

REGULATORY IMPACT STATEMENT

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION
(CONTROLLED SUBSTANCES) REGULATIONS, 2020**

Introduction

The State of Environment is dynamic and is constantly under threat of anthropogenic and naturally induced phenomena resulting in public health and environmental concerns.

By 1985, the globe had already seen advancements in the scientific understanding of ozone depletion and its impacts on human health and the environment. It was then that the Vienna Convention for the Protection of the Ozone Layer was created in response. This agreement is a framework convention that lays out principles agreed upon by many parties. It does not, however, require countries to take control actions to protect the ozone layer. This would come later in the form of the Montreal Protocol.

To address the destruction of the ozone layer, in 1987, the international community established the Montreal Protocol on ozone-depleting substances. The Montreal Protocol's objective is to cut down the production and consumption of ozone-depleting substances, in order to reduce their presence in the atmosphere and thus protect the Earth's ozone layer. The Kigali Amendment to the Montreal Protocol is an international agreement to gradually reduce the consumption and production of hydrofluorocarbons (HFCs). The amendment was agreed upon at the twenty-eighth Meeting of the Parties to the Montreal Protocol held on October 15, 2016, in Kigali.

Kenya has domesticated the Montreal Protocol as part of its obligation to rally behind global efforts to halt depletion of ozone layer amid negative impacts on the environment and human health. The country is yet to ratify the Kigali Amendment to the Montreal Protocol to phase down production and consumption of hydrofluorocarbons that serve as alternatives to ozone depleting substances.

As a result of these phenomena, it was appropriate to develop the Environmental Management and Coordination (Controlled Substances) Regulations, 2007. The Regulations were meant to address the management, storage, handling, production, packaging, import, export, transit, use, and disposal of controlled substances and equipment containing controlled substances in Kenya.

It was therefore against this background that the Environmental Management and Coordination (Controlled Substances) Regulations, 2020 were developed.

a) Objectives of the proposed regulations

- I. To protect the earth's ozone layer from chemicals that depletes it.
- II. To regulate trade and practice in controlled substances for protection of human health and the environment.
- III. To support reduction of Green House Gases in particular hydrofluorocarbons (HFCs).

b) Effects of the proposed regulations

The effects of the proposed regulations can be categorised as follows;

I. Economic Effects

There would be no additional financial burden to the Kenyan public save for imposition of new fees to importers and exporters on Controlled Substances by imposition of new fees as outlined in the sixth schedule of the Regulations. The new fees are being reviewed from the 2007 Regulations to address the challenges and gaps that have been experienced in respect to the implementation of the 2007 Regulations.

The Environmental Management and Coordination Act, No. 8 of 1999 was amended in 2015 and the fees therein were revised and updated. The present Environmental Management (Controlled substances) Regulations came into force in 2007 and remains in force to date. It against this background that the current amendment of the Environmental Management (Controlled substances) Regulations was informed.

SIXTH SCHEDULE

ENVIRONMENTAL MANAGENT AND CO-ORDINATION ACT

(No. 8 of 1999)

(r 9(2), 10 (2), 11(3), 12(2)(b), 13(2), 30)

FEES

The fees chargeable under these Regulations shall be as specified hereunder and shall be non-refundable except as indicated.

- (a) Application for a license to produce Controlled Substances.....Kshs.
100,000

(b) Application for a license to export or import Controlled Substance;

200,000 kg and above.....Kshs. 30,000

100,000 kg - 199,000 kg.....Kshs. 20,000

1 kg - 99,000 kg.....Kshs. 10,000

(c) Application for a permit to export or import a Controlled Substance;

200,000 kg and above.....Kshs. 3,000

100,000 kg - 199,000 kg.....Kshs. 2,000

1 kg - 99,000 kg.....Kshs. 1,000

(d) Application for license to import Refrigeration and Air Conditioning equipment that are Energy efficient and dependent on non-Controlled Substance will be **Nil**

(e) Application for Controlled Substances and Equipment dependent on Controlled Substance;
Deposit bond (refundable)-, insurance and freight value (CIF)

(f) Application to export a Controlled Substance..... Kshs. 7,500

(g) Application for registration as a Refrigeration and Air Conditioning practitioner;
Technician..... Ksh 3000;
Corporate Companies Ksh 30,000

(h) Application for annual license as a Refrigeration and Air Conditioning practitioner
Technician..... Ksh 2000
Corporate Companies Ksh 15,000

(i) Application for (one-off) Importation of Refrigeration and Air Conditioning equipment dependent on Controlled Substances- Ksh 6000

Social Effects

- i. By promoting sound environmental practices and therefore sustainable development, the public would be guaranteed to have a

clean and healthy environment since there would be more efforts geared towards the protection and conservation of our environment.

- ii. Promotes meaningful and inclusive public participation, transparency and social acceptability in management, conservation and protection of our environment.

Environmental Effects

- (i) The protection of the ozone layer from depletion and protection of the environment, human, health, flora and fauna.
- (ii) Ensures the right to a clean and healthy environment while promoting sustainable development.
- (iii) It enhances synergy building and inter-agency coordination among Ministries, Departments, Counties and Agencies (MDCA) in conservation and protection of environment.

(c) Statement of other practicable means of achieving the objectives of the proposed instrument Regulations 2018

Regulatory Options

- i. Enforcement by the relevant Ministries, Departments and Agencies on sectoral issues under their jurisdiction.

Non Regulatory options

- i. The Authority to continue to enhance awareness of best environmental practices.
- ii. Negotiated compliance arrangements.
- iii. Compliance assistance programmes.
- iv. Compliance promotion.
- v. Self-regulation.

(d) Assessment of the Costs and Benefits of the Regulation

- i. No new institution will be set up in the implementation of the Regulations and hence no cost implication from the exchequer.
- ii. Enforcement and Monitoring.

e) Reasons why other measures are not appropriate –

1. The Legal requirement-

- (i) Article 69 (1) (g) of the Constitution of Kenya mandates the Government to *inter alia* establish systems of protecting the environment and eliminate processes and activities that are likely to endanger the environment;
- (ii) Section 147 of the Environmental Management and Coordination Act (EMCA) No. 8 of 1999 provides that the Cabinet Secretary, at the time charged with matters relating to the environment may, on the recommendation of the Authority make regulations prescribing for matters that are required or permitted by EMCA to be prescribed or are necessary. These proposed Regulations are made to amend the current Environmental Management and Coordination (Controlled Substances) Regulations, 2007.

f) Any other matters specified by the Regulations

The review of the Regulations has been of high interest to all stakeholders including importers, exporters, public-private sector, citizens, professionals, civil society, development partners and academia.

g) Adequacy of the regulatory impact statement - Independent Advice.

To undertake the regulatory impact assessment and to guide on the formulation of the Regulations, the Director General NEMA constituted a taskforce with representation from the following;

- Ministry of Environment and Forestry (National Ozone Unit)
- National Environment Management Authority (NEMA)
- Heating Ventilation Air Conditioning (HEVAC) Kenya
- Kenya Revenue Authority (KRA)
- Kenya Bureau of Standards (KEBS)

The Terms of Reference for the task force were;

- To undertake a detailed review of the Environmental Management and Coordination (Ozone Depleting Substances) Regulations, 2007, including the scope, structure, outline challenges and barriers of implementation.
- To review the Environmental Management and Coordination (Ozone Depleting Substances) Regulations and identify concrete areas for improvement and recommend options and strategies for adoption in the amended Regulations.
- To undertake stakeholder consultations in the process of delivering amended Regulations.
- Prepare the Regulatory Impact Statement for the Regulation
- Coordinate the finalization of the instrument and the Gazette notice.
- Prepare the Explanatory Memorandum

- Perform any other task related to the amendment of the Regulations until finalization.

In order to effectively execute the above mentioned TORs, the taskforce undertook the following activities;

1. Comprehensive literature review
2. Rigorous stakeholder consultation was done in line with the Statutory Instrument Act, 2013 covering the following regional and targeted stakeholder consultation;
 - a. South Rift region stakeholders.
 - b. Refrigeration and Air Conditioning (RAC) Technicians
 - c. Importers of Controlled Substances
 - d. Lead agencies
 - e. County Governments.
 - f. Kenya Association of Manufacturers;
 - g. Kenya Private Sector Alliance
3. Drafting sessions

This was undertaken by the Controlled Substances Taskforce on behalf of Director General, NEMA.

The Director-General

National Environment Management Authority

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P.O.BOX 67839-00200,

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National Environment Management Authority

CALL FOR MEMORANDA-AND COMMENTS ON THE DRAFT ENVIRONMENTAL MANAGEMENT (CONTROLLED SUBSTANCES) REGULATIONS, 2020

The National Environment Management Authority (NEMA) pursuant to the Environmental Management and Coordination Act (EMCA) Act No. 8 of 1999 and in consultation with other stakeholders has prepared a draft Environmental Management (Controlled Substances) Regulations, 2020. The draft regulations are intended to repeal the Environmental Management (Controlled Substances) Regulations, 2007.

The overall objective of the Environmental Management (Controlled Substances) Regulations, 2020 is to align it to the Environmental Management & Coordination Act No. 8 of 1999 which was amended in 2015. The Regulations also seek to propose legislative areas of amendment as informed by development in international law, provide for controlled substances used in laboratories, refrigeration and air-conditioning as well as refrigeration and air-conditioning dependent equipment.

Pursuant to the Constitutional requirement for public participation and stakeholder engagement during the formulation and review of legal instruments, and to harmonize and have equity on the draft regulations, the Authority requests the public to submit their views and comments on the draft Environmental Management (Controlled Substances) Regulations, 2020 which can be accessed through the website www.nema.go.ke.

Written representation and memoranda on the Draft Regulations may be submitted by email to odsregulations@nema.go.ke/ odsregulations@gmail.com addressed to the attention of the Director General, National Environment Management Authority or sent to;

**Director General,
National Environment Management Authority
Popo Road, South C, off Mombasa Road
National Environment Management Authority,
P.O.BOX 67839-00200,
Nairobi.**

Telephone enquiries should be directed to the **Director Legal Services** through telephone number **0723398628** between **8 am and 3 pm Monday to Friday**. The representations or comments on the regulations should reach the Authority not later than 14 days from the date of this publication.

Members of the public are further notified that, in view of the public health threat of COVID 19 and the COVID 19 rules, no public hearings or oral submissions on the regulations will be held.

Report incidences and complaints: NEMA incident lines: **0786 101100, 0741 101100**



**National Environment Management
Authority - Kenya**

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