



**REGULATORY IMPACT STATEMENT**  
**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION**  
**(NOISE AND EXCESSIVE VIBRATION POLLUTION) (CONTROL)**  
**REGULATIONS, 2023**

## **INTRODUCTION**

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The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations of 2009, which has been in existence for over a decade are anchored in Section 101 of the Environmental Management and Coordination Act, 1999 (hereinafter 'EMCA') and came into effect through Legal Notice 61 of 2009. The purpose of the Regulations is to provide a framework for the prevention, control and abatement of noise pollution in line with the constitutional and statutory guarantees on ensuring a clean and healthy environment for all persons.

Urbanization, along with the associated growth in mobility, industrialization and socio economic activities has led to an amplification of noise in densely populated areas, increasing noise exposure as the growth of urban developments coupled with population explosion resulting to negative impacts on public health, repose, safety and comfort. Moreover, the Constitution of Kenya, 2010 devolved Control of noise pollution as one of the environmental functions to the County Governments. This has necessitated the need to have the Regulations reviewed to address existing gaps that have become apparent in addition to the need to align the regulations to the provisions of the Constitution.

The Authority in accordance with its mandate and as provided for under Section 101 of EMCA has proposed to undertake a review of these Regulations through a technical committee. The committee comprises of experts with divergent backgrounds touching on environmental noise management and pollution control and they are tasked with identifying the gaps in the Regulations, coming up with remedies for such gaps, collecting views from members of the public and preparing a draft Regulation with the proposed changes.

## **A. OBJECTIVES OF THE PROPOSED REGULATIONS**

- i. To align the regulations with the provisions of the Constitution of Kenya and especially on Schedule 4 relating to the functions of county governments.
- ii. Operationalize the standards on management of noise pollution by prescribing the maximum permissible noise levels from a facility or activity to which a person may be exposed.
- iii. To provide for minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment.
- iv. Control nuisance arising from excessive vibrations.
- v. Regulate and control pollution arising from noise and excessive vibrations from both stationary and mobile sources.
- vi. Provide for mitigation measures for the reduction of noise and excessive vibrations.
- vii. Mainstream environmental impact assessment into the control of noise and excessive vibrations.

## **B. EFFECTS OF THE PROPOSED REGULATIONS**

The effects of the proposed regulations can be categorized as follows:

### ***i. Economic Effects***

- ❖ There will be minimal financial implication to the Kenyan public arising from noise and excessive vibration fees as shall be prescribed by the respective county government.
- ❖ Enhance ease of doing business and provides opportunity for economic development and job creation.
- ❖ Provides good investment climate and favourable living environment.
- ❖ To ease the burden of disease arising from the impact of noise pollution and excessive vibration.
- ❖ Productivity index is enhanced.

- ❖ Supports the government policy objectives for sustainable development.
- ❖ Provides for opportunities for mapping and zoning of noise and vibration pollution areas.

**ii. *Social Effects***

- ❖ By enhancing positive social behaviour and consideration within the community for promotion of a clean and healthy environment for all in the Country.
- ❖ By promoting stakeholder engagements, public participation, transparency and social acceptability (social licenses) it will mitigate against conflicts and social unrests.
- ❖ It will enhance synergy and interagency co-ordination among MCDAs, especially with OSHA and County Governments in environmental management and thus avoid institutional conflict and duplication of responsibilities.
- ❖ Allow Citizens to enjoy their hard earned assets by enjoying a quiet and peaceful nights and rest in their places of residence and work.
- ❖ It ensures the tranquility of the surroundings and psychological wellbeing by regulating noise levels and excessive vibration.
- ❖ The Regulations elevate the standards of living of the people by prescribing acceptable noise levels for different facilities and activities.

**iii. *Environmental Effects***

- ❖ It ensures the right to a clean and healthy environment while promoting sustainable development.
- ❖ Fosters domestication of relevant International treaties and conventions by the ILO convention on noise and vibrations and the WHO.
- ❖ Puts in place preventive measures against destruction of the environment by noise and excessive vibration pollutants and averts potential future risks to the environment.

**C. STATEMENT OF OTHER PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES OF THE PROPOSED INSTRUMENT (NOISE AND EXCESSIVE VIBRATIONS POLLUTION (CONTROL) MANAGEMENT REGULATIONS 2023)**

***i. Regulatory Options***

- ❖ County legislation;
- ❖ Occupational Health and Safety Act (OSHA) regulations for noise regulation within work places;
- ❖ The Mining Act regulations for noise and excessive vibrations arising from quarrying and blasting activities.
- ❖ Adoption of internationally recognised standards on noise and excessive vibrations.

***ii. Non Regulatory options***

- ❖ The Authority to continue to enhance education and awareness of best environmental practices.
- ❖ Enforcement by the relevant Ministries, Counties, Departments, and Agencies (MCDAs) on sectoral issues under their jurisdiction.
- ❖ Negotiated compliance arrangements.
- ❖ Compliance assistance programmes.
- ❖ Compliance promotion.
- ❖ Voluntary/Self-regulation practices by members of the public, owner and operators.
- ❖ Monitoring of noise pollution through mapping of areas for noise and excessive vibrations for the purpose of making and approving strategic noise and vibration maps to inform on effectiveness of the existing standards and to guide on policy direction.

**D. ASSESSMENT OF THE COSTS AND THE BENEFITS OF THE NOISE AND EXCESSIVE VIBRATIONS POLLUTION (CONTROL) MANAGEMENT REGULATIONS, 2023**

***i. Cost of the Regulations***

- ❖ Need for increased personnel
- ❖ Equipment (sound level meters and printers and vibro meters )
- ❖ Mobility (vehicles, motorbikes and others vessels)
- ❖ Capacity enhancement

- ❖ Education and awareness
- ❖ Research and innovation
- ❖ Enforcement and monitoring

## **ii. *Benefits of the Regulations***

### **a) *Economic Benefits***

- ❖ Encourage uptake of innovations and technologies to address noise and excessive vibration pollution.
- ❖ Enhance ease of doing business and provides opportunity for economic development and job creation.
- ❖ Provides good investment climate.
- ❖ To ease the burden of disease arising from the impact of noise pollution and excessive vibration.
- ❖ Productivity index is enhanced.
- ❖ Supports the government policy objectives for sustainable development.
- ❖ Provides for opportunities for mapping and zoning of noise and vibration pollution areas.

### **b) *Social Effects***

- ❖ Reduction of noise and excessive vibrations illnesses such as hearing loss, tinnitus, vasoconstriction and other cardiovascular adverse effects.
- ❖ Enhancing positive social behaviour and consideration within the community for promotion of a clean and healthy environment for all in the Country.
- ❖ Mitigate against conflicts and social unrest by promoting stakeholder engagements, public participation, transparency and social acceptability (social licenses)
- ❖ Enhance synergy and interagency co-ordination among MCDAs, especially with OSHA and County Governments in environmental management and thus avoid institutional conflict and duplication of responsibilities.

- ❖ Allow Citizens to enjoy their hard earned assets by enjoying a quiet and peaceful nights and rest in their places of residence and work.
- ❖ It ensures the tranquility of citizen's surroundings and psychological wellbeing by regulating noise levels and excessive vibration which annoys, disturbs, injures or endangers the comfort, repose, health or safety of others and the environment
- ❖ The Regulations elevate the standards of living of the people by prescribing acceptable noise levels for different facilities and activities.

***c) Environmental Benefits***

- ❖ It ensures the right to a clean and healthy environment while promoting sustainable development.
- ❖ Fosters domestication of relevant International treaties and conventions by the ILO (ILO Convention) and the WHO.
- ❖ Puts in place preventive measures against destruction of the environment by noise and excessive vibration pollutants and averts potential future risks to the environment.

**E. REASONS WHY OTHER MEASURES ARE NOT APPROPRIATE**

- ❖ Existing gaps and inadequacies in the current regulations
- ❖ The compliance status among the regulated community is wanting and hence the need to enhance enforcement of the prescribed regulations and standards.
- ❖ Low self-regulation by the regulated community
- ❖ The Constitution squarely puts the mandate on the government on ensuring a clean and healthy environment to Kenyans.
- ❖ The substantive legislation (EMCA, 1999) provides for the development of regulations for its implementation.

**F. ANY OTHER MATTERS SPECIFIED BY THE REGULATIONS**

- ❖ Designation of mapping bodies for the purpose of making and approving strategic noise or vibration maps.
- ❖ Joint enforcement actions by the national and county governments.
- ❖ Measurement of noise levels shall be by gazetted environmental inspectors

#### **G. ADEQUACY OF THE REGULATORY IMPACT ASSESSMENT- INDEPENDENT ADVICE**

To undertake the regulatory impact assessment and to guide on the formulation of the Regulations, the Director General NEMA constituted a technical committee with membership drawn from officers of varied expertise within the Authority.

The Terms of Reference for the technical committee were;

- ❖ Review of the existing Environmental Management and Co-ordination Act (Noise and Excessive Vibrations (pollution) (control) Regulations, 2009;
- ❖ Ensure that all staff members are consulted and their input incorporated in the Regulations;
- ❖ Ensure that the Lead Agencies are consulted and their input considered in the Regulations;
- ❖ Ensure that public participation is effected in the process of reviewing the Regulations;
- ❖ Co-ordinate the finalization and Gazettement of the Regulations;
- ❖ To undertake stakeholder consultations in the process of delivering amended Regulations.
- ❖ Prepare the Regulatory Impact Statement for the Regulation
- ❖ Coordinate the finalization of the instrument and the Gazette notice.
- ❖ Prepare the Draft Explanatory Memorandum
- ❖ Perform any other task related to the amendment of the Regulations until finalization.

In order to effectively execute the above mentioned TORs, the technical committee undertook the following activities;

1. Comprehensive literature review
2. Technical committee meetings
3. Rigorous stakeholder consultations was done in line with the Statutory Instrument Act, 2013.
4. Drafting sessions

This was undertaken by the Technical Committee on behalf of Director General, NEMA.

## **H. CONCLUSION**

The review of the regulations is particularly important to enable alignment with the Constitution of Kenya, 2010 which is the supreme law of the land in terms of clothing the County Governments with the mandate to control noise pollution. This Regulatory instrument is also a critical tool for environmental management in Kenya.

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