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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.

The Department of Transport
Private Bag x 193
PRETORIA
0001

Email address: Naidook@dot.gov.za

Tel no: (012) 309 3550

Fax no: (012) 323 7007

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)**

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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

through the economic regulation it exercises pursuant to the Act and the Directives issued by the Regulator in terms of the Act, including through:

- (a) the complaints and appeals procedure established by the Act and conducted in accordance with the Directives issued by the Regulator in terms of the Act;
- (b) its consideration of prices filed by providers of port services other than the Authority, in the manner set out in the Directives issued by the Regulator in terms of the Act; and
- (c) the consideration and approval or rejection of tariffs charged by the Authority, in the manner set out in the Directives issued by the Regulator in terms of the Act.

CHAPTER 3
RULES OF PROCEDURE FOR PORT CONSULTATIVE COMMITTEES
(Sections 80(1)(c), 80(1)(g) read with section 81 of the Act)

7. Meetings of a Port Consultative Committee

- (1) Each Port Consultative Committee shall meet at least quarterly and the chairperson shall annually determine and distribute a schedule for the year's meetings.
- (2) The chairperson of a Port Consultative Committee may at any time convene an *ad hoc* meeting of the Committee, provided at least ten days' notice is given to all members of the committee of the date, time and venue of the meeting.

8. Chairperson and Secretariat of a Port Consultative Committee

- (1) The chairperson of each Port Consultative Committee shall be the South African Maritime Safety Authority representative on the Port Consultative Committee.
- (2) South African Maritime Safety Authority shall provide all Secretariat functions in relation to each Port Consultative Committee, including preparation and circulation of minutes, preparation and circulation of agendas and other related functions.

9. Quorum

- (1) Notwithstanding the remaining provisions of this regulation, meetings of the Port Consultative Committee may proceed without a quorum, but no advice to the Minister and no submission in terms of Regulation 15 shall be considered at any non-quorate meeting of the committee.
- (2) A quorum for a meeting of a Port Consultative Committee is seven persons, comprising at least the following persons –
 - (a) the Harbour Master;

- (b) one person representing the Authority, other than the Harbour Master;
 - (c) two persons representing port users;
 - (d) one person representing provincial government;
 - (e) one person representing organised labour; and
 - (f) the Chairperson, who shall represent the South African Maritime Safety Authority.
- (3) If a quorum is present at a meeting of a Port Consultative Committee for which a quorum is required in terms of subsection (1), the committee may exercise any or all of the powers for the time being vested in or exercisable generally by the committee in terms of the Act or these Regulations.
- (4) If within half an hour after the time appointed for a meeting a quorum is not present, the meeting shall stand adjourned to a date not earlier than seven days and not later than 21 days after the date of the meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum for that adjourned general meeting, provided the Chairperson and a representative of the Authority are present at the adjourned meeting.

10. Voting at meetings

- (1) A Port Consultative Committee shall endeavour to resolve all matters by consensus and to avoid voting, particularly on matters to do with the views, recommendations and advice to be given by the committee.
- (2) If consensus is not possible, any issue at a meeting of a Port Consultative Committee relating only to advice to be provided to the Minister or responses to a submission made in terms of Regulation 15 shall be decided by a majority of the votes cast on it. Voting shall be by way of a show of hands.
- (3) In the event of a deadlock on any question mentioned in subsection (2) at a meeting of a Port Consultative Committee, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (4) In providing advice to the Minister the Port Consultative Committee shall present in detail both the majority and all minority views of the members of the committee.

11. Minutes of meetings

- (1) Proper minutes shall be kept of all meetings of a Port Consultative Committee.
- (2) The minutes of a meeting of a Port Consultative Committee shall be circulated to all members and confirmed by resolution at the first subsequent meeting of the Port Consultative Committee, and the chairperson of that meeting shall sign the minutes so confirmed.

12. Agenda and participation in meetings

- (1) The agenda of a meeting of a Port Consultative Committee shall be circulated to all members of the Port Consultative Committee not less than ten days prior to the date on which the meeting is to be held.
- (2) All members present at a meeting of a Port Consultative Committee are entitled to participate in the meeting and raise objections to any action, decision or advice proposed to be taken or given by the committee.

13. Subcommittees and working groups

- (1) A Port Consultative Committee may establish *ad hoc* and permanent subcommittees to assist the committee in the performance of its functions, and such subcommittees may include persons who are not members of the Port Consultative Committee, provided such persons constitute a minority of the members of the subcommittee.
- (2) A Port Consultative Committee may establish *ad hoc* working groups to assist a subcommittee in the performance of its functions, and such working groups may include persons who are not members of the Port Consultative Committee, provided such persons constitute a minority of the members of the working group.
- (3) Every subcommittee established in terms of subregulation (1) must appoint a chairperson who is a member of the Port Consultative Committee and the chairperson must report at each meeting of the Port Consultative Committee on the activities of the subcommittee, as well as those of any working groups established in terms of subregulation (2) to assist the subcommittee.

14. Consultations with parties interested in any matter concerning the relevant port

A Port Consultative Committee may from time to time invite parties interested in any matter concerning the relevant port to make written or oral submissions to the committee, in the manner directed by the chairperson of that committee, regarding any matter which comes before the committee, to this end the committee may hold public meetings and carry out other information gathering exercises regarding any matter affecting the relevant port.

15. Authority required to consult with Port Consultative Committees

- (1) The Authority may not commence with any major scheme relating to the expansion or development of a particular port before it has submitted details of the proposed scheme to the relevant Port Consultative Committee and consulted with that committee regarding the scheme.
- (2) The Authority must provide the Port Consultative Committee with such information as it may require to consider the proposed scheme properly and must make itself available to answer questions and discuss the scheme with the Port Consultative Committee and any forum which the committee convenes to discuss the proposal.

- (3) If a Port Consultative Committee fails to furnish its suggestions or comments on a matter which the Authority refers to it in terms of subregulation (1) within three months of the submission, or within such further period as the parties may agree, the Authority may proceed to act on the proposal on the assumption that the Port Consultative Committee has no suggestions or comments to make regarding the proposed development.

CHAPTER 4

ACCESS BY THE REGULATOR TO CONFIDENTIAL INFORMATION 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

- (1) As set out in the section 30(3)(e) of the Act, the Regulator shall with the concurrence of the Minister and by notice in the *Government Gazette* issue directives not in conflict with the Act for access by the Regulator to confidential information of the Authority.
- (2) Subject to the provisions of such directives, the Authority is required, on written request by the Regulator, to make available to the Regulator, during reasonable office hours, any specified or generally described information which the Authority has in its possession which relates to the matters over which the Regulator has jurisdiction in terms of sections 30(1) and (2) of the Act.
- (3) If the Authority fails to provide any information requested by the Regulator in the manner and within the time periods set out in such directive, the Regulator may apply to any division of the High Court for an order directing the Authority to provide the requested information to the Regulator.

CHAPTER 5 PORT LIMITS

(Section 80(1)(d), read with section 10 of the Act)

17. Description of port limits

The port limits for the ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay and Port Nolloth are the areas described below, these port limits will be amended by Regulation one year after the promulgation of these Regulations following an internal review of the port limits -

(1) Richards Bay

The area at Richards Bay, including portion of the lagoon known as Richards Bay, vested in [the Government of the Republic of South Africa], Transnet and/or the Authority as shown on Sketch Plan CLS 61/2 and the list of co-ordinates published in Proclamation R.4 of 1976 and amended by Proclamation R.373 of 1977 and defined as follows:

The area within the figure A B C D E F G high water mark of Richards Bay H J K L M N O P Q R S T U u high water mark of Richards Bay v V W X Y Z A' B' C' high water mark of the Indian Ocean D' E' F' A.

(2) Port of Durban

(a) The area of sea bounded by –

- (i) to the north, a line drawn from the coast in position $29^{\circ} 48' 42''$ S $31^{\circ} 02' 32''$ E in a 90° (true) direction to position $29^{\circ} 48' 42''$ S $31^{\circ} 7' 30''$ E;
- (ii) to the south, a line drawn from the coast in position $29^{\circ} 54' 06''$ S $31^{\circ} 02' 30''$ E in a 90° (true) direction to position $29^{\circ} 54' 06''$ S $31^{\circ} 7' 30''$ E;
- (iii) to the east, a line joining the seaward positions in sub-paragraphs (1) and (2);

(b) the bay of Natal up to high water mark and the islands of the bay:

together with the foreshore, wharves, docks, basins, jetties, piers and all port infrastructure, harbour works and harbour and dock land vested in [the Government of the Republic of South Africa,] Transnet and/or the Authority, but such area shall not include any portion of the promontory of the Bluff set apart for defence purposes.

(3) Port of East London

- (a) The area of sea bounded by a line drawn from the coast at Nahoon Point in position $32^{\circ} 59' 50''$ S $27^{\circ} 57' 07\frac{1}{2}''$ E in a 114° direction for 1 852 metres to a position $33^{\circ} 00' 13,9''$ S $27^{\circ} 58' 12,8''$ E, thence in a direction $216\frac{1}{2}^{\circ}$ direction to a position $33^{\circ} 03' 14,46''$ S $27^{\circ} 55' 37,18''$ E and thence in a 295° direction to the coast in position $33^{\circ} 02' 36''$ S $27^{\circ} 53' 57''$ E (all bearings are true);
- (b) the whole of the water area within the Buffalo River and its tributaries from the ebb-and-flow to the mouth of that river including all the water area at or about the entrance of that river;
- (c) the foreshore, between the highest and the lowest water marks from

Hood Point to Nahoon Point;

- (d) the banks of the Buffalo River and its tributaries between the highest and the lowest water marks, from ebb-and-flow to the mouth of that river;

together with the wharves, docks, basins, jetties, piers and all port infrastructure, harbour works and harbour and dock lands vested in [the Government of the Republic of South Africa,] Transnet and/or the Authority.

(4) Port of Ngquru

Sea area

The area bounded by a line commencing at the extreme point on the east bank of the Swartkops River thence due east (true) for a distance of 1 609 metres to a point in the Indian Ocean; thence from that point to a second point in the Indian Ocean 1 609 metres due east (true) from Cape Recife; thence from that point to a third point in the Indian Ocean 1 609 metres south east (true) from the extreme point on the east bank of the Sunday's River; thence from that point 1 609 metres due north west to the extreme point on the east bank of the Sunday's River; thence along the high water mark between the extreme point of the east bank of the Sunday's River and the extreme point of the east bank of the Swartkops River, excluding the Islands of Jahleel, St. Croix and Brenton, and the 500 metre marine reserve surrounding each island.

Land area

The land area bounded to the north west by the N2 National Road; to the north east by the boundary between Hougham Park and Sonop Farms; to the south west by the line joining a point on the N2 National Road and the high water mark, which will become the boundary between St. George's Strand and the Ngqura DZ; to the south east by the high water mark between these boundaries.

(5) Port Elizabeth

The area bounded on the southward by a line drawn from Cape Recife, east (true) to a point in the Indian Ocean, distant 1 609 metres. On the northward by a line drawn from the extreme point of the east bank of the Swartkops River, east (true) distant 1 605 metres; on the eastward by a line drawn between these two points, and shall embrace the foreshore between high and low water marks from Cape Recife lighthouse to the aforesaid line at the east bank of the Swartkops

River, including that portion of the said river which lies on the seaward side of the bridge carrying the railway line to Alicedale together with all port infrastructure jetties, harbour works and all harbour lands vested in [the Government of the Republic of South Africa,] Transnet and/or the Authority.

(6) Port of Mossel Bay

Within a line drawn from Cape St Blaize lighthouse to the mouth of the Little Brak River, thence along the high water mark so as to include the foreshore between these points, together with Seal Island (Robbe Island), the estuary of the Little Brak River as far as the tide flows, and all port infrastructure, harbour works and harbour lands vested in [the Government of the Republic of South Africa,] Transnet and/or the Authority.

(7) Portion of Cape Town

Westwards by a straight line between Green Point and Robben Island lighthouses, and northwards by a straight line from Robben Island lighthouse, east (true) to the eastern shore of Table Bay, thence southwards along the high water mark, so as to include the foreshore to the Castle, thence back to Green Point lighthouse, together with the foreshore, the wharves, docks, basins, jetties, piers and all port infrastructure, harbour works, and, harbour and dock lands vested in [the Government of South Africa,] Transnet and/or the Authority.

(8) Saldanha Bay

The area reflected on Sketch Plan CLS70/1 and the list of co-ordinates published in Proclamation R.60 of 1978 and Proclamation R.87 of 1978 and described as within the figure A high water mark of the Atlantic Ocean and Saldanha Bay B C D high water mark of Saldanha Bay E landward boundaries of farm 196 fg high water mark of Saldanha Bay and the Atlantic Ocean HJKA, exclusive of the Government jetty, the repair jetty and the slipway of the [Department of Trade and Industry/the Department of Environment Affairs and Tourism] and all other fixed structures connected with the fishing industry.

(9) Port Nolloth

The area boarded northwards by a line drawn 245° from Port Nolloth to a point

4 827 metres from the shore; westward by a line drawn 155° from the above point to the point where it meets a line drawn 245° from Guap Point; southward by the latter line; together with the foreshore therein and all port infrastructure, jetties, harbour works and harbour lands vested in [the Government of the Republic of South Africa,] Transnet and/or the Authority.
