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DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 4122

30 November 2023

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)CONSULTATION ON THE INTENTION TO AMEND THE TRANSITIONAL ARRANGEMENTS IN
THE FINANCIAL PROVISIONING REGULATIONS, 2015

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby consult on the intention to extend the date of compliance for holders of rights and permits obtained under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) regime through an amendment of the transitional arrangements contained in the Financial Provisioning Regulations, 2015, as amended, in terms of section 44(1)(aE), (aF), (aG) and (aH), read with sections 24(5)(b)(ix), 24(5)(d), 24N, 24P, 24PA and 24R of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as set out in the Schedule hereto.

The extension is necessary as the proposed amendments to the Financial Provisioning Regulations, 2015 have not been finalised and until such time that the amendments are finalised the current requirements relating to financial provisioning will remain applicable.

Members of the public are invited to submit written comments or inputs, within 40 days after the publication of this Notice in the *Gazette*, to the following address:

By post to: The Director-General
Department of Forestry, Fisheries and the Environment
Attention: Dr D Fischer
Private Bag X447
PRETORIA
0001

By hand at: Environment House
473 Steve Biko Road
ARCADIA
0083

By e-mail: dfischer@dff.gov.za
Enquiries: 012 399 8843

Comments or inputs received after the closing date may not be considered.

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses thereto are collated into a

comments and responses report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name, or the name of the represented company/organisation, being made publicly available in the comments and responses report, such objection should be highlighted in bold as part of the comments submitted in response to this government notice.



BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

Definition

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and “the Regulations” means the Financial Provisioning Regulations, 2015, published under Government Notice No. R. 1147 in *Government Gazette* No. 39425 of 20 November 2015, as amended by Government Notice No. 1314, published in *Government Gazette* No. 40371 of 26 October 2016, Government Notice No. R. 452, published in *Government Gazette* No. 41584 of 20 April 2018, Government Notice No. 991, published in *Government Gazette* No. 41921 of 21 September 2018, Government Notice No. 24, published in *Government Gazette* No. 42956 of 17 January 2020, Government Notice No. 495, published in *Government Gazette* No. 44698 of 11 June 2021, Government Notice No. 2087, published in *Government Gazette* No. 46378 of 19 May 2022 and Government Notice No. 3841, published in *Government Gazette* No. 49220 of 1 September 2023.

Substitution of regulation 17A of the Regulations

2. Regulation 17A of the Regulations is hereby amended by the substitution for regulation 17A of the following regulation:

“17A. Extension of transitional period for holders of offshore exploration and production rights

Notwithstanding the provisions of regulation 17, and the extension of the transitional period published in Government Notice No. R. 452, published in *Government Gazette* No. 41584 of 20 April 2018, a holder of an offshore exploration or production right, who applied for such right prior to 20 November 2015, regardless when the right was obtained—

- (a) must by no later than a date published in the *Government Gazette* comply with these Regulations; and
- (b) shall, until such date published in the *Government Gazette* contemplated in paragraph (a), be regarded as having complied with the provisions of these Regulations, if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).”

Substitution of regulation 17B of the Regulations

3. Regulation 17B of the Regulations is hereby amended by the substitution for regulation 17B of the following regulation:

“17B Extension of the transitional period

Unless regulation 17A applies, a holder, or holder of a right or permit, who applied for such right or permit prior to 20 November 2015, regardless when the right or permit was obtained—

- (a) must by no later than a date published in the *Government Gazette* comply with these Regulations; and
- (b) shall, until such date published in the *Government Gazette* contemplated in paragraph (a), be regarded as having complied with the provisions of these Regulations, if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).".



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

THE INTENTION TO AMEND THE TRANSITIONAL ARRANGEMENTS IN THE FINANCIAL PROVISIONING REGULATIONS, 2015 (THE REGULATIONS)

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Disclaimer: Organisations/People whose comments are below were made aware that their names/organisation name will be aligned to their comments and will be included on the Department's website as part of the transparency of the commenting process.

COMMENTS AND RESPONSE REPORT

STAKEHOLDER	COMMENT	RECOMMENDATION	RESPONSE
Substitution of regulation 17B of the Regulations			
17B Extension of the transitional period			
The Minerals Council South Africa	Section 2 of the Notice provides that regulation 17B of the regulations will be substituted by "17B Extension of the transitional period: Unless regulation 17A applies a holder, or a holder of a right or permit who applied for such right or permit prior to 20 November 2015, regardless of when the right or permit was obtained- (a) must by no later than 19 February 2024 comply with these Regulations; and (b) shall until 18 February 2024, be regarded as having complied with the provisions and requirements regarding financial provisioning,		Noted.

	approved as part of the right or permit issued in terms of the MPRDA”.		
The Minerals Council South Africa	The wording in the notice provides for Regulation 17B, which is the regulation in the Financial Provisioning Regulations of 2015 (R1147) dealing with the transitional arrangements, to be amended as far as the date by which a holder, or holder of a permit or right applied for before November 2015 must comply with these Regulations. If such a holder complied with the provisions and arrangements regarding financial provisioning, approved as part of the right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) they were regarded as in compliance with the Regulations until the date provided.		Agreed. If such a holder complied with the provisions and arrangements regarding financial provisioning, approved as part of the right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) they were and will be regarded as being in compliance with the Regulations until the date provided.
GENERAL COMMENTS			
CENTRE FOR ENVIRONMENTAL RIGHTS	<p>We do not support the Proposed further extension for compliance with the FP Regulations, 2015 for the following reasons:</p> <p>There are again no reasons or explanatory memoranda provided for, yet another extension of the transitional periods provided for in the 2015 Financial Provision Regulations, specifically this current proposed extension, regardless of this current request for comments. Accordingly, such extension is without supporting reasoning.</p> <p>The regime for financial provision provided by the 2015 Financial Provision Regulations under NEMA is much more stringent than the MPRDA financial provision regime which persists during the transitional period. Our work and that of our partners with mining-affected communities evidences a wide-spread practice of inadequately assessed financial provision,</p>		The reasons for the extension were included in the public newspaper advert which was placed in the Sowetan newspaper. The reason provided is that the proposed amendments to the Financial Provisioning Regulations have not been finalised, although far advanced, as such existing holders will not be certain of the requirements that they will need to comply with. Another reason for the further delay is that the work on the simplified version of the financial provisioning, for low risk commodities, is also not finalised although this work is wrapping up and will be

	<p>inappropriately approved financial provision and a failure to collect financial provision from mining companies on the part of the responsible authority under the MPRDA regime. This exposes the state, and more directly, mining-affected communities, to failed or absent environmental rehabilitation, and indeed mine abandonment with impunity by the polluters who cause serious environmental degradation. It is critical that the improved protection provided for by the 2015 Financial Provision Regulations under NEMA is brought into effect, requiring that all mining companies are subject to the NEMA regime that has been in place for 8 years already. Delaying compliance with that regime any longer facilitates ongoing violations of NEMA and more broadly section 24 of the Constitution.</p> <p>Accordingly, we submit that the Proposed further extension for compliance with the FP Regulations should not be implemented.</p>		<p>completed by September 2023.</p> <p>It is a time consuming process to get to a point where most stakeholders are satisfied with the proposed amendments. It would not be wise to rush at this point as the possibility of legal action is high since the financial impact of the Regulations can be significant and the requirements need to be clear and reasonable.</p>
<p>The Minerals Council South Africa</p>	<p>The Minister intends to extend by 5 months the date of compliance with NEMA: Financial Provisioning Regulations requirements for holders of rights or permits obtained under the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA) through an amendment to the transitional arrangements contained the 2015 NEMA: Financial Provisioning Regulations, as amended.</p>	<p>It is of the Minerals Council's view that the proposed extra 5 months offers a temporary reprieve. Many of the members of the Minerals Council find themselves in the category of holders of rights or permits applied for or issued before November 2015 and as existing right/permit holders they would be impacted and would have only 5 months to make the transition. Given the extent of Minerals Council concerns with the previous versions of the regulations, it seems unlikely that the provisions of the new replacement version of the financial provisioning regulations will be favourable and settled in the next few months so these holders will not know what is expected of them come 19 February 2024 in order to comply with the new regulations. Therefore,</p>	<p>The work to finalise the various aspects of the proposed amendments to the Financial Provisioning Regulations is wrapping up and it is anticipated that this will be the final consultation period. Should an additional transitional period be required once the Regulations are finalised, this can be considered when the final version is gazetted for implementation.</p>

		<p>more time should be afforded.</p> <p>The Minerals Council respectfully requests that the proposed extension time frame of five (5) months be reconsidered and amended in accordance with the Minerals Council's representations outlined above whilst concerted effort is attained in addressing the mining industry concerns with the various versions of the regulations.</p>	
<p>The Minerals Council South Africa</p>	<p>Minerals Council note that it is not the first time that department of Forestry, Fisheries and the Environment (DFFE) has published a notice for an extension for the date of transition as proposed and for the date to be amended. In September 2018 this transition date was made to 19 February 2020 for such holders of mineral rights and permits. In 2020 by Notice 24 published in GG 42956 of 17 January 2020 this transition date was pushed out to 19 June 2021, and in June 2021 it was again extended to 19 June 2022 and in May 2022 it was extended to 19 September 2023. In June 2021 when the extension notice was gazetted, the compliance date referred to in Regulation 17B was made to no later than 19 June 2022. In 2022 when the notice to extend was made by GN 495 on 19 May 2022, it provided for an extension to 19 September 2023.</p> <p>When these previous extension notices regarding the compliance date were made as indicated above, these have provided for the date to be extended by 18 months or at least 1 year period. The need for the transition date to be extended is premised by the fact that existing holders need time to know what they must transition to, in other words what the requirements will be that need to be met for financial provisioning to be regarded as properly provided. With this Notice 3436</p>	<p>Minerals Council accordingly recommends that the notice should make provision for the extension with 18 months leading up to the transition date to March 2025. It is believed that the extension of 18 months will give members sufficient time to go through another circle of closure liability assessments before required to comply with the requirements of the final published regulations for implementation.</p> <p>In the replacement version published for comment in 2022 under GN 2272 of 11 July 2022, it provides for much more complex and detailed requirements regarding financial provisioning by existing holders. In the proposed Regulation 18, more complex requirements relating to transitional arrangements that would need to be met are included. If what is proposed were to become the requirement in the final replacement version this would require transition by holders of mineral rights and permits to occur in 3 months following the financial year end of such holders occurring after 19 September 2023. This date would obviously also need to be</p>	<p>Consultation and capacity building sessions will be held to equip the relevant stakeholders with knowledge of the amended requirements.</p> <p>Should an additional transitional period be required once the amendments to the Regulations are finalised, this can be considered when the final version is gazetted for</p>

	<p>only 5-months is proposed for Page 3 of 4 the extension. Of major concern to the Minerals Council is that if adopted as is, this would mean existing mining right or permit holders would have to comply by 19 February 2024 with what is provided for in R 1147.</p> <p>Our understanding is that the whole of R1147 will be revised and replaced by a new version which will contain new requirements on financial provisioning. There is currently uncertainty as to exactly what this replacement version will provide regarding how the quantum must be calculated and what the full implications of it will be for holders of existing rights or permits. On that basis the Minerals Council strongly believes that this proposed extension timeframe is too short for mining companies to make an assessment or to review the existing financial provision and the requirements to comply with, that will be contained in the new envisaged regulations.</p>	<p>pushed out when the final version of the replacement regulations eventually becomes law.</p>	<p>implementation.</p> <p>The entire Regulations are not being amended, only certain sections are being amended. For clarity purposes the amended Regulations will however be published as a full set of Regulations, and not just as certain amendments to the existing Regulations.</p> <p>It is understood that there is uncertainty as to exactly how the quantum must be calculated, which is one of the reasons for the extension.</p>
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