

Regulation on the handling of explosives precursors

Statutory authority: Prescribed by the Norwegian Directorate for Civil Protection xxx 2014 with statutory authority in Act No. 20 of 14 June 2002 relating to the Prevention of Fire, Explosion and Accidents involving Hazardous Substances and the Fire Services' Duties connected with Rescue Operations (Fire and Explosion Prevention Act) § 5, § 6, § 20a, § 22, § 26, § 27 and § 43, cf. administrative decision 1 September 2003 no. 1161.

EEA references: EEA Agreement, Annex **xx**, Chapter **X** (Regulation (EU) No 98/2013).

Chapter 1 – General provisions

§ 1 Purpose

This regulation shall contribute to explosives precursors not going astray or ending up in the wrong hands, and protecting life, health, environment and material values against unwanted intentional incidents, mishaps and accidents during the handling of these substances.

§ 2 Scope

This regulation applies to any handling of explosives precursors.

The regulation does not apply to articles, pyrotechnic articles and equipment et cetera or medical products legitimately made available to members of the general public, as mentioned in Regulation (EU) No 98/2013 on the marketing and use of explosives precursors Article 2 No. 2.

§ 3 Implementation of Regulation (EU) No 98/2013

Chapter **X** of Annex **xx** to the EEA Agreement (Regulation (EU) No 98/2013 on the marketing and use of explosives precursors) applies as a regulation with the changes and additions that follow from Annex II, Protocol 1 to the Agreement and the Agreement in general.

§ 4 Definitions

For the purposes of this regulation, the following definitions shall apply:

- a) 'Explosives precursors' means substances mentioned in Annex I and II of Regulation (EU) No 98/2013 on the marketing and use of explosives precursors, as well as mixtures or substances that contain any of the substances mentioned in Annex I and II. The given concentration limit values in weight percent apply, unless otherwise is explicitly stated in provisions in this regulation.

Substances in Annex I

Hydrogen peroxide, above 12 % w/w
Nitromethane, above 30 % w/w
Nitric acid, above 3 % w/w
Potassium chlorate, above 40 % w/w
Potassium perchlorate, above 40 % w/w
Sodium chlorate, above 40 % w/w
Sodium perchlorate, above 40 % w/w

Substances in Annex II

Hexamine
Sulphuric acid
Acetone
Potassium nitrate
Sodium nitrate
Calcium nitrate
Calcium ammonium nitrate
Ammonium nitrate (in concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher)

- b) 'Substance' means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition.
- c) 'Mixture' means a mixture or solution composed of two or more substances.
- d) 'End-user' means whoever uses or consumes explosives precursors in their own enterprise, and does not sell them on or in any other way make them available to others.
- e) 'Enterprise' means any public or private company regardless of whether the company has been established for professional profit or not.
- f) 'Member of the general public' means a member of the general public within the meaning of point (7) of Article 3 of Regulation (EU) No 98/2013.
- g) 'Introduction' (import) means introduction within the meaning of point (5) of Article 3 of Regulation (EU) No 98/2013.
- h) 'Handling' means any interaction with explosives precursors such as manufacturing, storage, treatment, transport, loading, unloading, acquiring, trading, introduction, export, transfer, use and destruction thereof.

§ 5 Requirement of diligence

Anyone who handles explosives precursors, regardless of given concentration limit values, has an obligation to show diligence and do what is necessary to prevent the substances from going astray or ending up in the wrong hands, and to prevent accidents.

§ 6 Prohibition for members of the general public

In accordance with Regulation (EU) No 98/2013 Article 4 No. 1, explosives precursors listed in Annex I of the regulation shall not be made available to, or introduced, possessed or used by members of the general public. Export of explosives precursors as mentioned in Annex I of Regulation No 98/2013 to members of the general public is prohibited. Explosives precursors listed in Annex I of the regulation can only be made available to enterprises with a professional need.

Members of the general public cannot apply to Norwegian authorities for a licence et cetera in accordance with Regulation (EU) No 98/2013 Article 4.2 and 4.3.

Members of the general public and enterprises with no professional necessity shall not have access to substances or mixtures in concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, in accordance with Regulation No. 516 of 30 May 2008 on Registration, Evaluation, Authorisation and Restriction of Chemicals (the REACH regulation), cf. Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, Annex XVII, Chapter 58.

§ 7 National contact point

The National Criminal Investigation Service (KRIPOS) is the national contact point for reporting suspicious transactions, significant and inexplicable disappearances and thefts in accordance with Regulation (EU) No 98/2013 Article 9.2.

Chapter 2 – Requirements for organisational arrangements and physical security

§ 8 Requirements for registration of enterprises

Enterprises who wish to introduce, manufacture, use, possess, distribute or in any other way make available explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, must be registered in the Register of Business Enterprises or the Central Coordinating Register for Legal Entities. Enterprises based abroad who are not registered in the Register of Business Enterprises or the Central Coordinating Register for Legal Entities, must be able to submit equivalent documentation from public registration authorities in their country of origin.

§ 9 Requirements of declaration and reporting

Anyone who manufactures or introduces explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, shall declare these to the Norwegian Environment Agency for electronic registration in the Product Register. Such declaration applies regardless of amount and area of application and also when introducing for use in their own enterprise.

Declaration in accordance with the first paragraph shall be done at the latest when production, distribution or professional use starts in Norway. The enterprise with a declaration obligation shall without undue delay and on its own initiative update the information in the Product Register if there are changes in the reported information. Information concerning the actual amount that is produced, introduced and exported per year shall be reported on an annual basis.

Enterprises who do not have a declaration obligation in accordance with the first paragraph and who wish to distribute or in other ways make available explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, shall report to the Norwegian Directorate for Civil Protection for electronic registration in SamBas, for each precursor specifically.

Reporting in accordance with the third paragraph shall be registered before the buying or otherwise acquiring of explosives precursors, or before distribution or otherwise making available of starts in Norway. In case of changes and discontinuance, a new report shall be sent accordingly and without undue delay.

§ 10 Systematic health, environment, safety and security work

Enterprises shall chart dangers and problems that may arise during the handling of explosives precursors, and in the light of this conduct a risk assessment. The risk assessment shall include external and internal circumstances, including unwanted intentional incidents.

Enterprises shall, as a result of the risk assessment, make plans and implement measures to prevent explosives precursors from going astray or falling into the wrong hands, and to prevent accidents.

Enterprises shall ensure that everyone handling explosives precursors have the sufficient knowledge and skills to carry out their tasks in a safe and secure manner.

§ 11 Obligation to report suspicious transactions, thefts or significant and inexplicable disappearances

Enterprises handling explosives precursors have an obligation to report suspicious transactions, thefts or significant and inexplicable disappearances of said precursors to the National Criminal Investigation Service (KRIPOS) in accordance with Regulation (EU) No 98/2013 Article 9.

Enterprises shall conduct frequent auditing of their stocks of explosives precursors, to quickly be able to identify thefts or significant and inexplicable disappearances.

This provision and Article 9 of Regulation (EU) No 98/2013 apply regardless of the given concentration limit values in Annex I of the regulation.

§ 12 Requirement to keep a record of suppliers and customers

All enterprises shall keep records of undertaken transactions involving explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher.

The records shall include:

- a) Information about the customer's or supplier's names, addresses and company numbers,
- b) Information about the individual transaction, including name of the goods that contain explosives precursors, amount, date and time of the transaction, name of the person making the purchase, method of payment and intended use, and
- c) Information on whether or not the customer is the end-user.

For new customers, the records in accordance with the second paragraph shall also contain a signed declaration stating that explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, shall not be made available to, introduced, possessed or used by members of the general public, and that the customer is aware of the obligations that follow from this regulation.

New customers who are going to resell explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, shall supply documentation to the seller of undertaken reporting in accordance with § 9 third paragraph. This also applies to existing customers who are end-users and who are going to start reselling.

Information about transactions in accordance with the second and third paragraph shall be kept for at least five years, and all the information shall be made available to the supervisory authorities upon request.

§ 13 Obligation of information to the next link in the supply chain

Enterprises who sell or in other ways make available explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher to another enterprise, shall give written information stating that the precursors are subject to restrictions and shall not be made available to, introduced, possessed or used by members of the general public.

Enterprises that sell or in other ways make available explosives precursors listed in Annex I or II of Regulation (EU) No 98/2013 to another enterprise, shall in writing provide information about the obligation to report suspicious transactions, thefts or significant and inexplicable disappearances regardless of the given concentration limit values.

The obligation of information in accordance with the first and second paragraphs applies only to new customer relationships or when delivering substances or mixtures that are new to an existing customer. The obligation of information shall at the latest be fulfilled at delivery.

§ 14 Proof of identity requirement

Anyone who on behalf of an enterprise makes a purchase or otherwise acquires explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, must provide valid proof of identity and document his or her affiliation with the enterprise. If purchasing or otherwise acquiring ammonium nitrate with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, special documentation of professional necessity must additionally be provided.

If purchase or acquisition happens without attendance in person, a confirmed copy of the proof of identity as mentioned in the first paragraph can be used.

The requirements in the first and second paragraphs do not apply to established customer relationships where the person who does the purchase and that person's affiliation with the enterprise in question or the professional necessity is known to the seller.

§ 15 Storage

Any enterprise handling explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, has an obligation to, on request, supply information to the Norwegian Directorate for Civil Protection about storage and storage location, the amount of explosives precursors being stored and what security measures have been implemented.

§ 16 Requirements of storage of explosives precursors listed in Annex I

Enterprises shall store explosives precursors listed in Annex I of Regulation (EU) No 98/2013 unavailable to unauthorized persons and securely locked in a building, room, device or cabinet, or inside a fenced and admission controlled area. This provision applies to all links in the supply chain, including end-users.

Enterprises shall introduce further security measures, such as camera surveillance, guards, alarm or extra burglary security if the risk assessment in accordance with § 10 requires it.

At places of sale, explosives precursors listed in Annex I of Regulation (EU) No 98/2013 shall be stored in areas inaccessible to customers.

Enterprises shall have procedures for and overview over who has access to storing or storage areas.

§ 17 Requirements of storing and storage of substances and mixtures with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher

Enterprises shall store substances and mixtures with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher inaccessible to unauthorized persons and securely locked in a building, room, device or cabinet, or inside a fenced and admission controlled area, unless otherwise is expressly stated by the second paragraph in this provision. This provision applies to all links in the supply chain, including end-users.

Farmers who cannot store substances and mixtures with concentrations from and including 16 to 28 % by weight of nitrogen in relation to ammonium nitrate in accordance with the requirements of the first paragraph, shall have storing and storage areas under daily supervision, shielded from public roads and not easily visible or accessible for intruders. If the storing or storage area is not under daily supervision, storage shall occur in a locked

appropriate building, outside in a locked off area or through some other lockable device. Such storing or storage areas shall be under frequent supervision, and not easily accessible for intruders.

This provision does not apply to substances or mixtures with ammonium nitrate that are to be used for the legal manufacture of explosives, cf. Regulation June 26th 2002 no. 922 on the Handling of Explosive Substances.

Chapter 3 – Other provisions

§ 18 Transport

Enterprises handling explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, to which the provisions in Regulation No. 384 of 1 April 2009 on Inland Transport of Dangerous Goods does not apply, shall only offer transport commissions to carrier companies who are sufficiently identified.

Explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher must not be handed over for transport to someone who obviously lacks the necessary knowledge and skills, or do not have the equipment to carry out safe transport.

§ 19 Requirement of destruction

Enterprises or members of the general public who do not legally possess, introduce or attempt to introduce explosives precursors listed in Annex I of Regulation (EU) No 98/2013 or with a concentration of 16 % by weight of nitrogen in relation to ammonium nitrate or higher, shall be required to pay for the costs of safe destruction.

Chapter 4 – Closing provisions

§ 20 Documentation

Anyone handling explosives precursors shall at any time be able to document that requirements in law and regulations, terms for exemptions and other requirements prescribed by the supervisory authority has been fulfilled.

§ 21 Supervisory authority

The Norwegian Directorate for Civil Protection will supervise that the provisions in this regulation are being followed.

The Norwegian Directorate for Civil Protection can let other public or private experts conduct supervision on their behalf.

When executing the supervision, the Fire and Explosion Prevention Act section 33 - 36 shall apply.

§ 22 Exemptions

In special cases, and in so far as it will not violate Regulation (EU) No 98/2013, the Ministry of Justice and Public Security or whoever the Ministry of Justice and Public Security gives the authority to, can make exemptions from this regulation.

In the assessment on whether there can be given an exemption from the prohibition in § 6, emphasize shall among other things be put on whether the applicant is suitable, if he or she has a documented legitimate need, if there are alternative suitable substances or mixtures, the objective of use, the amount and concentration applied for, the length of the application period, and the applicant's potential for fulfilling the security requirements according to this regulation.

Anyone who is granted an exemption is during the exemption period required to fulfill the given conditions. Failure to comply with the conditions may give grounds for revoking the exemption and the use of sanctions, cf. § 23.

§ 23 Sanctions

In the event of a violation of the regulation or resolutions made in accordance with the regulation, the Fire and Explosion Prevention Act section 37 - 40 and 42 apply.

§ 24 Appeals

Decisions made by the Norwegian Directorate for Civil Protection can be appealed to the Ministry of Justice and Public Security.

§ 25 Entry into force

This regulation will enter into force on xx.xx 20xx.

§ 26 Transitional provisions

Requirements of declaration and reporting in accordance with § 9 come into force on 1 January 2015.

Exemptions for the possession and use of explosives precursors listed in Annex I in Regulation (EU) No 98/2013 for members of the general public, in the period until 2 March 2016, follows from Regulation (EU) No 98/2013 on the marketing and use of explosives precursors Article 16.