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Petroleum Act

The Petroleum (Pricing) Regulations

Legal Notice 192 of 2022

Legislation as at 31 December 2022

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The Petroleum (Pricing) Regulations (Legal Notice 192 of 2022)

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PETROLEUM ACT

THE PETROLEUM (PRICING) REGULATIONS

LEGAL NOTICE 192 OF 2022

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1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires-

"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 for the time being responsible for petroleum;

"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;

"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;

"OTS" or "open tendering system" has the same meaning assigned to it in the Act;

"petroleum products" means Premium Motor Spirit (Super Petrol), Illuminating Kerosene and Automotive Gasoil (Diesel) that meet the requirements of the Kenya Standards;

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

"pump price" means the capped price of petroleum products to be paid by a consumer at a retail dispensing site;

"primary storage" means a petroleum bulk storage depot into which petroleum products are first received at Mombasa upon importation;

"primary transport" means the transportation of petroleum from primary storage depots to secondary storage depots;

"secondary storage" means a bulk storage depot that receives petroleum products from a primary storage depot;

"retail dispensing site" means licensed premises where petroleum products are sold to consumers; and

"wholesale depot" means a facility for petroleum bulk receipt, storage, and truck loading for onward distribution and supply.

3. Application

- (1) The Authority shall determine and publish the maximum wholesale and retail prices of petroleum products on the 14th day of every calendar month.
- (2) The published prices in subregulation (1) shall be effective on the 15th day of the calendar month and shall remain in force until the 14th day of the following calendar month.
- (3) Notwithstanding subregulations (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 costs of petroleum products.
- (4) Except as otherwise provided, these Regulations shall apply to —
 - (a) Super Petrol;
 - (b) Illuminating Kerosene; and
 - (c) Diesel.
- (5) The petroleum products listed in subregulation (4) shall be imported through the OTS and designated for consumption in Kenya.
- (6) A person licensed to undertake the business of wholesale or retail of petroleum products shall not offer for sale petroleum products at a price above the published maximum wholesale and retail price respectively.
- (7) A person who contravenes subregulation (6) commits an offence and is liable on conviction to the fine prescribed in section 124 of the Act.

Part II – TARIFFS ON IMPORTATION AND TRANSPORTATION OF PETROLEUM PRODUCTS

4. Landed costs

- (1) The landed cost of imported petroleum products shall be calculated and determined using the pricing formula and cost components 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 the pricing structure shall be published in the *Gazette*.

5. Pipeline tariff

- (1) The Authority shall approve the applicable tariffs for primary transport by pipeline.
- (2) The allowable pipeline loss to be factored in the pump price shall be the actual loss approved by the Authority.
- (3) The loss in subregulation (2) 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

6. Wholesale price

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

$$C_I = \frac{\sum (V_{irp} \cdot C_{irp})}{\sum V_{irp}}$$

C_I is the weighted average cost in Kenya shillings per litre of petroleum products imported through the OTS through a gazetted primary storage depot;

V_{irp} is the volume in litres of a cargo of petroleum product imported through the OTS and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month;

C_{irp} is the unit cost of a cargo of petroleum product imported through the OTS and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month in Kenya Shillings per litre;

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

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

Where –

P_w = the maximum wholesale price

C_I = the landed cost of imported petroleum products

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 storage costs

L_{ss} = the allowable losses on secondary storage

C_f = the inventory financing costs

M_w = the wholesale margin

Y = is any other prudently incurred cost approved by the Authority

T = the applicable taxes (Excluding VAT),

VAT= Value Added Tax

- (a) The landed cost of imported petroleum products C_I , shall be calculated and determined using the pricing formula set out in Part I of the Second Schedule;
- (b) C_p is the primary storage tariff at Kipevu Oil Storage Facility or any other gazetted primary storage depot;
- (c) L_{ps} is the allowable loss factor in Primary Storage Depots;
- (d) C_f is the inventory financing cost for operational stocks of petroleum products;

- (e) P_t is 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 Part II of the Second Schedule;
- (f) C_{ss} is the secondary storage depot throughput fees;
- (g) L_{ss} is the allowed losses in secondary storage depots;
- (h) M_w is the allowed wholesale margin.

7. Retail pump price

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

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

Where –

- (a) P_r is the maximum retail price of petroleum products;
- (b) T_s is the cost of transporting petroleum products from a secondary storage depot to a retail dispensing site;
- (c) M_{ri} is the retail margin corresponding to the investments associated with a benchmark retail dispensing site;
- (d) Z is any other prudently incurred cost approved by the Authority;
- (e) M_{ro} is the retail margin corresponding to the operating costs associated with a benchmark retail dispensing site.

8. Publication of cost elements and pricing areas

The Authority shall publish the J_{hc} , C_p , P_t , C_f , L_{ss} , L_{ps} , T_s , C_{ss} , x -factor, K_{pt} , K_{rd} , M_{ri} , M_{ro} , M_w , and the list of pricing towns from time to time.

Part IV – GENERAL PROVISIONS

9. Secondary storage locations

The locations of wholesale depots used as secondary storage for purposes of determining the maximum wholesale and retail prices of petroleum products are as set out in the First Schedule.

10. Display of petroleum prices

- (1) A person licensed to undertake retail of petroleum products shall at all times display the applicable retail prices.
- (2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine of twenty thousand shillings.

11. Non-disclosure of price before release

- (1) A person shall not disclose prices of petroleum products set under these Regulations prior to the date that such prices are to be declared by the Authority.
- (2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to the fine prescribed in section 124 of the Act.

12. Price determination under emergency situations

The Authority shall determine the maximum wholesale and retail price of petroleum products released from the strategic stocks.

13. Offences and penalties

Where a person defaults or contravenes any of the provisions of these Regulations for which no fine or penalty is expressly stated in the Act, the person shall on conviction be liable to the fine set out under section 124 of the Act.

FIRST SCHEDULE [r. 9]**WHOLESALE DEPOT LOCATIONS**

The locations of wholesale depots used as secondary storage for purposes of determining the maximum wholesale and retail prices of petroleum products are:

<i>Item</i>	<i>Wholesale Depot Location</i>
1.	Mombasa
2.	Nairobi
3.	Nakuru
4.	Eldoret
5.	Kisumu

SECOND SCHEDULE [r. 4(1), 4(2), 6(a), 6(e)]**LANDED COST AND PRIMARY TRANSPORTATION COST****Part I - LANDED COST OF PETROLEUM**

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

$$C_i = \left\{ \frac{(FOB + FP + LC) \times FX}{1,000 \times CF} \right\} + \{IWR + KPA + SC + OL + A + I + COC + AR + D\}$$

Where -

<i>FOB</i>	Free on Board price of imported petroleum products as per the OTS Agreement in United States Dollar per metric ton
<i>FP</i>	Freight and Premium in United States Dollar per metric ton
<i>LC</i>	Letter of credit charges in United States Dollar per metric ton
<i>IWR</i>	Insurance and War Risk charges in Kenya Shillings per litre
<i>CF</i>	Conversion Factor to convert Metric Ton to Cubic Metre.
<i>FX</i>	Foreign Currency Exchange rate for converting the cost of imported petroleum products from United States Dollars or any other foreign currency to Kenyan Shillings and which shall be the mean selling rate of leading commercial banks or any other rate as may be determined by the Authority.
<i>COC</i>	Certificate of Conformity charges in Kenya Shillings per litre
<i>KPA</i>	Kenya Ports Authority handling fees in Kenya Shillings per litre
<i>SC</i>	Stevedoring Charges in Kenya Shillings per litre
<i>OL</i>	Ocean Losses in Kenya Shillings per litre
<i>A</i>	Administration Fees in Kenya Shillings per litre
<i>I</i>	Inspection charges in Kenya Shillings per litre
<i>AR</i>	Analysis and Recertification charges in Kenya Shillings per litre
<i>D</i>	Demurrage costs in Kenya Shillings per litre

Part II - TRANSPORT RATES TO THE NEAREST WHOLESALE DEPOT (P_t)

The P_t will be factored as follows:—

$$P_l = (x\% \times K_{pt}) + ((100 - x\%) \times K_{rd})$$

Where K_{pt} is the Pipeline tariff, and K_{rd} is the Road Bridging rate