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Petroleum Act

The Petroleum (Importation) Regulations, 2023

Legal Notice 3 of 2023

Legislation as at 3 February 2023

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The Petroleum (Importation) Regulations, 2023 (Legal Notice 3 of 2023)

Contents

Part 1 – PRELIMINARY	1
1. Citation	1
2. Interpretation	1
3. Application	2
Part II – THE OPEN TENDERING SYSTEM	2
4. Licence to import petroleum	2
5. Open tendering system agreement	2
6. Transport and storage agreement	2
7. Capacity allocation	2
8. Ownership of petroleum products	3
Part III – THE SUPPLY COORDINATION COMMITTEE	3
9. Supply Coordination Committee	3
10. Functions of the Committee	3
FIRST SCHEDULE (r. 2, 3, 4, 10)	4
SECOND SCHEDULE (r. 5 (1))	4

PETROLEUM ACT

THE PETROLEUM (IMPORTATION) REGULATIONS, 2023

LEGAL NOTICE 3 OF 2023

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Commenced on 27 January 2023

Part 1 – PRELIMINARY

1. Citation

These Regulations may be cited as the Petroleum (Importation) Regulations, 2023.

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);

"batch" means a quantity of refined petroleum product of similar grade pumped through the pipeline as a continuous consignment;

"batching" means the process of scheduling batches in the pipeline;

"Energy Act" means the Energy Act (Cap. 314);

"import cost build-up" means the breakdown of cost of imported petroleum product up to the point of delivery into Kenya;

"nominated common user primary import petroleum storage facility" means a shore petroleum storage facility owned and maintained by a person which may be used by third parties and which has been chosen at a particular point in time to receive a shipment of imported petroleum;

"offtake" means change in title and risk of refined petroleum products from one party to another after fulfilment of set commercial obligations;

"oil marketing company" means a company duly licensed to import the petroleum products in the First Schedule and is eligible to participate in the open tendering system;

"open tendering system" has the meaning assigned to it under the Act;

"open tendering system agreement" means the approved set of rules and procedures that govern the operation of the open tendering system;

"pipeline operator" means the entity in charge of management and operations of a network of petroleum pipelines and whose pipeline infrastructure is connected to a primary import petroleum storage facility;

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

"strategic stocks" has the meaning assigned to it under the Act;

"tender call" means a notice from the open tendering system coordinator for interested bidders to participate in a petroleum import tender; and

"transport and storage agreement" means a contract between Kenya Pipeline Company and pipeline users executed for the purpose of storage and transmission of petroleum products through the pipeline system.

3. Application

- (1) These Regulations shall apply to the importation of the refined petroleum products listed in the First Schedule.
- (2) The Cabinet Secretary may, upon the recommendation of the Authority, amend the list of petroleum products specified in the First Schedule.
- (3) These Regulations shall not apply to the procurement of petroleum products for strategic stocks.

Part II – THE OPEN TENDERING SYSTEM

4. Licence to import petroleum

- (1) A person shall not import the petroleum products in the First Schedule except under the terms and conditions of a valid licence issued by the Authority.
- (2) The importation of petroleum products under these Regulations shall be through the open tendering system.
- (3) The importation of petroleum products under these Regulations through a Government to Government arrangement shall be deemed to have occurred through the open tendering system.
- (4) An oil marketing company that is eligible to participate in the open tendering system shall offtake the petroleum products in subregulation (3) under the terms and conditions of the open tendering system.
- (5) The importation of petroleum through the open tendering system or a Government to Government arrangement shall be centrally coordinated by the ministry responsible for petroleum.
- (6) The products listed in the First Schedule shall except where exempted by the Cabinet Secretary in writing, be imported through the Kipevu Oil Terminal and the Shimanzi Oil Terminal in Mombasa.
- (7) The Cabinet Secretary may upon recommendation by the Authority, amend the import routes and points in sub-regulation (6).

5. Open tendering system agreement

- (1) An oil marketing company shall sign and comply with the terms and conditions of the open tendering system agreement as set out in the Second Schedule.
- (2) The parties to an open tendering agreement may amend the terms and conditions of the open tendering agreement provided the Authority approves the amendments.

6. Transport and storage agreement

Every oil marketing company shall sign and comply with the terms and conditions of a transport and storage agreement.

7. Capacity allocation

- (1) The participation of an oil marketing company in the open tendering system shall be dependent on the allocated storage capacity in a nominated common user primary import petroleum storage facility.

- (2) The capacity referred to in sub-regulation (1) shall be allocated in a manner approved by the Authority.

8. Ownership of petroleum products

Transfer of title and risk of petroleum products imported under these Regulations shall be as provided in the open tendering system agreement.

Part III – THE SUPPLY COORDINATION COMMITTEE

9. Supply Coordination Committee

- (1) The parties to the open tendering system agreement shall, at their own cost, establish a supply coordination committee.
- (2) The supply coordination committee shall liaise with the ministry responsible for petroleum, the pipeline operator, operators of common user petroleum facilities and other relevant government agencies for the efficient implementation of the open tendering system agreement.
- (3) The parties to the open tendering system agreement shall develop operational procedures to guide the day to day operations of the supply coordination committee.

10. Functions of the Committee

- (1) The functions of the supply coordination committee shall be to —
 - (a) consolidate the volume requirements for petroleum products to be imported through the open tendering system;
 - (b) communicate import tender calls and final results to the participants in the open tendering system;
 - (c) witness the opening of bids at the opening sessions attended by participants in the open tendering system and in the presence of a representative of the Principal Secretary in charge of petroleum;
 - (d) consolidate and verify the accuracy of petroleum products import cost build-ups for the purposes of pricing;
 - (e) submit after verification of accuracy, the petroleum products import cost build-ups to the Authority for the purpose of pricing; and
 - (f) assist the pipeline operator in batching petroleum products being transported through the pipeline system.
- (2) The supply coordination committee shall compile and submit the following information to the Authority and the ministry responsible for petroleum—
 - (a) the stock levels of petroleum in licensed bulk storage facilities at intervals prescribed by the Authority; and
 - (b) cost build-ups for the imported petroleum products listed in the First Schedule.

FIRST SCHEDULE (r. 2, 3, 4, 10)**PETROLEUM PRODUCTS TO BE IMPORTED
THROUGH THE OPEN TENDERING SYSTEM**

Item	Petroleum Product
1.	Premium Motor Spirit (PMS) or Super Petrol
2.	Jet A-1 or Dual Purpose Kerosene (DPK)
3.	Automotive Gasoil (AGO) or Diesel

SECOND SCHEDULE (r. 5 (1))**OPEN TENDERING SYSTEM AGREEMENT TERMS AND CONDITIONS**

The open tendering system agreement shall contain the following terms and conditions and any other terms and conditions that the parties may deem fit and approved by the Authority:

1.	The Effective Date and Duration of the Agreement
2.	Conditions that qualify oil marketing companies to enter into the open tendering system agreement and participate either as importers/sellers or buyers.
3.	The open tendering system process— (a) Invitation to tender (b) Tender closing and opening time (c) Validity of offers (d) Disqualification of offers
4.	Delivery Point — The designated delivery shore terminal
5.	Quality — Description of the specification of the products to be imported
6.	Shipment — Parcel split (one or two parcels per cargo award and the conditions thereof)

1.	The Effective Date and Duration of the Agreement
7.	Pricing Basis - The Free on Board cost, Freight and Premium, Local Currency Component
8.	Payment terms and penalties for late payment
9.	Lay-time and Demurrage
10.	Title and Risk of petroleum products
11.	Termination and Withdrawal procedures
12.	Dispute Resolution
13.	Governing Law
14.	Penalties — Withdrawal, Late Delivery, Delivery Default