



EXPLANATORY MEMORANDUM

**EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (E-
WASTE MANAGEMENT) REGULATIONS 2013
No. [XXXX]**

PART I

Name of the Statutory Instrument: THE ENVIRONMENTAL MANAGEMENT AND
COORDINATION (E-WASTE MANAGEMENT)
REGULATIONS, 2013

Name of the Parent Act: ENVIRONMENTAL MANAGEMENT AND COORDINATION
ACT, 1999

Enacted Pursuant to: SECTION 147 OF THE ENVIRONMENTAL MANAGEMENT AND
COORDINATION ACT, 1999

Name of the Ministry/ Department: MINISTRY OF ENVIRONMENT, WATER AND
NATURAL RESOURCES

Gazetted on :

Tabled on :

PART II

1. Purpose of the Statutory Instrument

1.1 To manage E-waste in Kenya.

E-Waste has been an emerging challenge as certain components therein contain hazardous materials that pose a threat to public health and the environment. Discarded computers, televisions, VCRs, stereos, copiers, fax machines, electric lamps, cell phones, audio equipment and batteries all constitute E-waste. Many of these products can however be refurbished, reused, or recycled in an environmentally sound manner so that they are less harmful to the ecosystem and public health.

3. Policy Background

3.1 The Environmental Management and Coordination Act seeks to ensure a clean and healthy environment for all Kenyans and this includes the proper disposal of electronic and electrical waste. This statutory instrument provides for recycling, re-use and complete destruction of e-waste while giving incentives for the same to those in the e-waste disposal chain. The instrument undoubtedly creates penal offences for those who violate its provisions.

3.2 E-Waste has been an emerging challenge as certain components therein contain hazardous materials that pose a threat to public health and the environment. Discarded computers, televisions, VCRs, stereos, copiers, fax machines, electric lamps, cell phones, audio equipment and batteries all constitute E-waste. The processing of electronic waste is a major challenge in Kenya because electronic equipment contains lead, cadmium, and beryllium and brominated flame retardants.

3.3 There is a high level of public interest in this area of e-waste. There are even matters in the courts where the government is being sued for introducing the primary schools laptop project without a proper disposal plan for their end of life. The Media both print and visual have given a lot of attention to the problem of e-waste.

3.4 From the foregoing it is evident that this statutory instrument is of legal necessity, if we are to protect our environment.

3.5 No consolidation with any other statutory instrument is intended.

4. Consultation outcome

4.1 A stakeholders' consultation forum was organized and various stakeholders from various industries and government institutions were invited to give their views on the proposed legislation.

The following was the outcome of the meeting:

1. The Producer Alliance team needed a proper definition of electrical and electronic waste which they felt was not all inclusive but that was improved
2. Dr. Musili from Machakos county wanted to know; whether we have recycling facilities for electronic and electrical waste and the linkage the legislation will have with the County

Management but preferably an outside body – No agreement was reached on this proposal.

5. Guidance

Guidance will be by way of public education and awareness. NEMA intends to do this for 6 months pending the rolling out of the instrument or coming into force. This will be by way of sensitization of stakeholders to the provisions of the instrument. It must however be noted that the stakeholder participation process was satisfactorily done.

6. Impact

- 6.1 This Instrument does not deprive the public or anyone of their fundamental rights.
- 6.2 The impact on the Private Sector:

Positive Impacts:

1. To provide a legal backing for the few producers who have already put structures in place for the management of their Electrical and Electrical Equipment (EEE) at their end-of-life;
2. Opportunity for producers to manage the end-of-life of their EEE on a level playing ground by ensuring all actors are involved in fulfilling obligations relating to the products they introduce;
3. By ensuring improvement in collection of e-waste thus reducing amount of e-waste being disposed off at our disposal sites;
4. Employment will be created in the various systems either in collection, transportation or in the treatment facilities;
5. Knowledge and technology transfer in the management of e-waste;
6. Creation of awareness on issues relating to management of e-waste ; and

on customer satisfaction surveys as discontent.

- 6.4** No impact assessment statement has been prepared for this instrument.

Section 6 of the Statutory Instruments Act does not apply to this Instrument as this instrument is not likely to impose significant costs on the community. Further, this instrument raises a matter that is substantially uniform or complementary with EMCA. This is provided by section 9(g) of the Statutory Instruments Act.

7. Monitoring and review

- 7.1** The outcome of the legislation that this instrument proposes will be subject to review every 3 years and amendment to legislation proposed as need arises.
- 7.2** Monitoring and review will be conducted by NEMA.

8. Contact

The Director General
National Environment Management Authority (NEMA)
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'Draft E-waste Regulations'

SPECIAL ISSUE

Kenya Gazette Supplement No...

Date... ..

(Legislative Supplement No...)

LEGAL NOTICE NO.

ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT

(No. 8 of 1999)

**ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (E-WASTE
MANAGEMENT)
REGULATIONS, 2013**

ARRANGEMENT OF REGULATIONS

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- 1—Citation
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- 3—Application

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EQUIPMENT REGISTRY**

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- 5—Registration of Producers
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- 8—Disclosure

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- 11—Responsibilities of Refurbishers
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- 17—Restriction of importation of Cathode Ray Tubes into the country
- 18—Recipient of electrical and electronic equipment donations etc

PART V: PROHIBITIONS AND DISPOSAL

- 19—Prohibitions and treatment
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PART VI: RECORDS AND NOTIFICATIONS

- 21—Reporting
- 22—Collection Incentives
- 23—Transfer of Responsibility

IN EXERCISE of the powers conferred by Sections 86 and 147 of the Environmental Management and Co-ordination Act No. 8, of 1999, the Cabinet Secretary for the time being responsible for Environmental matters, on the recommendation of the National Environment Management Authority and upon consultation with the relevant lead agencies, and in fulfillment of the requirement of Public participation makes the following Regulations:

The Environmental Management and Coordination (E-Waste Management) Regulations of 2013

PART I PRELIMINARY	
Citation	1. These Regulations may be cited as the Environmental Management and Co-ordination (Electrical and Electronic Waste Management) Regulations, 2013.
Interpretation	2. In these Regulations unless the context otherwise requires: ‘Authority’ means the National Environment Management Authority established under section 7 of the Environmental Management and Coordination Act of 1999; ‘collection centre’ means a facility designated for the collection of e-waste; ‘collection incentive’ means the price paid by recyclers to the collection network to ensure collection of e-waste; ‘electrical equipment’ means equipment for the generation, transfer and measurement of electric currents and fields falling under the categories set out in schedule 1 of these regulation; ‘electrical and electronic equipment registry’ means a unit housed by the Authority for the purposes of effecting registration of all electrical and electronic equipment producers and recyclers; ‘electronic equipment’ means equipment which is dependent on electric currents or electromagnetic fields in order to work properly under the categories set out in schedule 1 of these regulation; ‘environmentally sound management’ means the management of e-waste in accordance with the principles listed in schedule 2; ‘evidence note’ means a reporting structure utilizing evidence issued to the producer by a licensed treatment facility through the electrical and electronic equipment registry in the format prescribed in schedule 3; ‘e-waste’ also referred to as waste electrical and electronic equipment means waste resulting from electrical and electronic equipment including components and sub-assemblies thereof;

	<p>(2) These regulations may be read together with the Guidelines for E-waste Management in Kenya.</p> <p>(3) These Regulations shall operate in addition to other relevant Regulations and Standards made under any other law.</p>
<p>PART II: THE ELECTRICAL AND ELECTRONIC EQUIPMENT REGISTRY</p>	
<p>Electrical and Electronic Equipment Registry</p>	<p>4. (1) The Authority shall establish an electrical and electronic equipment registry.</p> <p>(2) The Authority shall operate the electrical and electronic equipment Registry through multi-sectoral stakeholder participation.</p> <p>(3) The electrical and electronic equipment Registry shall keep registers as required by these regulations.</p> <p>(4) The electrical and electronic equipment registry shall keep a record on the following;</p> <p>(a) The total tonnage and types of electrical and electronic equipment placed on the market by all producers;</p> <p>(b) The tonnage and types of e-waste collected and processed by the licensed treatment facilities;</p> <p>(c) Status of compliance based on percentage of obligation fulfilled.</p> <p>(5) The registry shall calculate individual producer responsibility by market share for problematic fractions and shall communicate this to the producer.</p> <p>(6) In the event that a treatment facility treats more problematic fraction than that anticipated as per the market share of any producer the electrical and electronic equipment registry shall distribute the excess volumes to all producers on pro-rata basis.</p>
<p>Registration of Producers</p>	<p>5. (1) A Producer introducing new or used electrical and electronic equipment into Kenya shall apply for registration from the Authority.</p> <p>(2) An application for registration shall be made to the Authority;</p> <p>(a) In a form as set out in schedule 6; and</p> <p>(b) Upon payment of a prescribed fee as set out in schedule 7.</p>

facilities	<p>recycling facility shall obtain an Environmental Impact Assessment license in accordance with the Environmental (Impact Assessment and Audit) Regulations of 2003;</p> <p>(2) Every operator of a recycling facility shall obtain an operating license from the Authority in accordance with the Environmental Management and Coordination (Waste Management) Regulations of 2006.</p> <p>(3) An application for a license to operate a recycling facility shall be made to the Authority and shall be—</p> <p>(a) in a form set out in schedule 11 of these regulations; and</p> <p>(b) accompanied by the prescribed fee</p> <p>(4) After submission of the application, the Authority shall make a decision to approve, reject or request for further information and communicate the decision in writing within twenty one (21) days.</p> <p>(5) If the decision is to approve then the authority shall issue a license to operate an e-waste recycling facility as provided for in schedule 12.</p> <p>(6) If the decision under this regulation is to reject the application, the authority shall communicate the reasons for the decision within (21) twenty one days.</p> <p>(7) A person aggrieved by a decision under this regulation shall have a right to appeal to the National Environment Tribunal within (60) sixty days.</p>
	PART IV: IMPORTATION CONTROL
E-waste- control and handling	<p>16. (1) The Authority may establish a mechanism to ensure collaboration within African States on importation of e-waste.</p> <p>(2) Any e-waste imported into Kenya from within Africa shall be for the purpose of recycling, refurbishment, and material recovery.</p> <p>(3) Any person importing e-waste referred to under these regulations from within Africa into Kenya shall apply to the Authority for a permit in accordance with the format prescribed under Schedule.... upon payment of the prescribed fee set out in schedule 7.</p>
Restriction of importation of Cathode Ray Tubes into the country	<p>17. (1) The importation of electrical and electronic equipment containing Cathode Ray Tubes into the country is banned except for essential services such</p>

	<p>equipment shall keep records of quantities of e-waste transferred to the collection centers.</p> <p>(2) Every recycler of e-waste shall submit to the Authority every twelve months records of;</p> <p>(a) tonnage of e-waste received of each type for recycling;</p> <p>(b) tonnage and types of recovered materials including precious metals;</p> <p>(c) Recycling technologies applied;</p> <p>(d) tonnages exported for further recycling; and</p> <p>(e) certificate of disposal recovery;</p> <p>(3) The records required under sub-regulations 1 and 2 shall be in a format as prescribed under schedule 13.</p>
Collection Incentives	22. The Authority may establish a framework through which to determine minimum collection incentives to actors in the e-waste value chain.
Transfer of Responsibility	23. A producer intending to cease operations shall notify the Authority six (6) months in advance in writing and shall provide evidence of arrangements for alternative entities to bear their obligation within the compliance period.
PART VII: OFFENCES AND PENALTIES	
Importation of electrical and electronic equipment and e-waste	<p>24. (1) No person shall import any electrical and electronic equipment whose age exceeds the number of years listed in schedule 1A.</p> <p>(2) No person shall import any e-waste from outside Africa into Kenya.</p> <p>(3) A person who contravenes this regulation commits an offence and is liable upon conviction to imprisonment of not less than 24 months and a fine of not less than one million Kenya shillings or both such imprisonment and fine.</p>
Offences relating to Registration	<p>25. (1) Any person introducing electrical and electronic equipment into the Country without a certificate of registration by the Authority commits an offence and is liable upon conviction to imprisonment of not less than 24 months and a fine of not less than one million Kenya shillings or both such imprisonment and fine.</p> <p>(2) The producer in addition to the penalty prescribed by the law shall be required to forfeit the goods so introduced and to export back or have the electrical</p>

SCHEDULE 1 (reg. 2, 3)

CATEGORIES OF ELECTRICAL AND ELECTRONIC EQUIPMENTS

List of products which shall be taken into account for the purpose of this Regulation include, but are not limited to;

1. Large household appliances

- i. Large cooling appliances
- ii. Refrigerators
- iii. Freezers
- iv. Other large appliances used for refrigeration, conservation and storage of food
- v. Washing machines
- vi. Clothes dryers
- vii. Dish washing machines
- viii. Electrical Cooking equipment
- ix. Electric stoves
- x. Electric hot plates
- xi. Microwaves
- xii. Other large appliances used for cooking and other processing of food
- xiii. Electric heating appliances
- xiv. Electric radiators
- xv. Other large appliances for heating rooms, beds, seating furniture
- xvi. Electric fans
- xvii. Air conditioner appliances
- xviii. Other fanning, exhaust ventilation and conditioning equipment

2. Small household appliances

- i. Vacuum cleaners
- ii. Carpet sweepers
- iii. Other electrical appliances for cleaning
- iv. Appliances used for sewing, knitting, weaving and other processing for textiles
- v. Ironing, mangling and other clothing appliances.

- xii. Cordless telephones
- xiii. Cellular telephones
- xiv. Answering systems and other products
- xv. Broadcasting equipment for transmitting sound, images or other information by telecommunications
- xvi. And other products or equipment for the purpose of recording or reproducing sound or images, including signals or other technologies for the distribution of sound and image than by telecommunications

4. Consumer equipment

- i. Radio sets
- ii. Television sets
- iii. Video cameras
- iv. Video recorders
- v. Hi-fi recorders
- vi. Audio amplifiers
- vii. Musical instruments

5. Lighting equipment

- i. Luminaries for fluorescent lamps. Straight fluorescent lamps
- ii. Compact fluorescent lamps
- iii. High intensity discharge lamps, including pressure sodium lamps and metal halide lamps
- iv. Low pressure sodium lamps
- v. Other lighting or equipment for the purpose of spreading or controlling light

6. Electrical and electronic tools

- i. Drills
- ii. Saws
- iii. Sewing machines
- iv. Equipment for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes, punching, folding, bending or similar processing of wood, metal and other materials
- v. Tools for riveting, nailing or screwing or removing rivets, nails, screws or similar uses

10. Automatic dispensers

- i. Automatic dispensers for hot drinks
- ii. Automatic dispensers for hot or cold bottles or cans
- iii. Automatic dispensers for solid products
- iv. Automatic dispensers for money

11. Batteries

- i. Portable batteries-Non-Rechargeable
- ii. Portable batteries-Rechargeable
- iii. Automotive batteries
- iv. Industrial batteries

SCHEDULE 2 (reg. 2)

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

Act No 8 of 1999

PRINCIPLES OF ENVIRONMENTALLY SOUND MANAGEMENT

Principles of ESM

1. Principle of waste Prevention
2. Principle of waste minimization
3. Principle of self sufficiency
4. Principle of safe disposal close to point of generation
5. Polluter pay principle
6. Design for environment
7. Best appropriate technology
8. Right to know
9. Principle of substitution
10. Participatory management
11. Integrated pollution prevention and control
12. Cleaner production technologies
13. Principle of green growth

Guidelines for E-waste treatment facility (Refer to the National E-waste management guidelines)

SCHEDULE 4 (reg. 4 (2))

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

Act No 8 of 1999

ELECTRICAL AND ELECTRONIC EQUIPMENT DECLARATION FORMAT

Type of Electrical and Electronic Equipment	Previous year's electrical and electronic equipment introduced into the market	Subsequent year's projection of electrical and electronic equipment to be introduced into the market

SCHEDULE 6 (reg. 6(2) (a))

APPLICATION FORM FOR REGISTRATION OF PRODUCERS

Reg.37

Application Reference No.

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

Act No. 8 of 1999

APPLICATION FOR REGISTRATION AS AN ELECTRICAL AND
ELECTRONIC EQUIPMENT (EEE) PRODUCER

Part A: DETAILS OF APPLICANT

A1	Name of producer
	Company <input type="checkbox"/>
	Business name <input type="checkbox"/>
	Others.....
A2	Nationality.....
A3	PIN No.
A4	Identification number/Business Registration Number/Incorporation Number (as applicable).....
A6	Postal and physical Address (Road/Street/Building):
A7	Telephone No.
A8	Fax No.
A9	E-mail.....

Part B: NATURE OF BUSINESS

B1	Nature of business (State whether Importer, Manufacturer or which other).....
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On Behalf of

.....

Name Seal/Official stamp

Date.....

Part E: FOR OFFICIAL USE

Approved/ Not Approved

.....

.....

.....

Comments

.....

.....

.....

.....Name of

Official

DesignationSign.....

Date

SCHEDULE 8 (reg. 6(8))

REGISTRATION CERTIFICATE

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

Act 8 of 1999

CERTIFICATE OF REGISTRATION AS AN ELECTRICAL AND ELECTRONIC
EQUIPMENT PRODUCER

Registration Certificate No.

Name.....
.....

Address.....

.....You are hereby registered as an Electrical and Electronic Equipment
(EEE) Producer for the following categories:

.....
.....

Subject to the following conditions

.....
.....
.....

Date:

Signature.....

For Director General

National Environment Management Authority

SCHEDULE 11 (reg. 10(3) (a))
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

Act No 8 of 1999

APPLICATION/RENEWAL FOR A LICENCE TO OPERATE AN E- WASTE RECYCLING/TREATMENT FACILITY

I hereby apply for a licence to operate an e-waste recycling/treatment facility, particulars whereof are given below:-

Name of Applicant.....
Address
.....
Phone No.....
Contact Person.....
.....
PIN Number
Location of plant/site
.....
.....
.....
Recycling Technology applied.....

.....

.....

Date:..... Signature:.....

Designation/Title:.....

FOR OFFICIAL USE ONLY

Application received by.....on.....20.....

Fee paid Kshs..... (in words).....

Signature..... Date.....
.....

For: Director General

National Environment Management Authority

.....
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.....
.....

Date:..... Signature.....

.....

Director General

National Environment Management Authority

SCHEDULE 14 (reg. 15(1))
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT
Act No 8 of 1999

NOTIFICATION FORM FOR ESTABLISHMENT OF COLLECTION CENTRES

Name of Collection centre.....

Address.....

Provide details of;

- a. Physical Location.....
- b. GPS position.....
- c. Postal Address.....
- d. Contact Person.....
- e. Tel. No.....
- f. E-mail address.....

Added Tax (Remission) (Low Income Housing Projects), Order 2008, shall be revoked with effect from the commencement date of the Act; and

(5) The Value Added Tax (Remission) (Low Income Housing Projects), Order, 2008, shall continue to apply to a remission granted before the commencement date while the remission remains in force

Made on 12th June, 2014


HENRY ROTICH,
Cabinet Secretary for the National Treasury