

LEGAL NOTICE NO. 97

## THE PETROLEUM ACT

*(Cap. 308)*THE PETROLEUM (OPERATION OF COMMON USER  
PETROLEUM FACILITIES) REGULATIONS, 2025

## ARRANGEMENT OF REGULATIONS

## PART 1—PRELIMINARY

*Regulation*

1—Citation.

2—Interpretation.

3—Application.

## PART II—OPERATION OF A COMMON USER FACILITY

4—Requirement for licence to construct a common user facility.

5—Requirements for licence and renewal of licence to operate a  
common user facility.

6—Determination of an application for licence.

7—Capacity utilisation contract.

8—Obligations of a common user petroleum facility licensee.

9—Ownership and custody of petroleum products.

10—Tarrifs.

11—Allowable operating stock loss.

## PART III— MISCELLANEOUS

12—Complaints and disputes.

13—Reporting of accidents or incidents.

14—Investigation of accidents or incidents.

15—False information.

## SCHEDULES

## THE PETROLEUM ACT

(Cap. 308)

IN EXERCISE of the powers conferred by section 101 the Petroleum Act, the Cabinet Secretary for Energy and Petroleum on the recommendation on the Energy and Petroleum Regulations Authority, makes the following Regulations—

THE PETROLEUM (OPERATION OF COMMON USER  
PETROLEUM FACILITIES) REGULATIONS, 2025.

## PART I—PRELIMINARY

1. These Regulations may be cited as the Petroleum (Operation of Common User Petroleum Facilities) Regulations, 2025. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
  - Act” means the Petroleum Act; Cap 308
  - “Authority” means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act; Cap 314
  - “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to petroleum;
  - “capacity utilisation contract” means a contract developed by a common user petroleum facility licensee and submitted to the Authority in accordance with regulation 7;
  - “common user facility” has the meaning assigned to it under the Act;
  - “tariff” means a set of prices, rates, charges and costs 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 capacity utilisation contract with an owner or operator of a common user facility; and
  - “wholesale depot” means a petroleum receipt, storage and truck loading facility owned by a licensee carrying out petroleum business.
3. The following may be licensed as common user petroleum facilities upon meeting the terms and conditions set by the Authority under Part II— Application.
  - (a) petroleum bulk storage facilities;
  - (b) petroleum pipeline transportation systems;
  - (c) petroleum marine jetty systems;
  - (d) aviation refueling hydrant systems and dispensers;
  - (e) petroleum truck loading facilities;
  - (f) liquidified petroleum gas pipeline systems, storage facilities and cylinder refilling facilities;

- (g) rail tank-wagon loading facilities; and
- (h) any other facility that may be approved by the Authority from time to time.

#### PART II—OPERATION OF A COMMON USER FACILITY

4. (1) A person who intends to construct a common user facility shall comply with the requirements under the Act and the Regulations governing petroleum business licensing and facility construction.

Requirement for licence to construct a common user facility permit.

(2) A person who intends to operate a common user facility shall obtain a licence from the Authority.

(3) The application for the licence in sub-regulation (2) shall be accompanied by a common user tariff approved by the Authority and a declaration of the capacity available to third parties for common use.

(4) A person who undertakes the operation of a common user petroleum facility without a valid licence issued under the Act and these Regulations commits an offence and shall be liable, on conviction to the penalty set out under section 124 of the Act.

5. (1) A person who wishes to operate a common user facility or renew a common user licence shall make an application to the Authority in the form set out in the First Schedule.

Requirements for licence and renewal of licence to operate a common user facility.

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

- (a) proof of payment of the fees listed in the Second Schedule; and
- (b) a copy of a valid petroleum business licence.

(3) The Authority shall review the application in sub-regulation (1) within thirty days of receipt of the application.

(4) The Authority may request for additional documents to enable satisfactory review of the application for the licence.

(5) An application for the renewal of a licence shall be made at least thirty days before expiry of the licence.

(6) The Authority upon consideration of an application under this regulation may —

- (a) issue or renew a licence with or without conditions as it may deem necessary; or
- (b) reject the application for a licence or renewal of a licence where such application does not meet the applicable requirements.

(7) Where the Authority rejects an application for a licence or renewal of a licence, the Authority shall give reasons for the rejection in writing within seven days of the rejection.

(8) A renewed licence shall maintain the original licence number.

(9) A licence issued by the Authority for a common user facility shall be valid for thirty –six months from the date of issue.

(10) Where an application for the renewal of a licence is made thirty days before expiry and the Authority has not made a determination by the date of expiry, the licence shall be deemed to be valid until a determination on the application for renewal is made.

6.(1) In considering the application for a common user petroleum facility, the Authority shall take into account the following—

Determination of an application for licence.

- (a) current capacity utilization;
- (b) outcome of key stakeholder engagements;
- (c) ease of supply logistics to the facility;
- (d) operational efficiency of the facility;
- (e) that the contractual rights, privileges, liabilities, and obligations accrued to an existing licensee or any other person are not materially adversely affected;
- (f) economic and financial benefits to the country or area of supply of the undertaking;
- (g) the cost of the undertaking and financing arrangements;
- (h) the applicant's proposed tariff; and
- (i) any other matter that the Authority may consider likely to have a bearing on the undertaking.

(2) A licence for a common user petroleum facility shall be issued in the form set out in the Third Schedule.

7. (1) The licensee of a common user petroleum facility shall develop and submit to the Authority for approval, a capacity utilisation contract to be signed by users.

Capacity utilisation contract.

(2) The contract in sub-regulation (1) shall apply the following key principles—

- (a) open access to the common user petroleum facility upon users meeting the requisite terms and conditions as stipulated in the capacity utilisation contract; and
- (b) non-discrimination between users or classes of users on access, tariffs and conditions of service.

(3) The tariffs, charges payable and any subsequent reviews of the tariffs and charges shall be subject to approval by the Authority.

(4) The capacity utilisation contract shall contain the minimum requirements set out in the Fourth Schedule.

8. (1) A licensee of a common user petroleum facility shall –
- Obligations of a common user petroleum facility licensee.
- (a) at all times, provide the declared capacity which shall be subject to common user principles as provided in the licence;
  - (b) notify the Authority in writing giving reasons of any changes in the capacity available to third party users;
  - (c) offer services only to persons licensed by the Authority;
  - (d) provide open access to users who meet the terms and conditions of the contract;
  - (e) not discriminate between users or classes of users on access, tariffs, and conditions of service;
  - (f) where there is limited capacity, allocate capacity among users based on the equitable principles stipulated in the contract and approved by the Authority; and
  - (g) submit copies of the signed contract with users, to the Authority.
- (2) A common user facility licensee who contravenes the provisions of sub regulation (1) commits an offence and shall upon conviction be liable, to—
- (a) in the case of paragraph (a) a penalty of five hundred shillings for every cubic metre not declared; and
  - (b) in the case of paragraphs (b), (c), (d), (e) (f) or (g) the general penalty provided under section 124 of the Act.
9. A commercial transaction relating to the title of petroleum products stored or delivered in a common user facility shall be as provided in the capacity utilisation contract.
- Ownership and custody of petroleum products.
10. (1) The Authority shall approve the tariff to be charged by a common user facility.
- Tariffs.
- (2) A common user petroleum facility licensee shall apply in writing to the Authority for the review and approval of the tariffs in sub-regulation (1) and attach the following to the application—
- (a) a summary of the proposed tariff;
  - (b) the tariff model outlining a detailed breakdown of the proposed tariff; and
  - (c) any supporting documentation to support the proposed tariff.
- (3) The Authority shall review and determine the application in sub-regulation (2) within ninety days of receipt of such an application.
- (4) In approving the tariff in sub-regulation (1), the Authority shall ensure the recovery of any reasonable costs and a reasonable return on investment.

(5) In the case of pipeline systems, the approved tariff shall be designated separately for pipeline transportation, storage and loading.

(6) The tariffs shall be calculated in accordance with the method set out in the Fifth Schedule.

11. The allowable operating stock loss for a common user facility shall in any case not exceed zero point two five percent (0.25%) of the volume of petroleum handled.

Allowable  
operating stock  
loss.

### PART III— MISCELLANEOUS

12. (1) Any complaints or disputes under these Regulations shall be resolved as provided for in the capacity utilisation contract between the user and the common user petroleum facility licensee.

Complaints and  
disputes.

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

13. (1) A common user petroleum facility licensee shall within forty-eight hours of an accident or incident notify the Authority in the form set out in the Sixth Schedule.

Reporting of  
accidents or  
incidents.

(2) The threshold of accidents or incidences to be reported under these Regulations shall include those that cause—

- (a) loss of life or permanent total disability;
- (b) damage to property or to the environment of a value exceeding one million shillings;
- (c) an oil spill of one hundred litres or more, or accidental gas release of one hundred kilograms or more; or
- (d) a fire or explosion resulting in the incidents in paragraphs (a) or (b).

(3) The information to be submitted to the Authority in sub-regulation (1) shall include the following—

- (a) name of the owner and operator of the premises involved;
- (b) date and time of the incident or accident;
- (c) location and geographical spread of the incident or accident;
- (d) number of injuries or fatalities, if any;
- (e) scale of environmental damage, if any;
- (f) damage to the common user facility or the property of a third party, if any;
- (g) in case of a petroleum logistics facility, the number of days the infrastructure continues to be out of service; and
- (h) description of events leading to and the most probable cause of the incident or accident.

(4) A common user petroleum facility licensee who fails to report an accident or incident as required under sub-regulation (1)

commits an offence and shall upon conviction be liable to a penalty of twenty thousand shillings.

14. (1) A common user petroleum facility licensee shall conduct detailed investigations of any accident or incident reported under regulation 13 within fourteen days from the date of occurrence, and submit a report containing the following—

Investigation of accidents or incidents.

- (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 for implementation.

(2) The Authority shall review the report submitted under sub-regulation (1) within thirty days of receipt and—

- (a) accept the report;
- (b) request for adjustments; or
- (c) reject the report giving reasons for the rejection.

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

15. (1) A common user petroleum facility licensee shall at all times provide to the Authority accurate and truthful information.

False information.

(2) A common user petroleum facility licensee who provides false information to the Authority commits an offence and shall be liable on conviction to the penalty set out under section 103 of the Act.

## FIRST SCHEDULE

r. 5 (1)

## APPLICATION FORM FOR A LICENCE FOR A COMMON USER PETROLEUM FACILITY

(A separate application form must be completed in respect of each separate business establishment)

## 1. Application Type (Tick as appropriate):

a. ☐ New Applicationb. ☐ Renewal Application

## 2. Name of business/applicant: \_\_\_\_\_

## 3. Details of applicant: \_\_\_\_\_

(a) Petroleum Facility Business Licence No: \_\_\_\_\_

(b) Storage Capacity: \_\_\_\_\_

(c) Income Tax Person &amp; Identification Number(s): \_\_\_\_\_

(d) Business/applicant KRA pin: \_\_\_\_\_

(e) Postal address: \_\_\_\_\_

(f) Email Address: \_\_\_\_\_

(g) Telephone/Mobile Number: \_\_\_\_\_

(h) Business registration details (Date of Registration, Registration Number): \_\_\_\_\_

(i) Proposed location of the business premises:

(i) Plot No: \_\_\_\_\_

(ii) Building Name: \_\_\_\_\_

(iii) Street/Market: \_\_\_\_\_

(iv) Town/District: \_\_\_\_\_

(v) County: \_\_\_\_\_

## 4. Location: -Longitude: \_\_\_\_\_ Latitude: \_\_\_\_\_

## 5. Details of proprietors or partners owning business or directors/shareholders of the company, as the case may be:

Name:	Nationality	No of shares	Passport/ ID No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Any additional information should be submitted on a separate sheet of paper)



6. Percentage of the total storage capacity of the facility being offered for Common Use
7. Attach Tariff Application as prescribed in this regulation
8. Attach sample Capacity Utilisation Agreement

## SECOND SCHEDULE

r. 5(2(a))

## LICENCE FEES

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

## THIRD SCHEDULE

r. 6 (2)

## FORM OF COMMON USER PETROLEUM FACILITY LICENCE



THE PETROLEUM ACT, CAP 308  
PETROLEUM BUSINESS LICENCE

No. ERC/PET \_\_\_\_\_

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

**LICENCE TO OPERATE A COMMON USER PETROLEUM FACILITY**

On premises situated at: \_\_\_\_\_

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

Building \_\_\_\_\_

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

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

This licence is valid for a period of \_\_\_\_\_

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

Signature \_\_\_\_\_

(SEAL)

Director General Energy and Petroleum Regulatory Authority

Conditions:

As shall be provided by the Authority.

## FOURTH SCHEDULE

r. 7(4)

REQUIREMENTS FOR A COMMON USER PETROLEUM FACILITY CAPACITY  
UTILISATION CONTRACT

A Common User Petroleum Facility Licensee shall enter into an Agreement with Users and shall, on the minimum, contain the following provisions as prescribed by Regulation 8(2) of these Regulations –	
1.	Licensee obligations and responsibilities.
2.	Users' obligations and responsibilities.
3.	Underlying principles of 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 petroleum products.
6.	Procedures for receipt of products including scheduling, quantity measurements, determination of product quality specifications and certification.
7.	Procedures for coordination and scheduling of petroleum products deliveries.
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.
15.	Procedures for governing facility access, security, safety, environment, and hygiene.

## FIFTH SCHEDULE

r. 10 (6)

## TARIFF CALCULATION METHOD FOR COMMON USER PETROLEUM FACILITIES

The method outlined in this schedule shall be used by the Authority to calculate allowable tariffs for various services offered at a common user petroleum facility. The tariffs approved by the Authority shall be sufficient for the licensee to recover the capital cost of the investment, operate and maintain the system, and make a return commensurate with the risk.

The methodology used to calculate tariffs shall be systematic, consistent, comparable, fair, non-discriminatory, simple, transparent, predictable, and stable such that it promotes access to affordable petroleum products.

The method shall determine the allowable revenue for the year under consideration, divided by the throughput volume for the period to arrive at the tariff in Kenya Shillings or United States Dollar per cubic metre for that particular service and facility.

A detailed demonstration of the methodology shall be published on the Authority's Website

1.	<p><b>Allowable Revenue (AR)</b></p> <p>The following formula shall be used to determine the Allowable Revenue:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: fit-content;"> <math display="block">AR = (RAB \times RoR) + E + D + F + T</math> </div> <p>Where –</p> <p>AR = Allowable revenue</p> <p>RAB = Regulatory asset base</p> <p>RoR = Rate of Return as determined by the Authority based on the Weighted Average Cost of Capital.</p> <p>E = Operating and maintenance expenses for the tariff period under review. This shall be based on expenses following an independent and professional benchmarking exercise.</p> <p>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 RAB for the tariff period under review.</p> <p>F = Approved revenue addition to meet debt obligations for the tariff period under review</p> <p>T = Estimated tax expense for the tariff period under review</p>
2.	<p><b>RAB</b></p> <p>The following formula shall be used to determine the RAB:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: fit-content;"> <math display="block">RAB = (V - d) + w \pm dtax</math> </div>

	<p>Where —</p> <p>V is the 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 is the cumulative depreciation against operating property, plant, vehicles, and equipment in service</p> <p>w is the 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:</p> <p><i>Net working capital = inventory + receivables + operating cash + minimum cash balance – trade payables.</i></p> <p>dtax is the deferred tax</p>
3.	<p>Expenses – Operating and Maintenance (E)</p> <p>The tariff set by the Authority shall enable recovery of reasonable operational and maintenance expenses of the facility in the year in which they are incurred. These expenses should comprise 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>



## SIXTH SCHEDULE

r. 13 (1)

## COMMON USER PETROLEUM FACILITY ACCIDENT REPORTING FORM

1. Name of Licensee: \_\_\_\_\_
2. Motor Vehicle Registration No.: \_\_\_\_\_
3. Accident Location:
  - (i) County: \_\_\_\_\_
  - (ii) Sub-County: \_\_\_\_\_
  - (iii) Location: \_\_\_\_\_
  - (iv) Village: \_\_\_\_\_
4. Time and Date of the Accident: \_\_\_\_\_
5. Date Reported to Licensee: \_\_\_\_\_
6. Date Reported to the Authority: \_\_\_\_\_
7. Cause of Accident: \_\_\_\_\_
8. Accident Impact: \_\_\_\_\_
9. Police Reference and Reported Date (*as applicable*): \_\_\_\_\_
10. Reported by:
  - (a) Name: \_\_\_\_\_
  - (b) Postal address: \_\_\_\_\_
  - (c) Email address: \_\_\_\_\_
  - (d) Telephone: \_\_\_\_\_
11. Supporting Documents: (*As applicable including scene photos*)

Made on the 19th May, 2025.

OPIYO WANDAYI,  
*Cabinet Secretary for Energy and Petroleum.*