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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 timeous 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.