

No. R. 994

8 December 2014

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)**

NATIONAL EXEMPTION REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the regulations pertaining to the process to be followed for the lodging and processing of an application for exemption, under Section 44(1)(a) read with Section 24M(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

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Interpretation

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context requires otherwise—

“**applicant**” means a person applying for an exemption in terms of these Regulations;

“**environmental impact assessment**” has the meaning assigned to it in regulation 1 of the Environmental Impact Assessment Regulations;

“**Environmental Impact Assessment Regulations**” means the regulations pertaining to environmental impact assessment made in terms of section 24(5)(a) of the Act;

“**MEC**” has the meaning assigned to it in section 1 of the Act;

“**Minister**” has the meaning assigned to it in section 1 of the Act;

“**the Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Purpose of Regulations

2. The purpose of these Regulations is to regulate the process contemplated in section 24M (3) of the Act relating to the lodging and processing of an application for exemption in terms of the Act.

Application for exemption

3. Subject to section 24M(1) and (2) of the Act, a person may apply in writing to the Minister, the Minister responsible for mineral resources, or the MEC, as the case may be, for exemption from a provision of the Act, the regulations or any notice issued under the Act.

Submission of application

4. (1) A written application contemplated in regulation 3 must be accompanied by—
 - (a) the name, address and telephone number of the person applying for the exemption;
 - (b) a document explaining of the reasons for the application and addressing the issues contemplated in section 24M(4) of the Act;
 - (c) details of the specific provision from which the person is requesting exemption; and
 - (d) any applicable supporting documents;
 - (e) a declaration by the applicant that the information in the application is correct and accurate; and
 - (f) the applicable application fee.
- (2) The Minister, Minister responsible for mineral resources or MEC must, within 14 calendar days from the receipt of the application for exemption, acknowledge receipt in writing.
- (3) A person applying for an exemption from a provision of the Act that relates to an application for an environmental authorisation or from a provision of the Environmental Impact Assessment Regulations must communicate his or her notice of intention to apply for exemption by

conducting a public participation process in the manner prescribed in the Environmental Impact Assessment Regulations.

- (4) The written notice contemplated in sub-regulation (3) must contain the following information—
- (a) the name, address and telephone number of the person applying for the exemption;
 - (b) the provisions from which the exemption is applied for;
 - (c) a brief description of the exemption applied for and where the application can be viewed or a copy can be obtained from;
 - (d) the postal address, e-mail address, fax number, contact details of the person applying for the exemption to whom comments must be submitted;
 - (e) the date on which comments on the exemption application must be submitted, provided that a minimum of 30 calendar days must be allowed for the submission of comments; and
- (5) A person applying for exemption from a provision of this Act, other than contemplated in subregulation (3), must give notice to all potential interested and affected parties of an application by—
- (a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of the site which will be affected by the exemption;
 - (b) giving written notice, in any of the manners provided for in section 47D of the Act, to—
 - (i) the occupiers of the site and, if the applicant is not the owner or person in control of the site which will be affected by the exemption, the owner or person in control of the site which will be affected by the exemption;
 - (ii) owners, persons in control of, and occupiers of land adjacent to the site contemplated in (a);
 - (iii) the municipal councillor of the ward in which the site contemplated in (a) is situated and any organisation of ratepayers that represent the community in the area;
 - (iv) the municipality which has jurisdiction in the area;
 - (v) any organ of state that may have an interest in the matter; and
 - (vi) any other party as required by the Minister or MEC;
 - (c) placing an advertisement in one local newspaper;
 - (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the exemption will have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it will be granted; and
 - (e) using reasonable alternative methods, as agreed to by the Minister or MEC, in those instances where a person is desirous of but unable to participate in the process due to—
 - (i) illiteracy;
 - (ii) disability; or
 - (iii) any other disadvantage.
- (6) The notice, notice board and advertisement contemplated in sub-regulation (5) must contain the information set out in subregulation (4).

Consideration of application

5. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may upon receipt of the application for exemption, request the person applying for an exemption to furnish additional information within 15 calendar days where such information is necessary for the purposes of informing the Minister, Minister responsible for mineral resources or MEC's decision.
- (2) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may in appropriate circumstances, allow a member of the public to make oral representations to the Minister, Minister responsible for mineral resources or MEC, or to a person designated by the Minister, Minister responsible for mineral resources or MEC.
- (3) The Minister, Minister responsible for mineral resources or MEC must consider the application for exemption, additional information, if such information was submitted in terms of subregulation (1), and all comments, objections or oral representations submitted in terms of regulation 4(4)(e) and subregulation (2) and must reach a decision within 30 calendar days from the date that all information was received.

Decision on application

6. (1) Subject to section 24M(4) of the Act, the Minister, Minister responsible for mineral resources or MEC, as case may be, may grant or refuse to grant an exemption.
- (2) If an application for exemption is granted, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must issue a written exemption notice to the person applying for exemption stating the—
 - (a) name, address and telephone number of the person to whom the exemption is granted;
 - (b) provision of the legislation from which exemption is granted;
 - (c) conditions subject to which exemption is granted, including conditions relating to the transfer of the written exemption notice; and
 - (d) period for which exemption is granted.
- (3) After the Minister, Minister responsible for mineral resources or MEC has reached a decision on an application for exemption, the Minister, Minister responsible for mineral resources or MEC must, in writing and within eight calendar days—
 - (a) notify and make available to the applicant the decision on the application for exemption; and
 - (b) give written reasons for the decision.
- (4) The applicant must in writing and within 12 calendar days of being notified of the decision, notify, using any of the communication methods set out in section 47D of the Act, any person that submitted comments, objections or oral submissions in relation to the exemption application of—
 - (a) the outcome of the application and the reasons for the decision; and
 - (b) draw the attention of any person that submitted comments, objections or oral submissions to the fact that an appeal may be lodged against the decision in terms of section 43 of the Act, if such appeal is available in the circumstances of the decision.

Review of exemption

7. (1) The Minister, Minister responsible for mineral resources or MEC, as the case may be, may—
- (a) from time to time review any exemption granted in terms of these Regulations; and
 - (b) on good grounds suspend, withdraw or amend the exemption, or any part thereof.
- (2) Before suspending, withdrawing or amending an exemption granted in terms of these Regulations, the Minister, Minister responsible for mineral resources or MEC, as the case may be, must give notice of such intention to the person to whom the exemption was granted and must provide the person with an opportunity to make written representations within a specified period.
- (3) The Minister, Minister responsible for mineral resources or MEC must consider any comments submitted in terms of sub-regulation (2) before making a decision on the suspension, withdrawal or amendment of any exemption granted in terms of these Regulations.
- (4) The Minister, Minister responsible for mineral resources or MEC must reach a decision on the suspension, withdrawal or amendment of any exemption granted in terms of these Regulations within 30 calendar days after receipt of any comments submitted in terms of sub-regulation (2).
- (5) The Minister, Minister responsible for mineral resources or MEC must in writing and within 12 calendar days, using any of the communication methods set out in section 47D of the Act—
- (a) notify the holder of the relevant exemption granted in terms of these Regulations; and
 - (b) draw the attention of the holder of the relevant exemption granted in terms of these Regulations to the fact that an appeal may be lodged against the decision in terms of section 43 of the Act.

Repeal of regulations

8. The regulations mentioned in the Table in Annexure 1 to these Regulations are hereby repealed or amended to the extent set out in the third column of the Table.

Transitional arrangements

9. (1) An application for exemption submitted in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010, and which is pending when these Regulations take effect, must despite the repeal of chapter 5 of the Environmental Impact Assessment Regulations, 2010, be dispensed with in terms of those regulations as if those regulations were not repealed and a decision taken in terms of chapter 5 of the Environmental Impact Assessment Regulations, 2010 must be deemed as a decision taken in terms of these Regulations.
- (2) An application for exemption submitted after the commencement of the Environmental Impact Assessment Regulations, 2014 must be processed in terms of these Regulations.

Short title and commencement

10. These Regulations are called the National Exemption Regulations, 2014, and takes effect on the date of publication in the *Gazette*.

ANNEXURE 1

REGULATIONS REPEALED		
Date and year of publication	Short title	Extent of repeal
Government Notice No. R.543, <i>Gazette No. 33306</i> of 18 June 2010.	Environmental Impact Assessment Regulations, 2010.	Chapter 5.