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THE PETROLEUM ACT,
(CAP. 392)

RULES

(Made under section 5 (3))

THE PETROLEUM (MARKING AND QUALITY CONTROL) RULES, 2010

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THE PETROLEUM ACT,
(CAP 392)

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(Made Under Section 5(3))

THE PETROLEUM (MARKING AND QUALITY CONTROL) RULES, 2010

PART I
PRELIMINARY PROVISIONS

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|--|----------------|
| 1. These Rules may be cited as the Petroleum (Marking and Quality Control) Rules, 2010. | Citation |
| 2. These Rules shall apply to petroleum products marking, quality monitoring and related activities. | Application |
| 3. In these Rules, unless the context otherwise requires: | Interpretation |
| “Act” means the Petroleum Act; | Cap 392 |
| “applicable law” means any principal law, treaty, proclamation, regulation, order, rule and by-law that is customarily treated in Tanzania as having legally binding force relevant to matters pertaining to monitoring of the quality of a petroleum product; | |
| “approved marker” means a substance with specification as agreed in the contract between EWURA and marking company; | |
| “Authority” means the Energy and Water Utilities Regulatory Authority established under the EWURA Act; | Cap. 414 |
| “bulk quantity” means a single quantity of two hundred litres | |

of a petroleum product or more;

“consumer installation” means an installation, including a pump, storage tank or piping used in relation thereto, for the purpose of dispensing a petroleum product into an owned or hired vehicle, machinery or equipment;

“COCO” stands for Company Owned Company Operated which means an arrangement where a retail outlet is owned and operated by the same company;

“CODO” stands for Company Owned Dealer Operated which means an arrangement where a retail outlet is owned by a company, be it a wholesaler or not, but operated by a separate retailer and includes an arrangement where a natural person owns a retail outlet but lets it to a retailer;

“DODO” stands for Dealer Owned Dealer Operated which means an arrangement where a retail outlet is owned and operated by the same retailer;

Cap 414

“EWURA Act” means the Energy and Water Utilities Regulatory Authority Act;

“Good Petroleum Industry Practices” means any action related to a petroleum product intended to preserve product quality and meeting generally accepted health, safety and environmental requirements;

“habitual offender” means a retailer who has been found with non-conforming products for more than two times within a licence period;

Cap. 414

“inspector” means any person appointed or authorized by the Authority under the EWURA Act to act as an inspector;

“licence” means a licence issued by the Authority to an operator to conduct a licensed activity;

“licensed activity” means the importation, transformation, storage, wholesale trade, retail sale or distribution of a petroleum product;

“licensed facility” means a depot, receiving terminal or a

retail outlet in respect of which an operator conducts its licensed activity;

“non- conforming product” means a petroleum product that has failed a detector test;

“marking system” means the process of introducing an approved marker into a petroleum product and shall include all the associated equipment and operation involved in such process;

“marking company” means a company contracted or designated by the Authority to implement a marking system;

“marking terminal” means a site designated by the Authority for marking a petroleum product;

“operator” means any person or entity that operates a licensed facility or owns or operates a transport unit;

“petroleum product” means petrol, diesel or kerosene;

“retailer” means the operator of a retail outlet;

“retail outlet” means any place from which a petroleum product is sold or offered for sale to an end user on a retail basis;

“TRA” means the Tanzania Revenue Authority established under the provisions of the Tanzania Revenue Authority Act;

Cap. 399

“transport unit” means a railway wagon, a barge, a ship or a road tanker that an operator uses to transport a petroleum product;

“wholesaler” means any person engaged in the supply or importation of a petroleum product in bulk quantity for the purpose of wholesale business in Tanzania; and

“wholesale business” means the sale or importation of a petroleum product in bulk quantity.

PART II

MARKING OF A PETROLEUM PRODUCT

4.-(1) No person shall mark a petroleum product save as provided in these rules.

Marking of
petroleum
products

(2) All petroleum products imported for domestic use except those products that are tax exempted shall be marked with an approved marker in such a manner as shall be agreed in a contract between the Authority and the marking company.

(3) Marking of a petroleum product shall be done at a marking terminal.

(4) An operator shall take all precautionary measures to ensure that all petroleum products in his possession are marked with an approved marker pursuant to these rules.

Offence

5. Any operator found storing, selling, offering for sale or transporting a petroleum product which is not marked with an approved marker pursuant to these rules shall:

- (a) for a wholesaler, be liable to a fine of ten million shillings; and
- (b) for other operators, be liable to a fine of seven million shillings.

PART III

PROCUREMENT OF A MARKING COMPANY

Marking
company to
be procured
competitively
Cap. 410

6.-(1) The Authority shall procure the marking company in conformity with the provisions of the Public Procurement Act.

(2) The marking company shall be responsible for-

- (a) maintaining the integrity of the marking system;
- (b) marking a petroleum product pursuant to these rules;
- (c) supplying detectors;
- (d) providing the Authority with periodic reports on operations evaluation as per contract; and
- (e) carrying out any other functions as may agree with the Authority.

PART IV

PROCEDURES FOR TESTING OF A PETROLEUM PRODUCT

7.-(1) An inspector may, at any time, take a sample of a petroleum product from a licensed facility or a transport unit and carry out tests and examinations to determine the presence and concentration levels of the markers in the samples.

Procedures
for testing a
petroleum
product

(2) An operator shall render all necessary assistance to facilitate any inspection of its licensed facility or transport unit pursuant to sub-rule (1) for purposes of testing a petroleum product.

(3) An inspector may, during inspection, take a copy or extract of any document related to loading, handling, offloading or delivery of a petroleum product.

(4) An inspector may, during the course of an inspection, break any seal for the purpose of taking a sample, provided that the inspector shall thereafter affix the Authority's seal, and no person shall offload any petroleum product from such transport unit without prior authorization of the Authority.

(5) The Authority may seek the assistance of other law enforcement authorities, including the police force, in carrying out an investigation, inspection or impoundment of a transport unit.

8. Any person who hinders or refuses to allow the inspector to carry out any of the lawful activities commits an offence and shall upon conviction be liable to a fine of five million shillings or imprisonment for a period of three years or to both.

Offence

PART V

PENALTIES FOR NON-CONFORMING PRODUCTS

Penalties for
non-
conforming
products

9.-(1) Any operator of a licensed facility or a transport unit found with a non-conforming petroleum product shall be liable to a penalty prescribed in the Schedule to these rules and the Authority may further order such operator to:

- (a) close or quarantine its licensed facility either in whole or in part;
- (b) dispose or blend the non-conforming petroleum product in accordance with Good Petroleum Industry Practices and environmental laws; or
- (c) compensate any person who has lodged and proved a complaint for any damages caused by such non-conforming petroleum product.

(2) The operator shall after receiving an Order for closing or quarantining a licensed facility or part thereof, comply with such Order and the Authority shall fix a seal on pumps or quarantine storage tanks and may thereupon fix a signage around the pump island or storage tank indicating that such licensed facility or part thereof has been closed under the Order of the Authority.

(3) Notwithstanding the provisions of sub-rule (1) and any other penalties prescribed in the Act the Authority shall refer to TRA or any other relevant authority any person found with non-conforming petroleum product where it believes that there were attempts by such person to defraud the Government of its revenue.

Licensed
facility of
which a
licence has
been
Revoked

10. A licensed facility of which a licence has been revoked pursuant to rule 9 (4) shall:

- (a) for licensed facilities operated under DODO and COCO arrangement, remain closed and not be eligible for issuance of a licence for a period of twelve months from the date of revocation; and

- (b) for licensed facilities operated under CODO arrangement, be eligible for continuation of operation by another operator.

11. An operator who has its licensed facility or part thereof closed under Orders of the Authority shall pursuant to the directions in writing from the Authority be allowed to dispose off all petroleum products contained in such licensed facility or part thereof.

Procedures for disposal of a petroleum product

12. The Authority shall de-register any transport unit which has been found with non-conforming petroleum product for more than two times within a registration period.

De-registration process of a transport unit

PART VI

PROCEDURE FOR IMPOUNDING A TRANSPORT UNIT

13.-(1) An inspector shall impound any transport unit that has been found with a non-conforming product.

Procedure for impounding a transport unit

(2) The Authority shall affix its seal on any transport unit after impounding it and no person shall offload any petroleum product from such transport unit without prior authorization of the Authority.

(3) The Authority may seek the assistance of other enforcement authorities, including the police force, in carrying out an investigation, inspection or impoundment of a transport unit.

(4) After the Authority has impounded a transport unit pursuant to sub-rule (1) it shall without prejudice to the penalties prescribed in the Act and in the rules issued by the Authority, order the operator of such transport unit to blend the product in accordance with Good Petroleum Industry Practices and environmental laws.

Release of
the
impounded
transport unit

14. A transport unit which has been impounded under the provisions of rule 13 (1) shall only be released upon the Authority being satisfied that:

- (a) the non-conforming petroleum products therein have been disposed or blended in accordance with Good Petroleum Industry Practices and environmental laws;
- (b) TRA has certified in writing that it has no objection to such release if the matter was referred to it pursuant to rule 9 (3);
- (c) the operator has paid the appropriate fine pursuant to these rules; and
- (d) the Authority has issued an Order in writing for the release of such unit.

Exemption
from liability

15. Notwithstanding the provisions of these rules, the Authority shall not be liable for any liability arising from the impoundment of any transport unit, and all the costs associated with the impoundment and safe keeping of such transport unit shall be borne by the operator of such transport unit.

PART VII

PROCEDURES FOR RE-OPENING OR DE-QUARANTINING A LICENSED FACILITY

Procedure for
re-opening or
de-
quarantining
a licensed
facility

16.-(1) A licensed facility that has been closed or quarantined pursuant to rule 10 (1) shall be re-opened or de-quarantined only upon the Authority being satisfied that-

- (a) the operator has paid the appropriate fine pursuant to these rules.
- (b) a non-conforming petroleum product therein has been disposed of or blended in accordance with Good Petroleum Industry Practices and environmental laws; and

- (c) TRA has certified in writing that it has no objection to such reopening or dequarantining if the matter was referred to it pursuant to Rule 9 (3)

(2) The Authority shall issue an Order in writing for a reopening or de-quarantining of a licensed facility or part thereof.

(3) An operator shall, under direct supervision of an inspector and upon receipt of an Order to reopen or dequarantine a licensed facility or part thereof, be allowed to remove a signage indicating that the licensed facility or part thereof has been allowed to continue with operations.

PART VIII

GENERAL PROVISIONS

17.-(1) An operator who breaches any provision of these rules for which no specific penalty is prescribed shall be liable to a fine not exceeding ten million shillings.

General
penalty

(2) Where an operator charged with an offence under applicable law and these rules is a body corporate, any person who, at the time of commission of such offence was acting as director, manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate.

(3) An operator who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions concern the licensed activity.

18. Any person who is in continuous defiance of these rules shall be liable to a fine of five million shillings for every day on which the defiance continues.

Penalty for
continued
defiance

Penalties for cutting seals, removing a signage affixed at a licensed facility or transport unit

19. Any person who-
- (a) tempers with or cuts a seal affixed by the Authority at a licensed facility or a transport unit; or
 - (b) removes any signage affixed by the Authority at a licensed facility or a transport unit,

commits an offence and upon conviction shall be liable to a fine of five million shillings or to imprisonment for a term not exceeding two years, or to both.

The facility to remain closed until a fine is paid in full

20. Any operator who fails or refuses to pay a fine as ordered by the Authority, shall have its licensed facility as appropriate closed or remain closed until the fine is paid in fully.

Marking fee

21. A wholesaler shall pay the marking company a marking fee as shall be determined by the Authority from time to time.

Authority to supplement procedures

22. Where procedures are not provided for in these rules, the Authority may do whatever is necessary and permitted by applicable law to enable it to effectively and completely adjudicate on the matter before it.

SCHEDULE

(Made under Rule 9 (1))

PENALTIES

<i>S.N</i>	<i>Operator Category</i>	<i>1st Offence</i>	<i>2nd Offence</i>	<i>3rd or Subsequent Offence</i>
1	Retailer/Owner of Consumer Installation	Fine of seven million shillings	Fine of twenty five million shillings.	Licence Revocation
2	Wholesaler	Fine of ten million shillings	Fine of one hundred million shillings or twenty percent of the value of non-conforming petroleum product, whichever is higher.	Closure of a licensed facility or part thereof for a period of twelve months plus payment of a Fine of one hundred million shillings.
3	Transporter	Fine of seven million shillings	Fine of fifteen million shillings or twenty percent of the value of non-conforming petroleum product whichever is higher.	Deregistration of a transport unit found with non-conforming products.

Dar es Salaam
.....June, 2010

HARUNA MASEBU,
Director General