

# SPECIAL ISSUE



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GAZETTE NOTICE NO. 11348

## THE LAND REGISTRATION ACT

(No. 3 of 2012)

## THE LAND REGISTRATION (REGISTRATION UNITS) ORDER, 2017

### NOTIFICATION OF CONVERSION

PURSUANT to regulation 4 (4) of the Land Registration (Registration Units) Order, 2017, the Cabinet Secretary for Lands and Physical Planning, having received from the Registrar conversion list and cadastral maps in respect of Nairobi Land Registration Unit, hereby notifies the general public that land reference numbers specified in the first column of the Schedule have been converted to new parcel numbers, specified in the second column thereof, with corresponding acreage respectively specified in the third column.

Any person with an interest in land within the registration unit who is aggrieved by the information in the conversion list or the cadastral maps is invited, within the next ninety (90) days from the date of publication of this notice to—

- make a complaint, in writing in Form LRA 96 set out in the Second Schedule to the Land Registration (Registration Units) Order, 2017, to the Registrar in respect of the information contained in the conversion list and the cadastral maps; or
- apply to the Registrar in Form LRA 67 set out in the Sixth Schedule to the Land Registration (General) Regulations, 2017 for the registration of a caution pending the clarification or resolution of any complaint.

All transactions or dealings relating to parcels within the registration unit shall from the 1st April, 2021, be carried out in the new registers.

The cadastral maps can also be accessed at the Ministry of Lands and Physical Planning, Ardhi House, 1st Ngong Avenue, Nairobi.

### SCHEDULE

NAIROBI/BLOCK 1		
Old L.R. No.	New Parcel No.	Area
209/7229	1	9.367
4393/19	2	5.5928
4393/15/2	3	4.9857
4393/3	4	0.5380

NAIROBI/BLOCK 1		
Old L.R. No.	New Parcel No.	Area
4393/5	5	0.6973
209/5883/2	6	0.7814
4951	7	5.2288
4393/6	8	0.2788
209/6365	9	77.094
4393/7/1	10	0.3537
4393/7/2	11	0.4269
4393/25	12	0.2902
4393/27	13	0.3035
4393/11	14	1.0212
209/6544	15	0.9348
4393/24	16	0.5250
5/34	17	2.017
5/168	18	0.4290
5/49	19	0.4856
5/4	20	4.0469
5/86	21	0.1963
5/87	22	0.5338
5/99	23	0.2736
5/98	24	0.3076
5/100	25	0.2815
5/101	26	0.2981
5/88	27	0.2821
5/90	28	0.2788
5/97	29	0.2956
5/96	30	0.2991
5/161	31	0.3092
5/94	32	0.2828
5/93	33	0.2829
5/92	34	0.2829
5/91	35	0.2829
5/89	36	0.2742
5/104	37	0.3030
5/170	39	0.3772
5/158	40	0.3630
5/156	41	0.3760
5/64	42	0.3897
5/46	46	0.6069
5/155	47	0.611
5/14	48	0.8094
5/71	52	0.3453

Old L.R. No.	New Parcel No.	Area (Ha.)
209/7965/9	336	0.3927
209/7216	337	0.0334
209/7217	338	0.0307
209/6857	339	0.3298
209/7029	340	0.1829
209/6997	341	0.3662
209/6856	342	0.1829
209/7027	343	0.1829
209/7140	344	0.2748
209/7028	345	0.2732
209/7965/3	346	0.1201
209/7128	347	1.4812
209/7555	348	0.6552
209/6849	349	0.9146
209/4775	350	0.0825
209/4776	351	0.0825
209/8820/1	352	0.3995
209/8250	353	0.3580
209/8249	354	0.1425
209/8886	355	0.9965

Dated the 24th December, 2020.

FARIDA KARONEY,  
Cabinet Secretary for Lands and Physical Planning.

Note: Maps at the end of Gazette.

GAZETTE NOTICE NO. 11349

DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

### THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act No. 2 of 2019, the Cabinet Secretary for Petroleum and Mining makes the following Draft Regulations for public comments—

#### THE PETROLEUM (BUSINESS LICENSING AND FACILITY CONSTRUCTION PERMIT) REGULATIONS, 2020

#### PART I—PRELIMINARY

##### *Citation*

1. These Regulations may be cited as the Petroleum (Business Licensing and Facility Construction Permit) Regulations, 2020.

##### *Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Agent” has the meaning as defined in the Energy Act;

“Authority” has the meaning as defined in the Energy Act;

“Contractor” means a person registered under Section 15 of the National Construction Authority Act;

“Consumption” means the quantity of petroleum products sold to the end user at any given period;

“Emergency works” means and includes all such works necessary to prevent the occurrence or further deterioration or damage or disaster or accident or incident that could seriously affect persons, property or the environment;

“Energy Act” means the Energy Act No. 1 of 2019;

“Environmental Liability Policy” means a statement of commitment by a party to the laws, regulations and other policy mechanisms concerning environmental issues;

“Feasibility Study” means a political, environmental, social, technical, economic and legal analysis of a proposed project to determine that the project is fit for purpose;

“Local content” means the added value brought to the Kenyan economy from petroleum related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits;

“Modification” means any change in the facility that alters the existing technical design, storage capacity or impacts on compliance with local health, environmental and safety legal requirements;

“Person” means any natural or juridical person;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum logistics facility” means any facility that is or can be used to receive, store, load, offload or transport petroleum product and includes marine jetties, marine terminals, pipeline systems and storage depots but does not include retail dispensing sites;

“Third parties” means other petroleum business licensees and their agents carrying out business with a licensee;

“Tribunal” has the same meaning as in the Energy Act.

##### *Application*

3. (1) Except as otherwise provided, these Regulations shall apply to the licensing of petroleum businesses and construction of petroleum logistics facilities.

(2) These Regulations shall not apply to the Kenya Defence Forces.

#### PART II – PETROLEUM LOGISTICS FACILITY CONSTRUCTION PERMITS

##### *Prohibition against construction without a Permit*

4. (1) A person shall not undertake construction works or undertake the modification of a petroleum logistics facility except in accordance with the terms and conditions of a valid Construction Permit issued under the Petroleum Act.

(2) Notwithstanding sub-regulation (1) emergency works may be undertaken without a Construction Permit provided that the authorisation is sought within sixty (60) days of commencement of the works.

(3) The emergency works in sub-regulation (2) may include construction works meant to prevent escalation of loss of containment, in the event of an oil spill or gas release and fires.

(4) The Authority may direct a person to cease the construction of a petroleum logistics facility where –

- (a) the construction is being undertaken without a valid construction permit issued by the Authority;
- (b) the construction for which a permit has been issued is in breach of the terms and conditions set forth by the Authority; or
- (c) the approval of the Construction Permit was based on false information, misstatement of facts or forged documents.

(5) Any person who undertakes the construction of a petroleum logistics facility without a valid Construction Permit issued by the Authority commits an offence and is liable on conviction to the fines and penalties as set out in the Sixth Schedule.

##### *Application for a construction permit*

5. (1) A person who wishes to undertake the construction of a petroleum logistics facility shall make an application for a Construction Permit to the Authority or its licensing agents in the form and manner prescribed.

(2) The application in sub-regulation (1) shall be accompanied by-

- (a) a Feasibility Study of the project prepared by a professional duly qualified and registered in their field of specialisation. The Feasibility study shall include:
  - (i) technical reports which will contain designs compliant with local and international standards and a priced bill of quantities; and
  - (ii) an environmental and social impact assessment licence.

- (b) methods of financing the project; and
- (c) documents specified in the First Schedule and such additional documentation as the Authority may be required.

(3) The application in sub-regulation (1) shall be accompanied by proof of payment of the prescribed fees as set out in the Fifth Schedule.

*Form and validity of construction permit*

6. (1) A permit for construction of a petroleum logistics facility shall be in the form set out in Part II of the First Schedule or any other format that the Authority may prescribe by notice in the Gazette.

(2) Provided that where no construction has started a Construction Permit shall be valid for a period of twelve (12) months.

(3) Where the construction work has commenced within the validity period, the Construction Permit shall be valid for a maximum period of thirty-six (36) months from the date of issue.

(4) The Construction Permit holder may make an application for the extension of the validity period by providing a justification and such supporting documents as may be required by the Authority.

(5) The extension of the validity period of a Construction Permit shall be to a maximum of –

- (a) six (6) months where construction work has not commenced; and
- (b) twenty four (24) months where construction work has commenced.

(6) An applicant shall be required to make a fresh application as provided for in sub-regulation (5) where the Construction Permit cannot be extended further as provided for in sub-regulation (5).

(7) A construction permit ceases to be valid if –

- (a) the permit is suspended or revoked by the Authority for non-compliance with any term or condition thereof within the prescribed period by notice in the Gazette; or
- (b) execution of the works has not commenced at the expiry of twelve (12) months from the date on which the construction permit was granted or the expiration of any extended period which the Authority may allow.

*Determination of an application for a Construction Permit*

7. (1) The Authority or its agents shall within forty-five (45) days review an application submitted in the prescribed form and manner.

(2) Provided that the application is materially complete, does not offend the provisions of any written law and meets the prescribed requirements, the Authority, upon consideration of the application, may grant a Construction Permit to the applicant.

(3) A Construction Permit issued under sub-regulation (2) shall contain such terms and conditions as may be prescribed by the Authority.

(4) The Authority shall reject an application where the application does not meet the requirements for granting a Construction Permit.

(5) Within forty-five (45) days of receipt of an application, the Authority shall notify the applicant of such rejection, specifying the reasons thereof.

(6) Where the rejection in sub-regulation (4) related to –

- (a) incomplete information, the applicant may make a fresh application by providing the requisite information or documents;
- (b) the unsuitability of a site, the decision of the Authority shall be final and if the applicant is not satisfied with the Authority's decision, they may lodge an appeal at the Tribunal.

*Obligations of construction permit holder*

8. In undertaking construction of a petroleum logistics facility, the construction permit holder shall –

- (a) Display the construction permit number conspicuously on the site;

(b) comply with the terms and conditions of the Construction Permit as stipulated by the Authority;

(c) engage only contractors who are licenced by the National Construction Authority for that class of work;

(d) comply with the Environmental Impacts Mitigation Plan approved by NEMA;

(e) comply with the Government policy on local content; and

(f) comply with the directions issued by the Authority from time to time.

*Compliance with statutory Obligations*

9. The Construction permit holder shall, notwithstanding anything contained in the permit, comply with the provisions of the Petroleum Act and all other applicable laws.

**PART III – PETROLEUM BUSINESS LICENCE**

*Prohibition against operating a Petroleum Business without a Licence*

10. (1) A person shall not conduct the business of importation, exportation, wholesale or storage of petroleum except in accordance with the Petroleum Act and the terms and conditions of a valid petroleum business licence issued by the Authority or its agents.

(2) A person who undertakes a petroleum business or operates a petroleum logistics facility without a valid licence, commits an offence and shall be liable on conviction to the fines and penalties set out in the Sixth Schedule.

*Application for a Petroleum Business Licence*

11. (1) A person who wishes to apply for a petroleum business licence shall make an application to the Authority in the prescribed format accompanied by the documents specified in the Second Schedule.

(2) The application in sub-regulation (1) shall be accompanied by the prescribed fees listed in the Fifth Schedule.

*Environment Liability Policy*

12. An application for a licence for a petroleum business or a petroleum logistics facility shall be accompanied by an Environmental Liability Policy.

*Forms and Duration of Licence*

13. (1) A petroleum business licence issued under the Petroleum Act shall be in the form set out in the Fourth Schedule.

(2) A petroleum business licence shall be valid for the period defined in the licence.

*Renewal of Licence*

14. (1) An application for renewal of a licence shall be made to the Authority or its agents at least thirty (30) days prior to the expiry date.

(2) An application for renewal in sub-regulation (1) shall be in the prescribed format and shall be accompanied by the documents set out in the Third Schedule and proof of payment of the prescribed fees as set out in the Fifth Schedule.

*Amendment of Licence*

15. (1) A person may make an application for amendment of a licence in the form and manner prescribed by the Authority.

(2) An application for amendment shall be accompanied by proof of payment of the prescribed fees as set out in the Fifth Schedule.

(3) A licence amended under this section shall have a new issue date but shall retain the existing expiry date.

(4) An amended licence shall contain the words "Amended".

*Obligations of Petroleum Business Licensee*

16. A petroleum business licensee shall—

- (a) Operate its facilities in compliance with the Petroleum Act and all applicable law;
- (b) Require third parties, customers, including any contracted petroleum road transportation business licensees, using or

servicing its facilities to have valid licences, permits or certificates to carry out such services;

- (c) Adhere to Kenya Standards for petroleum products;
- (d) Purchase petroleum only from other petroleum business licensees or a licensed petroleum refinery, except in the case of importation of petroleum;
- (e) Sell petroleum in Kenya only to other petroleum business licensees, or end users for own consumption;
- (f) Submit information to the Authority or its agents as required under the Petroleum Act and any Regulations made there under;
- (g) Inform the Authority or its agents in writing of any changes of address or any other material particulars submitted as part of the application for the licence within thirty (30) days of the relevant change taking effect;
- (h) Obtain approval from the Authority prior to any changes in directorship of the company; and
- (i) At all times comply with the Petroleum Act and these Regulations and carry out the legitimate instructions of the Authority or its agents.

#### *Suspension or Revocation of Licence*

17. (1) The Authority may at any time revoke or suspend any petroleum business licence issued under the Petroleum Act and these Regulations if the licensee commits any breach of the Petroleum Act, these Regulations or the terms and conditions of the licence.

(2) Unless otherwise specified in the petroleum business licence, the Authority may give a licensee fourteen (14) days to show cause why the licence should not be suspended or revoked setting out the specific breach.

(3) The Authority shall determine the matter within thirty (30) days from the expiry of the notice period in sub-regulation (2).

(4) The Authority may reinstate a licence revoked or suspended under sub-regulation (1) if satisfied that the reasons for the revocation or suspension no longer exists.

(5) Any suspension or revocation of a petroleum business licence shall not indemnify the licensee from any penalties for which the licensee may have become liable under the Petroleum Act or any other written law.

#### *Transfer of a Licence*

18. (1) A licensee shall not transfer or otherwise divest any rights, powers or obligations without the consent of the licencing Authority as prescribed under Section 83 of the Petroleum Act.

(2) An application to transfer a licence shall be lodged in the form and manner prescribed by the Authority.

### PART III – GENERAL PROVISIONS

#### *Display of Licences and Permits*

19. (1) A petroleum business licence or petroleum logistics facility construction permit, or certified copies thereof, shall be displayed in a prominent position at the premises in respect of which it is issued.

- (2) A petroleum business licence issued under the Petroleum Act -
  - (a) remains the property of the Authority;
  - (b) may be suspended, revoked or amended by the Authority at any time subject to compliance with the Petroleum Act;
  - (c) may be replaced if the holder provides proof of loss of the licence to the Authority;
  - (d) shall not be tampered with or defaced in any manner; and

(e) shall not be transferred without the written consent of the Authority.

(3) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the applicable fines and penalties as set out in the Sixth Schedule.

#### *Reporting of Accidents or Incidents*

20. (1) A person licensed to undertake petroleum business shall within forty-eight hours notify the Authority in the specified form and manner of any incident or accident causing –

- (a) loss of life or personal injury; or
- (b) damage to property or to the environment; or
- (c) an explosion; or
- (d) oil spill or accidental gas release; or
- (e) fire.

(2) A petroleum business licensee who fails to comply with this Regulation commits an offence and shall be liable to the fines and penalties set out in the Sixth Schedule.

#### *Investigation of Accidents or Incidents*

21. (1) A petroleum business licensee shall conduct a detailed investigation of any accident reported under Regulation 20 within fourteen (14) days from the date of the incident or any such extended period as approved by the Authority and submit a report containing among other details:

- (a) cause of the accident;
- (b) environmental effects of the accident
- (c) economic impacts of the accident;
- (d) health impacts of the accident; and
- (e) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub-regulation (1) within thirty (30) days and –

- (a) accept the report; or
- (b) request for adjustments; or
- (c) reject the report giving reasons and other directives

(3) Notwithstanding provisions of sub-regulations (1) and (2), the Authority may commission its own investigation.

#### *Appeals*

22. Any person aggrieved by the decision of the licensing Authority in refusing to renew, amend, replace, grant a licence or permit, or impose conditions on a licence or a permit or in suspension or revocation of a licence or a permit may appeal to the Tribunal within thirty (30) days of receipt by him of the written notification of such action.

#### *General Penalty*

23. A person who commits an offence under these regulations for which no express penalty is provided shall on conviction be liable to the penalties prescribed under Section 99 of the Petroleum Act.

#### *Repeal*

24. The Energy (Licensing of Petroleum Logistics Business and Facility Construction) Regulations 2013 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary,  
Ministry of Petroleum and Mining.

## FIRST SCHEDULE


Regulations 5(2), 5(3) and 6(1)

## PART I – REQUIREMENTS FOR A PETROLEUM LOGISTICS FACILITY CONSTRUCTION PERMIT

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	Company financial statements for the past three years this shall include the balance sheet, profit and loss and cash flow;
6.	Development permission from the respective County Government (including County Physical Planning Office);
7.	Detailed report on corrosion control (endorsed by respective professional)
8.	Proof of land ownership (copy of title deed in the name of company/director(s)). In the case of long-term land lease, copy of duly registered lease agreement in the name of the Applicant company plus the title deed of the land owner;
9.	Mechanical engineer's drawings specifying materials and design/ operational limitations (product piping, above-ground tank(s), filling facility, water draw off fittings, high level alarm location, pump vents, pumps etc);
10.	Development permission from the respective County Government (including County Physical Planning Office);
11.	Civil engineer's drawings (all civil works including drainage, Oil Water Separator, bund walls, tank pad/ foundation, hard standing surfaces);
12.	Fire suppression systems (firefighting water storage tanks and associated fittings, firewalls etc) which should be accompanied by calculations showing adequacy of the same
13.	A valid Environmental Impact Assessment licence from NEMA for the project;

## DRAFT FOR PUBLIC COMMENTS

## PART II – FORM OF A PETROLEUM FACILITY CONSTRUCTION PERMIT

	
PERMIT NO. ....	
THE PETROLEUM ACT, 2019 PETROLEUM FACILITY CONSTRUCTION PERMIT	
Construction Permit is hereby granted to _____ of P.O. Box _____ to construct the following petroleum Facility (is):	
Construction of: Petroleum Facility .....	
On premises situated at: _____	
Plot No. _____	
Street/Market _____	
Town/County _____	
This Permit expires on _____	
	Dated this: _____
	Signature _____
	(SEAL) Director General Energy & Petroleum Regulatory Authority
Conditions:	
1. ....	
2. ....	
3. ....	
4. ....	

## DRAFT FOR PUBLIC COMMENTS

## SECOND SCHEDULE

Regulation 11(1)

## PART I - REQUIREMENTS FOR APPLICATION FOR A NEW PETROLEUM BUSINESS LICENCE (EXCEPT LPG)

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	A valid Single Business Permit for the premises of operation from the respective County Government;
7.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
8.	A valid Environmental Impact Assessment licence from NEMA for the project;
9.	A valid Fire Clearance Certificate for the facility from the respective County Government;

10.	A letter from the Kenya Bureau of Standards as proof of conformity assessment of the facility against the applicable Kenya Standard;
11.	Certificate of Compliance with the Physical Planning Act 2019 (PPA5 or PPA2);
12.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
13.	A valid calibration certificate for each petroleum storage tank at the facility;
14.	A summary Emergency Response Plan from the applicant; and
15.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel

## PART II – Requirements For Licence For Importation, Wholesale And Export Of Petroleum Products (EXCEPT LPG)

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	Proof of Financial Capability by either: (a) Providing proof of operations in Kenya as a wholesaler with an annual sales volume of 6,600 cubic metres of either or a combination of Premium Motor Spirit, Automotive Gasoil, Jet A1 or Illuminating Kerosene; or (b) Providing proof of ownership or long term lease (at least 5 years) of 5 licensed petroleum retail stations in Kenya; or (c) Proof of ownership or long term lease (at least 5 years) of 1 licensed petroleum bulk storage depot in Kenya; or (d) Providing certified audited accounts for the last 3 years indicating an annual turnover of US\$ 10 million for applicants with operations outside Kenya.
7.	Proof of application for membership to an Oil Spill Contingency Group; and
8.	A valid Single Business Permit for the premises of operation from the respective County Government.

## PART III – REQUIREMENTS FOR LICENCE OF WHOLESALE AND EXPORT OF PETROLEUM PRODUCTS (EXCEPT LPG)

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority; and
6.	A valid Single Business Permit for the premises of operation from the respective County Government.

## THIRD SCHEDULE

## Regulation 14 (2)

## PART I – REQUIREMENTS APPLICATION FOR A RENEWAL OF PETROLEUM BUSINESS LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	A valid Single Business Permit for the premises of operation from the respective County Government;
6.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
7.	An acknowledgement from NEMA of having submitted an annual Environmental Audit report for the facility (the acknowledgement should not be older than 1 year at the time of submission of the application);
8.	A valid Fire Clearance Certificate for the facility from the respective County Government;
9.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
10.	A valid calibration certificate for each petroleum storage tank at the facility;
11.	A summary Emergency Response Plan from the applicant; and
12.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel.
13.	Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics

## PART II – REQUIREMENTS APPLICATION FOR A RENEWAL OF A PETROLEUM IMPORTATION LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Single Business Permit for the premises of operation from the respective County Government;
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	Proof of Financial Capability by either:

	(a) Providing proof of operations in Kenya as a wholesaler with an annual sales volume of 6,600 cubic metres of either or a combination of Premium Motor Spirit, Automotive Gasoil, Jet A1 or Illuminating Kerosene; or (b) Providing proof of ownership or long term lease (at least 5 years) of 5 licensed petroleum retail stations in Kenya; or (c) Proof of ownership or long term lease (at least 5 years) of 1 licensed petroleum bulk storage depot in Kenya; or (d) Providing certified audited accounts for the last 3 years indicating an annual turnover of US\$ 10 million for applicants with operations outside Kenya.
7.	Clearance letter from Kenya Maritime Authority (KMA) on Compliance with International Oil Pollution Compensation Fund;
8.	Proof of fulfilment of line fill obligations from Kenya Pipeline Company Limited
9.	Proof of membership (in good standing) of an Oil Spill Contingency Group; and
10.	Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics

Part III – Requirements Application For A Renewal Of Licence For Wholesale And Export Of Petroleum Products (Except LPG)


1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority; and
5.	A valid Single Business Permit for the premises of operation from the respective County Government.

DRAFT FOR PUBLIC COMMENTS

FOURTH SCHEDULE

Regulation 13(1)

FORM OF PETROLEUM BUSINESS LICENCE

	
<p>THE PETROLEUM ACT, 2019 PETROLEUM BUSINESS LICENCE</p>	
No. ERC/PET _____	
Licence is hereby granted to _____ of P.O. Box _____ to carry on the following petroleum businesses:	
<p>LICENCE NAME (EXCEPT LPG)</p>	
On premises situated at:	: _____
Plot No.	: _____
Building	: _____
Street/Market	: _____
Town/County	: _____
This licence expires on	: _____
Dated this: _____	
Signature _____	
(SEAL)	
Director-General	
Energy & Petroleum Regulatory Authority	

FIFTH SCHEDULE

Regulations 5 (2), 5 (3), 11 (2), 14 (2) and 15 (2)

FEES SCHEDULE

Description-Category of Licence Fees	New Application (Amount in KSh.)	Renewal Application (Amount in KSh.)	Amendment Application (Amount in KSh.)
Construction Permit	5,000	2,000	1,000
Importation, Export and Wholesale of Petroleum Products Licence (Except LPG)	10,000	5,000	1,000
Wholesale and Export of Petroleum Product Licence (Except LPG)	5,000	3,000	1,000

## SIXTH SCHEDULE

Regulations 4 (5), 10 (2), 19 (3) and 20 (2)

## FINES AND PENALTIES

Regulations	Offence	Fine or Penalty (Amount in KSh.)
4(5)	Undertaking construction of petroleum logistics facility without a valid construction permit	10,000,000
10(2)	Undertaking petroleum business or operating petroleum logistics facility without a valid licence	10,000,000
16	Obstructing, hindering or withholding information or providing false information	20,000
	Use of unlicensed petroleum logistics facility for logistics services	20,000
	Allowing unlicensed third parties, customers including petroleum road transportation businesses the use of or providing service to the facility	20,000
	Failure to adhere to Kenya Standards for petroleum products	5,000,000
	Purchasing petroleum products from unlicensed petroleum business or petroleum refinery, except in the importation of petroleum	20,000
	Offering for sale petroleum to unlicensed petroleum businesses	20,000
	Failure to comply with applicable laws for construction or operations of a petroleum logistics facility	20,000
19(3)	Failure to display petroleum Business or petroleum logistics Facility licence	1,000,000
20(2)	Failure to report accidents or incidents	20,000

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act No. 2 of 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (OPERATION OF COMMON USER PETROLEUM FACILITIES) REGULATIONS, 2020**

## PART I – PRELIMINARY

*Citation*

1. These Regulations may be cited as the Petroleum (Operation of Common User Petroleum Facilities) Regulations, 2020.

*Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Authority” means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act, 2019;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Petroleum;

“Common user petroleum facility” has the same meaning as provided in the Petroleum Act;

“Downstream petroleum operations” has the same meaning as provided in the Petroleum Act;

“Energy Act” means the Energy Act, No. 1 of 2019;

“Kenya Standard” has the same meaning as provided in the Petroleum Act;

“KPRL” means Kenya Petroleum Refineries Limited;

“Kenya Pipeline Company Limited” means Kenya Pipeline Company Limited;

“KOSF” means the Kipevu Oil Storage Facility;

“Petroleum Act” means the Petroleum Act, No. 2 of 2019;

“Petroleum products” means super petrol, kerosene and automotive diesel;

“Tariff” means a set of prices, rates, charges and any cost associated with capacity, supply and delivery of petroleum products as approved by the Authority;

“User” means a petroleum business licensee that has entered into a contract with an owner or operator of a common user facility;

“Wholesale depot” means the petroleum receipt, storage and truck loading facilities owned by licensees carrying out petroleum business.

*Application of the Regulations*

3. (1) These Regulations shall apply to a person who applies to the Authority to be designated as such –

(2) The following may be licensed upon meeting the terms and conditions set by the Authority –

- (a) petroleum bulk storage facilities;
- (b) petroleum pipeline transportation system;
- (c) petroleum marine jetty system;
- (d) aviation refuelling hydrant systems and dispensers;
- (e) petroleum truck loading facilities;
- (f) LPG cylinder refilling facilities; and/or
- (g) Any other Common User Petroleum Facility approved by the Authority.

## PART II – OPERATION OF A COMMON USER FACILITY

*Requirement to obtain a licence*

4. (1) Any person who intends to operate a common user facility shall be required to obtain a licence from the Authority.

(2) The applicant for a licence shall declare to the Authority the capacity that is available to third parties for common use.

(3) The declared capacity in (2) shall be subject to common user principles as provided in the licence.

(4) Any person who undertakes the operation of a common user facility without a valid licence issued under the Petroleum Act and these Regulations commits an offence and shall on conviction be liable to the fines and penalties prescribed in the Fourth Schedule.

*Application for a licence*

5. (1) A person who wishes to apply for a common user facility licence shall make an application to the Authority or its agents in the prescribed form and manner.

(2) The Authority may require proof of payment of the prescribed fees as set out in the Third Schedule.



(3) A common user facility licence shall be valid for the period prescribed in the licence.

*Renewal of a licence*

6. (1) An application for renewal of a licence shall be made to the Authority in the prescribed form and manner at least thirty (30) days before the expiry date.

(2) An application for renewal in sub-regulation (1) shall be accompanied by proof of payment of the prescribed fees as set out in the Third Schedule.

*Common User Facility Contracts*

7. (1) The operator of a Common User Facility shall develop and submit to the Authority for approval a standard agreement to be signed by users.

(2) A standard agreement between the operator and users of a Common User Facility shall apply the following key principles-

- (a) open access to a Common User Facility upon meeting the requisite terms and conditions as stipulated in the contract;
- (b) Non-discrimination between users or classes of users regarding access, tariffs and conditions of service; and
- (c) the tariffs, charges payable and any subsequent reviews shall be subject to approval by the Authority

(3) The agreement in Sub-regulation (1) shall contain the minimum requirements listed in the First Schedule.

*Obligations of a Common User Petroleum Facility Operator*

8. (1) The operator of a common user petroleum logistics facility shall:

- (a) at all times provide the declared capacity;
- (b) offer services only to persons licensed by the Authority;
- (c) provide open access to its facility for use by any User who meets the terms and conditions of the standard agreement;
- (d) not discriminate between Users or classes of Users regarding access, tariffs and conditions of service;
- (e) shall, where there is limited capacity, allocate capacity among Users based on the equitable principles stipulated in the standard agreement and approved by the Authority; and
- (f) submit copies of the signed agreements with users to the Authority.

(2) Any operator of a common user facility that fails to comply with the obligations set out in this Regulation commits an offence and shall on conviction be liable to the fines and penalties in the Fourth Schedule.

*Ownership and Custody of petroleum product*

9. Any commercial transaction relating to the title of the petroleum product stored or delivered in the common user facility shall be as provided in the applicable contractual arrangement.

*Tariffs*

10. (1) The Authority shall approve the tariff to be charged by a common user facility.

(2) The operator of a common user facility shall apply to the Authority for a review and approval of tariffs in respect of the facilities in sub-regulation (1) and in the form and manner prescribed by the Authority.

(3) In setting the tariff in sub-regulation (2), the Authority shall ensure a just and reasonable recovery of prudently incurred costs and a reasonable return on investment.

(4) The allowable tariffs shall be calculated in accordance with the guidelines and methods set out in the Second Schedule.

*Operating stock loss allowances*

11. The allowable loss for a common user facility shall be the actual loss which in any case shall not exceed 0.25% of the volume handled.

PART IV – GENERAL PROVISIONS

*Complaints and Disputes*

12. (1) Complaints and disputes shall be handled as provided in the contract between the user and licensee of the use of the Common User facility.

(2) Notwithstanding sub-Regulation (1) the right of a user or operator of a common user facility to lodge a complaint with the Authority shall not be limited or qualified.

*Reporting of Accidents or Incidents*

13. (1) A person licensed to operate a common user facility shall within forty-eight (48) hours notify the Authority in the specified form and manner of any accident or incident causing –

- (a) loss of life or personal injury;
- (b) damage to property or to the environment;
- (c) an explosion, spill, accidental gas release or
- (d) a fire.

(2) A common user facility licensee who fails to comply with this regulation commits an offence and shall be liable to the fines and penalties set out in the Fourth Schedule.

*Investigation of Accidents or Incidents*

14. (1) A common user facility licensee shall conduct a detailed investigation of any accident reported under Regulation 13 within fourteen (14) days from the date of the incident or any such extended period as approved by the Authority and submit a report containing among other details—

- (a) cause of the accident;
- (b) environmental effects of the accident
- (c) economic impacts of the accident;
- (d) health impacts of the accident; and
- (e) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub-regulation (1) within thirty (30) days and –

- (a) accept the report; or
- (b) request for adjustments; or
- (c) reject the report giving reasons and other directives

(3) Notwithstanding provisions of sub-regulations (1) and (2), the Authority may commission its own investigation.

*General Penalty*

15. A person who commits an offence under these Regulations for which no express penalty is provided shall on conviction be liable to the penalties prescribed under Section 99 of the Petroleum Act.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

DRAFT FOR PUBLIC COMMENTS

FIRST SCHEDULE

Regulation 7(3)

REQUIREMENTS FOR COMMON USER PETROLEUM LOGISTICS FACILITY LICENCEE/USER AGREEMENT

The Common User Petroleum Logistics Facilities Licensee shall enter into a service agreement with Users and shall on the minimum contain the following provisions as prescribed by Regulation 7(2) of these Regulations –	
1.	Licencee obligations and responsibilities.
2.	Users' obligations and responsibilities.
3.	Underlying principles on capacity allocation and procedures for allocation.
4.	Ownership of products and custodial responsibilities.
5.	Processes and responsibilities for settlement of payments due to Kenya Revenue Authority and any other statutory payments levied on products.
6.	Procedures for receipt of products into licensee facilities which includes receipt scheduling, quantity measurements, product quality specifications and certification.
7.	Procedures for coordination and scheduling of products deliveries including communication.
8.	Stock accounting procedures including measurements, stock variances, and reporting.
9.	Allowable stock losses for each logistics service contracted.
10.	Product quality management including standards, specifications, methods for determination.
11.	Procedures for handling of off-specification products and dispute resolution process.
12.	A list of tariffs for each logistics service offered, billing, and payments.
13.	Process for handling disputes and claims.
14.	Situations constituting Force Majeure.

## SECOND SCHEDULE

## Regulation 10 (4)

## TARIFF CALCULATION METHOD FOR COMMON USER FACILITIES

<p>This method shall be used by the Authority to calculate allowable tariffs for various services offered at petroleum logistics licensed as common user logistics facilities. The tariffs approved by the Authority shall be sufficient for the licensee to recover the investment, operate and maintain the system; and make a profit commensurate with the risk.</p> <p>The methodology used to calculate tariffs should be systematic, consistent, comparable, fair, non-discriminatory, simple, transparent, predictable, and stable such that it promotes access to affordable petroleum products.</p> <p>The method calculates allowable revenue for the year under consideration, divided by the throughput volume for the period, or in case of pipelines M3-kilometers to arrive at the tariff in Shillings or US Dollars per M<sup>3</sup> for that particular service and facility.</p> <p>A detailed demonstration of the methodology shall be published in the Authority Website</p>	
1.	<p>Allowable Revenue (AR)</p> <p style="text-align: center;">The following formula shall be used to determine the Allowable Revenue:</p> $AR = (RAB \times RoR) + E + D + F + T$ <p>Where –</p> <p>AR = Allowable revenue  RAB = Regulatory asset base  RoR = Rate of Return - 15% or as the Authority may determine based on the Weighted Average Cost of Capital.  E = Expenses: operating and maintenance expenses for the tariff period under review. This would be based on expenses following an independent and professional benchmarking exercise.  D = The depreciation amount calculated on a straight line basis over the service life of each of the assets or classes of assets in the regulatory asset base for the tariff period under review.  F = Approved revenue addition to meet debt obligations for the tariff period under review  T = Tax expense: estimated tax expense for the tariff period under review</p>
2.	<p>Regulatory Asset Base (RAB)</p> <p>The following formula shall be used to determine the value of the licensee's regulatory asset base:</p> $RAB = (V - d) + w \pm dtax$ <p>Where –</p> <p>V = Value of operating property, plant, vehicles and equipment that are used or will be used in the tariff period under review and shall comprise only non-current assets plus a pro rata portion of new or additional property, plant, vehicles and equipment that will be used during the tariff period under review.</p> <p>d = Accumulated depreciation and accumulated amortization of inflation write-up for the period up to the commencement of the tariff period under review is the cumulative depreciation against operating property, plant, vehicles and equipment in service</p> <p>w = Net working capital refers to various regulated activities or business operations funding requirements other than property, plant, vehicles and equipment in service. These funding requirements include inventories, pre-payments, minimum bank balances, cash working capital and other non-plant operating requirements. The following formula shall be used to determine net working capital:  Net working capital = inventory + receivables + operating cash + minimum cash balance – trade payables.  dtax = means Deferred tax</p>
3.	<p>Expenses – Operating and Maintenance (E)</p> <p>The tariffs set by the Authority shall enable an efficient licensee to recover the reasonable operational and maintenance expenses of the facility in the year in which they are incurred and are those planned for the efficient operation and maintenance of the core business.</p>
4.	<p>Revenue Addition to Meet Debt Obligations (F)</p> <p>The Authority may approve additional revenue to meet debt obligations.</p>

THIRD SCHEDULE  
APPLICATION LICENCE FEES  
Rule 5(2) and 6(2)

Description-Category of Licence Fees	New Application (Amount in KSh.)	Renewal Application (Amount in KSh.)
Common User Facility Licence	10,000	5,000

FOURTH SCHEDULE  
OFFENCES, FINES AND PENALTIES

Relevant Rules	Offence	Penalty (Ksh.)
4(4)	Undertaking or carrying out operation of a common user facility without a valid licence	10,000,000
8(2)	Failure to declare capacity of the common user facility to the Authority	20,000
	Offering services to persons not duly licensed by the Authority	20,000
	Failure to grant open access to Users of the common user facility who meet terms and conditions of the standard contract	20,000
	Discriminating between Users or classes of Users regarding access, tariffs and conditions of service	20,000
	Failure to allocate capacity amongst Users based on equitable principles in the standard contract where there is limited capacity	20,000
	Failure to submit copies of signed contracts to the Authority	20,000
13 (2)	Failure to report accidents or incidents	20,000

DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations –

THE PETROLEUM (IMPORTATION OF PETROLEUM PRODUCTS) REGULATIONS, 2020

PART I—PRELIMINARY

*Citation*

1. These Regulations may be cited as the Petroleum (Importation of Petroleum Products) Regulations, 2020.

*Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Authority” means the Energy and Petroleum Regulatory Authority established under Section 9 of the Energy Act;

“Accounting officer” means Accounting officer as defined in Section 2 of the Public Finance Management Act, No. 18 of 2012;

“Energy Act” means the Energy Act No. 1 of 2019;

“KPC” means the “Kenya Pipeline Company Limited”

“OMC” or “Oil Marketing Company” means a company duly licensed to import premium motor spirit, automotive gasoil, dual-purpose kerosene and fuel oil and is eligible to participate in the open tendering system.

“Petroleum Act” means the Petroleum Act No 2 of 2019;

“Pipeline operator” means the entity in charge of management and operations of a network of pipelines and is connected to the main importation storage facility at Mombasa;

“Transport and Storage Agreement” means an agreement for storage and transmission through pipeline of petroleum products entered into between Kenya Pipeline Company Limited and persons authorized to import refined petroleum products

*Application*

3. (1) These Regulations shall apply to the importation of refined petroleum products listed in the First Schedule.

(2) The Cabinet Secretary may, upon the recommendation of the Authority, amend the list of petroleum products specified in the First Schedule from time to time.

(3) These Regulations shall not apply to –

(a) The importation of petroleum products by the Kenya Defence Forces; and

(b) The procurement of petroleum products for strategic stock.

PART II – THE OPEN TENDERING SYSTEM

*Importation of Petroleum Products*

4. (1) A person who intends to import petroleum products shall be required to obtain a licence from the Authority.

(2) The importation of products listed in the in the First Schedule shall be through the Open Tendering System (OTS).

(3) The list of products in Regulation 4(2) may be amended by the Cabinet Secretary and notified in the Kenya Gazette

(4) The places at, or routes through, which petroleum products shall be imported into Kenya shall be as prescribed by the Cabinet Secretary and notified in the Kenya Gazette.

*Open Tendering System Agreement*

5. (1) A petroleum business licensee wishing to import the petroleum products listed in the First Schedule into Kenya shall execute and become a party to an Open Tendering System Agreement.

(2) The Open Tendering System Agreement shall contain such terms and conditions as the parties to the Agreement may determine.

(3) Provided that the terms and conditions in the agreement in sub-regulation (1) shall include those listed in the Second Schedule.

(4) The parties to the Open Tendering System Agreement may from time to time amend the Agreement.

(5) The amendments in sub-regulation (4) shall be approved by the Authority.

*Transport and Storage Agreement*

6. A party to the Open Tendering System Agreement shall have signed a Transport and Storage Agreement with the pipeline operator.

*Capacity allocation*

7. (1) The extent of participation in the Open Tendering System shall be based on the allocated storage capacity in a nominated common user storage facility.

(2) The capacity share in sub-regulation (1) shall be allocated in proportion to the historical throughput for a period to be determined by the Authority.

*Ownership of petroleum products*

8. Ownership of the imported product shall be as provided for in the open tendering system agreement.

PART III – THE SUPPLY COORDINATION COMMITTEE

*Supply Co-ordination Committee*

9. (1) The parties to the Open Tendering System Agreement shall at their own cost form a Supply Coordination Committee.

(2) The Supply Coordination Committee shall liaise with the Ministry responsible for petroleum, the pipeline operator, common user facilities operators and other relevant government agencies for the purpose of implementation of the Open Tendering System.

(3) The parties to the Open Tendering System Agreement shall develop operational procedures to guide the day to day operations of the Supply Coordination Committee

*Functions of the Committee*

10. (1) The functions of the Committee shall be to –

- (a) consolidate petroleum products import requirements for participants in the Open Tendering System;
- (b) communicate calls for tender to the participants of the Open Tendering System;
- (c) open bids at tender opening sessions attended by participants in the Open Tendering System and in the presence of a representative of the Principal Secretary in charge of petroleum;
- (d) determine and award winning bids;
- (e) consolidate and verify the accuracy of petroleum products import cost build-ups for the purposes of pricing;

(f) submit the final petroleum product import cost build-up to the Authority for the purpose of pricing; and

(g) Assist the pipeline operator to schedule transport of petroleum products batches through the pipeline system.

(2) The Committee shall compile and submit the following information to the Authority and the Ministry in charge of petroleum:

- (a) Petroleum stock levels in licensed petroleum depots on a daily basis
- (b) Import cost build-up for each shipment and for each product imported as detailed in the First Schedule of the Petroleum (Pricing) Regulations 2020 on a monthly basis.

PART IV—MISCELLANEOUS

*Repeal*

11. The Petroleum (Amendment) (No. 2) Rules L.N. No. 197 of 2003, the Petroleum (Amendment) (No. 1) Rules L.N. No. 31 of 2006, and the Petroleum (Amendment) Rules L.N. No. 24 of 2012 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

FIRST SCHEDULE

Regulations 3 (1), 3 (2), 4 (2), 5 (2) and 10 (2) (b)

PETROLEUM PRODUCTS IMPORTED UNDER OPEN THE OPEN TENDERING SYSTEM

Item	Petroleum Product
1.	Super Petrol
2.	Dual-Purpose Kerosene
3.	Automotive Gasoil or Diesel

SECOND SCHEDULE

Regulation 5(3)

OPEN TENDERING SYSTEM (OTS) AGREEMENT TERMS AND CONDITIONS

The Open Tendering System Agreement shall on the minimum contain the following terms and conditions governing the tendering of joint importation of petroleum products for Kenya and transit markets

Oil Marketing Companies licensed by the Authority to import, export and wholesale petroleum products and who participate in the OTS shall jointly enter into an OTS agreement that binds them to terms and condition of the importation process, and shall include, among others, the following :-
1. The Effective Date and Duration of the Agreement
2. Conditions that qualify oil marketing companies to enter into the OTS Agreement and participate in OTS imports.
3. Condition that qualify a signatory to the OTS Agreement to qualify as an Importer and Seller of products imported through the OTS.
4. Condition that commits a signatory to the OTS Agreement to become a Buyer of products imported through OTS.
5. Procedures for OTS tender process which shall include – (a) Invitation to tender (b) Tender closing and opening time (c) Validity of offers (d) Disqualification of tenders (e) Delivery point (f) Quality of the products
6. Penalties for Seller who fails to meet agreed terms.
7. Vessel scheduling and maximum number of shipment parcels that shall constitute full delivery of tendered volumes.
8. The price schedule and details for aggregation of allowable costs from the loading port to the receiving shore tanks, including applicable currency and conversions thereof.
9. Allowable vessel lay time, and demurrage accountability and liabilities.
10. Levies and taxes that are due to but not limited to the Kenya Revenue Authority, Kenya Ports Authority and Kenya Maritime Authority.
11. Invoicing and payment terms for products allocated to each buyer including penalties for failure to meet set terms.
12. Methods for effecting stock entitled from Sellers to Buyers.
13. Product ownership, title and risk and points of transfer of custody.
14. Collective responsibility for oil marketing companies to meet the expenses for the Petroleum Importation Secretariat.

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (INFORMATION AND STATISTICS)  
REGULATIONS, 2020**

## PART I - PRELIMINARY

*Citation*

1. These Regulations may be cited as the Petroleum (Information and Statistics) Regulations, 2020.

*Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Authority” means the Energy and Petroleum Regulatory Authority established under Section 9 of the Energy Act;

“Destination markets” means local or transit point of sale;

“Dead stocks” refers to petroleum products that cannot be extracted from the storage tank (normally below the discharge point of a tank) in the normal course of operations;

“Energy Act” means the Energy Act, No 1. of 2019;

“Incident” means any occurrence which has the potential to cause harm to a person or damage to equipment, property or the environment and includes accidents;

“Licensee” has the same meaning as in the Petroleum Act;

“Line fill” means the volume of petroleum products maintained in a pipeline as restricted stock for purposes of displacement of other products during pumping operations;

“LPG” or “Liquefied Petroleum Gas” means commercial propane, commercial butane or a mixture thereof as specified in the relevant Kenya standard;

“Operational stock” means stock in storage facilities that is accessible in normal operations;

“Petroleum products” means all imported refined petroleum products;

“Petroleum Act” means the Petroleum Act, No 2 of 2019;

“Pipeline” means a pipe or system of pipes that is used or to be used for the transportation of petroleum and any apparatus and works associated therewith, including –

(a) apparatus for inducing or facilitating the flow of petroleum through the pipe or system of pipes;

(b) valves, valve chambers, manholes, inspection points and similar works, being works annexed to, or incorporated in the course of the pipe or system of pipes;

(c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) or of such works as mentioned in paragraph (b);

(d) apparatus for the transmission of information for the operation of the pipe or system of pipes;

(e) apparatus for affording cathodic protection to the pipe or system of pipes; or

(f) a structure for the exclusive support of a part of the pipe or system of pipes;

“Storage tank” means a tank used or designed to be used for the storage of petroleum products;

“Transit” means the movement of petroleum products imported from a foreign country through Kenya to a foreign destination;

“Undertaking” means the carrying out of the business specified in a licence or a permit.

*Application*

3. (1) These regulations shall apply to a licensee or holder of any licence issued under the Petroleum Act.

(2) These Regulations shall not apply to the Kenya Defence Forces.

## PART II – INFORMATION ON IMPORTATION AND STORAGE

*Requirement to submit information*

4. (1) A licensee shall submit information required by the Authority under these Regulations in the form and manner and within the period prescribed by the Authority or its agents.

(2) The Authority may require a licensee to submit any other relevant information as may be deemed necessary.

*Information on Storage facilities*

5. (1) A licensee engaged in the storage of petroleum products shall submit to the Authority the following information electronically on the tenth (10th) day after the end of each calendar month –

(a) operational capacity for each petroleum storage tank according to type of petroleum product;

(b) closing stock of volumes of petroleum products of the period specified by the Authority;

(c) average throughput volumes of petroleum products of the period specified by the Authority; and

(d) operational stock losses for each petroleum product in the form and manner specified by the Authority.

(2) The information provided in sub-regulation (1) shall be geo-referenced according to the Global Positioning System (GPS) location of each storage facility as indicated in the petroleum business licence.

(3) The information submitted in this Regulation shall be in the form and manner prescribed in the First Schedule of these Regulations.

*Information on importation of petroleum products*

6. (1) A petroleum business licensee engaged in the importation of petroleum products shall submit to the Authority the following information –

(a) the quantity of petroleum products imported into Kenya by –

(i) type of petroleum product;

(ii) country of origin and/or Open Tendering System (OTS) Reference Number,

(iii) port of entry; and

(iv) the receiving bulk storage facility.

(b) declaration on the final destination of the imported products.

(2) The information required under sub-regulation (1) of these regulations shall be submitted to the Authority by the licensee by the tenth (10th) calendar day of each calendar month in the prescribed in the Second Schedule.

## PART III – INFORMATION ON TRANSPORTATION

*Information on pipeline transportation and storage*

7. (1) A licensee engaged in the pipeline transportation and storage of petroleum products shall submit to the Authority or its agents the following information –

(a) details of operational stocks, line fill and dead stocks in the pipeline system;

(b) daily throughput and closing stocks by product in all storage facilities; and

(c) stock losses in common user facilities in the form and manner prescribed by the Authority.

(2) The information in sub-regulation (1) shall be submitted in the form prescribed in the Third Schedule of these Regulations.

**PART IV – INFORMATION ON WHOLESALE AND RETAIL OF PETROLEUM PRODUCTS**

*Information on wholesale of petroleum products*

8. (1) A licensee engaged in the wholesale of petroleum products shall submit to the Authority the following information –

- (a) total volume sold by product and source storage facility; and
- (b) total volume sold by destination.

(2) The information in sub-regulation (1) shall be submitted in the form prescribed in the Fourth Schedule of these Regulations.

*Information on retail sales of petroleum products*

9. (1) A petroleum business licensee engaged in the retail of petroleum products shall submit to the Authority the following information –

- (a) total volume sold by product;
- (b) total volume purchased and the source; and
- (c) tank storage capacities per product

(2) The information in sub-regulation (1) shall be submitted in the form prescribed in the Fifth Schedule of these Regulations.

*Information on Liquefied Petroleum Gas (LPG)*

10. (1) A licensee undertaking the business of LPG, in addition to any other reporting requirements as prescribed in these Regulations, shall submit to the Authority the following information –

- (a) LPG imported by quantity, source and entry point;
- (b) quantity of LPG locally purchased in bulk and the source;
- (c) quantity of LPG sold in bulk;

(d) quantity and unit cost of LPG cylinders imported or procured locally per quarter;

(e) sales of LPG in cylinders for each calendar month; and

(f) any other information as may be prescribed by the Authority

(2) The information in sub-regulation (1) shall be submitted in the form and manner as prescribed by the Authority.

**PART V – GENERAL PROVISIONS**

*Reporting of Accidents and Incidents*

11. (1) Accidents and incidents shall be reported in the form and manner provided for in the Sixth Schedule of these Regulations

(2) Any person who contravenes this regulation commits an offence and shall be liable to the fines and penalties prescribed in the Seventh Schedule.

*Offences and Penalties*

12. (1) Any person who deliberately gives false information or fails, refuses, or neglects to submit data and information as required under these Regulations commits an offence and shall be liable on conviction to the fines and penalties prescribed in the Seventh Schedule.

(2) The Authority may suspend, revoke the licence, permit or certificate or take any other appropriate action it may deem necessary.

*Repeal*

13. The Energy (Petroleum Information and Statistics) Regulations 2013 are hereby revoked.


Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

**FIRST SCHEDULE**

Regulation 3(3)

**PETROLEUM STORAGE FACILITIES REPORTING REQUIREMENTS**

FORM 1 PETROLEUM STORAGE FACILITIES REPORTING REQUIREMENTS			
			
<b>PART A</b>			
Name:			
Licence No.:		Type of Storage: (Private, Common User, Strategic Stocks)	
Reporting Period			
Date of Submission:			
GPS Location:	Longitude:	Latitude:	
Total Storage by Product Capacity:	Storage Capacity (M <sup>3</sup> ):		
	i.	Product:	Volume (M <sup>3</sup> ):
	ii.	Product:	Volume(M <sup>3</sup> ):
	iii.	Product:	Volume(M <sup>3</sup> ):
<b>PART B</b>			
1 – 7 to be completed for each petroleum product held at the storage facility*			
Product:			
1.	Opening Stock: Total _____ M <sup>3</sup> = Operational Stock _____ M <sup>3</sup> + Deadstock _____ M <sup>3</sup> * At the beginning of the reporting period		
2.	Receipts Total: _____ M <sup>3</sup> : (i) Receipts from Ship _____ M <sup>3</sup> (ii) Receipts from Pipeline _____ M <sup>3</sup>		


	(iii) Receipts from Trucks _____ M <sup>3</sup>
3.	Withdrawals by Total: _____ M <sup>3</sup> (i) Withdrawals by Pipeline _____ M <sup>3</sup> (ii) Withdrawals by Trucks _____ M <sup>3</sup> (iii) Withdrawals by Ship _____ M <sup>3</sup>
4.	Withdrawals by Destination Total: _____ M <sup>3</sup> (i) Local Market _____ M <sup>3</sup> (ii) Transit Market _____ M <sup>3</sup> (iii) Export Market _____ M <sup>3</sup>
5.	Operational Losses Total: _____ M <sup>3</sup> _____ % (i) Product _____ M <sup>3</sup> _____ % (ii) Product _____ M <sup>3</sup> _____ % (iii) Product _____ M <sup>3</sup> _____ %
6.	Closing Stock: Total _____ M <sup>3</sup> = Operational Stock _____ M <sup>3</sup> + Deadstock _____ M <sup>3</sup> * At the end of the reporting period
7.	Ullage or available capacity by product: *This will be as at the end of the reporting period and will be calculated based on the information provided above
Incidences:	* Comment on any incidences including any non-operational losses

## SECOND SCHEDULE

Regulation 4(2)

## PETROLEUM IMPORTATION

## REPORTING REQUIREMENTS

FORM 2 PETROLEUM IMPORTATION REPORTING REQUIREMENTS			
PART A			
Name:			
Licence No.:			
Reporting Period:	_____ Month _____ Year		
Date of Submission:	_____		
Total Volume Imported by Product:	i.	Product:	Volume (M <sup>3</sup> ) :
	ii.	Product:	Volume (M <sup>3</sup> ):
	iii.	Product:	Volume (M <sup>3</sup> ) :
PART B			
1 – 7 to be completed for each petroleum product import during the reporting period*			
Product:			
1.	Port of entry:		
2.	Country of Origin:		
3.	Vessel/Vehicle Registration No.:		
4.	Date of Import:		
5.	Import Storage Facilities:	* storage facilities used to discharge the product after importation	
6.	Total Volume Imported:	_____ M <sup>3</sup>	
	i.	Local Market:	
	ii.	Transit Market:	
7.	For products Imported through Open Tendering System:	FOB Price:	
		Freight and Premium:	
		Insurance and War Risk:	
		Letter of Credit Costs:	
		Demurrage Costs:	


## THIRD SCHEDULE

Regulation 5(1)

## PETROLEUM PIPELINE TRANSPORT AND STORAGE


## REPORTING REQUIREMENTS

THIS SHOULD BE COMPLETED TOGETHER WITH THE STORAGE INFORMATION REQUIREMENTS AS PRESCRIBED IN REGULATION 5.

FORM 4			
PIPELINE TRANSPORTATION AND STORAGE MINIMUM INFORMATION REPORTING REQUIREMENTS			
<b>PART A</b>			
Name:			
Licence No.:			
Reporting Period:	_____ Month _____ Year		
Date of Submission:	_____		
Total Pipeline System Capacity (excluding storage facilities):	i.	Name of Mainline:	Volume (M <sup>3</sup> ) :
	ii.	Name of Mainline:	Volume (M <sup>3</sup> ) :
	iii.	Name of Mainline:	Volume (M <sup>3</sup> ) :
Total Product Volume in Pipeline System (excluding storage facilities):	i.	Product:	Volume (M <sup>3</sup> ) :
	ii.	Product:	Volume (M <sup>3</sup> ) :
	iii.	Product:	Volume (M <sup>3</sup> ) :
<b>PART B</b>			
Part B 1 – 4 to be completed for each mainline within the pipeline system*			
Name of Mainline:			
Name of Storage facility:			
GPS Location	Longitude:	Latitude:	
Total Storage by Product Capacity:	_____ M3		
	*Provide storage capacity		
	i.	Product:	Volume (M <sup>3</sup> ) :
	ii.	Product:	Volume (M <sup>3</sup> ):
iii.	Product:	Volume (M <sup>3</sup> ) :	
Part B 5 – 12 to be completed for each petroleum product held at the storage facility*			
Product:			
5.	Opening Stock: Total _____ M3 = Operational Stock _____ M3 + Deadstock _____ M3 * At the beginning of the reporting period		
6.	Receipts Total: _____ M <sup>3</sup> ; (i) Receipts from Ship _____ M <sup>3</sup> (ii) Receipts from Pipeline _____ M <sup>3</sup>		
7.	Withdrawals by Total: _____ M <sup>3</sup> (i) Withdrawals by Pipeline _____ M <sup>3</sup> (ii) Withdrawals by Trucks _____ M <sup>3</sup> (iii) Withdrawals by Ship _____ M <sup>3</sup>		
8.	Withdrawals by Destination Total: _____ M <sup>3</sup> (i) Local Market _____ M <sup>3</sup> (ii) Transit Market _____ M <sup>3</sup> (iii) Export Market _____ M <sup>3</sup>		
9.	Operational Losses Total: _____ M <sup>3</sup> ___ % (i) Product _____ M <sup>3</sup> ___ % (ii) Product _____ M <sup>3</sup> ___ % (iii) Product _____ M <sup>3</sup> ___ %		
10.	Closing Stock: Total _____ M3 = Operational Stock _____ M3 + Deadstock _____ M3 * At the end of the reporting period		
11.	Ullage or available capacity by product: *This will be as at the end of the reporting period and will be calculated based on the information provided above		
12.	Incidents: * Comment on any incidences including any non-operational losses		




FOURTH SCHEDULE  
Regulation 6(2)  
PETROLEUM WHOLESALE  
REPORTING REQUIREMENTS

FORM 5				
PETROLEUM WHOLESALE REPORTING REQUIREMENTS				
Name: _____				
Licence No.: _____				
Reporting Period: _____ Month _____ Year				
Date of Submission: _____				
Total Volume sold by product and source storage depot:	i.	Product: _____		Volume (M <sup>3</sup> ) :
		a	Storage depot: _____	Volume (M <sup>3</sup> ) :
		b	Storage depot: _____	Volume (M <sup>3</sup> ) :
		c	Storage depot: _____	Volume (M <sup>3</sup> ) :
	ii.	Product: _____		Volume (M <sup>3</sup> ):
		a	Storage depot: _____	Volume (M <sup>3</sup> ) :
		b	Storage depot: _____	Volume (M <sup>3</sup> ) :
		c	Storage depot: _____	Volume (M <sup>3</sup> ) :
	iii.	Product: _____		Volume (M <sup>3</sup> ) :
		a	Storage depot: _____	Volume (M <sup>3</sup> ) :
		b	Storage depot: _____	Volume (M <sup>3</sup> ) :
		c	Storage depot: _____	Volume (M <sup>3</sup> ) :
Total Volume sold by destination	i.	Local Market:	Volume (M <sup>3</sup> ) :: _____ a. Retail dispensing sites (Total): _____ b. Source storage Facility (Total) _____ i. Storage depot _____ Volume _____ ii. Storage depot _____ Volume _____	
	ii.	Transit and Export Market:	Volume (M <sup>3</sup> ) : _____	

FIFTH SCHEDULE

Regulation 7(2)

PETROLEUM RETAIL  
REPORTING REQUIREMENTS


FORM 6				
PETROLEUM RETAIL REPORTING REQUIREMENTS				
Name: _____				
Licence No.: _____				
Reporting Period: _____ Month _____ Year				
Date of Submission: _____				
*Deadline of Submission is the 10 <sup>th</sup> of every month				
GPS Location:		Longitude: _____	Latitude: _____	
Storage Tank capacities		Product _____	Tank Capacity: _____ M <sup>3</sup>	
Total Volume sold by product and source storage depot:	i.	Product: _____		Volume (M <sup>3</sup> ) :
		a	Source Storage depot: _____	Volume (M <sup>3</sup> ) :
		b	Source Storage depot: _____	Volume (M <sup>3</sup> ) :
		c	Source Storage depot: _____	Volume (M <sup>3</sup> ) :

	ii.	Product:		Volume (M <sup>3</sup> ):
		a	Source Storage depot:	Volume (M <sup>3</sup> ) :
		b	Source Storage depot:	Volume (M <sup>3</sup> ) :
		c	Source Storage depot:	Volume (M <sup>3</sup> ) :
	iii.	Product:		Volume (M <sup>3</sup> ) :
		a	Source Storage depot:	Volume (M <sup>3</sup> ) :
		b	Source Storage depot:	Volume (M <sup>3</sup> ) :
Total Volume sold by destination	i.	Local Market:	Volume (M <sup>3</sup> ) :: _____ a. Retail dispensing sites (Total): _____ b. Source storage depots (Total) _____ i. Source storage depot _____ Volume _____ ii. Source storage depot _____ Volume _____	
	ii.	Transit and Export Market:	Volume (M <sup>3</sup> ) : _____	

## SIXTH SCHEDULE

Regulation 9(1)

## ACCIDENT OR INCIDENT REPORT

FORM 6	ACCIDENT OR INCIDENT REPORT			
NAME OF OWNER AND OPERATOR OF PREMISES:				
Business Name:				
Petroleum Business Licence No. :		Expiry Date:		
Environment Liability Policy:				
VEHICLE INFORMATION:				
Vehicle Registration No.:				
Petroleum Tanker Permit No.		Expiry Date:		
Cargo on Board:				
Origin:				
Destination:				
DRIVER:				
Name:				
National I.D. No.:				
Petroleum Road Tanker Driver Certificate No. :		Expiry Date:		
DETAILS OF INCIDENT/ACCIDENT:				
Date:		Time:		
Location of Accident and geographical spread of incident or accident				
Scale of environmental damage if any		Gas Volume (M <sup>3</sup> ) Liquid Volume (L) Area impacted (M <sup>2</sup> )		
Own and third party property damage if any				
Number of Injuries and/or Fatalities if any				
DESCRIPTION OF THE EVENTS LEADING TO AND THE MOST PROBABLE CAUSE OF THE INCIDENT AND ACCIDENT:				

PLEASE ATTACH ANY INFORMATION THAT IS RELEVANT TO THE REPORT WHERE APPROPRIATE SUCH AS A COPY OF THE JOURNEY PLAN AND VEHICLE TRACKING DATA DOWNLOAD FOR THE PREVIOUS 12 HOURS PRIOR TO THE INCIDENT/ACCIDENT OR ANY OTHER ADDITIONAL INFORMATION THE AUTHORITY MAY REQUIRE.

SEVENTH SCHEDULE  
OFFENCES, FINES AND PENALTIES

<i>Relevant Rules</i>	<i>Offence</i>	<i>Penalty (KSh.)</i>
9(2)	Failure to provide information on accidents	1,000,000
10 (1)	Deliberate failure, refusal or neglect in submitting data and information required under these Regulations or any other regulations made under the Act	5,000,000
	Deliberately giving false information or misleading information required under these regulations or any other regulations made under the Act	10,000,000

DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments—

**THE PETROLEUM (LICENSING OF PETROLEUM ROAD TRANSPORTATION BUSINESS, ROAD TANKERS AND DRIVERS) REGULATIONS, 2020**

PART I—PRELIMINARY

*Citation*

1. These Regulations may be cited as the Petroleum (Licensing of Petroleum Road Transportation Business, Road Tankers and Drivers) Regulations, 2020.

*Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Adulterated product” means any one or more class of refined petroleum grades mixed with another that alter the product specifications detailed in the applicable Kenya Standards;

“Agent” means a person appointed by the Authority pursuant to Section 22;

“Authority” means the Energy and Petroleum Regulatory Authority established under Section 9 of the Energy Act;

“Energy Act” means the Energy Act No. 1 of 2019;

“Person” means any natural or jurisdictional person;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum Road Transportation Business” means a concern to carry on the transportation of petroleum by road;

“Specifications” means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, the commodity may be manufactured, produced, processed, treated, tested or sampled;

*Application*

3. Except as otherwise provided in these Regulations, these rules shall not apply to –

(a) Kenya Defence Forces;

(b) Petroleum contained in a vehicle for consumption by the engine; and

(c) Petroleum transported in containers whose combined volume does not exceed one thousand (1,000) litres.

PART II – PETROLEUM ROAD TRANSPORTATION BUSINESS LICENCE

*Requirement for licence*

4. (1) A person shall not carry out the business of petroleum road transportation except in accordance with a licence issued under the Petroleum Act and these Regulations.

(2) A person who undertakes the business of petroleum road transportation without a valid licence commits an offence and shall on conviction be liable to the fines and penalties as set out in the Fifth Schedule.

*Application for a licence*

5. (1) A person who intends to carry out the business of transportation of petroleum by road shall make an application to the Authority for a licence in the prescribed form and manner.

(2) The application in sub-regulation (1) shall be accompanied by the documents listed in the First Schedule.

(3) The Authority may from time to time request for additional documents to those listed in the First Schedule.

(4) The application in sub-Regulation (1) shall be accompanied by the prescribed fees set out in the Fourth Schedule.

*Form and duration of licence*

6. (1) A licence issued for the transportation business shall be in the format prescribed by the Authority from time to time.
- (2) A licence issued under the Act may contain such conditions as may be determined by the Authority from time to time.
- (3) A licence issued under these Regulations shall be valid for the period specified in the licence.

*Renewal of licence*

7. (1) An application for renewal of a licence shall be made to the Authority or its agents at least thirty (30) days prior to the expiry date.
- (2) An application for renewal in sub-regulation (1) shall be in the prescribed format and shall be accompanied by the documents set out in the Second Schedule and proof of payment of the prescribed fees as set out in the Fourth Schedule.

*Obligation of Road Transportation Business licensees*

8. (1) In carrying out the business of petroleum road transportation, a licensee shall –
  - (a) transport only petroleum products that meet the Kenya Standard;
  - (b) ensure that the business complies with the requirements of the Petroleum Act and all other applicable laws;
  - (c) transport petroleum only for persons who hold a valid petroleum business licence issued under the Petroleum Act;
  - (d) only use designated import route to transport transit petroleum products;
  - (e) load petroleum only from petroleum storage facilities that are licenced under the Petroleum Act;
  - (f) discharge petroleum only to a licenced facility, to an end user for own consumption or, in the case of petroleum intended for export, at the destination outside Kenya;
  - (g) ensure that all vehicles used in the transportation of petroleum have valid petroleum road tanker permits issued by the Authority;
  - (h) ensure that the vehicles used in the transportation of petroleum are driven only by persons in possession of valid certificates issued under the Petroleum Act;
  - (i) ensure that there is an emergency preparedness and response plan that meets the criteria set by the Authority;
  - (j) implement regular pre-loading vehicle inspection in accordance with a checklist approved by the Authority from time to time;
  - (k) ensure petroleum road tankers are only parked in a suitable petroleum tanker parking yard or designated petroleum tanker parking areas where such areas exist;
  - (l) ensure that the provisions of these Regulations and the conditions of the licence and vehicle permits are known to, and by all persons employed in or about the licensed premises or the petroleum road tankers;
  - (m) ensure that unauthorized persons do not have access to the petroleum road tankers.
  - (n) ensure petroleum road tankers have the following—
    - (i) a line of reflective tape along the entire horizontal length of the left and right side of the tank;
    - (ii) a horizontal line of reflective tape at the back of the tank covering the entire diameter;
    - (iii) a line of reflective tape along the entire circumference at the back of the tank;
    - (iv) a line of reflective tape along the entire horizontal length of the left and right side of the cabin;
    - (v) a line of reflective tape along the entire horizontal length of the front of the cabin;
    - (vi) the words “DANGER PETROL” written on the rear, left and right sides of the petroleum tanker having the following characteristics—
      - (aa) the letters shall be written in scarlet red on a white background; and
      - (bb) the height of the letters shall be a minimum of one hundred and fifty (150) millimeters with a proportional width.

(2) Any petroleum transport business licensee who fails to comply with the requirements listed in sub-regulation (1) commits an offence and shall on conviction be liable to the fines and penalties set out in the Fifth Schedule.

*Journey Plans*

9. (1) The holder of a Petroleum Road Transport Business Licence shall ensure each delivery is covered by a Journey Plan duly signed by the licensee or the authorized representative.
- (2) The Journey Plan in sub-regulation (1) shall specify the –
  - (a) registration number of the tanker;
  - (b) date and time of travel;
  - (c) cargo on board;
  - (d) name and national identification card number of the driver;
  - (e) name of the authorizing officer;
  - (f) route of travel, designated stopping and resting points;
  - (g) the maximum allowed continuous driving time by an individual driver which shall not exceed four (4) hours;
  - (h) the maximum rest period after continuous driving which shall not be less than thirty (30) minutes;
  - (i) the combined driving hours including rest period (s) shall not exceed ten hours in any twenty-four (24) hour period.

## PART III– PETROLEUM ROAD TANKER PERMIT

*Prohibition against use of petroleum road tanker without permit*

10. (1) A person shall not use or cause to be used a petroleum road tanker for transportation of petroleum by road unless it is in possession of a valid road tanker permit issued under the Petroleum Act.

(2) A person found operating a petroleum road tanker without a valid permit shall be subject to the fines and penalties as listed in Fifth Schedule.

*Application for a permit*

11. (1) A person who intends to use a petroleum road tanker shall apply to the Authority for a permit as set out in Part I of the First Schedule.

(2) An application for renewal of a permit shall be accompanied by the documents listed in Part I of the Second Schedule and such additional documentation as the Authority may require from time to time.

(3) The application in sub-regulations (1) and (2) shall be accompanied by the prescribed fees set out in the Fourth Schedule.

*Form and duration of permit*

12. (1) A permit issued for petroleum road tankers shall be in the format prescribed by the Authority.

(2) A permit issued under these Regulations shall be valid for a period of one (1) year from the date of issue.

*Vehicle tracking*

13. (1) Each licensed petroleum road tanker shall be equipped with a properly functioning vehicle tracking device with a Global Positioning System (GPS) capable of generating distance, locations and speed reports available on a web-based database.

(2) The reports in sub-regulation (1) shall be accessible to the Authority for periodic monitoring.

(3) Evidence of the tracking system shall be provided as part of the requirements for licence application as specified in the First Schedule.

*Designated Parking*

14. (1) No licensee or a certificate holder shall cause a tanker to be parked in an area other than a designated petroleum tanker parking.

(2) Where a licensee has developed an exclusive tanker parking for its tankers, the licensee shall ensure that it is constructed in a manner such as to minimize impacts on safety and the environment in case of incidents.

(3) In any case no petroleum road tanker shall be allowed to remain stationary within one hundred (100) metres from a residential area whether the tanker is loaded or empty.

## PART IV– CERTIFICATION OF PETROLEUM TANKER DRIVERS

*Petroleum Driver Certificate*

15. (1) A person shall not drive a petroleum tanker for the purpose of transportation of petroleum unless he is in possession of a valid petroleum driver certificate.

(2) Any person who drives a petroleum road tanker without a valid petroleum driver certificate commits an offence and shall be liable on conviction to the fines and penalties as set out in the Fifth Schedule.

*Application for Certificate*

16. (1) A person who intends to drive a petroleum road tanker shall make an application to the Authority for a petroleum driver certificate in the prescribed manner.

(2) The application in sub-regulation (1) shall be accompanied by the documents listed in Part II of the First Schedule and the prescribed fees set out in the Fourth Schedule.

(3) The Authority may require from time to time request additional documents in addition to those listed in the First Schedule.

*Form of Certificate*

17. (1) A petroleum driver certificate shall be in the format prescribed by the Authority from time to time.

(2) A petroleum driver certificate issued under these Regulations shall be valid for the period specified in the certificate.

*Possession of Certificate*

18. (1) A driver of a petroleum road tanker shall at all times when driving or in any way controlling a petroleum road tanker have in his possession his certificate, or a certified copy thereof.

(2) Any petroleum driver certificate issued in terms of these Regulations –

(a) remains the property of the Authority;

(b) may be modified, suspended, revoked or amended at any time subject to compliance with the Petroleum Act;

(c) may not be tampered with or defaced in any manner; and

(d) is not transferable.

*Renewal of a petroleum driver certificate*

19. (1) An application for the renewal of a petroleum driver certificate shall be made at least thirty (30) days prior to its expiry.

(2) An application for renewal in sub-regulation (1) shall be in the prescribed format and shall be accompanied by the documents set out in Part II of the Second Schedule and proof of payment of the prescribed fees.

*Obligation of Certificate Holder*

20. (1) A petroleum road tanker driver shall –

(a) not drive a petroleum tanker unless such a tanker has a valid petroleum road tanker permit issued by the Authority;

- (b) not allow another person who is not in possession of a valid petroleum driver certificate to drive or take control of a petroleum tanker in his custody;
- (c) not tamper with the quality of the petroleum product in his custody;
- (d) not divert the petroleum destined for export into local market;
- (e) ensure that he operates the petroleum road tanker in accordance with the requirements of the Petroleum Act;
- (f) transport petroleum only for petroleum business licensees in possession of valid licences issued by the Authority under the Petroleum Act;
- (g) load petroleum only from petroleum storage facilities in possession of a valid licence issued by the Authority under the Petroleum Act;
- (h) discharge petroleum only to a facility in respect of which a licence has been issued under the Petroleum Act, to an end user for own consumption or, in case of the petroleum intended for export, at the destination outside Kenya through a designated transit border crossing point;
- (i) comply with the Emergency Preparedness and Response Plan that has been put in place by the petroleum transport business licensee;
- (j) implement regular pre-loading vehicle inspection in accordance with a checklist approved by the Authority;
- (k) comply with arrangements for the safe parking of petroleum road tankers in accordance with the emergency preparedness and response plan;
- (l) park petroleum road tanker in designated parking areas where they exist whether the tanker is loaded or empty;
- (m) not allow a petroleum road tanker to remain stationary within one hundred (100) metres of a residential building whether the tanker is loaded or empty;
- (n) always adhere to the written instructions of the Authority;
- (o) be in possession of and adhere to the journey plan, which shall be signed by the owner of the tanker or the authorized representative;
- (p) not carry unauthorized passengers or cargo.

(2) Any person who fails to comply with the requirements listed in sub-regulation (1) commits an offence and shall on conviction be liable to the fines and penalties as set out in the Fifth Schedule.

#### PART V – MISCELLANEOUS

##### *Amendment of licence, permit or certificate*

- 21. (1) (1) A person may make an application for amendment of a licence in the form and manner prescribed by the Authority.
- (2) An application for amendment shall be accompanied by proof of payment of the prescribed fees as set out in the Fourth Schedule.
- (3) A licence amended under this section shall have a new issue date but shall retain the existing expiry date.
- (4) An amended licence shall contain the words “Amended”.

##### *Reporting of Accidents or Incidents*

22. (1) A person licensed to undertake petroleum transport shall within forty-eight (48) hours notify the Authority in the specified form and manner of any accident or incident causing –

- (a) loss of life or personal injury;
- (b) damage to property or to the environment;
- (c) an explosion,
- (d) oil-spill or accidental gas release; or
- (e) a fire.

(2) A licensee who fails to comply with this Regulation commits an offence and shall be liable to the fines and penalties set out in the Fifth Schedule.

##### *Investigation of Accidents or Incidents*

23. (1) A petroleum business licensee shall conduct a detailed investigation of any accident reported under Regulation 22 within fourteen (14) days from the date of the incident or any such extended period as approved by the Authority and submit a report containing among other details:

- (a) cause of the accident;
- (b) environmental effects of the accident
- (c) economic impacts of the accident;
- (d) health impacts of the accident; and
- (e) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub-regulation (1) within thirty (30) days and –

- (a) accept the report; or
- (b) request for adjustments; or
- (c) reject the report giving reasons and other directives

(3) Notwithstanding provisions of sub-regulations (1) and (2), the Authority may commission its own investigation.

##### *Appeals*

24. (1) The applicant has the right to appeal against the decision of the licensing Authority where the Authority –

- (a) refuses to grant or renew a licence, permit or certificate or revokes a licence, permit or certificate; or  
 (b) imposes conditions on a licence, permit or certificate; or  
 (c) refuses to replace or amend a licence, permit or certificate.

(2) A person aggrieved by the decision of the licensing Authority may appeal to the Tribunal within thirty (30) days of receipt of the Authority's notification.

#### General Penalties

25. A person who commits an offence under these regulations for which no express penalty is provided shall on conviction be liable to the penalties prescribed under Section 99 of the Petroleum Act.

#### Repeal

26. The Energy (Licensing of Petroleum Road Transportation Business) Regulations 2013 L.N. No. 8 are hereby repealed.

Dated the 15th December, 2020.

JOHN MUNYES,  
 Cabinet Secretary  
 Ministry of Petroleum and Mining.

### FIRST SCHEDULE

Regulations 5(2), 5(3), 11(1), 13(3) 16(2) and 16(3)

#### REQUIREMENT FOR APPLICATION OF A NEW LICENCE

##### PART-I REQUIREMENTS FOR LICENCE FOR PETROLEUM TRANSPORT BUSINESS

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	A valid Single Business Permit for the premises of operation from the respective County Government;
7.	Log book for each prime mover and trailer (Attach a valid lease agreement if vehicle not in the name of the applicant);
8.	A paired list of prime movers and trailers where necessary (In Microsoft Excel);
9.	A valid Fire certificate for each vehicle from the County Government;
10.	A valid calibration certificate for the tank mounted on each trailer;
11.	A summary Highway Emergency Response Plan from the applicant; and
12.	A valid Motor Vehicle Inspection Certificate from the National Transport and Safety Authority for each prime mover and trailer.

##### PART-II REQUIREMENTS FOR A PETROLEUM ROAD TANKER DRIVER CERTIFICATE

1.	Identification Document (ID) for the applicant;
2.	A valid certificate of fitness of the applicant from a doctor approved by the Directorate of Occupation Health and Safety Services;
3.	A valid driving licence of the applicant;
4.	A Police Clearance Certificate of the applicant (should not be older than 1 year at the time of submission of the application); and
5.	A colour Passport size photo of the applicant.

### SECOND SCHEDULE

Regulations 7(2), 11(2), 16(2) and 19(2)

##### PART I – REQUIREMENT FOR RENEWAL OF LICENCE FOR PETROLEUM TRANSPORT BUSINESS

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	A valid Motor Vehicle Inspection Certificate from the National Transport and Safety Authority for each prime mover and trailer;
6.	Log book for each prime mover and trailer (Attach a valid lease agreement if vehicle not in the name of the applicant);
7.	A paired list of prime movers and trailers where necessary (In Microsoft Excel);
8.	A valid Fire certificate for each vehicle from the County Government;
9.	A valid calibration certificate for the tank mounted on each trailer;
10.	A summary Highway Emergency Response Plan from the applicant; and
11.	A valid Single Business Permit for the premises of operation from the respective County Government.

##### PART II—REQUIREMENTS FOR RENEWAL OF A PETROLEUM ROAD TANKER DRIVER CERTIFICATE

1.	Identification Document (ID) for the applicant;
2.	A valid certificate of fitness of the applicant from a doctor approved by the Directorate of Occupation Health and Safety Services;
3.	A valid driving licence of the applicant;

- |    |   |
|----|---|
| 4. | A Police Clearance Certificate of the applicant (should not be older than 1 year at the time of submission of the application); and |
| 5. | A colour Passport size photo of the applicant.  |

## THIRD SCHEDULE

## FORM OF LICENCE, PERMIT AND CERTIFICATE

## PART I – PETROLEUM BUSINESS LICENCE

FORM 1

The Petroleum Act 2019



## PETROLEUM BUSINESS LICENCE

No. EPRA/PET/ \_\_\_\_\_

Licence is hereby granted to \_\_\_\_\_ of P.O. Box \_\_\_\_\_ to carry on the following petroleum businesses:

## LICENCE NAME

On premises situated at: : \_\_\_\_\_  
 Plot No. : \_\_\_\_\_  
 Building : \_\_\_\_\_  
 Street/Market : \_\_\_\_\_  
 Town/District : \_\_\_\_\_  
 This licence expires on : \_\_\_\_\_

Dated this: \_\_\_\_\_

Signature: \_\_\_\_\_

Director General/CEO

## PART II – PETROLEUM TANKER PERMIT

FORM 2

The Petroleum Act, 2019



## PETROLEUM ROAD TANKER PERMIT

PERMIT NO. ....

This petroleum tanker permit authorizes the transport of petroleum products (except LPG) in the tanker whose details appears below

Tanker No. : \_\_\_\_\_  
 Chassis No. : \_\_\_\_\_  
 Maximum Capacity : \_\_\_\_\_  
 This Permit expires on : \_\_\_\_\_

Dated this: \_\_\_\_\_

Signature: \_\_\_\_\_

Director General/CEO



## PART III – PETROLEUM ROAD TANKER DRIVER CERTIFICATE

FORM 3

The Petroleum Act, 2019



## PETROLEUM/LPG ROAD TANKER DRIVER CERTIFICATE

Class: ..... Number \_\_\_\_\_

Name: \_\_\_\_\_

National ID No.: \_\_\_\_\_

KRA PIN NO.: \_\_\_\_\_

This Certificate authorizes the Holder to drive a petroleum/LPG road tanker

Date of Issue: \_\_\_\_\_

Expiry Date: \_\_\_\_\_

Director General,  
Energy and Petroleum Regulatory Authority

THIS CERTIFICATE SHALL REMAIN VALID UPTO EXPIRY DATE INDICATED ON  
FRONT SIDE SUBJECT TO THE HOLDER BEING IN THE REGISTER MAINTAINED BY  
THE AUTHORITY AT [www.epra.go.ke](http://www.epra.go.ke).

THIS CERTIFICATE IS THE PROPERTY OF THE ENERGY AND PETROLEUM  
REGULATORY AUTHORITY AND SHOULD BE SURRENDERED ON EXPIRY, OR IF  
FOUND TO:

ENERGY AND PETROLEUM REGULATORY AUTHORITY  
P.O. BOX 42681-00100 NAIROBI KENYA

## FOURTH SCHEDULE

Rule 5(4), 7(2), 11(3), 16(2) and 21(2)

## FEES SCHEDULE

Description-Category of Licence Fees	New Application (Amount in KSh.)	Renewal Application (Amount in KSh.)	Amendment Application (Amount in KSh.)
Petroleum Transport Business Licence	10,000	5,000	1,000
Road Tanker Permit	1,000	500	250
Petroleum Road Tanker Driver Certificate	1,000	500	250

## FIFTH SCHEDULE

Regulations 4(1), 8(2), 10(2), 15(2), 20(2) and 22(2)

## OFFENCES, FINES AND PENALTIES

Offence	Penalty (KSh.)
Undertaking petroleum transport business without a valid licence	1,000,000
Failure to transport petroleum products that adhere to Kenya Standards or any other international standard approved by KEBS	1,000,000
Failure to comply with the requirements of the Act and all other applicable laws	1,000,000
Transporting petroleum for unlicensed persons	1,000,000
Using undesignated import routes to transport transit petroleum products	1,000,000
Loading petroleum from unlicensed petroleum storage facilities	1,000,000
Discharging petroleum in unlicensed facility or discharging export petroleum in the country	1,000,000
Using vehicle without a valid petroleum road tanker permit	1,000,000
Engaging a road tanker driver without a valid road tanker driver certificate	1,000,000
Failure to comply with emergency preparedness and response plan that meets criteria set by the Authority	1,000,000
Failure to implement regular pre-loading vehicle inspection in accordance with Authority's checklist	1,000,000
Failure to park road tankers in designated petroleum parking areas	1,000,000
Allowing unauthorized persons access to petroleum road tankers	1,000,000
Using a non-compliant petroleum road tanker	1,000,000
Driving a petroleum road tanker without a valid road tanker permit	250,000
Allowing another person not in possession of a valid petroleum driver certificate to drive or take control of a petroleum tanker in his custody	250,000
Tampering with the quality of petroleum product in his custody	5,000,000
Diverting petroleum destined for export into local market	5,000,000
Being the owner of a petroleum tanker used to transport adulterated petroleum products	10,000,000
Loading petroleum from unlicensed petroleum storage facility	1,000,000

<i>Offence</i>	<i>Penalty (KSh.)</i>
Failing to comply with written instructions of the Authority	1,000,000
Not being in possession of and failure to adhere to the journey plan signed by the owner of the tanker or the authorized representative	250,000
Failure to report accidents or incidents	20,000
Obstructing, hindering or withholding information or providing false information	20,000

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (LUBRICANTS FACILITY CONSTRUCTION AND BUSINESS LICENSING) REGULATIONS, 2020**

## PART I—PRELIMINARY

*Citation*

1. These Regulations may be cited as the Petroleum (Lubricants Facility Construction and Business Licencing) Regulations, 2020.

*Interpretation*

2. In these Regulations, unless the context otherwise requires –

“Agent” means a person appointed in writing by the Authority to perform any of its functions;

“Authority” means the Energy and Petroleum Regulatory Authority as established under Section 9 of the Energy Act 2019;

“Blending” means a process by which components of a lubricant are mixed to create a final product;

“Bulk Lubricants Road Transportation” means bulk transportation of lubricants by road and does not include packaged lubricants;

“Bulk” means lubricants in receptacle of capacities exceeding one thousand (1000) litres or in a truck tank compartment of any capacity;

“Contractor” means a person registered under Section 15 of the National Construction Authority Act Chapter 449A;

“Energy Act” means the Energy Act No. 1 2019;

“Environmental Liability Policy” means a statement of commitment by a party to the laws, regulations and other policy mechanisms concerning environmental issues;

“Feasibility Study” means a political, environmental, social, technical, economic and legal analysis of a proposed project to determine that the project is fit for purpose;

“KEBS” means the Kenya Bureau of Standards or similar body in charge of standards in the country;

“Licensing authority” means the authority with, or any person granted the power to issue, revoke or suspend a licence under the Petroleum Act;

“Lubricants business licence” means a concern carrying on the importation, blending, bulk storage, bulk transportation, of lubricants;

“Lubricants facility” means any facility that is or can be used for receiving in bulk, blending, bulk storage, loading and offloading in bulk of lubricants but does not include retail dispensing sites;

“Lubricants” means natural or synthetic oils, greases and fluids whose fundamental applications include reduction of friction and wear between moving parts in machinery, hydraulic power transmission, electrical insulating, heat transfer and sealing systems in machinery and equipment;

“Modification” means any change in the facility that alters the existing technical design, storage capacity or impacts on compliance with local health, environmental and safety legal requirements or any change requiring local authority approval;

“NCA” means the National Construction Authority or the body responsible for the accreditation and certification of skilled construction workers and construction site supervisors in Kenya;

“Person” means any natural or jurisdictional person;

“Petroleum Act” means the Petroleum Act No. 2 2019;

“Third parties” means other persons or entities who interact with the licensee’s premises in the course of doing business;

*Application*

3. (1) Except as otherwise provided in these Regulations, these rules shall apply to the –

- (a) Construction of lubricant facilities; and
- (b) Licensing of lubricant business.

- (2) These Regulations shall not apply to the Kenya Defence Forces.

## PART II – LUBRICANTS FACILITY CONSTRUCTION PERMITS

*Construction permit*

4. (1) A person shall not undertake construction works or modification of a lubricants facility except in accordance with the terms and conditions of a valid Construction Permit issued under the Petroleum Act.

(2) Notwithstanding sub-regulation (1) emergency works may be undertaken without a construction permit provided that the approval from the Authority is sought within sixty (60) days of commencement of the works.

(3) The emergency works in sub-regulation (2) may include construction works meant to prevent escalation of loss-of- containment (oil spill or gas release) and fires.

(4) Any person who undertakes the construction of a lubricants facility without a valid Construction Permit issued by the Authority commits an offence and is liable on conviction to the fines and penalties as set out in the Sixth Schedule.

#### *Application for a Construction Permit*

5. (1) A person who wishes to construct a lubricants facility shall make an application for a Construction Permit to the Authority in the prescribed form and manner.

(2) The application in sub-regulation (1) shall be accompanied by -

(a) a Feasibility Study of the project prepared by a professional duly qualified and registered in their field of specialisation.

(b) a Feasibility study shall include the following:

(i) Technical report containing designs compliant with local and international standards and a priced bill of quantities; and

(ii) An environmental and social impact assessment licence.

(c) methods of financing the project; and

(d) documents specified in the First Schedule and such additional documentation as the Authority may require.

(3) The application in sub-regulation (1) shall be accompanied by proof of payments of the prescribed fees as set in the Fifth Schedule.

#### *Determination of application for a Construction Permit*

6. (1) The Authority or its agents shall, within forty-five (45) days, review an application submitted in the prescribed form and manner.

(2) Provided that the application meets the prescribed requirements, the Authority may grant a Construction Permit to the applicant.

(3) Where the application for a construction permit is rejected, the Authority shall notify the applicant of such rejection, specifying the reasons thereof.

(4) A Construction Permit issued under sub-regulation (2) shall contain such terms and conditions as may be prescribed by the Authority.

(5) Where the rejection in sub-regulation (4) relates to -

(a) incomplete information, the applicant may make a fresh application by providing the requisite information or documents;

(b) the unsuitability of the site, the decision of the Authority shall be final and if the applicant is not satisfied with the Authority's decision, they may lodge an appeal in the Tribunal.

#### *Form and Validity of a Construction Permit*

7. (1) A permit for construction of a lubricants facility shall be in the form set out in Part I of the First Schedule or any other format that the Authority may prescribe in the Gazette.

(2) Provided that no construction has started, a Construction Permit shall be valid for a period of twelve (12) months.

(3) Where the construction work has commenced within the validity period, the Construction Permit shall be valid for a maximum period of thirty-six (36) months from the date of issue.

(4) The Construction Permit holder may make an application for extension of the validity period by providing documents as required by the Authority.

(5) The extension of the validity period of a Construction Permit shall be to a maximum of -

(a) six (6) months where construction work has not commenced; and

(b) twenty-four (24) months where construction work has commenced.

(6) An applicant shall be required to make a fresh application where the Construction Permit cannot be extended further as provided in sub-regulation (5).

(7) A construction permit ceases to be valid if -

(a) the permit is suspended or revoked by the Authority for non-compliance with any term or condition thereof within the prescribed period by notice in the Gazette; or

(b) execution of the works has not commenced at the expiry of twelve (12) months from the date on which the construction permit was granted or upon the expiration of any extended period which the Authority may allow.

#### *Obligations of a construction permit holder*

8. In undertaking construction of a lubricants facility, the construction permit holder shall -

(a) comply with the terms and conditions of the Construction Permit as stipulated by the Authority;

(b) engage only contractors who are licenced by the NCA for their class of work;

(c) comply with the Environmental Impacts Mitigation Plan approved by NEMA;

(d) comply with the Government policy on local content; and

(e) comply with directions issued by the Authority from time to time.

#### *Compliance with statutory obligations*

9. The construction permit holder shall, notwithstanding anything contained in the permit, comply with the provisions of the Petroleum Act and all other written laws.

## PART III – LICENSING OF A LUBRICANTS FACILITY AND LUBRICANTS BUSINESS

*Requirement for a Licence*

10. (1) A person shall not conduct a lubricants business or operate a lubricants facility except in accordance with the provisions of the Petroleum Act and the terms and conditions of a valid lubricants facility or lubricants business licence issued by the Authority or its agents.

(2) A licensed lubricants facility or lubricants business shall ensure continued compliance with the terms and conditions of the Construction Permit issued by the Authority.

(3) A person who contravenes this Regulation commits an offence and shall, on conviction, be liable to the penalties prescribed under in the Sixth Schedule.

*Application for a Licence*

11. (1) A person who wishes to apply for a lubricants facility licence shall make an application to the Authority in the prescribed format accompanied by the documents specified in the Second Schedule.

(2) The application in sub-regulation (1) shall be accompanied by the prescribed fees listed in the Fifth Schedule.

(3) The Authority may request additional documentation to in support of the licence application.

(4) The Authority may require proof of payment of the prescribed fees as set out in the Fifth Schedule.

*Environment Liability Policy*

12. An application for a licence for a lubricants facility shall be accompanied by an Environmental Liability Policy.

*Form and Duration of a Licence*

13. (1) A lubricants business licence issued under the Act shall be in the form set out in the Fourth Schedule.

(2) A lubricants business licence shall be valid for the period defined in the licence.

*Renewal of a Licence*

14. (1) An application for renewal of a lubricants business licence shall be made to the Authority or its agents at least thirty (30) days prior to the expiry date.

(2) An application for renewal in sub-regulation (1) shall be in the prescribed format and shall be accompanied by the documents set out in the Third Schedule and proof of payment of the prescribed fees as set out in the Fifth Schedule.

*Amendment of Licence*

15. (1) A person may make an application for amendment of a lubricants business licence in the form and manner prescribed by the Authority.

(2) An application for amendment shall be accompanied by proof of payment of the prescribed fees as set out in the Fifth Schedule.

(3) A licence amended under this section shall have a new issue date but shall retain the existing expiry date.

(4) An amended licence shall contain the words "Amended".

*Obligations of a Lubricants Business Licensee*

16. A lubricants business licensee shall –

- (a) operate its lubricants facilities and business in a manner prescribed by the Petroleum Act and applicable regulations made under any other law;
- (b) require that third parties using or servicing its facilities to be in possession of valid licences, permits or certificates to carry out such services.
- (c) use road tankers for bulk lubricants road transportation that comply with Kenya Standards and have valid petroleum tanker permits issued under the Petroleum Act
- (d) use road tanker drivers who are certified for that purpose under the Petroleum Act.
- (e) submit information to the Authority as required under the Petroleum Act and any Regulations made thereunder, including source and quantity of raw materials, records of packaging materials, purchase and sales data and any other information requested by the Authority;
- (f) purchase or acquire lubricants only from other lubricants business licensees or a licensed blending plant, except in the case of importation of lubricants;
- (g) Inform the Authority or its agents in writing of any changes of address or any other material particulars submitted as part of the application for the licence within thirty (30) days of the relevant change taking effect;
- (h) Obtain approval from the Authority prior to any changes in directorship of the company; and
- (i) At all times comply with the Petroleum Act and these Regulations and carry out the legitimate instructions of the Authority or its agents.

*Suspension or Revocation of a Licence*

17. (1) The Authority may at any time revoke or suspend any licence issued under the Act and these Regulations if the licensee commits any breach of the Petroleum Act, these Regulations or the terms and conditions of the licence.

(2) Unless otherwise specified in the licence, the Authority may give a licensee fourteen (14) days to show cause why the licence should not be suspended or revoked setting out the specific breach.

(3) The Authority shall determine the matter within thirty (30) days from the expiry of the notice period prescribed under sub-regulation (2) of these Regulations.

(4) The Authority may reinstate a licence revoked or suspended under sub-regulation (1) if satisfied that the reasons for the revocation or suspension no longer exists.

(5) Any suspension or revocation of a lubricants business licence shall not indemnify the licensee from any penalties for which the licensee may have become liable under the Petroleum Act or any other written law.

*Transfer of a Licence*

18. (1) A licensee shall not transfer or otherwise divest any rights, powers or obligations without the consent of the licensing Authority as prescribed under Section 83 of the Petroleum Act.

(2) An application to transfer a licence shall be lodged in the form and manner prescribed by the Authority.

#### PART III – MISCELLANEOUS

##### *Display of Permits and Licences*

19. (1) A lubricants facility licence, lubricants business licence and construction permit, or certified copies thereof, shall be displayed in a prominent position at the premises in respect of which it is issued.

(2) A licence issued under the Petroleum Act and these regulations –

- (a) remains the property of the Authority;
- (b) may be suspended, revoked or amended by the Authority at any time subject to compliance with the Act;
- (c) may be replaced if the holder provides proof of loss of the licence to the Authority;
- (d) shall not be tampered with or defaced in any manner; and
- (e) shall not be transferred without the written consent of the Authority.

(3) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the fines and penalties set out in the Sixth Schedule.

##### *Reporting of Accidents or Incidents*

(1) A person licensed to undertake petroleum business shall within forty-eight hours notify the Authority in the specified form and manner of any incident or accident causing –

- (a) loss of life or personal injury; or
- (b) damage to property or to the environment; or
- (c) an explosion; or
- (d) oil spill or accidental gas release; or
- (e) a fire.

(2) A petroleum business licensee who fails to comply with this regulation commits an offence and shall be liable to the applicable fines and penalties as set out in the Sixth Schedule.

##### *Investigation of Accidents or Incidents*

21. (1) A petroleum lubricants business licensee shall conduct a detailed investigation of any accident reported under Regulation 20 within fourteen (14) days from the date of the incident or any such extended period as approved by the Authority and submit a report containing among other details:

- (a) cause of the accident;
- (b) environmental effects of the accident
- (c) economic impacts of the accident;
- (d) health impacts of the accident; and
- (e) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub-regulation (1) within thirty (30) days and –

- (a) accept the report; or
- (b) request for adjustments; or
- (c) reject the report giving reasons and other directives

(3) Notwithstanding provisions of sub-regulations (1) and (2), the Authority may commission its own investigation.

##### *Inspections*

22. The Authority or any authorized person acting on its behalf may enter and inspect any lubricants facility and/or any premises where lubricants business is conducted for the purposes of inspections or conducting investigations pursuant to the provisions of the Act or Regulations made under the Act.

##### *Disclosure of Information*

23. (1) No person shall obstruct, hinder, withhold information or provide false information to the Authority as may be requested by the Authority or its appointed agent or committee provided that such information is requested in the prescribed manner.

(2) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the fines and penalties set out in the Sixth Schedule.

##### *Appeals*

24. Any person aggrieved by the decision of the licensing Authority in refusing to renew, amend, replace, grant a licence or permit, or impose conditions on a licence or a permit or in suspension or revocation of a licence or a permit may appeal to the Tribunal within thirty (30) days of receipt by him of the written notification of such action.

##### *General Penalty*

25. A person who commits an offence under these regulations for which no express penalty is provided shall on conviction be liable to the penalties prescribed under Section 99 of the Petroleum Act.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.


FIRST SCHEDULE

Regulations 5(2) (d) and 7(1)

PART I – REQUIREMENTS FOR A PERMIT FOR CONSTRUCTION FOR A LUBRICANTS FACILITY

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company’s CR12 plus all the Directors’ IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class “G” for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	Company financial statements for the past three years this shall include the balance sheet, profit and loss and cash flow;
6.	Development permission from the respective County Government (including County Physical Planning Office);
7.	Detailed report on corrosion control (endorsed by respective professional)
8.	Proof of land ownership (copy of title deed in the name of company/director(s)). In the case of long-term land lease, copy of duly registered lease agreement in the name of the Applicant company plus the title deed of the land owner;
9.	Mechanical engineer’s drawings specifying materials and design/ operational limitations (product piping, above-ground tank(s), filling facility, water draw off fittings, high level alarm location, pump vents, pumps etc);
10.	Development permission from the respective County Government (including County Physical Planning Office);
11.	Civil engineer’s drawings (all civil works including drainage, Oil Water Separator, bund walls, tank pad/ foundation, hard standing surfaces e.t.c);
12.	Fire suppression systems (firefighting water storage tanks and associated fittings, firewalls etc) which should be accompanied by calculations showing adequacy of the same
13.	A valid Environmental Impact Assessment licence from NEMA for the project;

PART II – FORM OF LUBRICANTS FACILITY CONSTRUCTION PERMIT



PERMIT NO. EPRA/PET/.....

THE PETROLEUM ACT, 2019

PETROLEUM CONSTRUCTION PERMIT

Construction Permit is hereby granted to \_\_\_\_\_ of P.O. Box \_\_\_\_\_ to carry out construction of:

**LUBRICANTS STORAGE DEPOT**

On premises situated at:

Plot No. : \_\_\_\_\_

Street/Market : \_\_\_\_\_

Town/County : \_\_\_\_\_

This Permit expires on : \_\_\_\_\_

(If no Construction has Started)

Approved max. Installation : \_\_\_\_\_

Capacity \_\_\_\_\_

Issue date: \_\_\_\_\_

Signature \_\_\_\_\_

Director General  
Energy & Petroleum Regulatory Authority

Terms & Conditions:

11. ....

12. ....

13. ....

SECOND SCHEDULE

APPLICATION REQUIREMENTS FOR NEW LICENCES

Regulation 11(1)

PART I – REQUIREMENTS FOR A LUBRICANTS BLENDING LICENCE

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company’s CR12 plus all the Directors’ IDs);

3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	A valid Single Business Permit for the premises of operation from the respective County Government;
7.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
8.	A valid Environmental Impact Assessment licence from NEMA for the project;
9.	A valid Fire Clearance Certificate for the facility from the respective County Government;
10.	A letter from the Kenya Bureau of Standards as proof of conformity assessment of the facility against the applicable Kenya Standard;
11.	Certificate of Compliance with the Physical Planning Act 2019 (PPA5 or PPA2);
12.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
13.	A valid calibration certificate for each petroleum storage tank at the facility;
14.	A summary Emergency Response Plan from the applicant; and
15.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel.

## PART II – REQUIREMENTS FOR LUBRICANTS STORAGE LICENCE

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	A valid Single Business Permit for the premises of operation from the respective County Government;
7.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
8.	A valid Environmental Impact Assessment licence from NEMA for the project;
9.	A valid Fire Clearance Certificate for the facility from the respective County Government;
10.	A letter from the Kenya Bureau of Standards as proof of conformity assessment of the facility against the applicable Kenya Standard;
11.	Certificate of Compliance with the Physical Planning Act 2019 (PPA5 or PPA2);
12.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
13.	A valid calibration certificate for each petroleum storage tank at the facility;
14.	A summary Emergency Response Plan from the applicant; and
15.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel

## PART III – REQUIREMENTS FOR LUBRICANTS IMPORTATION LICENCE

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	Proof of registration of the Lubricant brand by the body responsible for brand registration in Kenya; and
7.	A valid Single Business Permit for the premises of operation from the respective County Government.

## PART IV – REQUIREMENTS FOR LUBRICANTS WHOLESALE AND EXPORT LICENCE

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
6.	Written Authority from the Lubricants brand owner; and
7.	A valid Single Business Permit for the premises of operation from the respective County Government

## THIRD SCHEDULE

## APPLICATION FOR RENEWAL OF A LICENCE

## Regulation 14(2)

## PART I – REQUIREMENTS FOR RENEWAL OF LUBRICANTS BLENDING LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
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2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	A valid Single Business Permit for the premises of operation from the respective County Government;
6.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
7.	An acknowledgement from NEMA of having submitted an annual Environmental Audit report for the facility (the acknowledgement should not be older than 1 year at the time of submission of the application);
8.	A valid Fire Clearance Certificate for the facility from the respective County Government;
9.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
10.	A valid calibration certificate for each petroleum storage tank at the facility;
11.	A summary Emergency Response Plan from the applicant;
12.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel; and
13.	Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics.

## PART II – REQUIREMENTS FOR RENEWAL OF LUBRICANTS STORAGE LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	A valid Single Business Permit for the premises of operation from the respective County Government;
6.	Proof of ownership of the storage facility (title deed or a registered lease in the name of applicant);
7.	An acknowledgement from NEMA of having submitted an annual Environmental Audit report for the facility (the acknowledgement should not be older than 1 year at the time of submission of the application);
8.	A valid Fire Clearance Certificate for the facility from the respective County Government;
9.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
10.	A valid calibration certificate for each petroleum storage tank at the facility;
11.	A summary Emergency Response Plan from the applicant;
12.	Proof of training of a minimum of four employees in the safe handling of Petroleum from a National Industrial Training Authority approved personnel; and
13.	Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics.

## PART III – REQUIREMENTS FOR A RENEWAL OF LUBRICANTS IMPORT LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	Proof of registration of the Lubricant brand by the body responsible for brand registration in Kenya; and
6.	A valid Single Business Permit for the premises of operation from the respective County Government.

## PART IV – REQUIREMENTS FOR A RENEWAL OF LUBRICANTS WHOLESALE AND EXPORT LICENCE


1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	Written Authority from the Lubricants brand owner; and
6.	A valid Single Business Permit for the premises of operation from the respective County Government.



## FOURTH SCHEDULE

Regulation 13(1)

## FORM OF LUBRICANTS BUSINESS LICENCE

		No. EPRA/PET _____
THE PETROLEUM ACT, 2019 PETROLEUM BUSINESS LICENCE (EXCEPT LPG)		
Licence is hereby granted to _____ of P.O. Box _____ to carry on the following petroleum businesses:		
<b>LICENCE NAME</b>		
On premises situated at:		
Plot No.	:	_____
Building	:	_____
Street/Market	:	_____
Town/County	:	_____
This licence expires on	:	_____
	Issue date:	_____
	Signature	_____
		Director General Energy & Petroleum Regulatory Authority
Terms & Conditions:		
1.	.....	
2.	.....	

## FIFTH SCHEDULE

Rule 5(3), 11(2), 11(4), 14(2) and 15(2)

## APPLICABLE PERMIT AND LICENCE FEES

Description-Category of Licence Fees	New Application (Amount in KSh.)	Renewal Application (Amount in KSh.)	Amendment Application (Amount in KSh.)
Lubricants Facility Construction Permit	5,000	2,000	1,000
Lubricants Blending Licence	10,000	5,000	1,000
Lubricants Storage Licence	5,000	2,000	1,000
Lubricants Importation Licence	10,000	5,000	1,000
Lubricants Wholesale and Export Licence	5,000	3,000	1,000

## SIXTH SCHEDULE

## OFFENCES, FINES AND PENALTIES

Relevant Rules	Offence	Penalty (KSh.)
4(4)	Undertaking construction of a lubricants facility without a valid construction permit	10,000,000
10(3)	Undertaking Lubricants business or operating Lubricants facility without a valid licence	10,000,000
16	Use of unlicensed lubricants facility for logistics services	1,000,000
	Blending, storing or packing lubricants at an unlicensed facility	1,000,000
	Failure to adhere to Kenya Standards for Lubricants or any other international standard approved by KEBS	5,000,000
	Purchasing lubricants for resale from unlicensed persons or facilities, except in the case of importation of lubricants	100,000
	Importing lubricants without written consent from lubricant brand owner	1,000,000
	Offering for sale lubricants whose brand is unregistered	100,000
	Offering for sale lubricants to unlicensed persons for resale	100,000
	Transporting branded packaging material without the consent from the brand owner	100,000
	Blending, packing or offering for sale branded lubricants without written consent of the brand owner	1,000,000
19(3)	Failure to display Lubricants Business or Facility Licence	1,000,000
20(2)	Failure to report accidents or incidents	20,000
23(2)	Obstructing, hindering or withholding information or providing false information	20,000

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 93 and 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (MINIMUM OPERATIONAL STOCK) REGULATIONS, 2020**

## PART I—PRELIMINARY

*Citation.*

1. These Regulations may be cited as the Petroleum (Minimum Operational Stock) Regulations, 2020.

*Interpretation.*

2. In these Regulations, unless the context otherwise requires –

“Authority” means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act No. 1 of 2019;

“Bulk depot” means premises consisting one or more above-ground tanks for storing petroleum with a total combined storage capacity of not less than 240,000 litres;

“Consumption” means the quantity of petroleum products consumed at any given period;

“Energy Act” means the Energy Act No. 1 of 2019;

“FO Importer” or “Fuel Oil Importer” means a company licensed under the Petroleum Act to import Fuel Oil into Kenya;

“Hospitality arrangement” means storage of petroleum products on behalf of the owner by a common user facility for a fee;

“KPC” means the Kenya Pipeline Company Limited;

“KPRL” means the Kenya Petroleum Refineries Limited;

“KOSF” means the Kipevu Oil Storage Facility;

“Line fill” means the volume of petroleum products maintained in a pipeline as restricted stock for purposes of displacement of other products during pumping;

“LPG Importer” or “Liquefied Petroleum Gas Importer” means a company licensed under the Act to import LPG into Kenya;

“OMC” or “Oil Marketing Company” means a firm licensed under the Petroleum Act to import premium motor spirit (PMS), automotive gasoil (AGO) and dual purpose kerosene (DPK) into Kenya;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum products” means the products listed in the First Schedule of these Regulations;

“Petroleum transport” means the conveyance of petroleum products from primary import storage depots by either pipeline, rail or road;

“Quarter” means a period of three successive calendar months;

“Stock-days” specified period of petroleum inventory

*Application*

3. Except as otherwise provided in these Regulations, these rules shall apply to the storage of petroleum products listed in the First Schedule of these Regulations.

## PART II – MAINTENANCE OF MINIMUM OPERATIONAL STOCK

*Requirement to maintain minimum operation stocks*

4. (1) A licensed OMC, FO and LPG importer shall at all times maintain physical operational stock, to be known as the minimum operational stock, in quantities not less than the minimum stock days specified in the First Schedule of these Regulations.

(2) The minimum operational stock shall be maintained in order to ensure uninterrupted supply of petroleum products.

(3) Any licensee who fails to maintain such quantities of minimum stock and at such locations as prescribed in the First Schedule of these Regulations, commits an offence and shall be liable to the penalties prescribed in the Second Schedule.

*Determination of minimum operational stock.*

5. (1) In determining the amount of minimum operational stock to be maintained by a licensed petroleum business pursuant to Regulation 4 of these Regulations, the following shall be taken into account –

(a) petroleum products belonging to any OMC stored at the storage tanks of KPC in any part of the country;

(b) Fuel oil belonging to any FO importer stored at bulk depots in any part of the country;

(c) LPG belonging to any LPG importer stored at bulk depots in any part of the country;

(d) refined petroleum products at KOSF stored on account of any OMC, FO importer or LPG importer;

- (e) refined petroleum products at the storage tanks of KPRL on the account of any OMC, FO importer or LPG importer;
  - (f) petroleum products belonging to any OMC, FO importer or LPG importer stored at the company's own licensed bulk depot;
  - (g) consignment stocks in the custody of any OMC, FO importer or LPG importer; and
  - (h) petroleum products belonging to any OMC, FO importer or LPG importer stored under a hospitality arrangement in another licensed petroleum bulk storage facility;
- (2) The minimum operational stock shall not include –
- (a) Line fill and dead stock in the KPC system;
  - (b) Dead stock at any other storage facility referred to in sub-regulation (1) of these Regulations;
  - (c) Transit stock held by any OMC, FO importer or LPG importer;
  - (d) Petroleum products or crude oil in marine tankers in the high seas;
  - (e) Petroleum products stock in any OMC, FO importer or LPG importer's retail dispensing sites;
  - (f) Petroleum products being transferred from one storage depot to another storage depot or to a retail dispensing site within the country.

*Determination and maintenance of Minimum Operational Stock.*

6. (1) OMCs, FO importers or LPG importers shall at all times maintain such minimum operational stock as computed by the Authority from time to time.

(2) The minimum operational stocks referred to in sub-regulation (1) shall be determined by the Authority every six (6) months for each OMC, FO importer or LPG importer.

(3) In determining the minimum operational stock referred to in sub-regulation (1) the Authority shall take into account the average sales of petroleum products in the six (6) months preceding the period under consideration.

(4) The minimum operational stock applicable to OMC, FO importer or LPG importer shall be determined as follows –

$$OS_{days} = \frac{\text{stock at hand}}{\text{sales per day}} \quad OS_{days} = \frac{\text{stock at hand}}{\text{sales per day}}$$

Where -

$OS_{days}$  = Minimum Operational Stock days

Sales per day = Average sales of petroleum products in the previous six (6) months attributable to the OMC, FO importer or LPG importer

Stock at hand = the Pumpable petroleum stocks in bulk depots but excluding dead stock, line fill and stocks in transit attributable to the OMC, FO importer or LPG importer.

*Declaration to the Authority*

7. (1) For the purposes of Regulation 6, every OMC, FO importer or LPG importer shall forward to the Authority the following information by the 10th day of every calendar month –

- (a) Closing and opening stock figures of the previous month;
- (b) Location of storage facilities where stock is held; and
- (c) Sales volumes in cubic metres (m<sup>3</sup>).

(2) Any OMC, FO importer or LPG importer who fails to comply with sub-regulation (1) commits an offence and shall on conviction be liable to the fines and penalties prescribed in the Second Schedule.

PART III – MISCELLANEOUS

*Appeals*

8. Any person aggrieved by a decision of the Authority on any complaint or any matter under these Regulations may file an appeal with the Tribunal.

*Disclosure of information*

9. (1) No person shall obstruct, hinder, withhold information or provide false information to the Authority as may be requested by the Authority or its appointed agent or committee provided that such information is requested in the prescribed manner.

(2) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the fines and penalties set out in the Second Schedule.

*General Penalty*

10. Any person who contravenes these Regulations shall, be liable to the penalties prescribed in the Act and these Regulations.

*Repeal*

11. The Energy (Minimum Operational Stock) Regulations, 2008 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

## FIRST SCHEDULE

## Regulation 3

## MINIMUM OPERATIONAL STOCK

<i>Petroleum Product</i>	<i>Minimum Operation Stock (days' Consumption)</i>
Liquefied Petroleum Gas (LPG)	15
Aviation Gasoline (Avgas)	15
Premium Motor Spirit (PMS)	15
Jet A 1	20
Illuminating Kerosene (IK)	15
Automotive Gas Oil (AGO)	15
Heavy Fuel Oil ( Boiler/Furnace Oil)	15

## SECOND SCHEDULE

## OFFENCES, FINES AND PENALTIES

<i>Relevant Rules</i>	<i>Offence</i>	<i>Penalty</i>
4(3)	Failure to maintain minimum operational stock	Minimum of KShs 1,000,000
7(2)	Failure to make monthly declarations to the Authority	Kshs 100,000/-
9(2)	Obstructing, hindering or withholding information or providing false information with regard to maintenance of minimum operating stock	Kshs 100,000/- for each day the obstruction occurs

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments—

**THE PETROLEUM (PRICING) REGULATIONS, 2020**

## PART I—PRELIMINARY

*Citation.*

1. These Regulations may be cited as the Petroleum (Pricing) Regulations, 2020.

*Interpretation.*

2. In these Regulations, unless the context otherwise requires –

“Authority” means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Petroleum;

“Common User Facility” has the same meaning as provided in the Petroleum Act;

“Consumer” means any person who is supplied or entitled to be supplied with petroleum as an end user;

“Consumption” means the quantity of petroleum products consumed at any given period;

“Emergency situation” means a situation that in the opinion of the Cabinet Secretary poses threat of a shortage of supply of a petroleum products which cannot be sufficiently covered by the minimum operational stocks;

“Energy Act” means Energy Act No. 1 of 2019;

“Maximum retail price” means the capped retail prices of petroleum products as set by the Authority for a particular period;

“Maximum wholesale price” means the capped depot gate prices of petroleum products as set by the Authority for a particular period;

“Ministry” means the Ministry for the time being responsible for petroleum in Kenya;

“Open Tendering System” has the same meaning as the Petroleum Act;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum products” means super petrol, illuminating kerosene and automotive diesel for sale in Kenya;

“Petroleum business” has the same meaning as in the Petroleum Act;

“Petroleum transport” means the transportation of petroleum products from primary import storage depots by pipeline, road, rail or in navigable waters;

“Pump price” means the capped price of petroleum products to be paid by an end user or consumer at a retail outlet;

“Primary storage” means a petroleum bulk storage depot into which petroleum products are first received at Mombasa upon importation;

“Primary transport” means the transport of petroleum from primary storage to secondary storage;

“Secondary storage” means a bulk storage depot that receives petroleum products in bulk from the primary storage;

“Retail Dispensing Site” means licensed premises where petroleum products are sold to consumers;

“Retail Pricing Areas” means regions within which retail dispensing sites are situated as defined by the Authority for purposes of calculation of the maximum retail prices;

“Wholesale Depot” means the facilities for bulk receipt and storage of petroleum products and truck loading facilities for onward distribution and supply;

“Wholesale Depot Locations” means the towns where depots used as secondary storage are situated and which are used for determining the maximum wholesale and retail prices and are for the time being set out in the First Schedule.

#### *Application*

3. (1) The Authority shall determine and publish the maximum wholesale and retail prices of petroleum products on the 14<sup>th</sup> day of every calendar month.

(2) The published prices in (1) shall be effective on the 15<sup>th</sup> day of the same calendar month and shall remain in force until the 14<sup>th</sup> day of the following calendar month.

(3) Notwithstanding (1) and (2) the Authority may compute and publish wholesale and retail prices of petroleum products to take into account changes in law impacting on the costs of petroleum products.

(4) Except as otherwise provided, these Regulations shall apply to –

- (a) Super Petrol;
- (b) Illuminating Kerosene; and
- (c) Automotive Gasoil or Diesel.

(4) These Regulations shall apply to the petroleum products listed in sub-regulation (1) for sale in Kenya and which are imported through the open tendering system.

(5) A licensee shall comply with the provisions of these Regulations.

#### PART II –TARIFFS ON IMPORTATION AND TRANSPORTATION OF PETROLEUM PRODUCTS

##### *Landed costs*

4. (1) The landed costs of imported petroleum products shall be calculated and determined using the pricing formula and cost elements provided in Part I of the Second Schedule.

(2) The Authority may vary the cost structure in the Second Schedule upon consultation with stakeholders.

(3) Any changes in price structure shall be published in the Kenya Gazette

##### *Pipeline Tariff*

5. (1) The tariffs applicable for primary transport by pipeline shall be approved by the Authority.

(2) The allowable pipeline loss to be factored in the pump price shall be the actual loss as approved by the Authority.

(3) The loss in 5(2) above shall be capped at 0.25% of the total throughput volume in a period defined by the Authority.

#### PART III – WHOLESALE AND RETAIL COST ELEMENTS AND MARGINS

##### *Determination of wholesale price*

6. (1) The landed cost of petroleum products shall be determined as follows:

$$C_l = \frac{\sum(V_{irp} * C_{irp})}{\sum V_{irp}}$$

$C_l$  is the weighted average cost in shillings per litre of petroleum products imported through the OTS ex-primary storage facility;

$V_{irp}$  is the volume in litres of a cargo of a refined petroleum product imported through the open tendering system and discharged at the port of Mombasa from the 10<sup>th</sup> day of the previous month to the 9<sup>th</sup> day of the pricing month

$C_{irp}$  is the unit cost of a cargo of refined petroleum product imported through the open tendering system and discharged at the port of Mombasa from the 10<sup>th</sup> day of the previous month to the 9<sup>th</sup> day of the pricing month in shillings per litre

(2) The maximum wholesale prices of petroleum products in shillings per litre shall be determined as the sum of the following -

$$P_w = C_l + J_{hc} + C_p + L_{ps} + P_t + L_{pt} + C_{ss} + L_{ss} + C_f + M_w + T + VAT$$

Where –

$P_w$  = the Maximum Wholesale Price

$C_l$  = the Landed Cost of imports

$J_{hc}$  = the jetty handling costs

$C_p$  = the Primary Storage costs

$L_{ps}$  = the allowable losses on Primary Storage

$P_t$  = the Primary transportation costs

$L_{pt}$  = the Allowable losses on Primary Transport

$C_{ss}$  = the Secondary depot storage costs

$L_{ss}$  = the Allowable Losses on Secondary Storage

$C_f$  = the Inventory financing costs

$M_w$  = the Wholesale Margin

$T$  = the applicable taxes,

(a) The landed costs of petroleum imports  $C_l$  shall be calculated and determined using the pricing formula in Part I of the Second Schedule and as guided by the Regulations governing the importation of petroleum products.

(b)  $C_p$  = the primary storage tariffs at Kipevu Oil Storage Facility or any other import depot designated to receive OTS imports. The tariff will be as set out in the Petroleum (Operation of Common User Petroleum Logistics Facilities) Regulations 2020.

(c)  $L_{ps}$  = the allowable loss allowance in Primary Import Storage Depots.

(d)  $C_f$  = the inventory financing cost for the working stocks as required.

(e)  $T_p$  = the transportation cost from Mombasa to the nearest wholesale depot, which is made up of  $x$  percent of pipeline tariff ( $K_{pt}$ ) and  $(100-x)$  percent of road bridging cost ( $K_{rd}$ ) as set out in the Second Schedule.

(f)  $C_{ss}$  = secondary storage throughput fees.

(g)  $L_{ss}$  = the allowed losses in Secondary Storage Depot losses.

(h)  $M_w$  = the allowed wholesale margin may be reviewed from time to time and published in the Kenya Gazette.

#### *Determination of Retail Pump Price*

7. The maximum retail price of petroleum products shall be the sum of the following –

$$P_r = P_w + T_s + M_{ri} + M_{ro} + VAT$$

Where –

(a)  $T_s$  = cost of transporting petroleum products from a secondary storage to a retail dispensing site as set out in the Second Schedule and varies with distance from the depot to the various retail dispensing sites.

(b)  $M_{ri}$  = the retail margin corresponding to the investments associated with a benchmark retail dispensing site, and may be reviewed from time to time and published in the Kenya Gazette.

(c)  $M_{ro}$  = the retail margin corresponding to the operation costs associated with the benchmark retail dispensing site, may be reviewed from time to time and published in the Kenya Gazette.

#### *Publication of cost elements and pricing areas*

8. The Authority may, by means of the Gazette notice, publish the  $J_{hc}$ ,  $C_p$ ,  $P_t$ ,  $C_{ss}$ ,  $x$ -factor,  $M_{ri}$ ,  $M_{ro}$  and the list of pricing towns from time to time.

### PART IV – GENERAL PROVISIONS

#### *Display of petroleum prices*

9. A licensed petroleum business undertaking the retail sale of petroleum products to a consumer or end user shall at all times display the applicable retail price that shall not exceed the maximum retail price as announced by the Authority from time to time.

#### *Non-disclosure of price before publication*

10. (1) A person who disclose prices of petroleum products set under these Regulations prior to the date such prices are to be announced by the Authority commits an offence.

(2) A person convicted of the offence in 10(1) shall be liable to a fine not exceeding KShs. 100,000.

#### *Price determination under emergency situations*

11. (1) Where the Cabinet Secretary in charge of Petroleum, by notice in the Gazette, declares an emergency causing a major disruption in supply of petroleum in accordance with the Regulations governing petroleum strategic stocks, he may direct licensed oil marketing companies to draw from strategic stocks.

(2) The purchase price for the strategic stocks shall be a price calculated and determined by the Authority.

(3) In the situation under sub-Regulation (1) the Authority shall determine the maximum wholesale and retail price of petroleum products in line with the order issued by the Cabinet Secretary.

#### *Offences and Penalties*

12. Where any default in or contravention of any of the provisions of these Regulations is made for which no fine or penalty is expressly stated in the Petroleum Act, the person so defaulting or contravening shall on conviction be liable to a fine of not less than Kenya shillings five million.

#### *Repeal.*

13. The Energy (Petroleum Pricing) Regulations 2010 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

## SCHEDULES

## FIRST SCHEDULE

## Regulation 2

## WHOLESALE DEPOT LOCATIONS

The wholesale depot locations used as secondary storage for purposes of determining the maximum wholesale and retail prices are –

Item	Wholesale Depot Location
1.	Mombasa
2.	Nairobi
3.	Nakuru
4.	Eldoret
5.	Kisumu

## SECOND SCHEDULE

Regulations 4(1), 4(2), 6(a), 6(e), 7(a)

## LANDED COSTS, STORAGE AND TRANSPORT RATES

## PART I - LANDED COST OF PETROLEUM IMPORTS

The landed cost of Petroleum Imports ( $C_i$ ) shall be calculated using the formula below and as guided by the Open Tendering System.

$C_i = \{ \{ \{ \text{FOB} + \text{PF} + \text{LC} \} * \{ \text{FX} \} / \text{CF} \} + \{ \text{IWR} + \text{KPA} + \text{SC} + \text{OL} + \text{A} + \text{I} + \text{AR} + \text{MS} \} + \text{T}$	
Where -	
FOB	Free on Board price of imported petroleum products calculated as per the Open Tendering System
FP	Freight and Premium as per the Open Tendering System
C&F	Cost and Freight = FOB + PF
LC	Letter of credit charges as per the Open Tendering System
IWR	Insurance and War Risk as per the Open Tendering System
CIF	Cost, Insurance & Freight = FOB + PF + LC + IWR
CF	Conversion Factor to convert Metric Ton to Litre.
FX	Foreign Currency Exchange rate for converting cost of imported petroleum products from US Dollars to Kenyan Shillings shall be the average mean exchange rate of leading commercial banks approved by the Authority.
KPA	Kenya Ports Authority handling fees
SC	Stevedoring charges
OL	Ocean Losses as per the Open Tendering System
A	Administration costs as per the Open Tendering System
I	Inspection charges of as per Open Tendering System
AR	Analysis and recertification charges as per the Open Tendering System
MS	Merchant Shipping Fees as defined as per the Open Tendering System
T	All taxes and levies and levies applicable during the importation of petroleum. This may include Excise Duty, Road Maintenance Levy, Petroleum Development Levy, Railway Development Levy, Merchant Shipping Levy, Petroleum Regulation Levy, Import Declaration fee, Anti-adulteration Levy and Value Added Tax

PART II – TRANSPORT RATES TO THE NEAREST WHOLESALE DEPOT ( $T_p$ )

The  $T_p$  will be calculated as follows using the tariffs in the table below:

$$T_p = xK_{pt} + (100-x\%) K_{rd}$$

Where  $K_{pt}$  is the Pipeline tariff and  $K_{rd}$  is the Bridging rate.

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (PRODUCTS QUALITY MANAGEMENT) REGULATIONS, 2020**

## PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Petroleum (Products Quality Management) Regulations, 2020.

Interpretation.

2. In these Regulations, unless the context otherwise requires –

“Adulterant” means a petroleum product that is miscible in petroleum products such as Illuminating Kerosene, and any other petroleum solvent that alter product specifications and degrades performance standards as detailed in the applicable Kenya Standards;

“Adulterated Petroleum” means any resultant mixture of refined petroleum products whose specifications and performance standards do not meet the requirements of the Kenya Standards;

“AFQRJOS” means the Aviation Fuel Quality Requirements for Jointly Operated System or the agreed specification requirements for jet fuel supplied into joint venture locations;

“ASTM” means the American Society for Testing and Materials or the international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services;

“Authority” means the Energy and Petroleum Regulatory Authority established under Section 9 of the Energy Act No. 1 of 2019;

“Competent person” means a person certified by a credible body to collect samples, test and interpret the results thereof so as to determine if samples meet the applicable specifications. Unless otherwise stated, the following shall be assumed:

- (i) In case of the approved marker technology, the scope of certification shall include the specific marker technology and specifications shall be the presence or absence of the of the marker and/or the level of concentration of the marker; and
- (ii) In the case of general petroleum products, the scope of certification shall be in relation to the various grades of refined petroleum products and the specifications shall be those listed by the Kenya standards;

“Energy Act” means the Energy Act No. 1 of 2019;

“Home use” means petroleum products which have, upon importation, been declared for use in Kenya, other than temporary use;

“KEBS” or “Kenya Bureau of Standards” means the body responsible for standards in Kenya as established under the Standards Act Chapter 496;

“KENAS” or “Kenya National Accreditation Services” means the national accreditation body responsible for accreditation services as established under the State Corporations Act, Cap 446 vide Legal Notice No. 55 of May 2009;

“KRA” or “Kenya Revenue Authority” means the central body responsible for the assessment and collection of revenue, for the administration and enforcement of the laws relating to revenue as established under the Kenya Revenue Authority Act Chapter 469;

“Kenya Standard” means a specification or code of practice declared by the Council under the Standards Act Chapter 496;

“Licence” means any document or instrument in writing granted under the Petroleum Act to any person authorizing the transportation, exportation, refining, storage and sale of petroleum;

“Licensee” means a holder of a licence issued under the Petroleum Act;

“Load port” means a shore terminal from which the imported petroleum product to be discharged into a shore terminal in Kenya was consigned to the marine vessel;

“Marker” means any petroleum fuels differentiation technology approved by the Authority to be used for identification of specific grades of or classes of tax-exempt petroleum products;

“NEMA” or “National Environment Management Authority” means the body responsible for the management of the environment as established under the Environmental Management and Coordination Act, 2015;

“Non-compliant site” means a site storing or offering for sale petroleum products that are:

- (i) Adulterated or a tanker transporting petroleum products that are adulterated; and/or
- (ii) Not duty paid whether in full or partially in accordance with the applicable customs rate.

“OMC” or “Oil Marketing Company” means a company licensed under the Petroleum Act to import products into Kenya;

“Out of specification” means grade of petroleum products not meeting the set requirements and performance standards as set by the applicable Kenya standards;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum grades” means a class of products of exhibiting similar specifications after a refining process of crude oil and have similar applications;

“Petroleum Motor Fuels” means Premium Motor Spirit (Super Petrol) and Automotive Gas Oil (Diesel);

“Shore terminal” means a bulk storage facility on land that is licensed handle to import petroleum products from marine vessels;

“Specifications” means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, any commodity may be manufactured, produced, processed, treated. Tested or sampled;

“Storage and Loading depots” means licensed premises where petroleum road tankers can collect petroleum for delivery to other petroleum businesses for resale or a consumer’s own use;

“Transit” means the movement of petroleum products imported from a foreign country through Kenya to a foreign destination;

“Tribunal” means the Energy and Petroleum Tribunal established under Section 25 of the Energy Act.

#### *Application of the Regulations.*

3. (1) These Regulations shall not apply to the Kenya Defence Forces.

(2) Notwithstanding the provisions of sub-regulation (1), all tax-exempt petroleum products and illuminating kerosene loaded from a civilian storage and loading depot, shall be marked in accordance with these Regulations.



## PART II – QUALITY MANAGEMENT OF PETROLEUM PRODUCTS

*Quality of Petroleum Imported into Kenya.*

4. (1) Petroleum products imported into Kenya whether for home use or transit shall conform to the specifications set out in the Kenya Standard or any international standard approved by KEBS.

(2) Petroleum products intended to be transported through the Kenya pipeline system shall, in addition to meeting the requirement in Regulation 4(1) above, adhere to the minimum operational specifications specified by the pipeline operator.

(3) Aviation petroleum fuels imported into Kenya shall in addition to meeting the requirements of Kenya Standards, conform to the latest issue of AFQRJOS for Jet A-1 fuel and ASTM D910 for Aviation Gasoline.

(4) A licensee in charge of a shore terminal shall put in place such infrastructure to ensure that the imported petroleum products retain the specifications listed in the applicable Kenya Standards.

(5) The infrastructure in sub-regulation (4) shall include but not limited to an established and accredited laboratory or a duly executed contract with an accredited laboratory service provider.

(6) A licensee of a shore terminal and storage and loading depot shall employ such competent personnel to ensure that the certified petroleum products continue to meet the applicable specifications.

*Sampling and Testing of Petroleum Imported into Kenya at*

5. (1) An OMC shall ensure that all petroleum products it imports into Kenya are sampled and tested for quality against the Kenya Standards by KEBS or competent persons authorized by KEBS for the purpose of petroleum import inspection and quality verification.

(2) The Authority may request KEBS to test additional parameters for the better execution of the Petroleum Act.

(3) The tests under these Regulations shall be carried out in a laboratory accredited by KENAS.

(4) The samples for testing shall be sealed in a tamper proof container and signed by the master of the ship, a representative of the OMC and a representative of the shore terminal

(5) Unless otherwise required by KEBS or the Authority in writing and subject to a dispute or court proceedings, the operator of the shore terminal shall preserve the samples in sub-regulation (4) for a minimum of sixty (60) days from the date of collection.

(6) The OMC shall ensure that copies of the load port quality certificate for each cargo is submitted to KEBS and the shore terminal within a period of not less than twenty-four (24) hours prior to commencement of discharge.

(7) Off specification petroleum products shall be subject to such directives issued by KEBS as per the Standards Act Chapter 496 and in consultation with the Authority.

(8) A shore terminal operator shall carry out an independent quality certification of the petroleum product in each of the shore tanks after every receipt.

(9) Notwithstanding any satisfactory test certificates of the petroleum products, the operator of a shore terminal shall carry out petroleum product certification every ninety (90) days where product has not been moved.

(10) Each storage facility shall, before transfer of custody of the petroleum product, furnish a buyer with a copy of quality certificate mentioned in sub-regulation (8) for the batch of product delivered.

*Marking of Export Petroleum Products.*

6. (1) All petroleum products listed in the First Schedule and meant for export except aviation petroleum fuels shall be marked with an export marker approved by the Authority.

(2) No person shall release or cause to be released, from a storage and loading depot or a petroleum road tanker carrying petroleum products specified in sub-regulation (1) and meant for the export market without the requisite export marker approved by the Authority.

(3) The Authority or its appointed agents may stop, sample and test petroleum product aboard any tanker conveying export product to confirm if it is the marked.

*Marking of Illuminating Kerosene.*

7. (1) All Illuminating Kerosene intended for sale in the country shall be marked with an adulterant marker approved by the Authority.

(2) No person shall release or cause to be released from a Storage and Loading depot a petroleum road tanker carrying Illuminating Kerosene meant for consumption in Kenya without the requisite adulterant marker approved by the Authority.

(3) The Authority or its appointed agents may sample and test Illuminating Kerosene from any retail dispensing site or any petroleum road tanker carrying Illuminating Kerosene and confirm the presence of the adulterant marker.

*Marking Personnel*

8. (1) The Authority may designate competent persons or a firm consisting of competent persons to apply markers and to test petroleum products to detect the marker's presence.

(2) The cost of applying the markers shall be borne by the owner of the petroleum products.

(3) The Authority may require the storage and loading depot to invest in a suitable technology to apply the markers automatically.

*Sampling and Testing for markers*

9.(1) The Authority or its appointed agents may sample and test for the presence of export and adulterant marker in petroleum motor fuels and Illuminating Kerosene offered for sale in Kenya at any retail dispensing site, commercial storage site, petroleum in tankers and at any bulk storage depot.

(2) Such testing shall be undertaken in the presence of the site operator/ owner or their agents.

(3) Where the owner in sub-regulation (2) or his representative is not present, the Authority shall use such powers of entry as provided for in the Petroleum Act.

(4) The cost of the sample shall be borne by the site operator in case of a fixed installation or the tanker owner in case of a petroleum tanker.

(5) Any sample of petroleum product collected for the purpose of onsite testing shall be not exceed two-hundred millilitres (200 ml) per dispensing nozzle or per compartment in case of a road tanker and per tank in case of a commercial site.

(6) Any sample collected for further analysis shall not exceed three (3) separate containers of not more than one thousand (1,000) millilitres each.

(5) No person shall obstruct the Authority or its agents from carrying out the sampling and testing on any retail or commercial site, depot or road tankers.

(6) It shall be the duty of the retail dispensing site operator to provide access to the dispensing nozzles and the tanks as the Authority or its agents may require for the purpose of quality and quantity verification.

*Non-compliant sites or tankers*

10. (1) A non-compliant site shall have all the dispensers and, where feasible, tanks sealed and its operating licence suspended.

(2) A non-compliant petroleum road tanker shall have its manholes and outlet valves sealed and the operating permit suspended.

(3) The driver whose petroleum road tanker is found to be non-compliant shall have his Driver's Certificate suspended.

(4) Three (3) separate samples each not exceeding one thousand millilitres (1000ml) shall be taken –

(a) one will be carried by KEBS or its nominee for further laboratory analysis; and

(b) one shall be retained by the site operator and the other one by the Authority for future reference.

(5) The Authority shall retain the samples specified in sub-regulation (4) for a period of thirty (30) days.

(6) A person who wishes to challenge the results of the sampling specified in sub-regulation (4) shall do so within thirty (30) days from the date of sampling.

(7) A re-test shall be undertaken on each of the duly sealed samples retained by the site or tanker operator and the Authority.

(8) The re-testing specified in sub-regulation (7) shall be undertaken in the presence the Authority, KEBS, KRA, site operator/ owner or his appointed agent, and the marking and inspection agent.

(9) Prior to the retesting exercise, the Authority shall satisfy itself that the original seals and the packaging have not been tampered with.

(10) Where there is evidence of tampering, the Authority shall not proceed with the retest.

(11) After a re-test has been done, the costs shall be borne by the site or tanker operator if the final results returns a non-compliant verdict.

(12) No person shall authorize or offer product for sale from a non-compliant site or tanker before receiving clearance from the Authority

(13) No person shall cut or cause to be cut seals from a non-compliant site without the written approval from the Authority.

(14) No person shall transfer or tamper with the contents of the petroleum storage tanks of a non-compliant site or tanker without a written approval from the Authority.

*Reinstating a Closed site.*

11. (1) A non-compliant site shall be reinstated after the Authority is satisfied that reasonable mitigation measures to prevent recurrence have been put in place.

(2) The measures in sub-regulation (1) shall include but not limited to -

(a) proof of payment of fines and penalties to KRA;

(b) proof of receipt of petroleum product upgrade instructions from KEBS for adulterated products;

(c) proof that the adulterated product has been upgraded or disposed of in an environmentally friendly manner as per the instruction of KEBS;

(d) where the product cannot be upgraded by dilution, then a disposal advice shall be obtained from NEMA;

(e) proof of quality certificate from KEBS indicating that the upgraded petroleum product meets the Kenya Standard;

(f) Proof that controls have been put in place to prevent recurrence of the offence in future.

(2) The Authority may reject reinstatement of a site if it is of the opinion that the non-compliant site or tanker operator is a repeat offender or has not put in place sufficient mechanisms to prevent recurrence of the same in future.

PART III – MISCELLANEOUS

*Publishing of list of non-compliant sites or tankers*

12.(1) Notwithstanding the penalties prescribed in the Second Schedule and any other penalties that KRA and KEBS may impose on the site or tanker owner or operator, the Authority may publish the list of names of the operator and names of the outlets with non-compliant test results for the purpose of consumer awareness.

(2) The names in sub-regulation (1) may be published in a manner that the Authority may deem appropriate.

*Appeals.*

13. A person aggrieved by an order or decision of the Authority made pursuant to these Regulations may, within thirty (30) days of receipt of such order or decision, appeal to the Tribunal.

*Offences and Penalties.*

14. (1) No person –

- (a) or his representative shall obstruct the Authority's employee or its appointed agent in sampling and testing of petroleum products from a site or a petroleum road tanker;
- (b) being an OMC or owner of a site or road tanker operator shall fail to retain samples of petroleum products in the manner prescribed by these Regulations;
- (c) being the owner of a site or a road tanker operator, shall offer for sale petroleum product that does not meet Kenya Standards;
- (d) shall knowingly or unknowingly offer for sale motor fuels with an export marker or adulterant marker;
- (e) shall knowingly or unknowingly transport motor fuels with an adulterant marker and without the written permission of the Authority;
- (f) being a driver in possession of a valid certificate issued by the Authority, shall engage in the practice of adulteration or diversion of export petroleum products;
- (g) shall knowingly or unknowingly discharge or offload part of or the whole of petroleum products consignment containing an export marker into the domestic market without paying the taxes due to KRA or their written authority;
- (h) being the owner of petroleum products or a loading facility shall refuse to have the products under the First Schedule marked;
- (i) Shall reopen a non-compliant site without the written permission from the Authority.

(2) Any person who contravenes sub-regulation (1) shall be guilty of an offence and shall be liable on conviction to the fines and penalties prescribed in the Second Schedule.

(3) Where an offence is committed by a person who is licensed under the Act, he shall be liable to sanctions and penalties prescribed in the Second Schedule of these Regulations.

(4) In any case the Authority may suspend a licence for such a period that it shall deem prudent or revoke any licence or permit issued under the Petroleum Act if it has sufficient evidence that continued possession of the license or permit will be used to compromise quality of petroleum products in the Kenya.

*General Penalty.*

15. Where any default in or contravention of any of the provisions of these Regulations is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall, on conviction, be liable to the penalties prescribed under the Petroleum Act.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.

SCHEDULES

FIRST SCHEDULE

Regulations 6(1), 14(1) (h)

LIST OF PETROLEUM PRODUCTS TO BE MARKED

PART A – EXPORT PRODUCT MARKING

The following products designated for export shall be marked with export marker at the Storage and Loading depots:

	Petroleum Product
1.	Premium Motor Spirit (PMS)
2.	Automotive Gas Oil (AGO)
3.	Dual Purpose Kerosene

PART B – MARKING OF POSSIBLE ADULTERANTS

The following possible adulterants shall be marked with an adulterant marker at the Storage and Loading depots:

	Adulterant
1.	Illuminating Kerosene
2.	Natural Gas Condensate

SECOND SCHEDULE

Regulations 12(1) and 14(3).

OFFENCES, FINES AND PENALTIES

	Offence	Fines And Penalties		
		First Offence	Second Offence	Third Offence
1.	Obstructing the Authority's officers or its agents from conducting tests	Kshs 20,000	Revocation of operating licence	
2.	Releasing of unmarked Petroleum Products in a tanker listed in the First Schedule	KShs 50 for every litre to be compounded on the entire tanker capacity	Revocation of operating licence.	
3.	Refusing to have the Petroleum Products under the First Schedule Marked	KShs 50 for every litre to be compounded on the entire tanker capacity	KShs 50 for every litre to be compounded on the entire tanker capacity and suspension of operating licence for a minimum period of ninety (90) days	Revocation of operating licence
4.	Offering for sale and/ or transporting substandard Petroleum Product			
5.	Offering for sale marked motor fuels			
6.	Discharging export or duty free Petroleum Product into the local market without written Authority from KRA			
7.	Reopening a non-compliant site without written consent from the Authority	KShs. 1,000,000	Revocation of operating licence	

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments–

**THE PETROLEUM (RETAIL STATION CONSTRUCTION AND LICENSING) REGULATIONS, 2020**

## PART I - PRELIMINARY

*Citation.*

1. These Regulations may be cited as the Petroleum (Retail Station Construction and Licensing) Regulations, 2020.

*Interpretation.*

2. In these Regulations, unless the context otherwise requires –

“Adulterated petroleum” means any mixed refined petroleum products that alter product specifications detailed in the applicable Kenya Standards;

“Agent” means a person appointed in writing by the Authority to perform any of its functions.

“Authority” means the Energy and Petroleum Authority established under Section 9 of the Energy Act No. 1 of 2019;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Petroleum;

“Class” in relation to contract works, means any of the classes of contract works set out in the Third Schedule of the National Construction Authority Act Chapter 449A in respect of which a contractor may be licensed by the Board of the National Construction Authority;

“Contractor” means a person registered under Section 15 of the National Construction Authority Act Chapter 449A;

“Consumer” means any person who is supplied or entitled to be supplied with petroleum;

“County Government” has the meaning assigned to it in Article 176 of the Constitution;

“Energy Act” means the Energy Act No. 1 of 2019;

“Environmental and Social Impact Assessment Licence” means a licence issued by the National Environment Management Authority (NEMA);

“Engineer” means a person registered as such under Section 16 of the Engineers Act No. 43 of 2011;

“Environment Liability Policy” means a statement of commitment by a party to the laws, regulations and other policy mechanisms concerning environmental issues;

“Feasibility Study” means a political, environmental, social, technical, economic and legal analysis of a proposed project to determine that the project is fit for purpose.

“Kenya Standard” has the same meaning as provided in the Petroleum Act;

“Licence” means any document or instrument in writing granted under the Act by the Authority to any person authorizing the importation, exportation, refining, transportation, storage, distribution or sale of petroleum;

“Licensee” means any holder of a license issued under the Petroleum Act;

“Licensing Authority” means any person or body, including the Authority, with powers to grant, revoke or suspend a licence issued under the Act;

“Ministry” means the Ministry for the time being responsible for petroleum in Kenya;

“Modification” means any change in the facility that alters the existing technical design, storage capacity or impacts on compliance with local health, environmental and safety legal requirements or any change requiring local authority approval;

“NEMA” or “National Environment Management Authority” means the body responsible for the management of the environment as established under the Environmental Management and Coordination Act, 1999;

“NCA” or “National Construction Authority” means the body responsible for the accreditation and certification of skilled construction workers and construction site supervisors as established under the National Construction Authority Act Chapter 449A;

“Open tendering system” means a system of competitive bidding which applies to the importation into Kenya of petroleum products;

“Person” means any natural or juridical person;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum business” means a concern carrying on the importation, exportation, refining, storage, transportation, supply or sale of petroleum;

“Petroleum logistics facility” means any facility that is or can be used to receive, store, load, offload or transport petroleum in bulk but does not include retail dispensing sites and own consumption installations of capacity less than fifty thousand (50,000) litres;

“Retail station” means a retail dispensing site or premises where petroleum is stored in bulk in one or more tanks and dispensed to consumers for their own use and includes filling and service stations;

“Retail licence” means a licence to operate a retail station;

“Specifications” means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or to any substance or material of or with which, or the manner in which, any commodity may be manufactured, produced, processed, treated, tested or sampled;

“Third parties” means other petroleum business licensees and their agents carrying out business with a licensee

“Tribunal” means the Energy and Petroleum Tribunal established under Section 25 of the Energy Act, 2019;

#### *Application*

3. (1) These Regulations shall apply to the construction of retail dispensing sites and the licensing of petroleum retail businesses operating in Kenya.

(2) These Regulations shall not apply to the Kenya Defence Forces.

### PART II – RETAIL STATION CONSTRUCTION PERMITS

#### *Construction permit*

4. (1) A person shall not undertake construction works or modification of a petroleum retail station except in accordance with the terms and conditions of a valid Construction Permit issued under the Petroleum Act.

(2) The Authority may direct a person to cease the construction of a petroleum retail station where –

- (a) the construction is being undertaken without a valid construction permit issued by the Authority;
- (b) the construction for which a permit has been issued is in breach of the terms and conditions set forth by the Authority; or
- (c) the approval of the construction permit was based on false information, misstatement of facts or forged documents.

(3) Any person who undertakes the construction of a retail station without a valid Construction Permit issued by the Authority or its agents commits an offence and is liable on conviction to the fines and penalties set out in the Seventh Schedule.

#### *Application for a construction permit*

5. (1) A person who wishes to construct a petroleum retail station shall apply for a construction permit to the Authority in the prescribed form and manner.

(2) An application under sub-regulation (1) shall be accompanied by:-

- (a) a copy of the detailed layout plans and specifications prepared by a professional engineer or firm(s) registered as such;
- (b) the layout plans in sub-regulation (2)(a) shall, at minimum, take into consideration the provisions of the relevant Kenya Standards for petroleum retail facilities;
- (c) a feasibility study of the project prepared by a professional with the requisite competence and shall contain at minimum –
  - (i) detailed project costs;
  - (ii) sources of funding and financing of the project;
  - (iii) projected cash flow;
  - (iv) analysis of the projected sales volume bearing in mind the nearby existing retail stations; and
  - (v) expected rate of return.
- (d) proof of ownership of the land on which the retail station is to be built upon;
- (e) where the land is not in the name of the entity undertaking the development, then a duly registered lease for a minimum period of five(5) years shall be provided;
- (f) an approved Environmental and Social Impact Assessment licence issued by NEMA;
- (g) proof of compliance to the zonal planning requirements;
- (h) approval from the relevant County Government;
- (i) approval from the relevant road authority for the deceleration and acceleration lanes;
- (j) environmental liability policy; and
- (k) any other document that may assist the Authority to make proper determination on the application.

(3) The application in sub-regulation (1) shall be in the form and manner prescribed by the Authority and shall be accompanied by proof of payment of the prescribed fees as set out in the Sixth Schedule.

(4) The Authority shall make a determination on the application for a construction permit within forty-five (45) days from the date of submission.

#### *Form and Validity of a construction permit.*

6. (1) A Construction Permit for a petroleum retail station shall be in the form set out in Part II of the First Schedule or any other format that the Authority may prescribe in a Gazette notice.

(2) Where no construction works have commenced, a Construction Permit shall be valid for a period of twelve (12) months from the date of issue.

(3) Where construction works have commenced within the validity period of the permit, the construction permit shall be valid for a maximum period of thirty-six (36) months from the date of issue.

(4) The Construction Permit holder may make an application for extension of the validity period by providing documents as required by the Authority.

(5) The extension of the validity period of a Construction Permit shall be to a maximum of –

- (a) six (6) months where construction works have not commenced; and
- (b) twentyfour (24) months where construction works have commenced.

(6) An applicant shall be required to make fresh application where the Construction Permit cannot be extended further as provided for in sub-regulation (5).

*Determination of application for a Construction Permit.*

7. (1) The Authority shall, within forty-five (45) days, determine an application for a Construction Permit.
- (2) Provided that the application is materially complete, does not offend the provisions of any written law and meets the prescribed requirements, the Authority may grant a Construction Permit to the applicant.
- (3) The Authority may, prior to making a determination to grant a Construction Permit, take into consideration suitability of the site after a site visit.
- (4) The Construction Permit issued under sub-regulation (2) shall contain such terms and conditions that the Authority may deem fit based on the site and scale of the project.
- (5) The applicant shall be required to give a written undertaking to the Authority within thirty (30) days of receiving a notification of grant of a Construction Permit that the applicant shall abide by the stipulated terms and conditions.
- (6) The undertaking in sub-regulation (5) shall be in the form and manner prescribed in the Second Schedule.
- (7) Failure to execute the undertaking within the stipulated time shall render the grant of the Construction Permit null and void.
- (8) The Authority shall reject an application under these Regulations and in accordance with Section 75 of the Petroleum Act where the application does not meet the requirements for granting a Construction Permit.
- (9) Within forty-five (45) days of receipt of an application, the Authority shall notify the applicant of such rejection, specifying the reasons thereof.
- (10) Where the rejection in sub-regulation (8) relates to –
- (a) incomplete information, the applicant may make a fresh application by providing the requisite information or documents;
  - (b) the unsuitability of the site, the decision of the Authority shall be final and if the applicant is not satisfied with the Authority's decision, they may lodge an appeal in the Tribunal.

*Obligations of a construction permit holder.*

8. In undertaking construction of a petroleum retail station, the Construction Permit holder shall –
- (a) comply with the terms and conditions of the Construction Permit as stipulated by the Authority;
  - (b) engage only contractors who are licensed by the National Construction Authority (NCA) for their class of work;
  - (c) the construction project shall be supervised by a practicing professional engineer;
  - (d) comply with the Environmental Impacts Mitigation Plan approved by NEMA;
  - (e) comply with Government policy on local content; and
  - (f) comply with directions issued by the Authority from time to time

*Compliance with Statutory obligations.*

9. The Construction Permit holder shall, notwithstanding anything contained in the permit, comply with the provisions of the Petroleum Act and all other written laws.

PART III – LICENSING OF PETROLEUM RETAIL BUSINESSES

*Petroleum Retail Licence*

10. (1) A person shall not retail petroleum products without a valid licence issued under the Petroleum Act.
- (2) A licensed petroleum retail station shall ensure continued compliance with the terms and conditions of the Construction Permit issued by the Authority or its agents.
- (3) Where a Petroleum Retail Business Licence is issued by an agent appointed by the Authority under Section 21 of the Energy Act, the Authority may vary, suspend or revoke it if there is any reason to believe that the licence was issued erroneously.
- (4) Any person who undertakes the business of retail of petroleum products without a valid licence commits an offence and shall on conviction be liable to the fines and penalties as set out in the Seventh Schedule.

*Application for Petroleum Retail Business Licence*

11. (1) A person wishing to apply for a Petroleum Retail Business Licence shall do so in the prescribed form and manner accompanied by the documents set out in the Third Schedule.
- (2) An application in sub-regulation (1) shall be accompanied by:
- (i) Proof of payment of the applicable fees as set out in the Sixth Schedule.
  - (ii) An environmental liability policy.
- (3) The licensing Authority may request for any additional documents to enable review of the licence application.

*Form and Duration of a Petroleum Retail Business Licence*

12. (1) A Petroleum Retail Business Licence shall be in the form and manner set out in the Fifth Schedule.

(2) A Petroleum Retail Business Licence shall be valid for the period stipulated in the licence.

13.(1) An application for renewal of a Petroleum Retail Business Licence shall be made to the licensing authority at least thirty (30) days before the expiry date.

(2) The application in sub-regulation (1) shall be accompanied by documents set out in the Fourth Schedule and proof of payment of the prescribed fees as set out in the Sixth Schedule.

(3) A Petroleum Retail Business Licence that is not renewed by the date of expiry of the licence shall automatically lapse.

(4) Where an application for renewal is made thirty (30) days before expiry, and the licensing authority has not made a determination of the same by the date of expiry, the Petroleum Retail Business Licence shall be deemed to be valid until a determination on the application for renewal is made.

*Amendment of a Petroleum Retail Business Licence*

14. (1) A person may make an application for amendment of a Petroleum Retail Business Licence.

(2) A licence may be amended where –

(a) the details captured are erroneous; and/or

(b) there is a change in the licence details that were unforeseen at the time of making the application.

(3) Provided that the reasons for requesting the amendment does not include transfer of the petroleum retail business or change in control.

(4) An application under sub-regulation (1) shall be submitted in the prescribed form and manner.

(5) An application for amendment shall be accompanied by the prescribed fees as set out in the Sixth Schedule.

(6) A Petroleum Retail Business Licence amended under the Petroleum Act and these Regulations shall retain the existing expiry date.

(7) An amended licence shall contain the words “Amended”.

*Obligation of Petroleum Retail Business Licensee.*

15. A Petroleum Retail Business licensee shall –

(a) only retail petroleum products specified in the licence;

(b) purchase petroleum or petroleum products only from a holder of a valid petroleum business licence;

(c) only purchase or sell petroleum that meets the Kenya Standard or any other International Standard ratified by KEBS;

(d) not offer for sale adulterated petroleum products or petroleum products meant for export.

(e) ensure that the petroleum dispensing pumps are calibrated within the time period specified by the law.

(f) not under dispense or sell petroleum products at prices above those determined by the Authority.

(g) not hoard petroleum products.

(h) ensure that the construction or operations of the petroleum retail station comply with all applicable laws.

(i) institute appropriate environmental, health and safety control measures;

(j) Inform the Authority or its agents in writing of any changes of address or any other material particulars submitted as part of the application for the licence within thirty (30) days of the relevant change taking effect;

(k) Obtain approval from the Authority prior to any changes in directorship of the company; and

(l) ensure compliance with petroleum road tanker discharge procedures to maintain quality of product and safety at the retail site.

*Suspension and Revocation of a Licence.*

16. (1) The Authority may at any time revoke or suspend any licence issued under the Petroleum Act and these Regulations if the licensee commits any breach of the Petroleum Act, these Regulations or the terms and conditions specified in the licence.

(2) Unless otherwise specified in the licence, the Authority may give the licensee fourteen days (14) days to show because why the licence should not be suspended or revoked setting out the specific breach.

(3) The Authority shall determine the matter within thirty (30) days from the expiry of the notice period in sub-regulation (2).

(4) The Authority or its agent may reinstate a licence revoked or suspended under sub-regulation (1) if satisfied that the reasons for the revocation or suspension no longer exists.

(5) Any suspension or revocation of a licence shall not indemnify the licensee from any penalties for which the licensee may have become liable under the Petroleum Act or any other law.

(6) The Authority may publish a list of names of petroleum retail stations which may have committed any offence under the Petroleum Act or of these Regulations.

*Transfer of a Licence.*

17. (1) A licensee shall not transfer or otherwise divest any rights, powers or obligations without the consent of the licensing authority as prescribed under Section 83 of the Act.

(2) An application to transfer a licence shall be lodged in the form and manner prescribed by the licensing authority.

PART IV – MISCELLANEOUS

*Display of Permits and Petroleum Retail Business Licence*

18.(1) A Construction Permit and/or a Petroleum Retail Business Licence, or a certified copy thereof, shall be displayed in a prominent position at the premises in respect of which it is issued.

(2) A licence issued under the Petroleum Act and these regulations -

- (a) remains the property of the licensing authority;
- (b) may be suspended, revoked or amended by the Authority at any time subject to compliance with the Petroleum Act;
- (c) shall not be tampered with or defaced in any manner; and
- (d) shall not be transferred without the written consent of the licensing Authority.

(3) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the fines and penalties prescribed in the Seventh Schedule.

*Reporting of Accidents or Incidents.*

19. (1) A person licensed to undertake petroleum retail business shall within forty-eight (48) hours notify the Authority in writing of any work-related significant incident or accident causing -

- (a) loss of life or personal injury ;
- (b) damage to property or the environment; or
- (c) an explosion; or
- (d) oil-spill or accidental gas release; or
- (e) a fire.

(2) The information to be submitted to the Authority shall include -

- (a) name of the owner and operator of the premises involved;
- (b) date and time of the incident and accident;
- (c) location and geographical spread of the incident or accident;
- (d) number of injuries and/or fatalities if any;
- (e) own and third party property damage if any;
- (f) number of days the infrastructure will continue to be out of service; and
- (g) description of the events leading to and the most probable cause of the incident and accident.

(3) A person licensed to undertake petroleum retail business who fails to comply with this Regulation commits an offence and shall be liable on conviction to the fines and penalties as set out in the Seventh Schedule.

*Investigation of Accidents or Incidents.*

20. (1) A person licensed to undertake petroleum retail business shall investigate any accident reported under Regulation 19 within fourteen (14) days or any such extended period as approved by the Authority from the date of the incident and submit a report containing the -

- (a) cause of the accident;
- (b) effects of the accident; and
- (c) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub-regulation (1) within thirty (30) days and shall either -

- (a) accept the report; or
- (b) request for adjustment; or
- (c) reject the report giving reasons and other directives.

(3) Notwithstanding sub-regulations (1) and (2), the Authority may commission its own investigation.

(4) Where required, persons affected by the accident or incident shall be required to facilitate the Authority or its appointed agent or committee to undertake the investigation.

*Inspections.*

21. The Authority or any authorized person acting on its behalf may enter and inspect any petroleum retail facility and/or any premises where petroleum retail business is conducted for the purposes of inspections or conducting investigations pursuant to the provisions of the Petroleum Act or Regulations made under the Act.

*Disclosure of information*

22. (1) No person shall obstruct, hinder, withhold information or provide false information to the Authority as may be requested by the Authority or its appointed agent or committee provided that such information was requested in the prescribed manner.

(2) Any person who contravenes sub-regulation (1) commits an offence and shall be liable on conviction to the fines and penalties prescribed in the Seventh Schedule.

*Appeals.*

23. Any person aggrieved by the decision of the licensing Authority in refusing to renew, amend, replace, grant a licence or permit, or impose conditions on a licence or a permit or in suspension or revocation of a license or a permit may appeal to the Tribunal within thirty (30) days of receipt by him of the written notification of such action.



*Repeal*

24. The Energy (Retail Facility Construction and Licensing) Regulations, 2013 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.


## FIRST SCHEDULE

## Regulation 6(1)

## PART I – REQUIREMENTS FOR A PETROLEUM RETAIL DISPENSING SITE CONSTRUCTION PERMIT

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	Development permission from the respective County Government (including County Physical Planning Office);
6.	Approval to construct acceleration/deceleration lanes from the relevant roads authority (KENHA/ KURA/ KeRRA whichever is applicable)
7.	Mechanical engineer's drawings specifying materials and design/ operational limitations (Underground petroleum tank(s) designs and pipe-work layout)
8.	Civil engineer's drawings showing details of Underground tank cradle and backfill designs; Forecourt layout and surface designs; General drainage and OWS layout/ designs;
9.	Valid EIA license from NEMA approving the development of the project/facility and;
10.	Approval to construct acceleration/deceleration lanes from the relevant roads authority (KENHA/ KURA/ KeRRA whichever is applicable).


## PART II – FORM OF PETROLEUM RETAIL STATION CONSTRUCTION PERMIT

 <b>Energy &amp; Petroleum Regulatory Authority</b>	
THE PETROLEUM ACT, 2019 PETROLEUM RETAIL STATION CONSTRUCTION PERMIT	
PERMIT NO. ....	
Construction Permit is hereby granted to _____ of P.O. Box _____ to construct the following petroleum Facility (is):	
Construction of: Petroleum Facility .....	
On premises situated at: : _____ Plot No. : _____ Street/Market : _____ Town/County : _____ This Permit expires on : _____	Dated this: _____ Signature _____ <div style="text-align: right;">           (SEAL)            Director General            Energy &amp; Petroleum Regulatory Authority         </div>
Conditions: 1. .... 2. .... 3. .... 4. ....	

## SECOND SCHEDULE

## Regulation 7(6)

## FORM OF WRITTEN UNDERTAKING

 <b>Energy &amp; Petroleum Regulatory Authority</b>	
WRITTEN UNDERTAKING TO THE ENERGY & PETROLEUM REGULATORY AUTHORITY (Standard Form as approved by EPRA)	
WHEREAS Regulation 7(4) of the Petroleum (Retail Station Construction and Licencing) Regulations 2020, made under the authority of the Petroleum Act 2019 requires an applicant for a construction permit to make a written undertaking to the Energy and Petroleum Regulatory Authority (EPRA) within thirty (30) days of receiving notification of grant of a construction permit;	

THEREFORE .....of P.O. Box..... being the person who intends to construct or have a retail dispensing site constructed, hereby warrants to abide by the terms and conditions stipulated in the construction permit issued by EPRA.	
PERMIT No.:	PETROLEUM FACILITY:
PLOT No.:	LOCATION:
STREET/MARKET:	TOWN/COUNTY:
PERMIT EXPIRY DATE:	
FULL NAME OF APPLICANT:	PHONE NUMBER:
SIGNATURE OF APPLICANT OR PERSON AUTHORIZED BY SAID APPLICANT TO COMMIT THE APPLICANT AND TO ACT AS HIS AGENT IN THIS MATTER:	DATE:
IF THE NAME OF THE SIGNEE IS DIFFERENT FROM THE OWNER, PLEASE PRINT SIGNEE'S NAME HERE:	PHONE NUMBER:
Any person who furnishes false information in any permit application under the Petroleum Act 2019 or in any statement required to be furnished under the Act, or pursuant to the Petroleum (Retail Station Construction and Licencing) Regulations 2020, is on conviction, liable to such fines and penalties as prescribed by the Authority.	

## THIRD SCHEDULE

## Regulation 11(1)

## REQUIREMENTS FOR APPLICATION FOR NEW PETROLEUM RETAIL BUSINESS LICENCE

1.	Certificate of Incorporation / Business Registration Certificate;
2.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
3.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
4.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
5.	Proof of land ownership (copy of title deed in the name of company/director(s)). In the case of long-term land lease, copy of duly registered lease agreement in the name of the Applicant company plus the title deed of the land owner
6.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
7.	A valid Single Business Permit for the premises of operation from the respective County Government;
8.	A valid Environmental Impact Assessment licence from NEMA for the facility;
9.	A valid Fire Clearance Certificate for the facility from the respective County Government;
10.	Certificate of Compliance with the Physical Planning Act 2019 (PPA5 or PPA2);
11.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
12.	A valid calibration certificate for each petroleum storage tank at the facility;
13.	A valid certificate of calibration of the petroleum dispensing units' meters from the Department of Weights and Measures;
14.	A pressure test report for the petroleum tanks and pipelines at the facility;
15.	A colour photo of the facility clearly showing the frontage and the forecourt; and
16.	A summary Emergency Response Plan from the applicant.

## FOURTH SCHEDULE

## Regulation 12(2)


## REQUIREMENTS FOR A RENEWAL OF PETROLEUM RETAIL BUSINESS LICENCE

1.	CR12 from the Registrar of companies (should not be older than 1 year at the time of submission of the application. Further, if a Limited company appears as part of the shareholders, provide the company's CR12 plus all the Directors' IDs);
2.	Legible Copies of Identification Documents (IDs/Passports for all the directors);
3.	Valid Work Permits Class "G" for all foreign directors working in Kenya (Foreign directors not resident in Kenya should provide a notarized declaration. Further, any employee given Powers of Attorney by a foreign director should provide a copy of their identification document);
4.	A valid Tax Compliance Certificate for the applicant from the Kenya Revenue Authority;
5.	A valid Single Business Permit for the premises of operation from the respective County Government;
6.	An acknowledgement from NEMA of having submitted an annual Environmental Audit report for the facility (the acknowledgement should not be older than 1 year at the time of submission of the application);
7.	A valid Fire Clearance Certificate for the facility from the respective County Government;
8.	A valid certificate of registration of the facility as a work place from the Directorate of Occupational Safety and Health Services;
9.	A valid calibration certificate for each petroleum storage tank at the facility;
10.	A valid certificate of calibration of the petroleum dispensing units' meters from the Department of Weights and Measures;
11.	A pressure test report for the petroleum tanks and pipelines at the facility; and
12.	A summary Emergency Response Plan from the applicant.

## FIFTH SCHEDULE

Regulation 12(1)

## FORM OF PETROLEUM RETAIL BUSINESS LICENCE

	
THE PETROLEUM ACT, 2019 PETROLEUM RETAIL BUSINESS LICENCE	
No. ERC/PET _____	
Licence is hereby granted to _____ of P.O. Box _____ to carry on the following petroleum businesses:	
LICENCE NAME	
On premises situated at:	_____
Plot No.	_____
Building	_____
Street/Market	_____
Town/County	_____
This licence expires on	_____
	Dated this: _____
	Signature _____
	(SEAL) Director General Energy & Petroleum Regulatory Authority

## SIXTH SCHEDULE

Regulation 11(2), 12(2) and 14(5)

## FEES SCHEDULE

Description-Category of Licence Fees	New Application (Amount in KSh.)	Renewal Application (Amount in KSh.)	Amendment Application (Amount in KSh.)
Construction Permit	5,000	2,000	1,000
Petroleum Retail Business Licence	5,000	2,000	1,000

## SEVENTH SCHEDULE

Regulations 4(3), 10(5), 18(3) and 19(3)

## OFFENCES, FINES AND PENALTIES

Relevant Rules	Offence	Fine and Penalty (Ksh.)
4(5)	Undertaking construction without a valid Construction Permit	10,000,000
10 (5)	Undertaking Retail Business or operating a retail station without a valid licence	10,000,000
19(3)	Failure to display valid construction permit and or petroleum retail business licence	1,000,000
20(3)	Failure to report accidents or incidents	20,000
23(2)	Obstructing, hindering, withholding information or providing false information	20,000
25(1)(a)	Failure to institute appropriate environmental, health or safety control measures	10,000,000
25(1)(b)	Illegally acquiring, handling or being in possession of petroleum products	10,000,000
25(1)(c)	Hoarding petroleum products	1,000,000
25(1)(d)	Owning or operating unlicensed retail dispensing site	10,000,000
25(1)(e)	Under dispensing or selling above any price recommended by the Authority	10,000,000
25(1)(f)	Selling petroleum from a facility not listed in the petroleum retail licence	10,000,000
25(1)(g)	Purchasing or selling petroleum products not conforming to Kenya standards or any international standard approved by KEBS	5,000,000
25(1)(h)	Offering for sale adulterated petroleum products or petroleum products meant for export	5,000,000
25(1)(i)	Failure to comply with applicable laws for construction or operations of a retail dispensing site	10,000,000
25(1)(j)	Failure to comply with tanker discharge procedures to maintain quality and safety on site	20,000

## DRAFT FOR PUBLIC COMMENTS

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE NO.

## THE PETROLEUM ACT

(No. 2 of 2019)

IN EXERCISE of the powers conferred by section 101 and 107 of the Petroleum Act, 2019, the Cabinet Secretary for Petroleum and Mining makes the following Regulations for public comments-

## THE PETROLEUM (STRATEGIC STOCKS) REGULATIONS, 2020

## PART I—PRELIMINARY

*Citation.*

1. These Regulations may be cited as the Petroleum (Petroleum Strategic Stocks) Regulations 2020.

*Interpretation.*

2. In these Regulations, unless the context otherwise requires –

“Agent” has the meaning as defined in the Energy Act;

“Authority” has the meaning as defined in the Energy Act;

“Energy Act” means the Energy Act No. 1 of 2019;

“Emergency” means a situation leading to major supply disruption of petroleum products into Kenya that could result in stock out;

“Gazette” means the Kenya Gazette;

“KPRL” means the Kenya Petroleum Refineries Limited

“KRA” means the Kenya Revenue Authority;

“Market price” means the wholesale price published by the Authority;

“NOCK” means National Oil Corporation of Kenya

“OMC” or “Oil Marketing Company” means a firm licensed under the Act to import premium motor spirit (PMS), automotive gasoil (AGO) and dual purpose kerosene (DPK) into Kenya;

“Petroleum Act” means the Petroleum Act No. 2 of 2019;

“Petroleum products” means those listed under Regulation 3 of these Regulations;

“Replacement cost” means the resources required to replenish Strategic Stock which has been released into the market during an emergency declared by the Cabinet Secretary and which is determined based on the current market price;

“Shelf life” means the length of time the petroleum product can be stored without becoming unfit for use, consumption or sale;

“Storage depot” means petroleum bulk storage facilities designated for storing strategic stocks;

“Strategic Stocks” has the meaning as defined in the Petroleum Act;

*Application*

3. (1) These Regulations shall apply to –

(a) the maintenance of Petroleum Product Strategic Stocks; and

(b) designated Petroleum Strategic Stocks Bulk Storage Depots.

(2) The Cabinet Secretary shall designate a bulk storage facility in sub-regulation (1) for the purpose of Strategic Stocks reserves by means of publication in the Kenya Gazette.

(3) Except as otherwise provided in these Regulations, these rules shall apply to the following petroleum products –

(a) Premium Motor Spirit;

(b) Illuminating Kerosene;

(c) Jet Fuel;

(d) Automotive Gasoil; and

(e) Liquefied Petroleum Gas.

(4) The Cabinet Secretary may amend the list in sub-regulation (3) from time to time by a Gazette Notice.

*Purpose*

4. The purpose of these Regulations is to provide for the import, storage and management of Petroleum Product Strategic Stocks.

## PART II – MAINTENANCE OF STRATEGIC STOCKS

*Maintenance and Availability of Strategic Stocks*

5. (1) Pursuant to Section 96 of the Petroleum Act, the Cabinet Secretary shall establish a Petroleum Strategic Stocks Management Committee (PSSMC).

(2) The function of the PSSMC shall be to coordinate the day to day operations of the industry in relation to the security of supply of petroleum products including the financing, procurement, storage, maintenance and management of Strategic Stocks.

(3) The Cabinet Secretary, on the advise of the Authority, may declare an emergency in the Kenya Gazette.

(4) The PSSMC shall ensure equitable allocation of the petroleum product from the Strategic Stocks where the situation in sub-regulation (3) above has been declared.

*Procurement of Strategic Stock*

6. The Cabinet Secretary shall, through a competitive tendering process, select an OMC to supply petroleum products for the establishment and maintenance of Strategic Stocks.

*Financing of Strategic Stock*

7. (1) The procurement of Strategic Stock shall be financed out of funds from the Consolidated Petroleum Fund established under Section 107 of the Petroleum Act.

(2) Strategic Stocks shall be released to OMCs at the prevailing market price as determined by the Authority.

*Level of reserve*

8. (1) The Strategic Stocks procured for each of the products listed in Regulation 3 shall be maintained for an equivalent consumption of 15 days or any other period as may be determined by the Cabinet Secretary in the Gazette.

(2) Strategic Stock reserves shall be replenished through competitive procurement.

*Declaration of emergency*

9. (1) The level of reserve of Strategic Stock shall be maintained in order to ensure continuity of supply of petroleum products in case of an emergency.

(2) The Cabinet Secretary may, on the basis of a recommendation by the Authority, declare an emergency when it occurs in the country.

(3) An emergency may arise due to a breakdown in the country's petroleum infrastructure, interruption in the import of petroleum products into the country due to events in source markets or in the course of shipment or transportation.

(4) The Cabinet Secretary shall declare the emergency in sub-regulation (1) above through a Gazette notice.

*Release of Strategic Stock.*

10. (1) Strategic Stock shall be released into the market only in instances of supply shortages on account of an emergency situation declared by the Cabinet Secretary pursuant to Regulation 9.

(2) The Strategic Stocks shall be shared on a pro rata basis among OMCs based on their immediate throughput data as shared by KPC less transit volume.

(3) Where the strategic stocks has reached the end of its shelf-life, the Cabinet Secretary may on the advise of the Authority authorise the release of the strategic stocks.

(4) The Cabinet Secretary, on advice of the Authority, shall develop a standard operating procedure for the release and replenishment of Strategic Stocks.

PART III – STORAGE AND MANAGEMENT OF STRATEGIC STOCK

*Strategic Stock Storage Facilities*

11. (1) The Cabinet Secretary shall, on the advice of the Authority, designate a bulk storage facility in the Gazette as a Petroleum Strategic Stocks Bulk Storage Facility.

(2) A designation made by the Cabinet Secretary under sub-regulation (1) shall be made after due consideration of the following –

(a) security of the facilities and stock;

(b) physical accessibility to key demand areas;

(c) alignment of the storage depot with key distribution infrastructure;

(d) flexibility and capacity of the storage depot to re-circulate the Strategic Stock to maintain product quality;

(e) the facility has been approved as a customs bonded petroleum storage facility by KRA.

(3) The Authority shall set and approve applicable tariffs for Petroleum Strategic Stocks storage facilities.

(4) The costs associated with Strategic Stocks Storage Depots shall be drawn from the Consolidated Petroleum Fund.

*Bonded Warehouses for Strategic Stock*

12. (1) The Strategic Stock shall comply with the conditions set by KRA for a custom bonded warehouse.

(2) All taxes and levies shall be payable by the oil marketing company on the Strategic Stock upon release into the market.

*Inspection, operation and management of Strategic Stock*

13. (1) The PSSMC shall be in charge of inspection, verification, auditing and reconciliation of Petroleum Product Strategic Stocks.

(2) The PSSMC in sub-Regulation (1) shall be responsible for -

(a) coordination of the procurement of Petroleum Product Strategic Stocks;

(b) storage arrangements including for the lease of Petroleum Product Strategic Stocks Storage facilities;

(c) implementation of Petroleum Product Strategic Stocks standard operation procedures approved by the Cabinet Secretary;

(d) coordination of the independent monthly Petroleum Product Strategic Stocks inspections, verifications and reconciliations;

(e) preparation of monthly financial and Petroleum Product Strategic Stocks reconciliation reports for the Cabinet Secretary;

(f) maintenance of a Register of the Petroleum Product Strategic Stocks which shall be used for the identification and tracking of all petroleum products procured and stored in the designated Petroleum Product Strategic Stocks Bulk Storage Depots.

(3) The remuneration for the PSSMC and other operating costs shall be paid out of the Fund.

*Revocation.*

14. The Energy (Petroleum Strategic Stock) Regulations 2008 L.N. 43 are hereby revoked.

Dated the 15th December, 2020.

JOHN MUNYES,  
Cabinet Secretary  
Ministry of Petroleum and Mining.