
GENERAL NOTICE

NOTICE 1607 OF 2006

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: NATIONAL PORTS ACT, 2005 (ACT NO. 12 OF 2005)

REGULATIONS IN TERMS OF SECTION S 80(1)

The Minister of Transport intends under sections 80(1)(a),(c),(d) and (g) of the National Ports Act, 2005(Act No. 12 of **2005**) to make the regulations set out in the schedule. (Comments are invited). Interested persons are invited to submit written comments on the Regulations on or before the 13th of December 2006. Submissions should be posted to the Director-General for the attention of Ms Karen Naidoo.

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GOVERNMENT NOTICE

DEPARTMENT OF TRANSPORT

No. R [*]

[•] 2006

NATIONAL PORTS ACT, **2005** (Act No. 12 of **2005**)

REGULATIONS IN TERMS OF SECTIONS 80(1)

The Minister of Transport intends under sections 80(1)(a), **(c)**, (d) and **(g)** of the National Ports Act, **2005** (Act No. 12 of **2005**) to make the regulations set out in the Schedule.
[Comments are invited.]

SCHEDULE
ARRANGEMENT OF REGULATIONS

1. Definitions

CHAPTER 1 - ECONOMIC PARTICIPATION AND EMPOWERMENT OF
HISTORICALLY DISADVANTAGED GROUPS IN PORT OPERATIONS
(Section 80(1)(a) of the Act read with sections 56 and 57)

- 2. Authority to incorporate black economic empowerment into decision-making
- 3. Specific BEE targets to be applied by the Authority
- 4. Monitoring by the Regulator of the measures taken by the Authority pursuant to Regulation 2

CHAPTER 2 - ECONOMIC PARTICIPATION IN PORT OPERATIONS
(Section 80(1)(f) of the Act read with sections 56 and 57)

- 5. Economic Review by the Regulator
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OF THE AUTHORITY
(Section 80(1)(g), read with section 10 of the Act)

- 16. Access by the Regulator to confidential information of the Authority

CHAPTER 5 – PORT LIMITS**(Section 80(1)(d), read with section 10 of the Act)**

17. Description of port limits
- (1) Port of Richards Bay
 - (2) Port of Durban
 - (3) Port of East London
 - (4) Port of Ngqura
 - (5) Port of Port Elizabeth
 - (6) Port of Mossel Bay
 - (7) Port of Cape Town
 - (8) Port of Saldanha
 - (9) Port of Port Nolloth

1. Definitions

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

“the Act” means the National Ports Act, 2005 (Act No. 12 of 2005);

“the BEE Act” means the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;

“black people” has the meaning given to that term in the BEE Act;

“the economic review” means the review of the present economic participation in ports operations and services by public entities, private entities and public-private partnerships and the optimal economic structure for future participation in ports operations and services by public entities, private entities and public-private partnerships to be conducted by the Regulator pursuant to Regulation 5(1); and

“the Maritime Charter” means the Maritime Transport & Service BEE Charter signed by participants in the Maritime Industry in 2004, as amended from time to time.

CHAPTER 1**ECONOMIC PARTICIPATION AND EMPOWERMENT OF HISTORICALLY
DISADVANTAGED GROUPS IN PORT OPERATIONS
(Section 80(1)(a) of the Act read with sections 56 and 57)****2 Authority to incorporate black economic empowerment into decision-making**

Until such time as any Code of Good Practice is issued in terms of section 9 of the BEE Act the Authority must apply the specific targets set out in section 3 below and must take into account and, as far as is reasonably possible, apply the Maritime Charter, whereafter it should take into account and apply as far as is reasonably possible any relevant Code of Good Practice issued in terms of section 9 of the BEE Act, in —

- (1) determining qualification criteria for entering into any agreement in terms of section 56 of the Act;

- (2) determining qualification criteria for the issuing of any licence in terms of section 57 of the Act;
- (3) granting any other concession or authorisation in terms of the Act;
- (4) developing and implementing a preferential procurement policy;
- (5) determining qualification criteria for the sale or lease of any property owned by the Authority within a port; and
- (6) developing criteria for entering into partnerships with the private sector.

3. Specific BEE targets to be applied by the Authority

- (1) Within the first two years following the commencement of these Regulations at least twenty-five percent per year of all:
 - (a) agreements entered into in terms of section 56 of the Act by the Authority;
 - (b) licences issued in terms of section 57 of the Act by the Authority;
 - (c) other concessions or authorisations granted in terms of the Act by the Authority;
 - (d) sales or leases of any property owned by the Authority within a port; and
 - (e) any partnerships with the private sector and the Authority,

shall be entered into, issued or granted to persons or entities who meet or exceed the minimum target set for all elements of “ownership” by black persons in either the Maritime Charter or, once issued, the Code/s of Good Practice issued in terms of section 9 of the BEE Act.

- (2) From the end of the second year following the commencement of these Regulations at least seventy-five percent of the:
 - (a) agreements entered into in terms of section 56 of the Act by the Authority;
 - (b) licences issued in terms of section 57 of the Act by the Authority;
 - (c) other concessions or authorisations granted in terms of the Act by the Authority;
 - (d) sales or leases of any property owned by the Authority within a port; and
 - (e) any partnerships with the private sector and the Authority

shall be entered into, issued or granted to persons or entities who meet or exceed the minimum target set for all elements of “ownership” by black persons in either the Maritime Charter or, once issued, the Code/s of Good Practice issued in terms of section 9 of the BEE Act.

4. Monitoring by the Regulator of the measures taken by the Authority pursuant to Regulation 2

- (1) The Authority must submit a report to the Regulator, on or before each anniversary of the commencement of the Act, in which it sets out in detail the measures taken pursuant to Regulations 2 and 3 and the manner in which the measures taken have enhanced access to and participation in ports services and port facilities by black people.
- (2) The Regulator may take such other steps as it may deem necessary from time to time to monitor and enforce compliance by the Authority with the requirements of Regulations 2 and 3, including conduct a hearing regarding the performance of the Authority in fulfilling the requirements set out in Regulations 2 and 3.

CHAPTER 2

ECONOMIC PARTICIPATION IN PORT OPERATIONS

(Section 80(1)(f) of the Act read with sections 56 and 57)

5. Economic Review by the Regulator

- (1) One of the main functions of the Regulator is to exercise economic regulation in the ports system in line with government's strategic objectives: immediately following the appointment of the Regulator, the Regulator shall conduct a comprehensive economic review of the present economic participation in ports operations and services by public entities, private entities and public-private partnerships and the optimal economic structure for future participation in ports operations and services by public entities, private entities and public-private partnerships.
- (2) The Regulator may conduct a public participation process as part of the economic review, including conduct one or more public hearings in the manner set out in the Directives issued by the Regulator in terms of the Act.
- (3) For the purposes of the economic review, the Regulator may request access to all relevant information held by the Authority in the manner set out in the Directives issued by the Regulator in terms of the Act.
- (4) The economic review shall be completed within six months of the appointment of the Regulator and shall contain recommendations to the Minister regarding a future economic framework for participation in ports operations and services by public entities, private entities and public-private partnerships and the manner in which this shall be implemented.

6. Interim economic regulation of ports operations and services

- (1) Pending the finalisation of the economic review the Regulator shall regulate the participation in ports operations and services of all those wishing to participate