

FOREST (CHARCOAL) RULES, 2009

[L.N. 186/2009.]

1. Citation

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

2. Application

These Regulations shall be in addition to any other written law relating to forestry and sustainable charcoal production, transportation and marketing, for the time being in force.

3. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Forests Act, 2005;

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

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

4. Competent authority

(1) The Kenya Forest Service shall be the competent authority responsible for the issuance of licences for the production and transportation of charcoal.

(2) No licensing authority established under, any other written law, shall issue a trading permit or licence for the undertaking of any activity relating to commercial charcoal trade unless the applicant has produced to the licensing authority a licence for charcoal production or transportation, issued by the Service under these Regulations.

5. Establishment of associations

(1) All commercial charcoal producers shall organize themselves and form charcoal producer associations in the manner set out in the First Schedule.

(2) The Service shall register and issue a registration certificate in Form 1 set out in the Second Schedule to a commercial charcoal association formed under paragraph (1).

(3) An association registered under paragraph (2) shall—

- (a) facilitate sustainable production of charcoal by its members;
- (b) ensure that its members implement the reforestation conservation plans;
- (c) develop and implement a Code of Practice for the purposes of self regulation;
- (d) assist the Service in enforcing the provisions of the Act relating to sustainable charcoal production, transportation and marketing; and
- (e) do any other thing that is necessary for sustainable charcoal production and transportation.

6. Establishment of licensing committee

(1) Every forest conservation committee shall from its membership establish a licensing sub-committee.

(2) Notwithstanding paragraph (1), the Board may, on the recommendation of a forest conservation committee, establish any other licensing sub-committee in any part of a conservancy as it considers appropriate.

(3) A licensing sub-committee established under paragraph (1) or (2) shall—

- (a) consider and recommend applications for the issuance of charcoal producers' licence;
- (b) assess and approve plans and structures of intended charcoal production;
- (c) recommend the suspension or revocation of a charcoal producers' licence; and
- (d) perform such other functions as may be delegated by the Committee, that may be necessary or expedient for the licensing of sustainable charcoal production, transportation and marketing.

(4) Every Committee shall maintain a register of all charcoal producers within its jurisdiction who are licensed under these Regulations.

7. Requirement for a licence

(1) No person shall undertake or engage in any activity relating to commercial charcoal production and transportation without a valid licence, issued by the Service under these Regulations.

(2) A person or association that wishes to obtain a licence to undertake or engage in any activity relating to commercial charcoal production and transportation shall—

- (a) make an application to the forest conservation committee in Form 2 set out in the Second Schedule;
- (b) pay the prescribed fee; and
- (c) provide such other information that the forest conservation committee may require.

(3) Upon the receipt of an application, the licensing subcommittee may—

- (a) consider the application; or
- (b) require the applicant to submit a declaration or provide such additional information as it may consider necessary for the determination of the application.

(4) The licensing sub-committee shall, when determining an application consider—

- (a) the document submitted by the applicant in support of the application including, among others, the registration certificate of the association, its constitution and the list of members;
- (b) the place or places where charcoal is to be produced;
- (c) designated charcoal collection points;
- (d) the consent from the owner, or authorized person, of the land where charcoal is to be produced in Form 3 set out in 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) the reforestation or conservation plan for the area where trees will be managed for charcoal production.

(5) After considering an application and all the matters relevant to it, the licensing sub-committee may make a recommendation to grant or not to grant the licence.

(6) Upon receipt of the recommendations from the licensing subcommittee, the Committee may, recommend to the Board, to grant or refuse to grant the licence, or grant the application subject to such conditions as the Service may deem expedient.

(7) Any person who is aggrieved by any decision of the Service made under paragraph (6) may, within thirty days of communication to him of such decision, appeal to the National Environment Tribunal established under the Environmental Management and Co-ordination Act, 1999.

(8) The Service may on recommendation of the relevant Committee, at any time vary the conditions of a licence where it considers it expedient for ensuring sustainable charcoal production.

8. Licence

(1) A licence issued under these Regulations, shall unless earlier revoked, be valid for the period specified in the licence and where no such period is specified, the licence shall expire on the 31st December of the year in which it is issued.

(2) A licence issued under these Regulations is not transferable.

9. Exemption

(1) Notwithstanding regulations 7 and 8, a person who wishes to produce charcoal on his own land for his own consumption, shall not require a licence.

(2) Notwithstanding paragraph (1), a person who wishes to produce charcoal for commercial purposes on his own land, shall be required to obtain a licence.

10. Renewal of licence

An application for the renewal of a licence shall be made at least one month before the expiry date of the existing licence.

11. Revocation, suspension or cancellation of licence

(1) The Service may suspend or revoke a licence issued under these Regulations where the holder of a licence contravenes the conditions of the licence.

(2) The Service shall, upon its intention to suspend or revoke the licence under paragraph (1), notify the concerned party accordingly and give a fourteen days notice of revocation or cancellation thereof if the concerned party fails to fulfill such conditions as may be specified in the notice.

(3) The Service may suspend or cancel a licence for charcoal production upon expiry of the notice period prescribed under paragraph (2) of this regulation.

(4) Whenever a licence issued is suspended or revoked, the licensee shall cease operations of the charcoal production that is the subject of the licence until the suspension is lifted or a new licence is issued by the Service.

12. Prohibition relating to licences

(1) A person shall not—

- (a) unlawfully alter or endorse, a licence issued to him for the use any other person;

- (b) engage in commercial charcoal production on the basis of a licence issued to another person; or
 - (c) having been disqualified from holding a licence under the Act, apply for a licence without disclosing to the licensing sub-committee the disqualification.
- (2) Any person who contravenes the provisions of this regulation commits an offence.

13. Request to provide data

A licensee shall, upon receiving a written request from the Director, provide such data relating to charcoal production as the Director may specify in the request.

14. Charcoal movement permit

(1) No person shall, move charcoal or charcoal products from one place to another unless that person—

- (a) 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) 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) has an original receipt from the vendor.

(2) A person who wishes to obtain a charcoal movement permit shall make an application to the Service in the prescribed form.

(3) The Service shall, upon approving an application under paragraph (1), issue a charcoal movement permit in Form 4 set out in the Second Schedule, upon payment of the prescribed fee.

(4) The Service may specify in the charcoal movement permit, the vehicle or vessel that may be used to transport charcoal or charcoal products.

(5) A charcoal movement permit shall not be transferable.

(6) Any person who contravenes the provisions of this regulation commits an offence.

15. Record keeping

(1) A person engaged in wholesale or retail trade in charcoal shall keep a record of the sources of charcoal, and copies of the certificates of origin and the movement permits.

(2) No person or association shall engage in trade in charcoal with unlicensed charcoal producers.

(3) A forest officer may at any time enter the premises in which wholesale or retail trade in charcoal is being undertaken to inspect the records.

(4) Any person who contravenes the provisions of this Regulation commits an offence.

16. Protection of endangered and threatened plant species

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

(2) The Service shall publish, in the *Gazette*, a list of endangered, threatened and protected plant species.

(3) Any person who contravenes paragraph (1) commits an offence.

17. Export permit

(1) No person or association shall export charcoal or charcoal products, from Kenya, unless that person has obtained an export permit from the Service.

(2) A person who wishes to obtain an export permit under this regulation shall make an application in Form 5 set out in the Second Schedule to the Director and provide a proper description of the source of charcoal.

(3) The Director shall, upon approving an application, issue an export permit in Form 6 and a safety certificate in Form 7 set out in the Second schedule upon the payment of the prescribed fee.

(4) The Director shall, before granting an export permit, consider the local supply and demand situation of charcoal.

(5) A permit and safety certificate shall—

- (a) be surrendered to the customs officer at the port of export or where such export permit and safety certificate are required by the importer, and the said export permit and safety certificate shall be endorsed at the port of export; and
- (b) expire either on the date specified thereon or when the consignment is shipped or whichever occurs first.

(6) Any person who contravenes the provisions of this regulation shall be guilty of an offence.

18. Import permit

(1) No person or association shall import into Kenya charcoal or charcoal products unless he has obtained an import permit issued by the Service.

(2) A person who wishes to obtain a permit under this Regulation shall make an application in Form 5 set out in the Second Schedule and provide a proper description of the source of charcoal and submit the application to the respective Committee.

(3) The Committee shall consider applications submitted under paragraph (2) and forward the applications together with its recommendation, taking into account the supply and demand situation, to the Director for approval.

(4) The Director shall, upon approving an application, issue an import permit in Form 6 set out in the Second Schedule, subject to payment of the prescribed fee.

(5) Any person who contravenes the provisions of this regulation commits an offence.

19. Inspections

(1) A forest officer may carryout inspections at the premises or vessels used for charcoal production, transportation and trade—

- (a) regularly;
- (b) when non-compliance is suspected; and
- (c) when it is required for the purpose of issuing a licence or permit.

(2) A licensee shall produce a licence or permit issued under these Regulations to a forest officer, on demand.

(3) Whenever practicable, a forest officer shall carry out an inspection without giving prior notice.

20. General penalty

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

21. Effect of conviction

(1) Notwithstanding any other penalty prescribed under these Regulations, the Service may revoke the licence or permit of any person who is convicted of an offence under these Regulations.

(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 time of conviction.

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

FIRST SCHEDULE

[Rule. 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 licensing bureaucracy and make the licensing more affordable.

3. Each association shall keep—

- (a) a list of members of the association and their addresses;
- (b) a list of current/interim officials of the association;
- (c) its Constitution and Code of Practice for the association;
- (d) a list of the places where the members of the association operates from;
- (e) a record of the activities of the association relating to charcoal production and transportation;
- (f) information relating to the ownership of the land and the activities on the land;
- (g) the technology the association members use in charcoal production and the extent to which they have complied with the requirements under the Act or Regulations or any other written law, including among others, the Energy Act; and
- (h) its technical and financial capability.

4. A registered community forest association (CFA) shall be eligible to engage in charcoal production:

Provided that its constitution so allows and upon the fulfillment of the requirements set out in paragraph (3) of this Schedule.

SECOND SCHEDULE

FORM 1

(r. 5(2))

CERTIFICATE OF REGISTRATION OF ASSOCIATION

Application Reference No.

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

(r. 7(2))

APPLICATION FOR CHARCOAL PRODUCER LICENCE

Application Reference No.

PART A – DETAILS OF APPLICANT

A1. Name of Licensee (Association or Firm) Reg. Cert No.

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 the local environment committee

C7: Reforestation/conservation plan for the area

SECOND SCHEDULE, FORM 2—*continued*

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.

| <i>Name</i> | <i>Position</i> | <i>Signature</i> |
|--------------------|--|------------------|
| On behalf of | <i>Association/Company name and seal</i> | <i>Date</i> |

PART E – FOR OFFICIAL USE ONLY

Approved/Not Approved

Comments

Officer signature Date

Fees paid in words In figures Date of issue

*Director,
Kenya Forest Service*

FORM 3

(r. 7(4))

FORESTS ACT, 2005

CONSENT FROM THE LAND OWNER

PART A – CONSENT HOLDER

A1. Consent holders' Name (Association or Firm) Reg. Cert. No.

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> |

SECOND SCHEDULE, FORM 3—continued

PART D – FOR OFFICIAL USE ONLY

Approved/Not Approved
 Comments
 Officer Signature Date

*Director
Kenya Forest Service*

FORM 4

(r. 14(3))

CHARCOAL MOVEMENT PERMIT

1. Conservancy District Station/Div/Loc
 Name of (address)
 Nationality ID No/Passport No.
 is hereby authorized to transport charcoal/charcoal products named hereinbelow:

| CHARCOAL/CHARCOAL PRODUCTS | QUANTITY |
|----------------------------|----------|
| | |
| | |

| FROM | | | | TO | | |
|-------------|-------|--|--|-------------|-------|--|
| Conservancy | Place | | | Conservancy | Place | |
| | | | | | | |

Reasons for movement
 Date of Transportation Date of expiry
 Official Receipt No.
 Name of Issuing Forest Officer Designation Signature
 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

(r. 16 and 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.

SECOND SCHEDULE, FORM 3—*continued*

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)

| <i>Charcoal/Charcoal Products</i> | <i>Quantity</i> | <i>Value</i> |
|-----------------------------------|-----------------|--------------|
| | | |
| | | |
| | | |
| | | |

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

Officer signature Date

Fees paid in words in figures Date of issue

*Director
Kenya Forest Service*

FORM 6

(r. 16 and 17)

CHARCOAL IMPORT/EXPORT PERMIT AND COMPLIANCE WITH CHARCOAL SAFETY REQUIREMENTS

To: The Collector of Customs
Kenya Revenue Authority

.....

SECOND SCHEDULE, FORM 6—*continued*

(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)

| <i>Charcoal/Charcoal Products</i> | <i>Quantity</i> | <i>Value</i> |
|-----------------------------------|-----------------|--------------|
| | | |

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