

THE PETROLEUM ACT

*(No. 2 of 2019)*

IN EXERCISE of the powers conferred by section 101(y) of the Petroleum Act, 2019 the Cabinet Secretary for Petroleum and Mining on the recommendation of the Authority makes the following Regulations —

THE PETROLEUM (PRICING) REGULATIONS, 2022

1. These Regulations may be cited as the Petroleum (Pricing) Regulations, 2022.

Citation.

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

Interpretation.

“Act” means the Petroleum Act;

No. 2 of 2019

“Authority” means the Energy and Petroleum Regulatory 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;

“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. (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.

Application.

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

(3) Notwithstanding sub-regulations (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 sub-regulation (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 sub-regulation (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. (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.

Landed costs.

(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. (1) The Authority shall approve the applicable tariffs for primary transport by pipeline.

Pipeline tariff.

(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 sub-regulation (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. The landed cost of petroleum products shall be determined as follows:

Wholesale price.

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

$C_l$  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 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 petroleum product imported through the OTS 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 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 -

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

Where —

$P_w$  = the maximum wholesale price

$C_l$  = 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  $C_l$ , 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. The maximum retail price of petroleum products shall be the sum of the following –

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

Retail pump price.

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

Publication of cost elements and pricing areas.

#### PART IV — GENERAL PROVISIONS

9. 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.

Secondary storage locations.

10. (1) A person licensed to undertake retail of petroleum products shall at all times display the applicable retail prices.

Display of petroleum prices.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on conviction to a fine of twenty thousand shillings.

11. (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.

Non-disclosure of price before release.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on conviction to the fine prescribed in section 124 of the Act.

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

Price determination under emergency situations.

13. 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.

Offences and penalties.

## SCHEDULES

## 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 ( $C_l$ ) shall be calculated using the formula below and as guided by the OTS.

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

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:—

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

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

Made on the 14th October, 2022.

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*Cabinet Secretary for Petroleum and Mining.*