

(14 April 1989 - to date)

HAZARDOUS SUBSTANCES ACT 15 OF 1973

(Gazette No. 3834, No. 550 dated 4 April 1973. See Act for commencement dates.)

REGULATIONS RELATING TO GROUP III HAZARDOUS SUBSTANCES

Government Notice R690 in Government Gazette 11823, dated 14 April 1989. Commencement date: 14 April 1989.

I, Michael Hendrik Veldman, Deputy Minister of National Health, acting on behalf of and on assignment by the Minister of National Health and Population Development, have, in terms of section 29 of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), made the regulations contained in the Schedule hereto.

SCHEDULE

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Licensing for the purpose of the sale of listed electronic products
3. Application for a licence
4. Appeal
5. Records to be kept by approved dealers
6. Provisions relating to a defect and non-compliance with an applicable standard
- 7.
- 8.
9. Repair and modification of a listed electronic product
10. Penalties

1. Definitions

In these regulations “the Act” shall mean the Hazardous Substances Act, 1973 (Act No. 15 of 1973), and any expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates -

“**applicable standard**”, in relation to a listed electronic product, shall mean a standard which shall be determined by the Director-General as a condition of a licence and with which such product shall comply;

“**approval**” shall mean a written notice of approval referred to in regulation 3(6)(a);

Prepared by:

“**approved dealer**” shall mean a dealer to whom an approval has been issued;

“**dealer**” shall mean any person who sells or leases a listed electronic product;

“**defect**”, in relation to an electronic product, shall mean a defect, whether latent or not, which causes or may cause the emission of electronic product radiation which is unnecessary for the accomplishment of such product's primary purpose or which creates or may create a risk of injury to any person;

“**identification**” shall mean a description of an electronic product which, in terms of regulation 3(4), is permanently affixed to such product on a label or is inscribed on such product;

“**injury**” shall mean an injury induced by an electronic product

“**licence**” shall mean a licence referred to in section 4(b);

“**licensed**”, in relation to an electronic product, shall mean that a licence has been issued in respect of a model of such product;

“**licensee**” shall mean the holder of a licence;

“**listed electronic product**” shall mean an electronic product which has been declared a Group III hazardous substance in terms of section 2(1)(b) by the Minister by notice in the *Gazette*;

“**model**” shall mean an electronic product to which a specific name has been assigned in order to differentiate between such electronic product and similar electronic products;

“**modification**”, in relation to a listed electronic product, shall mean an alteration to such product which increases the danger associated with the use thereof, and “**modify**” shall have a corresponding meaning;

“**purchaser**”, in relation to a listed electronic product, shall mean any person who buys or otherwise acquires an electronic product for purposes other than the sale thereof or who leases such product for purposes other than the subleasing thereof;

“**repair**”, in relation to a listed *[sic]* electronic product, shall mean any work done on such product for the purpose of restoring the original function thereof but shall not include any modification of such product;

“**section**” shall mean a section of the Act.

2. Licensing for the purpose of the sale of listed electronic products

Prepared by:

- (1) A licence for the purpose of the sale of listed electronic products shall be issued in respect of a model and not in respect of each individual product of such model.
- (2) Where the Director-General has issued a licence in terms of section 4(b) in respect of a model and such licence has not been withdrawn or suspended in terms of section 7 such licence shall, for the purposes of section 3(1)(b), be deemed to be in force in respect of each separate listed electronic product of that model.
- (3) The issue of a licence or the sale of a listed electronic product in respect of which a licence has been issued shall be subject not only to such conditions as the Director-General, in terms of section 4, may have determined in general or in a particular case, but also to the conditions prescribed in these regulations.
- (4) For the purposes of this regulation, "sell" shall include "lease".

3. Application for a licence

- (1) Application for a licence shall be made by a dealer to the Director-General in writing.
- (2) A dealer referred to in subregulation (1) shall, together with such application, submit to the Director-General for approval a report on the model for which a licence is required.
- (3) Such report shall be clearly marked "Initial Report on a Listed Electronic Product for Licensing Purposes" and shall contain the full name under which the dealer carries on his business, as well as his postal address, and shall, in respect of each model -
 - (a) specify, for identification purposes, the date and place of manufacture, the brand name, the model name and the serial number;
 - (b) describe the following, namely -
 - (i) the electronic product radiation, the operating characteristics affecting such radiation and the known or intended uses of the product concerned;
 - (ii) the physical and electrical characteristics, with special reference to shielding and electronic circuitry, so far as the said characteristics have a bearing on the standards or design specifications referred to in paragraph (c);
 - (iii) the methods and procedures, if any, employed in the testing and measuring of the model in regard to electronic product safety, including the methods and procedures for the

testing and measuring of unnecessary, secondary or leakage electronic product radiation, and the basis for selecting the said methods and procedures; and

- (iv) the methods and procedures by which and the frequency with which listed electronic products liable to produce an increased risk of injury with ageing are tested for durability and stability in regard to electronic product safety: Provided that such description shall also include a specification of the basis for selecting such methods and procedures or, where no such testing or quality control procedures are applied, the basis on which such testing and quality control procedures are deemed unnecessary;
 - (c) state the standards or design specifications, if any, with respect to electronic product safety; and
 - (d) furnish the particulars of all warning signs, labels and instructions for installation, operation and use in respect of electronic product safety.
- (4) After such report has been approved and a licence issued by the Director-General, the particulars referred to in subregulation 3 (a), the licence number pertaining to the model concerned and any other identification particulars required by the Director-General shall as an identification be affixed to or inscribed on each listed electronic product of the licensed model: Provided that, in the case of such a product which cannot be identified in the said manner, the Director-General may approve any other method by which such product can be identified.
- (5)
- (a) Prior to the marketing of a modified model of a licensed listed electronic product, the approved dealer concerned shall submit to the Director-General for approval a supplementary report on the modified model clearly marked "Supplementary Report on (model)" and stipulating the changes in the information submitted in the initial report.
 - (b) No person shall sell or lease a listed electronic product belonging to a modified model, unless the modification concerned has been approved by the Director-General on the basis of such supplementary report.
- (6)
- (a) The Director-General shall, after considering the report referred to in subregulation (2) or (5), as the case may be, and after having satisfied himself that the listed electronic product concerned or the modified model thereof will, to the best of his knowledge and belief, entail no risk of injury to any person approve such product or model, as the case may be, and issue a written notice of such approval to the dealer.
 - (b) The Director-General may, in considering a report referred to in paragraph (a), require the following:

- (i) Oral or written substantiation by the dealer concerned;
 - (ii) an on-the-spot inspection or examination by an inspector of the listed electronic product concerned;
 - (iii) the delivery for evaluation purposes of such product to an address specified by him; or
 - (iv) the provision, by the dealer concerned, of any other information which he may deem necessary.
- (7) If a listed electronic product or a modified model thereof is not approved on the basis of a report referred to in subregulation (2) or (5), the Director-General shall in writing notify the dealer concerned accordingly stating -
- (a) his reason(s) for such non-approval; and
 - (b) the latest date by which such dealer may make further representations.

4. Appeal

Where an application made in terms of section 4 or 5, as the case may be, has been refused by the Director-General, an appeal in terms of section 6 shall be in the form of an affidavit directed to the Minister and shall be delivered to the Director-General by registered post or by hand at his office address in Pretoria to reach him not later than three months after the date of such refusal.

5. Records to be kept by approved dealers

- (1) Every approved dealer shall, if the Director-General so requires, keep in respect of the model concerned a record of -
- (a) every sale and leasing of any listed electronic product belonging to such model, and such record shall include the following:
 - (i) The name and postal address of the purchaser;
 - (ii) the brand name, model name and serial number of such product; and
 - (iii) the date of such sale or leasing;
 - (b)
 - (i) the quality control procedures instituted with respect to such product to ensure electronic product safety;

- (ii) the results of tests carried out on such product with a view to electronic product safety, including the control of unnecessary, secondary or leakage electronic product radiation;
 - (iii) the results of durability and stability tests on such product, showing up ageing effects which may increase the risk of injury; or
 - (iv) such other procedures pertaining to the control of such product as the Director-General may deem necessary.
- (2) The provisions of subregulation (1)(a) shall apply *mutatis mutandis* to any dealer who sells or leases such listed electronic product and the information referred to in subregulation (1) shall, on request, be supplied to the approved dealer concerned by such dealer.
- (3) The records referred to in subregulations (1) and (2) shall -
- (a) at all times, save when they have been withdrawn from use or have been removed for the purposes of these regulations or of any law, be kept on the business premises of the approved dealer or dealer concerned, as the case may be, in a place which is reasonably protected against fire and theft;
 - (b) be updated daily;
 - (c) at all reasonable times be made available for inspection at the request of an inspector;
 - (d) in the event of a change of ownership of the business concerned, be handed over to the new owner;
 - (e) at the request of the Director-General, as a complete record or in part or in the form of extracts, be forwarded to or delivered at, as the case may be, an address specified by him; and
 - (f) be disposed of only in such manner as may be approved by the Director-General.

6. Provisions relating to a defect and non-compliance with an applicable standard

- (1) When it comes to the notice of an approved dealer or when an approved dealer has reason to suspect that a listed electronic product of a licensed model has a defect or fault since it does not comply with an applicable standard or no longer fits the description of such model contained in the report on it submitted in terms of regulation 3(2) or (5), as the case may be, such approved dealer shall immediately -

- (a) notify the Director-General in accordance with subregulation (2) of the relevant facts or suspicion;
 - (b) if he is of the opinion that such defect or fault can be rectified, submit to the Director-General for approval, together with the notification referred to in paragraph (a), a plan or procedure for such rectification; and
 - (c) if directed by the Director-General to do so, forward a notification, in accordance with subregulation (3), to the purchaser or any other person who, either directly or through reasonable inquiry, can be identified as the present user of such listed electronic product, and furnish the Director-General with a copy of such notification.
- (2) Each notification, referred to in subregulation (1)(a) furnished to the Director-General shall be in writing and shall include the following information:
- (a) An identification of the listed electronic product concerned;
 - (b) the date on which and the circumstances under which such defect or fault was discovered or first suspected;
 - (c) a description of such defect or fault or the reason why it is suspected that such defect or fault existed or developed;
 - (d) an evaluation of the risk of injury resulting from such defect or fault;
 - (e) the number of units of the product concerned which have been manufactured or imported, the number sold and the number leased; and
 - (f) proposed instructions, if any, for approval by the Director-General, on the use of the product concerned pending the rectification thereof.
- (3) Each notification referred to in subregulation (1)(c) to a purchaser or user shall be in writing and in addition to any other relevant information, if any, that is to be furnished on the instruction of the Director-General shall include the following information:
- (a) An identification of the product or products concerned;
 - (b) a description of the defect or fault concerned;
 - (c) a clear evaluation in non-technical terms of the risk of injury resulting from such defect or fault; and

- (d) instructions approved by the Director-General, if any, on the use of the product concerned pending the rectification thereof.
- (4) If the Director-General on the basis of testing, inspection, research or the examination of reports or data is of the opinion that a listed electronic product of a licensed model has a defect or fault since it no longer complies with an applicable standard, he shall notify the approved dealer, in writing, of such defect or fault and shall specify the following in such notification:
- (a) His findings, with reference to the tests, inspections, studies or reports upon which they are based;
 - (b) the latest date by which such approved dealer, if he so wishes, may make representations in regard to such defect or fault;
 - (c) such approved dealer's responsibilities under regulation 7; and
 - (d) the conditions, if any, on which any person may use, operate or modify or dispose of the product concerned, until such time as the submitted plan or procedure is approved by the Director-General in terms of regulation 8(2) and is effectively carried out.
- (5) Every approved dealer who receives a notification under subregulation (4) shall advise the Director-General, in writing, on or before the date referred to in subregulation (4)(b) of the number of units of the product concerned which have been manufactured or imported, the number sold and the number leased.
- (6) If, after the date referred to in subregulation (4)(b) and after considering the representations, submitted by the approved dealer concerned if any, the Director-General is of the opinion that the product has still not been rectified, he may direct such approved dealer to forward a notification to the purchaser or user referred to in subregulation (1)(c) in the manner laid down in subregulation (3) and within a period determined by the Director-General.

7.

- (1) Notwithstanding anything to the contrary contained in these regulations the Director-General may, if he is of the opinion that the use of listed electronic products of a specific model is injurious or may be injurious to the health of any person, by notice given in such manner as in his opinion is best calculated to bring it to the notice of the persons concerned -
- (a) direct any manufacturer or importer of such model to -
 - (i) stop the manufacture of importation thereof; or

- (ii) request any person to return any number of units of such model which he has in his possession to the manufacturer or importer concerned or to deliver or send such number of units to a person designated by the Director-General;
 - (b) in cases where no specific manufacturer or importer of such model is known to the Director-General, request any person having such model in his possession or custody or under his control to deliver or send any number of units of such model to a person designated by the Director-General.
- (2) The Director-General may by written notice direct any manufacturer or importer of such model who has in his possession any number of units thereof, including any number returned to him in accordance with a direction given under subregulation (1), or any other person to whom any number of such units have been delivered or sent, to deal with or dispose of the said units in such manner as the Director-General may determine.
- (3) No person shall sell, lease or use any listed electronic product which is the subject of a notice given under subregulation (1).

8.

- (1) Every plan or procedure referred to in regulation 6(1)(b) shall include the date by which the defect or fault concerned is expected to have been rectified in all units of the product concerned.
- (2)
 - (a) If, after considering such plan or procedure, the Director-General is of the opinion that the proposed action by the approved dealer concerned will effectively rectify the defect or fault, he shall notify such dealer in writing of his approval of the plan or procedure.
 - (b) Such approval shall be subject to the additional conditions the Director-General may deem necessary for the protection of all persons against the risk of injury by a listed electronic product.
- (3) If such plan or procedure is not approved by the Director-General, he shall in writing notify the approved dealer concerned accordingly, and shall specify the following in such notification:
 - (a) The reason(s) for his refusal to approve such plan or procedure; and
 - (b) the latest date by which such approved dealer may make representations.

9. Repair and modification of a listed electronic product

No person shall -

Prepared by:

- (a) modify a licensed listed electronic product unless a supplementary report referred to in regulation 3(5) has been submitted and has been approved by the Director-General; or
- (b) repair a licensed listed electronic product unless such product carries a label or inscription referred to in regulation 3(4).

10. Penalties

Any person contravening or failing to comply with any provision of these regulations shall be guilty of an offence and liable on conviction to the penalties prescribed by section 19.