

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT,  
1999**

**IN EXERCISE** of the powers conferred by sections 3 and 147 of the Environmental Management and Co-ordination Act, the Cabinet Secretary for Environment and Forestry makes the following Regulations-

**THE ENVIRONMENTAL MANAGEMENT AND  
CO-ORDINATION  
(PLASTICS BAGS CONTROL AND MANAGEMENT)  
REGULATIONS, 2018**

**PART 1-PRELIMINARY**

Citation.

**1.** These Regulations may be cited as Environmental Management and Co-ordination (Plastics Bags Control and Management) Regulations, 2018, and shall come into operation upon gazettelement by the Cabinet Secretary.

Interpretation	2.0. In these Regulations unless the context otherwise requires:
	<i>“Authority”</i> means the National Environment Management Authority.
	<i>“Carrier bag”</i> means bag constructed with handles and with or without gussets.
	<i>“Flat bag means”</i> bag constructed without handles and with or without gussets
	<i>“Gussets”</i> means- Holes or holding support of bag or the crotch or handle bracket.
	<i>“Industrial packaging”</i> means packaging of raw materials for the next point of production.
	<i>“Plastic bags”</i> means carrier bag or flat bag composed of polythene.
	<i>“Polythene”</i> means a synthetic industrial product with a low density composed of numerous chemical molecules with a chemical formula: (CH <sub>2</sub> =CH <sub>2</sub> )
Objectives	3.0. The objective of these regulations is to ensure a clean and healthy environment through prevention of pollution

	caused by plastic bags and promotion of alternative biodegradable packaging materials.
Application	4.0 These regulations shall apply to all plastic bags used for packaging.
Prohibition	5.1 No person shall manufacture, import, export, use or offer for sale plastic carrier bags.  5.2 No person shall manufacture, import, export, use or offer for sale plastic flat bags.
Authorization to manufacture, import, or export plastic flat bags.	6.1 Notwithstanding Regulation 5(2), the Authority may authorize the manufacture, import, export or use of plastic flat bags for industrial packaging.  6.2 An application for authorization to manufacture, import, export or use plastic flat bags shall be made in accordance with the first schedule.  6.3 The application referred to Regulation 5(2) shall be accompanied by the prescribed fee stipulated under the second schedule.  6.4 An application to manufacturer, export, import or use plastic flat bags shall not be considered unless applicant submits a recycling plan to the Authority.  6.5 The application fee shall be levied on every product produced and or packaged by the Applicant.  6.6 The Authority shall deposit all fees collected under this Section into the Restoration Fund.  6.7 The Authority shall respond to the application within 21 days.  6.8 The Authority may after being satisfied with the application issue a license on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management  6.9 The licence issued under sub regulation 6 shall be valid for a period of 12 months.  6.10 The Authority may require an applicant at his own expense to submit additional information for purposes of ensuring the assessment of the application is as accurate and exhaustive as possible.

Review of an Application	<p>7.1 The Authority may, on application by any applicant, review its decision</p> <p>7.2 The Authority shall respond to the application for review within a period of 14 days.</p>
Appeal	<p>8. If the applicant is aggrieved with the decision of the Authority he may appeal to the National Environment Tribunal within sixty days.</p>
Criteria for Exemption	<p>9. In determining whether to authorize the use of plastic flat bags for industrial packaging, the Authority shall be guided by the following criteria:</p> <ul style="list-style-type: none"> <li>• Whether the packaging is required for product preservation and public health concerns;</li> <li>• Whether the packaging is required as a security measure;</li> <li>• Whether the packaging is required for water and dust proofing.</li> <li>• Whether the packaging is required to maintain product integrity while on transit.</li> <li>• Whether the packaging constitutes over-packaging or not.</li> <li>• Whether there is any other reasonably feasible non-plastic alternative packaging material</li> <li>• Whether the packaging is in accordance with international rules and standards which are applicable in Kenya.</li> <li>• Any other criteria that may be determined by the Authority.</li> </ul>
Recycling Plan	<p>10.0. Each manufacturer, importer or user shall develop and thereafter maintain a plan for supporting the collection and recycling of plastic bags and shall submit a copy of the plan to the Authority for posting to the Authority's website.</p> <p>10.1 Manufacturers, importers or users may develop and implement the plan individually, or jointly with other manufacturers, importers or users.</p> <p>10.2 The plan shall:</p> <p>describe the recycling program to be implemented throughout the Country, including collection locations, events, or both;</p> <ul style="list-style-type: none"> <li>a) include a detailed description as to how the plan will be implemented</li> <li>b) describe the performance measures that will be used to document collection efforts for plastic flat bags .</li> <li>c) include a public education plan on the reuse and recycling of plastic bags and plastic film product wrap; and</li> </ul>

	<p>d) include the mailing address or email address of the manufacturer for the submission of comments regarding the plan.</p> <p>e) Such other matters as the Authority may require</p> <p>10.3 During the process of preparing a plan for supporting the collection and recycling of plastic bags and plastic film product wrap, the manufacturer shall seek the views of persons who may be affected by the plan.</p>
<p>Recycling Program Report</p>	<p>11. Each manufacturer, importer or user shall submit a report to the Authority that includes, for the previous calendar year, a description of the manufacturer's, importer's or user's collection and recycling program, including, but not limited to,</p> <ul style="list-style-type: none"> <li>(a) the collection locations for plastic flat bags and plastic film product wrap,</li> <li>(b) the processing locations for the collected plastic flat bags and plastic film product wrap,</li> <li>(c) the weight in Kilograms of plastic flat bags and plastic film product wrap collected and processed for recycling,</li> <li>(d) the weight in kilograms of plastic flat bags the manufacturer, importer or user sold for use or distribution in Kenya,</li> <li>(e) the percentage of plastic flat bags and plastic film product wrap collected and processed for recycling based on the weight in Kilograms of plastic flat bags and plastic film product wrap collected and processed for recycling and the weight in Kilograms of plastic flat bags old for use or distribution in Kenya,</li> <li>(f) the amounts of pre-consumer recycled content and post-consumer recycled content in the plastic flat bags the manufacturer sold for use or distribution in Kenya</li> <li>(g) samples of the education materials provided to consumers.</li> <li>(h) Such other matters as the Authority may require</li> </ul>
<p>Due Diligence</p>	<p>12. A manufacturer, importer or user shall conduct and document due diligence assessments of any person with whom the manufacturer, importer or user contracts or arranges for any one or more of the following:</p> <ul style="list-style-type: none"> <li>a) a recycling collection location;</li> <li>b) collection, processing or transportation of plastic bags or plastic film product wrap; or</li> <li>c) recycling of plastic flat bags and plastic film product wrap.</li> </ul>

<p>Recycled content</p>	<p>13.0. Manufacturers selling plastic flat bags for use or distribution in Kenya shall label each bag to identify the recycled content in the bag.</p> <p>13.1. Manufacturers of plastic carryout bags shall strive to manufacture the bag to include at least 30% total recycled content.</p>
<p>Collection points</p>	<p>14.0. For the benefit of assisting consumers who wish to find collection locations for recycling plastic flat bags, the Authority shall post on its website the location of all collection sites identified to the Authority by manufacturers, importers or users in their plans and annual reports.</p> <p>14.1. The Authority shall post on its website the list of manufacturers, importers or users for which the Authority has received a recycling plan in accordance with Section 10.</p> <p>14.2. The Authority shall post on its website the list of manufacturers, importers or users for which the Authority has received an annual report in accordance with Section 11.</p>
<p>List of licensees</p>	<p>15. The Authority shall post on its website the list of manufacturers, importers or users that are licensed in accordance with Section 6(8).</p>
<p>Labelling</p>	<p>16. 1. No manufacturer or importer shall sell or offer to sell plastic flat bags in Kenya unless the name and contacts of the manufacturer or importer are printed on the bag so that the manufacturer's or importer's identity is readily identifiable.</p> <p>16. 2. The Authority may on the application of the manufacturer or importer approve the use of any other identifiable mark in place of the contact details of the manufacturer or importer of the plastic flat bags.</p>
<p>Prohibition on purchase of plastic bags.</p>	<p>17. 1. No user shall purchase plastic flat bags directly from a manufacturer or importer for use or distribution in Kenya unless the manufacturer or importer of the bags is licensed by the Authority in accordance with Section 6(8).</p> <p>17.2. No user shall purchase plastic bags for use or distribution in Kenya directly from a manufacturer or importer unless the name of the manufacturer is printed on the bag so that the manufacturer's or importer's identity is readily identifiable 15(1).</p>

Confidential Information	17.3. An applicant may specify what portion of information should be treated as confidential by the Authority during application for authorization to use, sell, manufacture, export or import plastic flat bags.
Records Keeping	<p>18.1. Every manufacturer, importer, exporter and user of plastic flat bags shall keep a record of quantities of materials manufactured, exported, imported or used.</p> <p>18.2. The record kept shall be submitted to the Authority annually in accordance with third schedule.</p> <p>18.3. Every importer of plastic flat bags shall declare at the point of entry the quantities and purpose of plastic flat bags in their possession.</p>
Inspection	19. The Authority's Environmental inspectors shall be responsible for inspection of facilities that manufacture, import, export, offer for sale any plastic packaging material to ensure adherence to the provisions of these regulations
<i>Obstruction</i>	20.0 No person shall deny any Environmental Inspector entry to their premises during inspection of facilities referred to in Regulation 20
Seizure of materials	21.1. The Authority's Environmental inspectors may seize any plastic bags and film plastic film plastic found to contravene any of these regulations.
Disposal of materials	<p>22.1 The Authority shall upon making an application in court proceed to dispose off any seized plastic bags and film plastic film product wrap material as the court may direct.</p> <p>22.2. The plastic packaging materials seized under Regulation 22.1 shall be disposed in accordance with the Environmental Management and Coordination (Waste Management) Regulations 2006.</p>
<i>Penalty &amp; Offences</i>	<p>23. 1. Any person who fails to comply with the provisions of these Regulations, commits an offence for which no other penalty is specifically provided for is liable upon conviction to imprisonment for such term and such fine as provided for in the Act.</p> <p>23. 2. Any person who engages in manufacturing, importation and sale of the banned plastic carrier and flat bags commits an offence and is liable upon conviction for a term of not less than one (1) year and not more than four (4) years or a fine of not less than Ksh 2 Million and not more than Ksh 4 Million or both.</p> <p>23. 3. A person who is found in possession and use of banned plastic carrier and flat bags commits an offence and is liable</p>

	<p>upon conviction for a term of not more than one (1) year or a fine of not less than Ksh 50,000 or both.</p> <p>23. 4 All flat and carrier bags found in possession of any person in contravention of these regulations shall be seized for disposal using environmentally friendly standard methods.</p> <p>23. 5 When an offence against these Regulations, is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.</p> <p>23. 6 Where an offence is committed under these Regulations by a partnership, every partner or officer of the partnership who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.</p> <p>23. 7 A person shall be personally liable for an offence against these Regulations, whether committed by him on his own account or as an agent or servant of another person.</p> <p>23. 8 An employer or principal shall be liable for an offence committed by an employee or agent against these Regulations, unless the employer or principal proves that the offence was committed against his express or standing directions.</p>
Engagement with stakeholders	<p>24. The Authority in consultation with the County Governments and other stakeholders shall within six months of commencement of this Regulation provide guidance on measures to manage the existing plastic waste in the environment as well as that to be generated from the exempted uses or applications</p>
Engagement with lead agencies	<p>25. The Authority shall where necessary engage with lead agencies to foster cooperation and ensure effective implementation of this Regulations.</p>

**FIRST SCHEDULE**

Application reference No.....

(For official use)

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT (CAP 387)**

**(GAZETTE NOTICE NO 2334 AND 2356 OF 2017)**

**APPLICATION FOR AUTHORITY TO MANUFACTURE, IMPORT, EXPORT OR USE OF PLASTIC FLAT BAGS FOR INDUSTRIAL PACKAGING**

Part A: DETAILS OF THE APPLICANT

A1. Name (Individual or Firm).....

A2. Business Registration No.....

A3. Address:.....

A4. Name of contact person:.....

A5. Position of contact person.....

A6. Address of contact person.....

Telephone No.....

E-mail:.....

PART B: CATEGORY OF EXEMPTION BEING SOUGHT

B1. Manufacturer  Importer  User  Exporter

B2. Nature of the plastic bag for which authority is sought

- a) Printed flat bags for industrial packaging.
- b) Printed courier bags
- c) Printed hazardous/biomedical waste plastic liners
- d) Printed garbage bags
- e) Other (specify) .....

B3. Product to be packaged in the plastic bag – as per B2(a) and B2(e) – attach list where necessary.

B4. Certification by the Kenya Bureau of Standards (KEBS) and the Kenya Revenue Authority

(Attach evidence) .....

B5. Source of the plastic bag (for non-manufacturers) .....

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B6. Quantity applied for .....

B7. Expected duration of use/consumption per month .....

B8. Expected normal points of use.....

B9. Extended producer/user responsibility scheme or take back mechanism to be put in place to manage the resultant waste from the plastic bags

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**Part E: DECLARATION BY APPLICANT**

I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief. I understand my clearance may be suspended, varied or cancelled if any information given above is false, misleading, wrong or incomplete.

Name.....

Position .....

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

Company/ Entity name and Seal/Stamp

Part F: OFFICIAL USE

Approved / Not approved.....

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Comments.....

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Officer.....Signature.....Date.....

**Important Note:**

Please submit 1(one) copy of this completed Form and all the requisite documentary evidence to:

The Director-General,

**National Environment Management Authority**

Popo Road, off Mombasa Road

P.O. BOX 67839-00200, Nairobi, Kenya

Tel: (254 020) 6005522, 6001945, Fax: (254 020) 6008997)

E-mail: [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke) Website: [www.nema.go.ke](http://www.nema.go.ke)

**SECOND SCHEDULE**

**FEES**

<b>Item</b>		
1.	One off fees for companies dealing with one product	Ksh 5,000.00
2.	Exemption fees for companies dealing with two or more products	Ksh 5,000.00 per application

**THIRD SCHEDULE**

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999  
RECORD OF PLASTIC PACKAGING MATERIALS**

**Part A: DETAILS OF THE APPLICANT**

**A1. Name (Individual or Firm).....**

**A2. Business Registration No.....**

**A3. Address:.....**

**A4. Name of contact person:.....**

**A5. Position of contact person.....**

**A6. Address of contact person.....**

**Telephone No.....**

**E-mail:.....**

**PART B: CATEGORY OF EXEMPTION GRANTED**

**B1. Manufacturer/Importer/User**

**B2. Type of the plastic packaging material used**

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**B3. Period of the exemption**

**Date issued.....**

**Expiry date .....**

**B4. Quantity of the plastic packaging material used in a given year.**

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**B5. Destination of the plastic packaging material (Please state whether destined for local or international use)**

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**Part E: DECLARATION BY APPLICANT**

**I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief.**

**Name.....**

**Position .....**

**Signature..... Date .....**

**Company/ Entity name and Seal/Stamp**

**Part F: OFFICIAL USE**

**Receiving officer.....Signature.....Date**

**The Director-General,**

**National Environment Management Authority**

**Popo Road, off Mombasa Road**

**P.O. BOX 67839-00200, Nairobi, Kenya**

**T el: (254 020) 6005522, 6001945, Fax: (254 020) 6008997)**

**E-mail: [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke) Website: [www.nema.go.ke](http://www.nema.go.ke)**