregulation (1), (2) or (3) is liable to a fine or imprisonment for a period not exceeding two years, or to both fine and such imprisonment.

Short title and commencement

26. (1) These regulations are called the Regulations under the National Forests Act 84 of 1998, and shall come into operation on the date of publication by notice in the *Gazette*.

(2) The Forest Act regulations published under Gazette No. R.602 of 27 March 1986 are hereby repealed.