



REGULATORY IMPACT STATEMENT (RIS)

For

THE DRAFT PETROLEUM (UPSTREAM AND MIDSTREAM
ENVIRONMENT, HEALTH AND SAFETY) REGULATIONS, 2025

APRIL, 2025

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1. INTRODUCTION

The Petroleum Act, (Cap 308) (“the Act”) establishes the legal and institutional framework for the contracting, exploration, development, production, transportation, storage, and decommissioning of petroleum operations in Kenya. In line with the mandate to ensure environmental protection and the health and safety of persons engaged in upstream and midstream petroleum activities, the Cabinet Secretary responsible for Petroleum, upon recommendation of the Energy and Petroleum Regulatory Authority (EPRA), proposes the Draft Petroleum (Upstream and Midstream Environment, Health and Safety) Regulations, 2025 (Draft Regulations). These Regulations are developed pursuant to Section 126 and 127 (u) of the Act, which empowers the Cabinet Secretary to make regulations for the effective implementation of the Act. The proposed Regulations aim to establish comprehensive environmental, health, and safety requirements applicable to upstream and midstream petroleum operations and facilities in Kenya.

REGULATORY IMPACT STATEMENT

Section 6 of the Statutory Instruments Act (Cap. 2A), (SIA) provides that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

This Regulatory Impact Statement was prepared in accordance with the provisions of Section 7 of the Statutory Instruments Act, Cap 2A.

2. STATEMENT OF OBJECTIVES

2.1. General Objective

The main objective of the proposed Regulations is to establish a robust legal and regulatory framework to ensure environmentally sound, safe and sustainable petroleum sector by aligning operational practices with national laws, approved standards, and best petroleum industry practices. Additionally, it ensures the protection of the environment,

health and safety of persons and safeguarding operations in the upstream and midstream petroleum operations in Kenya.

The specific objectives are to:

- I. Promote effective management of environmental, health, and safety (EHS) risks associated with upstream and midstream petroleum activities;
- II. Standardize procedures to ensure operational safety, environmental protection, and occupational health in midstream and upstream sector.
- III. Enhance environmental health and safety (EHS) accountability and regulatory oversight in the design, construction, operation, maintenance, and decommissioning of petroleum facilities; and
- IV. Promote a safety culture and environmental protection in petroleum operations.
- V. Ensure that petroleum operations are carried out in a manner that minimizes harm to people, property, and the environment while fostering long-term resource stewardship.

3. STATEMENT ON THE EFFECTS OF THE PROPOSED REGULATIONS

Kenya's upstream and midstream petroleum sector has long lacked a sector-specific and integrated regulatory framework to address the unique environmental, health, and safety (EHS) risks associated with petroleum operations. While general statutes such as the Occupational Safety and Health Act, (Cap. 514) and the Environmental Management and Coordination Act, 1999 (EMCA) provide important baseline obligations, they are not sufficiently tailored to the complex and hazardous nature of upstream and midstream petroleum activities.

OSHA, (Cap.514) , though instrumental in setting out workplace safety standards, does not fully address onshore/offshore upstream operations, hazardous chemical exposure unique to petroleum production, safety zones, nor emergency shutdown systems common in upstream and midstream infrastructure. Similarly, EMCA, (Cap. 387)

provides a broad framework for environmental protection but lacks specificity on petroleum-related issues such as flaring and venting, pipeline integrity, produced water management, decommissioning, and environmental liability specific to high-risk oil and gas operations.

Furthermore, earlier regulations such as the Petroleum (Exploration and Production) Regulations, 1984 and the Petroleum (Exploration and Production) (Training Fund) Regulations, 2006 are outdated and misaligned with the more recent Petroleum Act, (Cap 308) which mandates the development of specific regulations to operationalize EHS provisions in petroleum activities.

This fragmented legal framework has resulted in:

- Limited institutional coordination between regulatory agencies;
- Weak enforcement and inspection mechanisms in petroleum installations;
- Inadequate preparedness for major accident hazards and emergency response;
- Uncertainty for investors regarding their safety and environmental obligations; and
- Elevated risks to workers, communities, and the environment.

The proposed draft Petroleum (Upstream and Midstream Environment, Health and Safety) Regulations, 2025 are designed to fill these critical gaps. They introduce a comprehensive, enforceable, and petroleum-specific EHS framework that aligns with the Petroleum Act, (Cap 308), best petroleum industry practices, and approved national standards. The Regulations:

- Clearly define duties and responsibilities of operators in managing EHS risks;
- Establish mandatory safety cases, decommissioning obligations, and risk assessments;
- Set out detailed provisions on hazardous substances, waste management, flaring and venting, occupational safety, and emergency preparedness; and
- Provide the Energy and Petroleum Regulatory Authority (EPRA) with the tools to effectively monitor and enforce compliance.

By operationalizing these measures, the Regulations will strengthen sector governance, reduce operational risks, enhance investor confidence, and promote environmentally sustainable and socially responsible petroleum development in Kenya.

4. ASSESSMENT OF PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES

Option 1: Maintaining the Status Quo

Under the current regulatory framework, there are significant gaps in addressing current EHS challenges such as high-risk facility operations, emergency preparedness, hazardous substance management, and occupational safety standards. This regulatory vacuum exposes the sector to increased risks of environmental harm, workplace accidents, and public health concerns, while also weakening investor confidence due to regulatory uncertainty.

Maintaining the status quo would mean failure to operationalize the relevant provisions of the Petroleum Act (Cap 308) which provides for the establishment of regulations and provisions to ensure the safety of personnel, protection of the environment, and management of operational risks in petroleum activities.

Accordingly, **this option is NOT viable or desirable**, as it undermines the government's ability to safeguard public interest and ensure sustainable upstream petroleum operations.

Option 2: Use of Working Manuals and Guidelines

Section 2 of the SIA defines Statutory Instruments to include guidelines, directions and regulations as statutory instruments therefore requiring comprehensive scrutiny and publication as required by Sec.4 of the SIA.

A working manual or any form of document established in the execution of the Petroleum Act (Cap 308) falls under the threshold of a Statutory Instrument and therefore has to go through the progression process as required by the SIA. While the use of working manuals, guidelines, or administrative directives may offer interim direction on environmental, health, and safety (EHS) practices in upstream and midstream petroleum operations, this approach is insufficient as a long-term regulatory solution.

In addition, working documents could face legal challenge as they cannot be used to create offences and penalties, which are necessary for their effective application as well as challenge in court on the applicability and validity.

This option is **NOT desirable**, as it lacks the legal force necessary to ensure accountability and effective implementation of the Petroleum Act's provisions related to EHS standards.

Option 3: Developing the Draft Regulations

The Draft Petroleum (Upstream and Midstream Environment, Health and Safety) Regulations, 2025, seek to establish a comprehensive framework to manage environmental, health, and safety (EHS) risks associated with petroleum operations. By standardizing the procedures for facility safety, emergency response, waste management, occupational health, and environmental protection, the Draft Regulations fill existing regulatory gaps and ensure alignment with both the Petroleum Act (Cap 308), and best petroleum industry practices.

This is the PREFERRED OPTION, as it establishes a robust legal and regulatory framework to ensure sustainable development and management of the petroleum sector by aligning operational practices with national laws, approved standards, and best petroleum industry practices.

5. ASSESSMENT OF THE COST AND BENEFITS OF THE PROPOSED REGULATIONS.

The proposed Regulations are expected to have economic, social and environmental impacts as illustrated below;

a) Economic Impacts

The proposed regulation will increase investment confidence, operational efficiency, protection of public assets, job creation, cost savings from incident and accident prevention and enhanced revenue assurance.

b) Environmental Impacts

The environmental impact includes; Pollution prevention and control, site restoration, hazardous material management, ecosystem conservation and climate Impact mitigation

c) Social impacts

The social impacts will include; Local employment and skills development, community safety and awareness, infrastructural safeguards and development, reduced health related hazards, reduced risk of industrial accidents and transparent operations

Economic Assessment/Impact	
Impact/Benefit	Remarks
Increased Investment Confidence	A predictable and enforceable EHS framework enhances attractiveness for both domestic and foreign investors.
Operational Efficiency	Proactive safety and maintenance practices reduce downtime and losses due to accidents or regulatory breaches.
Protection of Public Assets	Minimizing environmental harm and accidents reduces the government's financial burden for emergency response and restoration.
Job Creation	Demand for environmental, health, and safety professionals stimulates employment in supporting industries.
Cost Savings from Incident and Accident Prevention	Avoidance of major accidents translates into reduced legal liabilities, compensation costs, and insurance premiums.
Enhanced Revenue Assurance	Stable and safe operations allow continuous production and taxation, securing predictable government income.
Environmental Assessment/Impact	
Impact/Benefit	Remarks
Pollution Prevention and Control	Regulations provides for flaring and venting management, proper waste handling, and emissions control to reduce environmental degradation.
Site Restoration	Introduction of mandatory decommissioning plans and funds ensures rehabilitation of petroleum sites, protecting ecosystems.
Hazardous Material Management	Strict control of chemical storage, use, and disposal prevents contamination of air, soil, and water.

Ecosystem Conservation	Zoning requirements and environmental safeguards during operations help prevent destruction of biodiversity and natural habitats.
Climate Impact Mitigation	Regulations limit gas emissions and promote energy-efficient operations, contributing to Kenya's climate change commitments.
Social Assessment/Impact	
Impact/Benefit	Remarks
Local Employment and Skills Development	The regulations mandate training and certification of local personnel on matters EHS, promoting job creation and skill enhancement within host communities.
Community Safety and Awareness	Public awareness of risks, emergency preparedness measures, and community engagement promote safer living environments.
Infrastructural Safeguards and Development	Compliance with safety and operational standards may lead to improved infrastructure , including roads, communication, and emergency facilities.
Reduced Health related hazards	Reduced exposure to pollutants, noise, and hazardous waste improves the health outcomes of both workers and nearby communities.
Reduced Risk of Industrial Accidents	Implementation of strict safety protocols helps prevent major incidents with social ramifications, such as displacement and property damage.
Transparent Operations	The requirement for stakeholder engagement and clear safety accountability fosters public trust and social stability.

6. ADMINISTRATION AND COMPLIANCE COSTS

The development of the proposed Petroleum (Upstream and Midstream Environment, Health and Safety) Regulations, 2025, is expected to result in marginal administrative

and compliance costs for the Authority and other relevant government agencies. These costs may arise from the need to enhance regulatory oversight through inspections, audits, review of safety cases, and capacity building to enforce the provisions of the Regulations effectively.

Additionally, there will be costs associated with staffing, training, and acquisition of technical expertise and equipment necessary for effective monitoring and enforcement. However, these costs are expected to be outweighed by the long-term benefits of improved environmental protection, reduced operational risks, and enhanced public safety.

7. ANY OTHER MATTERS SPECIFIED BY THE GUIDELINES

According to Regulation 2 of the proposed Regulations, all matters prescribed for in the Regulations relate to the environmental, health and safety requirements of upstream and midstream petroleum operations and facilities including the design, construction, installation, operation, maintenance, modification and decommissioning of; onshore and offshore upstream petroleum operations, facilities and related equipment; and midstream petroleum operations, facilities and related equipment. The Regulation shall not apply to facilities used in any downstream petroleum operations.

8. COPY OF THE DRAFT REGULATIONS

The *Draft* Petroleum (Upstream and Midstream Environment, Health and Safety) Regulations, 2025 are annexed herein.