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**EMCA (CONTROLLED SUBSTANCES)
REGULATIONS, 2025**

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

EXPLANATORY MEMORANDUM

[Sections 2 and 11, Statutory Instruments Act)

PART I

Name of the Statutory Instrument: The Environmental Management and Coordination (Controlled Substances) Regulations, 2020

Name of the Parent Act: The Environmental Management and Coordination Act No. 8. of 1999

Enacted pursuant to: Section 147 of Environmental Management and Coordination Act No. 8. of 1999

Name of the Ministry/Department: Ministry of Environment and Forestry/
National Environment Management Authority

Gazetted on:

Tabled on:

PART II

1. Purpose of the Statutory Instrument

The State of Environment is dynamic and is constantly under threat of anthropogenic and naturally induced phenomena resulting in public health and environmental concerns. To address the destruction of the ozone layer, the international community established the Montreal Protocol on ozone-depleting substances.

Kenya has domesticated the Montreal Protocol and ratified the Kigali Amendment to the Montreal Protocol to phase down production and consumption of hydrofluorocarbons that serve as alternatives to ozone depleting substances.

The purpose of the Environmental Management and Coordination (Controlled Substances) Regulations, 2020 (“the Regulations”) is to address the management, storage, handling, production, packaging, import, export, transit, use, and disposal of controlled substances and equipment containing controlled substances.

2. Legislative Context

In 1987, to address the destruction of the ozone layer, 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 has also ratified 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, it was appropriate to amend the Environmental Management and Coordination (Controlled Substances) Regulations, 2007 and update the same to the proposed Environmental Management and Coordination (Controlled Substances) Regulations, 2020. The Regulations are 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.

The Regulations were promulgated pursuant to Section 56 of the Environment Management and Coordination Act, No. 8 of 1999 and the implementation of the Vienna Convention on the Protection of the Ozone

Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer to protect the environment from any harmful effects of the depletion of the ozone layer by managing the importation and consumption of ozone depleting substances.

The Regulations were first promulgated in 2007 to develop a sustainable and environmentally sound system for the management, storage, handling, production, packaging, import, export, transit, use, and disposal of controlled substances and equipment containing controlled substances in Kenya.

Policy BackgroundThe policy objective of the Environmental Management and Coordination Act, 1999 is to provide for the establishment of an appropriate legal and institutional framework for the management of the environment.

Consequently, the Regulations fulfil the policy objectives of the Act by establishing a framework for the management, storage, handling, production, packaging, import, export, transit, use, and disposal of controlled substances and equipment containing controlled substances in Kenya.

Consultation Outcome

A taskforce was constituted to develop this Regulation which consisted of members drawn from the following Ministries and Agencies:

1. Ministry of Environment and Forestry
2. Heating, Ventilation and Air Conditioning (HEVAC) Association
3. Customs Department of Kenya Revenue Authority
4. Kenya Bureau of Standards
5. Ministry of Industrialization, Trade and Cooperatives

In development of this Regulation, stakeholder and public consultations and participation was done. This involved the government agencies, the council of governors, the county government and civil society organizations.

Stakeholder consultation workshops were held in five (5) regions namely the South Rift Region, the Coast Region, the Nyanza / Western Region, the North Rift Region and the Nairobi and Central Region. The South Rift region was held on 28th February 2020 in Nakuru and the other regions were held virtually via zoom on 16th and 17th June 2020 due to the COVID-19 pandemic. Targeted stakeholders' engagement with technicians was also held on 17th June 2020 and another targeted stakeholders' engagement with Importers, Exporters, clearing and forwarding agents, KEPSA, Natural Justice and representative of County Governments was equally held on 18th June 2020. The Consultation outcomes are outlines in Appendix of this document.

The following stakeholders were consulted countrywide:

1. Importers of the controlled Substances
2. RAC service companies and technicians
3. Clearing and forwarding agents for controlled substances
4. Kenya National Chamber of Commerce
5. Kenya Association of Manufacturers
6. Kenya Private Sector Alliance
7. County Governments Ministries and departments
8. Lead Agencies
 - a. Ministry of Environment and Forestry
 - b. Ministry of Trade and Industrialization
 - c. Kenya Revenue Authority
 - d. Kenya Bureau of Standards
 - e. Kenya Plant Health Inspectorate Service
 - f. Directorate of Occupational Health and Safety Services
9. County Governments

- i. Nairobi
- ii. Nakuru
- iii. Eldoret
- iv. Kisumu
- v. Mombasa

10. Environmental Civil Society platforms
11. Civil Society Organizations

There have been numerous consultative meetings within the various lead agencies, technicians, importers and the members of the public among other entities.

Upon the drafting of the Regulations herein, the same was published on the NEMA website and further there was an announcement in the Daily Nation of 9th June 2020 inviting members of the public to submit comments on the Draft Regulations.

The taskforce held stakeholder engagement meetings throughout the country. The first stakeholder engagement meeting was held for the south rift region in Nakuru County on the 28th of February 2020. Subsequently, the taskforce held further stakeholder engagement meetings on 16th and 17th June 2020.

The following stakeholders were consulted countrywide:

1. Importers of the controlled Substances
2. Refrigeration and Air Conditioning (RAC) service companies and technicians
3. Clearing and forwarding agents for controlled substances
4. Kenya National Chamber of Commerce
5. Kenya Association of Manufacturers
6. Kenya Private Sector Alliance

7. County Governments Ministries and departments

8. Lead Agencies

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| a. Ministry of Environment and Forestry | d. Kenya Bureau of Standards |
| b. Ministry of Trade and Industrialization | e. Kenya Plant Health Inspectorate Service |
| c. Kenya Revenue Authority | f. Directorate of Occupational Health and Safety Services |

9. County Governments

- i. Nairobi
- ii. Nakuru
- iii. Eldoret
- iv. Kisumu
- v. Mombasa

The main issues that arose during the stakeholder consultative forum were licensing and capacity building of technicians, classification of controlled substances, penalties to be imposed.

NEMA clarified that the Regulations provides for a clear outline on the licensing of technicians and even the need to build the capacity. It was also clarified that that all the penalties imposed for offences established by the Regulation are in line with the parent Act, EMCA, and the same cannot be reviewed

1. **Guidance**

2. The Regulations will be availed on the NEMA website where it can easily be accessible by members of the public. as well as prepare brief pamphlets for the ordinary *mwananchi* which will be distributed during public forums/road shows that would be used to explain the Regulations. Further, NEMA shall conduct strategic engagements and awareness creation with RAC technicians through continuous professional development engagements as well as engage the exporters, clearing and forwarding agents, private sector and the Regulatory agencies on a regular basis.**Impact**

2.1 *The impact on fundamental rights and freedoms*

The Regulations will enhance the enjoyment of fundamental rights and freedoms including principally the right to a clean and healthy environment, as well as the rights to the highest attainable standard of health and to clean and safe water.

2.2 *The impact on the public sector*

The public will be made responsible on the need to ensure that the controlled substances are regulated for protection of human health and the environment and the role they have to play.

5.3 *The impact on the private sector*

This Regulation will aid the private sector to contribute to the management and conservation of the environment and further enhance the public –private partnerships

2.3 A Regulatory Impact Assessment has been prepared for this statutory instrument.

3. Monitoring and review

The Authority shall from time to time advise the Cabinet Secretary Ministry of Environment & Forestry, Director-General and lead agencies on the effective implementation of the Regulations.

4. Contact

The Director-General
National Environment Management Authority
Popo Road, South C
P.O.BOX 67839-00200,
NAIROBI
E-Mail: dgnema@nema.go.ke