

Annex 4: THE FORESTS (CHARCOAL) REGULATIONS, 2009

IN EXERCISE of the powers conferred by section 59 of the Forests Act, 2005, the Minister for Forestry and Wildlife, makes the following Regulations,

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PART I

Preliminary

1. Citation

These Regulations may be cited as the Forests (Charcoal) Regulations, 2009.

2. Application

These Regulations shall be in addition to and not in derogation from any other written law for the time being in force related to forestry and sustainable charcoal production, transportation and marketing.

3. Interpretation

In these Regulations, unless the context otherwise requires –

“*Act*” means the Forests Act, No. 7 of 2005;

“*Board*” means the Board of Kenya Forest Service established under the Act;

“*certificate of origin*” means a certificate of confirmation of sources of charcoal issued by the charcoal producer under these Regulations;

“*charcoal*” means wood fuel product derived from carbonization of wood or other plant materials;

“*Committee*” means the Forest Conservation Committee established under section 13 of the Act.

“*competent authority*” refers to the Kenya Forest Service established under the Act;

“*Director*” means to the Director of the Service appointed pursuant to section 10 of the Act;

“*export*” means commercial trade with a natural or legal person outside the territory of Kenya;

“*Service*” means the Kenya Forest Service established under the Act;

“*sustainable use*” has the meaning assigned to it under the Act;

PART II

Designated Competent Authority

Competent authority

4. (1) The competent authority responsible for issuance of licence or permit for the production and transportation of charcoal shall be the Kenya Forest Service.
- (2) No person shall undertake or engage in any undertaking or activity relating to commercial charcoal production and transportation without a valid licence or permit, as the case may be, issued by the Service under these Regulations.
- (3) No licensing authority under any written law in force in Kenya shall issue a trading permit or licence for any undertaking or activity relating to commercial charcoal trade unless the applicant produces to the licensing authority a licence or permit of charcoal production or transportation, as the case may be, issued by the Service under these Regulations.

PART III

Charcoal Associations

Establishment of association

5. (1) All commercial charcoal producers shall be organized themselves as business firm (s) or charcoal producer association (s) as set out in the First Schedule and Form 1 of the Second Schedule.
- (2) The association under subregulation (1) shall be registered under the Societies Act.
- (3) Each association shall –
 - (a) facilitate sustainable production of charcoal by her members;
 - (b) ensure members implement the reforestation/conservation plans;
 - (c) develop and implement a Code of Practice for its members and self regulate her own members;
 - (d) assist the Service in enforcing the provisions of the Act and any rules and regulations made pursuant thereto, in particular in relation to sustainable charcoal production, transportation and marketing; and
 - (e) do any other act that is necessary for sustainable charcoal production and transportation.

PART IV

Licensing of charcoal producers

Establishment of licencing committee

6. (1) The Forest Conservation Committee shall from her membership set up a licensing committee.
- (2) Notwithstanding subregulation (1) of this regulation, the Board may, on recommendation of the Committee, establish such other licencing committee in any part of the conservancy as it deems appropriate.
- (3) A licencing committee established under subregulation (1) and (2) of this regulation shall -
- (a) consider and recommend applications for issuance, cancellation or revocation of charcoal producers' licence;
 - (b) assess and approve plans and structures of intended charcoal production;
 - (c) perform such other functions as may be delegated by the Committee, or as may be necessary or expedient for licencing sustainable charcoal production, transportation and marketing in accordance with these Regulations.
- (4) Each Committee shall maintain a register of all charcoal producers within their jurisdiction and licensed under these Regulations.

Requirement for a licence

7. (1) No person or association shall establish or engage in charcoal production for commercial purposes unless has applied for and obtained a licence issued by the Service under these Regulations.
- (2) A licence under this regulation shall be granted on:
- (a) application in the prescribed Form 2 as set out in the Second Schedule,
 - (b) upon payment of the prescribed fee; and
 - (c) subject to recommendation of the relevant Committee or such other conditions as the Service may determine.
- (3) The Service, on recommendation of the relevant Committee, where it considers it expedient for ensuring sustainable charcoal production, may at any time vary the conditions referred to in subregulation 2 of this Regulation.
- (4) Notwithstanding subregulations (1), (2), and (3) of this Regulation, any person desirous of producing charcoal on his own land is exempted from seeking a licence, provided that the charcoal so produced is not for commercial purposes.
- (5) Any person who intends to produce charcoal on his own land for commercial purposes shall be required to obtain a licence under these regulations.
- (6) Any person who produces charcoal pursuant to subregulation (4) of this Regulation and intends to transport it for sale shall be required to obtain a charcoal movement permit issued under these Regulations.

Issuance of licence

8. (1) Every person or association desirous of obtaining a licence shall –
- (a) make application to the Committee of the Conservancy in prescribed form as set out in Form 2;
 - (b) provide such other information as may be prescribed or deemed necessary; and
 - (c) pay the prescribed fee.
- (2) An application for the renewal of a licence shall be made at least one month before the expiry date of the existing licence.

- (3) On receipt of an application under this regulation, the licencing committee may make such investigation or require the submission of such declaration or further information as it may deem necessary in order to enable it to consider the application and make recommendation to the Committee and the Board.
- (4) In considering the licence application, the licencing committee shall have regard to the material considerations which include:
 - (a) a registration certificate of the association or firm accompanied with its constitution and list of members or articles of incorporation, as the case may be;
 - (b) the place or places where charcoal is to be produced;
 - (c) designated charcoal collection point(s);
 - (d) consent from the owner, or authorized person, of the land where charcoal is to be produced as set out in Form 3 of the Second Schedule;
 - (e) tree species, number of trees and estimated volume to be used for charcoal production;
 - (f) type of technology to be used as may be prescribed under these Regulations or any other written law, in particular, the Energy Act;
 - (g) a recommendation from the local environment committee; and
 - (h) a reforestation or conservation plan for the area where trees will be managed for charcoal production.
- (5) After considering an application made under this Regulation and all matters appearing relevant thereto, the licencing committee may make a recommendation to grant or not to grant the licence or variation, as the case may be.
- (6) Upon receipt of the recommendation from the licencing committee, the Committee may, with the approval of the Board, grant or refuse to grant the licence and may attach to any licence so granted such conditions as the Service may deem expedient.
- (7) Every licence issued under these Regulations, shall, unless invalidated pursuant to provisions of the Act or any Regulations made thereunder, remain valid up to the date stated therein or where no such date is specified up to 31st December of the year in which it is issued.
- (8) A licence issued under these Regulations is not transferable.
- (9) Any person aggrieved by the decision of the Service may, within thirty days of communication to him of such refusal, appeal to the National Environment Tribunal established under the Environmental Management and Coordination Act, 1999.
- (10) The Tribunal may confirm, vary or reverse the decision and shall issue instructions as to its decision to the Service.

Revocation, suspension or cancellation of licence

9. (1) The Service shall cancel, revoke or suspend any licence issued under these Regulations where the holder of a licence contravenes the provisions of the licence.
- (2) The Service shall, upon its intention to suspend the licence under subregulation (1), notify the concerned party accordingly and give a fourteen (14) days notice of revocation or cancellation thereof unless the concerned party fulfills such conditions as may be specified in the notice.
- (3) The Service may confirm, vary or cancel a licence for charcoal production under these Regulations upon expiry of the period prescribed under subregulation (2) of this regulation.
- (4) Whenever a licence issued under these Regulations is revoked, suspended or cancelled, the holder

thereof shall cease operations of the charcoal production the subject of the licence until a new licence is issued by the Service.

Prohibition relating to licences

10. (1) No person shall –

- (a) unlawfully alter or endorse, or lend a licence issued to him to any other person;
- (b) possess or attempt to operate pursuant to a licence issued to another person; or
- (c) having been disqualified from holding a licence under the Act or these Regulations, apply for a licence without disclosing to the licencing committee the disqualification.

(2) Any person who contravenes this Regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

Requirement to provide data

11. (1) The holder of a licence issued under these Regulations shall submit at any time as the Director may specify, data in respect of charcoal production as the Director may prescribe.

(2) Any person who contravenes this Regulation is committing an offence.

PART V

Reforestation or conservation plan

Requirement for a reforestation/conservation plan

12. (1) Every charcoal producer shall ensure that charcoal is produced in a sustainable manner and as may be prescribed from time to time by the Service.

(2) No person or association may be granted a licence for charcoal production without a reforestation plan for the area the subject of the proposed charcoal production.

Protection of endangered and threatened plant species

13. (1) No person shall produce charcoal from endangered, threatened and protected plant species.

(2) The Service shall, through Gazette, publish regularly a list of endangered, threatened and protected plant species.

(3) Any person who contravenes this regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

PART VI

Charcoal Transportation

Charcoal movement permit

14. (1) No person shall, move charcoal or charcoal products from one place to another unless –

- (a) he is in possession of a valid charcoal movement permit issued under these Regulations and is operating in conformity with the terms and conditions of such permit; and
- (b) he has a certificate of origin for the charcoal the subject of the charcoal movement permit duly signed by the relevant association or person from whom charcoal is to be obtained; or

- (c) he has a receipt from the vendor.
- (2) A charcoal movement permit as prescribed in Form 4 of the Second Schedule may, on application to and approval by the Service, be issued to a person or an association specifying the vehicle or vessel conveying charcoal or charcoal products, on payment of prescribed fee.
- (3) In the case of a vehicle or vessel, identification and registration details of the vehicle or vessel shall be entered in the charcoal movement permit before the same is issued.
- (4) The charcoal movement permit shall not be transferred to or used for any other vehicle or vessel unless approved by the Service.
- (5) Any person who contravenes this Regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

PART VII

Trade in Charcoal

Record keeping

- 15. (1) Any person engaged in wholesale or retail trade in charcoal shall keep record of the sources of charcoal, in particular, the certificate(s) of origin and the movement permit(s).
- (2) No person or association shall engage in trade in charcoal with unlicensed charcoal producers.
- (3) A forest officer may at any time inspect the premises in which wholesale or retail trade in charcoal is being undertaken for the records.
- (4) Any person who contravenes this Regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

Export permit

- 16. (1) No person or association shall export from Kenya charcoal or charcoal products unless he is in possession of a permit issued under this Regulation.
- (2) A person seeking a permit under this Regulation shall submit an application in the prescribed Form 5 of the Second Schedule to the Director and shall provide a proper description of the source of charcoal.
- (3) Where an application under this Regulation is approved by the Director, a permit as set out in Form 6 of the Second Schedule and safety certificate as set out in Form 7 of the second schedule may be issued to the applicant, subject to –
 - (i) payment of the prescribed fee;
 - (ii) local supply and demand situation of charcoal;
 - (iii) each permit and safety certificate issued shall be surrendered to the customs at the port of export or where such export permit and safety are required by the importer, the said export permit and safety certificate shall be endorsed at the port of export; and
 - (iv) the validity of each permit and safety certificate issued shall expire either on the date specified thereon or when the consignment is shipped or whichever of the two events occurs first.

- (4) Any person who contravenes the provisions of this Regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

Import Permit

17. (1) No person or association shall import into Kenya charcoal or charcoal products unless he is in possession of a permit issued under this Regulation.
- (2) A person seeking a permit under this Regulation shall submit an application in the prescribed Form 5 of the second Schedule to the relevant Committee and shall provide a proper description of the source of charcoal.
- (3) The Committee shall consider every application submitted under subparagraph (2) and shall forward the application together with its recommendation thereon, taking into account the supply and demand situation, to the Director for approval.
- (4) Where an application under this Regulation is approved by the Director, an import permit as set out in Form 6 of the Second Schedule may be issued to the applicant, subject to payment of the prescribed fee.
- (5) Any person who contravenes the provisions of this regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

PART VIII

Enforcement Provisions

Production of licence

18. Any licence or permit issued pursuant to these Regulations shall, on demand, be produced to a forest officer.

Inspections

19. (1) Inspections for charcoal production, transportation and marketing shall be carried out by a forest officer
-
- (a) regularly;
- (b) when non-compliance is suspected; and
- (c) when required for the purpose of licence or permit.
- (2) Whenever practicable, inspections shall be carried out without prior notice.

Presumption

20. It shall be presumed, *prima facie*, until the contrary is proved, that the person in possession of a charcoal movement permit is duly valid.

General penalty

21. Any person who contravenes the provisions of these Regulations for which no specific penalty is provided shall be guilty of an offence and liable to a fine of not less than ten thousand shillings or an imprisonment for a term not exceeding three months.

Effect of conviction

22. (1) The conviction of the holder of a licence or permit or his authorized agent for any offence under the Act or these Regulations, unless the Board in writing otherwise directs, have the effect of canceling the licence or permit and such instrument shall cease to be valid from the moment of conviction.

(2) Any person convicted of an offence under these Regulations shall, unless the Board in writing otherwise directs, stand disqualified from holding a licence or permit related to the provisions under which he has been convicted, for a period of one year from the moment of conviction.

(3) The holder of any licence or permit which is cancelled pursuant to subregulation (1) of this Regulation shall, within fourteen days from the date of conviction surrender the licence or permit to the Service.

FIRST SCHEDULE

[Regulation 5]

INFORMATION ON CHARCOAL PRODUCER ASSOCIATIONS

1. Every conservancy shall encourage individuals or groups involved in charcoal production to form associations.
2. The purpose for which the associations are established is to reduce licencing bureaucracy and make the licencing more affordable.
3. Each association shall specify:
 - (a) list of members of the association and its address;
 - (b) list of current/interim officials
 - (c) the Constitution and Code of Practice for the association;
 - (d) the place or places where the association operates from.
 - (e) activities of the association in relation to charcoal production and transportation.
 - (f) Information on whether it owns land and the type of activities on the land.
 - (g) type of technology the association members use in charcoal production and the extent to which they have complied with the requirements under this Act or Regulations or any other written law, in particular the Energy Act.
 - (h) her technical and financial capability.
4. A registered community forest association (CFA) desirous of engaging in charcoal will be eligible provided that its constitution so allows and upon its fulfillment of the requirements set out in paragraph (3) of this Schedule.

SECOND SCHEDULE

PRESCRIBED FORMS

FORM 1

[Regulation 5]

Application Reference No.....

FORESTS ACT, 2005

CERTIFICATE OF REGISTRATION OF ASSOCIATION

1. Name of Association.....
2. PIN No.....
3. Number of Members.....
4. Full Address.....

5: Location of Association:.....

Conservancy/Area..... District.....

Location..... Village.....

has been registered as a Charcoal Producers' Association for purposes of engaging in sustainable charcoal production in accordance with the provisions of the Forests Act, 2005 and Regulations made thereunder and contingent to conditions specified hereunder:

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

Fees paid in words.....In figures.....Date of issue.....

Date of expiry: 31st December,

.....
Director
Kenya Forest Service

FORM 2

[Regulation 7, 8]

Application Reference No.....

FORESTS ACT, 2005

APPLICATION FOR CHARCOAL PRODUCER LICENCE

PART A: DETAILS OF APPLICANT

A1. Name of Licensee (Association or Firm).....Reg.Cert

A2. PIN No.....

A3. Full Address.....

PART B: DETAILS OF CURRENT CHARCOAL LICENCE

B1: Name of the current charcoal licence.....

B2: Locality and Date of issue the current charcoal licence.....

PART C: MATERIAL CONSIDERATIONS

C1: Place or places where charcoal is to be produced.....

C2: Designated charcoal collection point(s).....

C3: Consent from land owner as prescribed in Form 3.....

C4: Tree species to be used for charcoal production.....

C5: Type of technology to be used

C6: A recommendation from local environment committee.....

C7: Reforestation/conservation plan for the area.....

PART D: 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 that the charcoal licence may be suspended, varied, revoked or cancelled if any information given above is false, misleading, wrong or incomplete.

.....
Name *Position* *Signature*

On behalf of
Association/Company name and seal *Date*

PART E: FOR OFFICIAL USE ONLY

Approved/Not Approved.....

Comments.....

Officersignature.....Date.....

Fees paid in words.....

In figures.....Date of issue.....

Signature
Director
Kenya Forest Service

FORM 3

[Regulation 8(4)]

FORESTS ACT, 2005

CONSENT FROM THE LAND OWNER

PART A: CONSENT HOLDER

A1. Consent holders' Name (Association or Firm).....

A2. PIN No.....

A3. Full Address.....

PART B: CONSENT GRANTOR

B1. Name of the land owner or authorized person.....

B2. Locality (LR. No.).....

B3: PIN No.

B4: Full Address.....

PART C: DECLARATION BY LAND OWNER/AUTHORIZED PERSON

I hereby give the association/firm named above consent to produce charcoal on my parcel of land using indigenous/farm forestry wood resources in accordance with the provisions of the Forests Act, 2005, the Forests (charcoal) Regulations made thereunder and the following conditions:

.....
Given under my hand

.....
<i>Name</i>	<i>Land Owner/Authorized Person</i>	<i>Signature</i>
On behalf of	firm
	<i>Association/Company name and seal</i>	<i>Date</i>

PART D: FOR OFFICIAL USE ONLY

Approved/Not Approved.....

Comments.....

OfficerSignature.....Date.....

.....
Director
Kenya Forest Service

FORM 4

[Regulation 14]

FORESTS ACT, 2005

CHARCOAL MOVEMENT PERMIT

- 1. ConservancyDistrict..... Station/Div/Loc.....
- 1. Name..... of (address).....
- Nationality..... IDNo/Passport No.....

is hereby authorized to transport charcoal/charcoal products named hereinbelow:

CHARCOAL/CHARCOAL PRODUCTS	QUANTITY
FROM	TO

Conservancy	Place	Conservancy	Place

2. Reasons for movement.....
3. Date of Transportation..... Date of expiry.....
4. Official Receipt No.....
5. Name of Issuing Forest Officer.....Designation.....Signature
6. Name of forest officer supervising removal.....Designation...Signature,Date.....
- Fees paid in words.....In figures.Date of issue.....

.....
Director
Kenya Forest Service

Contingent to any conditions as may be specified:

- (a) The charcoal movement permit is not transferable.
(b) Transport of charcoal shall take place between 6 a.m and 6 p.m.

FORM 5

[Regulation 16, 17]

FORESTS ACT, 2005

APPLICATION FOR CHARCOAL IMPORT/EXPORT PERMIT

PART A: DETAILS OF THE APPLICANT

- A1. Name of Applicant (Association or Firm).....
- A2. Reg. Cert No.....
- A3. PIN No.....
- A4. Full Address.....
- A5. Business Location: Name of Building/Place.....
- LR No. Street/Road.....
- Town..... District.....

PART B: BUSINESS DETAILS

- B1: Other than the business for which this application is made, are you involved in any other trade in the forestry industry? YES/NO.....

B2: If answer to B1 above is in the affirmative, specify nature or type of business(es).....

Charcoal/Charcoal Products	Quantity	Value

B4: Name and Address of Consignee/Supplier.....

PART C: SAFETY REQUIREMENTS

C1: Does the charcoal for export/import meet the safety standards? YES/NO.....

C2: Is the charcoal free from fire and safe for transportation.....?

C3: If answer to C1 and C2 is in the affirmative, specify measures taken to render the charcoal free from fire and other hazards.....

PART D: DECLARATION BY APPLICANT(S)

I/We declare that the particulars and information supplied by me/us herein are true, accurate and correct in every respect. I/We understand clearly that discovery of any false information provided by me/us will render this application invalid.

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

Name (of signatory).....

Position (in business).....

PART E: FOR OFFICIAL USE ONLY

Approved/Not Approved.....

Comments.....

Officersignature.....Date.....

Fees paid in words.....In figures.....Date of issue.....

.....
Director
Kenya Forest Service

[Regulation 16, 17]

FORESTS ACT, 2005

CHARCOAL IMPORT/EXPORT PERMIT AND COMPLIANCE WITH CHARCOAL SAFETY REQUIREMENTS

To: The Collector of Customs
Kenya Revenue Authority

.....
(Port/Airport of export)

This is to confirm that (Name).....of (address).....

has been authorized to Import/Export Charcoal/Charcoal Products mentioned herein below to/from (country).....

Charcoal/Charcoal Products	Quantity	Value

Name and address of consignee.....

The validity of this permit expires on the date specified or immediately on shipment of the consignment whichever of the two occurs earlier.

Fees paid in words.....In figures.....Date of issue.....

.....
Director
Kenya Forest Service

THIRD SCHEDULE

The Minister shall, by Gazette Notice, prescribe fees payable for any licence or permit issued under these Regulations from time to time.