

GAZETTE NOTICE NO. 1683

THE ENERGY ACT

(Cap. 314)

PROPOSED REGULATIONS IN RESPECT PETROLEUM
PRODUCTS QUALITY MANAGEMENT REGULATIONS, 2014

INVITATION OF PUBLIC COMMENTS

PART I

1. PURSUANT to section 110 (3) of the Energy Act, 2006, the Energy Regulatory Commission hereby invites members of the public to submit written comments within forty (40) days from the date of publication of this notice to the Director General, the Energy Regulatory Commission, on the proposed Regulations in respect of Petroleum Products Quality Management Regulations 2014 which are set out in Part II hereunder.
2. A comprehensive Regulatory Impact assessment is available on our website www.erc.go.ke.
3. Comments may be hand-delivered, posted and facsimiled or e-mailed to the Energy Regulatory Commission.
4. Physical address: The Energy Regulatory Commission, First Floor, Eagle Africa Centre, Longonot Road, Upperhill, Nairobi.
5. Postal address: P O Box 42681-00100, Nairobi.
6. Facsimile Number: +254 20 2717603
E-mail address: info@erc.go.ke

PART II

THE ENERGY ACT, 2006

(No. 12 of 2006)

THE ENERGY (PETROLEUM PRODUCTS QUALITY
MANAGEMENT) REGULATIONS, 2014

1. These Regulations may be cited as "The Energy (Petroleum Products Quality Management) Regulations, 2014".

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

"Act" means the Energy Act, 2006;

"Adulterant" means a distinct petroleum product that is miscible in motor fuels such as Illuminating Kerosene, and any other petroleum solvent;

"Commission" means the Energy Regulatory Commission established under section 4 of the Act;

"Competent Person" A person certified to test for the presence of the approved marker by the technology provider and authorized by the Commission;

"Compliant" means a site offering for sale or tanker transporting petroleum products that are fully duty paid or are not adulterated

"Dealer" means any petroleum retail outlet operator;

"Kenya Standard" means a specification or code of practice declared by the Standards Council under Section 9 of the Standards Act;

"KEBS" means the Kenya Bureau of Standards or the body responsible for standards in Kenya;

"Licensee" means the holder of a licence issued under the Act and the word "licensed" has a corresponding meaning;

"Loading Depots" means licensed "premises" where fuel tankers are loaded with fuel for delivery to other sites for resale or Marketer's own use;

"Marker" means any chemical or alternative fuel differentiation technology approved by the Commission to be used at any given period;

"Non-compliant" means a site offering for sale or tanker transporting petroleum products meant for export or which are adulterated;

"Petroleum" has its meaning as in the Act.

"Petroleum Motor fuels" means Motor Gasoline and Automotiye Gas Oil- (AGO);

"Point of entry" is points recognized for entry of imported petroleum products under the East Africa Customs Management Act (EACMA);

"Tribunal" means the Energy Tribunal established under the Act.

3. Application of these Regulations shall be limited to only marking of petroleum at the depot meant for the Kenya Defence Forces.

4. (1) The Kenya Bureau of Standard (KEBS) shall, in consultation with the Commission, shortlist and certify competent petroleum quality and quantity surveyors for the purpose of petroleum import inspection and verification.

(2) It shall be the obligation of all importers to use only the services of certified petroleum surveyors

5. (1) All petroleum products imported into the country for local use or transshipment into another country shall meet the specifications of Kenya Standards

(2) Such petroleum products under Regulation 5(1) shall only be offloaded into a storage facility possessing a valid licence from the Commission.

(3) Petroleum product intended for transport through the pipeline shall, in addition to meeting the requirements of the Kenya Standard, conform to the minimum operational specifications as specified by the pipeline operator.

(4) Aviation fuels shall in addition to meeting the requirements of Kenya standard, conform to the latest issue of Aviation Fuel Quality Requirements for Jointly Operated System (AFQRJOS) for Jet A-1 fuel and the American Society for Testing and Materials (ASTM D910) for AVGAS

(5) All petroleum products imported into the country shall be sampled and tested for quality against the Kenya Standards by KEBS or their appointed agents.

(6) KEBS shall, in consultation with the Commission, establish the mandatory parameters to be tested for each product type and shall in addition require determination of the actual quantity of the discharged cargo corrected to 20°C.

(7) The tests under Regulation 5(5) above shall be carried out in a laboratory approved by the National Environment Management Authority (NEMA) and which may accredited by the Kenya National Accreditation Services (KENAS).

(8) Samples of the ship cargo before discharge and the shore terminal after discharge which are duly sealed and signed by both the terminal representative and the ship master shall be retained for three (3) months after final date of discharge.

(9) The copies of the load port quality certificates for each particular cargo shall be submitted to KEBS twenty four (24) hours prior to offloading.

(10) Out of specification petroleum products shall be subject to directive issued by the Commission in consultation with KEBS as per the Standards Act CAP 496

(11) It shall be the duty of the receiving shore terminal to carry out an independent quality certification of product in shore tanks after every receipt.

(12) Each storage facility shall, before transfer of custody of the petroleum product, furnish a buyer with a copy of quality certificate mentioned in Regulation 5(11) for the batch of product delivered.

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

(2) No person shall release, from a loading depot, a fuel tanker carrying export product specified in Regulation 5(1) above without having been marked.

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

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

(2) No person shall release from a loading depot a fuel tanker carrying Illuminating Kerosene product specified in Regulation 7(1) above without a marker.

(3) The commission or its appointed agents may stop, sample and test product from any dispensing storage tank or any fuel tanker carrying Illuminating Kerosene and confirm the presence of the marker.

8. (1) All petroleum condensates produced in the country shall, prior to dispatch from a storage site at source, be marked with an adulterant marker approved by the Commission.

(2) All petroleum condensates imported into the country, shall prior to discharge into any shore terminal in Kenya, be marked with a marker approved by the Commission for the case of import by ship. If the import is over land (rail or road tanker) then the marking shall be done at the points of entry.

(3) It shall be the duty of the product owner to give proper declaration to KRA and KEBS of the quantity of the condensate imported.

(4) The Commission or its appointed agents may stop, sample and test product from any dispensing storage tank or any fuel tanker carrying condensate to confirm the presence of the marker.

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

(2) In any case such sampling and testing shall be done by an independent surveyor competitively procured by the Commission and certified by the Kenya Bureau of Standards

(3) The cost of the sample shall be borne by the site operator or the tanker owner provided such a sample does not exceed two-hundred milliliters (200 ml) per dispensing nozzle or per compartment in case of a tanker and per tank in case of a commercial site.

(4) No person shall block the Commission or their agents from carrying out the sampling and testing on any retail or commercial site, depot or tankers.

(5) It shall be the duty of the station owner to provide access to the dispensing nozzles and the tanks as the Commission or its agents may require for purpose of quality and quantity verification.

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

(2) A non-compliant tanker shall have their manholes and nozzles sealed and its operating licence suspended or the drivers permit suspended

(3) Three (3) separate samples each not exceeding one (1) litre shall be taken. One will be retained by the site operator; the second one will be carried by KEBS or his nominee for further analysis while the third will be retained by the Commission or its agent.

(4) The Commission shall retain the samples specified in Regulation 8(3) above for a period of thirty (30) days. A person who wishes to challenge the results shall only do so within thirty (30) days from date of sampling

(5) A retest shall only be done on the two samples duly sealed by the inspection agent that were retained by the site/tanker operator and the Commission.

(6) Before retesting, the Commission shall satisfy itself that the original seals and the packaging have not been tampered with. Where evidence of tampering is visible, the Commission shall refuse any request for retest.

- (7) After a retest has been done, the costs will be borne by the site or tanker operator if the results remain non-compliant. If however the results are compliant, then the Commission will bear the cost of only retesting and incidental costs of closure of business.
- (8) No person shall authorize or offer product for sale from a non-compliant site or tanker before receiving clearance from the Commission
- (9) No person shall cut the seals without written approval from the Commission.
- (10) No person shall transfer or tamper with the contents of the fuel storage tanks with non-compliant test results without a written approval from the commission
11. (1) A non-compliant site shall only be reinstated after the Commission is satisfied that reasonable mitigation measures have been taken. Such measures shall include but not limited to:
- Proof of payment of fines and penalties to KRA
 - Proof of receipt of product upgrade instructions from KEBS for adulterated products
 - Proof that the adulterated product has been upgraded or disposed off in an environmentally friendly manner as per the instruction of KEBS.
 - Where the product cannot be upgraded by dilution, then a disposal advice shall be obtained from NEMA.
 - Proof of quality certificate from KEBS having tested samples of upgraded product from the site.
 - Proof that mechanisms have been put in place to prevent recurrence of the offence in future
- (2) The commission may reject reinstatement of site if convinced 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.
12. (1) A person or his representative who obstructs the Commission's employee or its agent commits an offence.
- (2) A person who, being the owner of a storage facility, vessel or retail dispensing site offers for sale petroleum product that does not meet Kenya Standards commits an offence and shall be liable to penalties under Regulation 12(5) and any other directions that will safeguard availability of quality petroleum product in Kenya.
- (3) A person who knowingly or unknowingly offers for sale motor fuels with an export marker or adulterant marker commits an offence.
- (4) A person who, being an owner of product or a loading facility refuses to have the product under Schedule 1 marked commits an offence.
- (5) A person who reopens a non-compliant site without a written authority from the Commission commits an offense.
- (6) Where an offence is committed by a person who is licensed under the Act he may be liable to sanctions and penalties as follows:
- KSh. 5,000 for every day that the offence continues for obstructing the Commission officers or its agents from conducting tests
 - KSh. 1,000,000 for refusing to have the product marked
 - KSh. 1,000,000 for offering for sale substandard petroleum product
 - KSh. 1,000,000 for offering for sale marked motor fuels
 - KSh. 500,000 and suspension of operating licence for a minimum period of three (3) months for second time and subsequent offenders
 - KShs. 2,000,000 for reopening a non-compliant site without a written authority from the Commission.
 - In any case the Commission may suspend for such a period that it shall deem prudent or revoke any licence or permit issued under the Act if it has sufficient

evidence that continued possession of the license or permit will be used to compromise quality of petroleum product in the market the Kenyan market.

(7) Where an offence is committed by a person who is not licensed under the Act shall be on conviction be liable to a fine not exceeding two (2) million Kenya Shillings, or to a maximum term of imprisonment of one year, or to both

13. (1) Notwithstanding the penalties in Regulation 12 and any other that KRA and KEBS may impose on the site/truck owner/ operator, the Commission may publish the list of names of the operator and names of outlets with non-compliant test results for the purpose of consumer awareness.

(2) The names in Regulation 13(1) may be published in a manner that the Commission may deem appropriate.

14. A person aggrieved by an order or decision of the Commission made under the provisions of these Regulations may, within thirty (30) days of receipt of such order or decision appeal to the Tribunal.

15. The Petroleum (Amendment) Rules of 2000 are hereby repealed.

Schedule 1: List of Petroleum Products to be marked

A. Export Product Marking:

The following products designated for export shall be marked with export marker at the loading depot:

- Motor Gasoline (PMS)
- Automotive Gas Oil (Diesel)
- Dual Purpose Kerosene

B. Marking of Possible Adulterants

The following possible adulterants shall be marked with an adulterant marker at the loading depot:

- Illuminating Kerosene.
- Natural Gas Condensate.

MR/4648161

LINUS GITONGA,
for Director-General.