THE DRAFT ENERGY (BIOFULES) REGULATIONS, 2025

(Pursuant to Section 10(a)(iii) of the Energy Act, 2019)

REGULATORY IMPACT STATEMENT

JANUARY, 2025

Issued by the Energy and Petroleum Regulatory Authority

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The Energy (Biofuels) Regulations, 2025 have been developed within the provisions of Section 10(a) (iii) of the Energy Act, 2019 and constitute Regulations to the same Act.

1. INTRODUCTION

There is growing interest in utilization of biofuels in Kenya as a means of providing access to clean fuels for cooking, transport, industrial heating and electricity generation. This seeks to address the problem of high financial and environmental costs associated with the use of fossil fuels and solid biomass. To optimize the adoption of these fuels, there is need for strategic interventions. Such interventions are envisaged in various policy instruments, which include the Sessional Paper No. 4 of 2004, the Energy Policy 2018, the Energy Act No. 1 of 2019, and the Bioenergy Strategy (2020-2027).

The Energy and Petroleum Regulatory Authority (the Authority) plays a central role in the technical and economic regulation of the production, conversion, distribution, supply, marketing and use of renewable energy in the country. Biofuels fall under this category. It is therefore imperative for the Authority to develop regulations that will assist to promote their use. The draft regulations apply to the production, importation, exportation, transportation, storage, packaging, blending, distribution and sale of biofuels. The biofuels covered in these draft regulations are biodiesel, biogas and bioethanol.

The Authority, with other stakeholders, has assessed the viability of adopting biofuels in the industrial, transport and domestic use. Presented herein is a Regulatory Impact Statement of implementation of the draft Energy (Biofuels) Regulations, 2025.

2. OBJECTIVES OF THE REGULATIONS

The purpose of the draft regulations is to promote the adoption and use of biofuels by enforcing standards and ensuring fair business practice in the biofuels value chain. Once enacted, the Energy (Biofuels) Regulations, 2025 shall provide a framework for enforcing standards in the production, transportation, storage, packaging, blending and sale of

biodiesel, biogas and bioethanol, and collection of energy data as provided for in Section 10 (jj)of the Energy Act, 2019. The specific objectives of the Regulations are:

i. To promote fair business practices in the biofuel industry;
ii. To promote quality and safety in the biofuels value chain;
iii. To ensure environmental sustainability of the biofuel value chain; and
iv. To aid collection of biofuels data.

3. REGULATORY ALTERNATIVES

The first option for promoting the use of biofuels in the country would be through self-regulation. In this alternative, major stakeholders, that is the producers, transporters, sellers and users of biofuels would come up and set common principles that offer mutual benefits to all. Self-regulation has to come within the purview of specific interests of the consumers and the dealers of biofuels. However, self-regulatory systems should, above all interests, focus on the interest of the consumers. In such a system, it is envisaged that consumers should have easy access to safe products and complaint handling processes. The working of such a system should also be transparent and accessible to the consumers. It should also have sufficient sanctions to support the agreed decisions. More so, there should be adequate power to enforce the decisions.

Self-regulation can therefore be realized if all the players agree to some code of practice which will ensure that only quality biofuels are produced, imported, retailed and used. It also ensures that the safety of the users is taken care of. This calls for efforts of umbrella bodies in the country to come together and formulate frameworks for self-regulation. In addition, the government may be required to enter into a negotiated agreement with the players in order to come up with self-regulatory mechanisms.

In Kenya, the self-regulation mechanism is not viable considering that the existing umbrella organizations do not represent all the sector players. In addition, the players' organizations may not have capacity to provide education, training and skills development to all players,

which is a requirement for self-regulation. Similarly, there are no mechanisms for censuring non-compliant members. The Energy Act, 2019 and thus the resultant Regulations, provide a unified mechanism of having all the players comply with the developed biofuels standards and regulations, and promote development of platforms for capacity development across the sector. This is in addition to creating a pool of licensed players easily accessible to the members of the public who intend to install production facilities and utilise the biofuels. Sanctions have also been provided for non-compliant practitioners. These Regulations have also provided for a complaint and dispute handling mechanism.

4. COSTS AND BENEFITS OF THE REGULATIONS

4.1. Economic Impacts

The Sustainable Development Goal 7 which provides for access to affordable, reliable, sustainable and modern energy for all is in line with Kenya's target of supporting access to modern energy services. Biofuels provide an avenue for enhancing energy security by reducing reliance on fossil fuels in transport and manufacturing, and solid biomass for household energy. Specific economic benefits include:

a) **Job creation:** The biofuel industry has the potential to create jobs in feedstock production, processing, distribution, and related sectors.

b) **Rural development:** Biofuel production can stimulate rural economies by providing income opportunities for farmers and small-scale producers.

c) **Reduced import dependency**: Increased biofuel production can reduce reliance on imported fossil fuels, leading to foreign exchange savings.

d) **Increased agricultural productivity:** The demand for feedstock can incentivize agricultural productivity.

e) **Increased industrial productivity:** Use of by-products such as bagasse and molasses for biofuel production will enhance industrial productivity yielding better returns on investment.

f) **Promote innovation:** Biofuel production will spur innovation which is critical for economic development.

4.2. Social Impacts

The social benefits from the implementation of the proposed regulations include:

a) **Improved energy access:** Biofuels can provide access to clean and affordable energy for rural communities.

b) **Community development:** Biofuel projects can empower local communities through productive use of renewable energy, capacity building and skills development.

c) **Health benefits:** Use of biofuels can reduce household air pollution occasioned by dependence on fossil fuels and solid biomass that have been linked to respiratory diseases.

4.3. Environmental Impacts

The regulations will have the following benefits on the environment:

a) **Reduced greenhouse gas emissions:** Biofuels can contribute to reducing greenhouse gas emissions compared to fossil fuels.

b) **Improved air quality:** Biofuels can lead to lower emissions of particulate matter and other pollutants.

c) **Sustainable land use:** The regulations can promote the use of sustainable feedstock, minimizing negative impacts on land use and biodiversity.

d) **Waste management:** Biogas production can contribute to waste management by utilizing organic waste as feedstock.

4.4. Costs of Implementation of the Regulations

The regulations propose a fee to meet administrative costs associated with the licensing inspections for companies. The funds will facilitate closer scrutiny of the applicants to ensure that only qualified persons are licensed.

Extra costs shall be borne through funds available to the Authority from other sources provided for in Section 20 of the Energy Act, 2019. The enactment of these regulations will not result in any additional resource allocation from the government with proposed fees designed not to limit any practitioner from accessing the services. Information Technology Systems shall be deployed to ensure efficiency and transparency in the licensing process, monitoring of production, transportation, storage and use of biofuels, and reporting as required in the regulations.

5. CONCLUSION AND RECOMMENDATIONS

The proposed Biofuels regulations have the potential to bring significant economic, environmental and social benefits to Kenya. This regulatory impact statement has analysed two available options of self-regulation and explicit regulation through the Energy (Biofuels) Regulations, 2025. The Authority recommends adoption of the recommended regulations as opposed to self-regulation. Self-regulation is inadequate in meeting the set objectives for streamlining the biofuels industry in Kenya.

The regulations will also provide a framework for promotion of biofuels as a form of renewable energy technology.

6. IMPLEMENTATION AND REVIEW

The Authority will implement the Energy (Biofuels) Regulations 2025 through gazettement in the Kenya Gazette. Review shall be done as per the provisions of the **Statutory Instruments Act No. 23 of 2013** and in consultation with all stakeholders.