

24th July, 2009

LEGAL NOTICE NO. 121

THE ENERGY ACT
(No. 12 of 2006)

IN EXERCISE of the powers conferred by section 102 of the Energy Act, 2006, the Minister for Energy makes the following Regulation:—

THE ENERGY (LIQUEFIED PETROLEUM GAS) REGULATIONS, 2009

1. Citation

These Regulations may be cited as the Energy (Liquefied Petroleum Gas) Regulations, 2009.

2. Interpretation. No. 1 of 2005. Cap 496

In these Regulations, unless the context otherwise requires -

“bulk LPG” means LPG contained in a receptacle of a capacity exceeding eighty kilograms;

“cylinder or brand owner” means a licensed person who has introduced cylinders into the market through his network of wholesalers or retailers, by purchasing or importing from a manufacturer or acquiring the cylinders or brand from another licensee;

“import route” means the designated or prescribed import route under the East African Community Customs Management Act, 2004;

“Kenya Standard” means the specification or code of practice declared by the National Standards Council under section 9 of the Standards Act;

“licensee” means the holder of a licence issued under these Regulations;

“LPG” means liquefied petroleum gas;

“LPG cylinder exchange pool” means a body established under regulation 14;

“LPG storage” means the storing of LPG in premises consisting of one or more tanks in transit or for sale;

“port of entry” means a place, whether on the coast or elsewhere, appointed by the Council by notice in the Gazette, subject to any limitations specified in the notice, to be a port for the purposes of the East African Community Customs Management Act, 2004;

“premises” includes any —

(a) vehicle, vessel aircraft or hovercraft; or

(b) installation on land, foreshore or land intermittently covered by water, any offshore installation or any other installation whether floating, or resting on seabed or the subsoil, or resting on other land covered with water or the subsoil;

“retail in LPG” means a form of distribution of LPG by which the LPG is customarily sold to consumers other than for the purpose of resale;

“standard capacity cylinder” means a LPG cylinder of one, three, six or thirteen kilograms fitted with the unified valves;

“unified valve” means the unified valve specified in the Kenya Standard, KS 201:2007; and

“wholesale trade” means a form of distribution of LPG by which LPG is customarily sold for the purpose of resale.

3. Application.

These Regulations shall not apply to LPG imported, exported, kept, stored or transported by the Armed Forces.

4. Licence for LPG business.

A person shall not import, export, store, wholesale, retail, transport or fill LPG except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

5. Powers of inspection.

(1) The Commission or any authorized person acting on its behalf may enter and inspect any vehicle, premises or facility that he reasonably believes is involved in the business of importation, exportation, wholesale, retail, storage, filling or transportation of LPG.

(2) Subject to paragraph (1), the Commission may give directions to the owner, occupier, driver or a person in charge of a vehicle, premises, installation or facility as it considers necessary.

(3) The Commission may, call upon a licensee, by a notice in writing and within such time as the Commission may indicate in the notice, to execute any repairs to the licensed premises. Powers of inspection.

6. Reporting of accidents and fires.

A licensee shall, in writing and within forty eight hours, report to the Commission -

(a) any accident involving LPG or the transportation of LPG which causes injury to an employee or any other person or damages property;

(b) an accidental release of LPG; or

(c) any fire in which LPG is involved.

7. Permission by LPG cylinder or brand owner.

(1) A person shall not fill LPG in cylinder without the permission of the cylinder or brand owner.

(2) A person shall not alter the branding, deface, damage, repair or submit for maintenance an LPG cylinder without the authority of the brand owner. P

8. Licence for importation of LPG. L.N. 60 of 2003

(1) A person shall not import LPG into Kenya except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) A person who wishes to import LPG shall make an application for a licence to the Commission in Form LPG No.1 set out in the Schedule.

(3) The application under paragraph (2), shall be accompanied by—

(a) a declaration to adhere and conform to the specifications contained in KS 03 – 91 on the Specifications for Liquefied Petroleum Gases; and

(b) a declaration of compliance with the Imports, Exports and Essential Supplies (Control of Essential Supplies) Order, 2003.

(4) A licensee shall import LPG through the import routes specified in the licences.

(5) The licence issued under paragraph (2), shall be in Form LPG No. 2 set out in the Schedule and shall state the conditions of the licence.

(6) A person shall not import LPG into Kenya unless the means of transport used to import the LPG meets the Kenya Standard and where no standard exists, the relevant international standards approved by the Kenya Bureau of Standards.

(7) A person shall not import LPG into Kenya by sea or land unless such person has—

(a) an oil clean-up plan in compliance with the national oil policy; and

(b) subscribed to membership to the Oil Spill Mutual Aid Group or any other body approved by the Commission.

9. Licence for bulk LPG storage. No 8 of 1999, No 15 of 2007, Cap 242 No 6 of 1996, Cap 265

(1) A person shall not operate a bulk LPG storage facility except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) A person who wishes to operate a bulk LPG storage facility shall make an application for a valid licence to the Commission in Form LPG No.1 set out in the Schedule.

(3) The application under paragraph (2), shall be accompanied by—

- (a) an Environmental Impact Assessment Licence issued in accordance with the Environmental Management and Co-ordination Act, 1999 for a new facility or an Environmental Audit for an existing facility;
- (b) proof that the storage facility complies with the Occupational Safety and Health Act, 2007 and the Public Health Act;
- (c) a certificate of compliance issued in accordance with the Physical Planning Act, 1996;
- (d) a copy of approved drawings in accordance with the Local Government Act, with specifications and plans in duplicate indicating—
 - (i) the facility to be licensed, giving particulars of the materials and construction;
 - (ii) the position of the facility in relation to adjoining property including the distances from neighbouring buildings;
 - (iii) in the case of an installation, the position and capacity of all tanks, storage sheds and filling stations, the position of all buildings, structures or other works within the installation, and the manner in which the LPG is to be stored;
 - (iv) all lighting arrangements including the position of electric cables, switches and fuse boxes, drainage system, water connections, fire hydrants and fire-fighting appliances;
- (e) a clearance certificate from the Chief Fire Officer in accordance with the Local Government Act; and
- (f) a declaration of the intended use of the LPG that is to be stored in the facility.

(g) a copy of certificate of adherence to the KS 1938 (Part 1 – 5) on the Handling, Storage and Distribution of Liquefied Petroleum Gas in Domestic, Commercial and Industrial Installations.

(4) The Commission shall not issue a licence for bulk LPG storage which is for non-commercial use and in quantities not exceeding eighty kilograms.

(5) A licensee shall, at all times, ensure that LPG is contained in a secure cylinder that conforms to Kenya Standard –

- (a) KS ISO 4706 on Refillable Welded Steel Gas Cylinders; and
- (b) KS 1938 (Part 1 – 5) on Handling, Storage And Distribution Of Liquefied Petroleum Gas in Domestic, Commercial and Industrial Installations.

(6) An applicant shall attach to the application Form a copy of the specification and plan.

(7) The applicant shall ensure that the site plan is drawn to a scale of not less than 1/500th of an inch to one foot and the detail plan to a scale of not less than 1 /16th of an inch to one foot.

(8) A licensee shall not alter the licensed facility or the method of bulk LPG storage shown in the licence or specification and plan attached to the licence without the authority of the Commission.

(9) Where the Commission approves any alterations under paragraph (8), it shall incorporate the alterations in the licence.

(10) A licensee shall not operate a bulk LPG storage facility in a building constructed using inflammable material.

(11) A licensee shall not offer, release or part with possession of bulk LPG to a person, unless that person has a valid bulk LPG storage licence issued by the Commission under these Regulations.

(12) A licence for bulk LPG storage shall be in Form LPG No.2 attached in the Schedule and shall state the conditions of the licence.

10. Licence for filling LPG into cylinders. No 8 of 1999, No 6 of 1996, Cap 265.

(1) A person shall not fill LPG into cylinders except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) A person who wishes to conduct the business of filling of LPG into cylinders shall make an application for a licence to the Commission in the Form LPG No.1 set out in the Schedule.

(3) The application under paragraph (2), shall be accompanied by—

(a) an environmental impact assessment licence, issued in accordance with the Environmental Management and Co-ordination Act, 1999 for a new facility or an Environmental Audit for an existing facility or proof that the filling facility complies with environmental standard set out in the Environmental Management and Co-ordination Act, 1999;

(b) a certificate of compliance issued in accordance with the Physical Planning Act, 1996;

(c) a copy of an approved drawings in accordance with the Local Government Act with specifications and plans in duplicate indicating—

(i) the facility to be licensed, giving particulars of the materials and construction;

(ii) the position of the facility in relation to adjoining property including the distances from neighbouring buildings;

(iii) in the case of an installation, the position and capacity of all tanks, storage sheds and filling stations, the position of all buildings, structures or other works within the installation, and the manner in which the LPG is to be stored;

(iv) all lighting arrangements including the position of electric cables, switches and fuse boxes, drainage system, water connections, fire hydrants and fire-fighting appliances;

(d) a clearance certificate from the Chief Fire Officer in accordance with the Local Government Act;

(e) a copy of a certificate of adherence to the KS 1938 (Part 1–5) on the Handling, Storage and Distribution of Liquefied Petroleum Gas in Domestic, Commercial and Industrial Installations.

(4) A person shall not fill the standard capacity cylinder unless that cylinder conforms to—

(a) KS 201 – 2007 on Unified Valves for Liquefied Petroleum Gas Cylinders for Domestic Use - Specification (Third Edition); and

(b) KS 06-896 on the Specification for Periodic Inspection, Testing and Maintenance of Transportable Gas Containers (excluding dissolved acetylene containers).

(5) A licence for filling of LPG into cylinders shall be in Form LPG No. 2 set out in the Schedule and shall state conditions of the licence.

11. Licence for wholesale trade of LPG in cylinders. No 8 of 1999, No 6 of 1996, Cap 265

(1) A person shall not conduct a business of wholesale trade in LPG in cylinders except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) A person shall not conduct a business of wholesale trade in LPG in cylinders without the authority of the brand owner.

(3) A person who wishes to conduct the business of wholesale trade of LPG in cylinders shall make an application for a licence to the Commission in Form LPG No.1 set out in the Schedule.

(4) An application under paragraph (3) shall be accompanied by—

(a) an environmental impact assessment licence issued in accordance with the Environmental Management and Co-ordination Act, 1999 for a new facility or an Environmental Audit for an existing facility;

(b) a certificate of compliance issued in accordance with the Physical Planning Act 1996;

(c) a copy of approved drawings in accordance with the Local Government Act with specifications and plans in duplicate indicating—

(i) the facility to be licensed, giving particulars of the materials and construction;

(ii) the position of the facility in relation to adjoining property including the distances from neighbouring buildings;

(iii) in the case of an installation, the position and capacity of all tanks, storage sheds and filling stations, the position of all buildings, structures or other works within the installation, and the manner in which the LPG is to be stored;

(iv) all lighting arrangements including the position of electric cables, switches and fuse boxes, drainage system, water connections, fire hydrants and fire-fighting appliances;

(d) a clearance certificate from the Chief Fire Officer in accordance with the Local Government Act.

(e) a copy of a certificate of adherence to the KS 1938 on the Handling, Storage and Distribution of Liquefied Petroleum Gas in Domestic, Commercial and Industrial Installations;

(f) a copy of a certificate of adherence to the KS 1938 on the Handling, Storage and Distribution of Liquefied Petroleum Gas in Domestic, Commercial and Industrial Installations.

(5) A person licensed to conduct a business of wholesale trade in LPG in cylinders shall not buy or sell LPG in cylinders from an unlicensed person.

(6) A licence for wholesale trade in LPG in cylinders shall be in Form LPG No.2 as set out in the Schedule hereto and shall state conditions of the licence.

12. Licence for retail in LPG cylinders. Cap 265, Cap 513

(1) A person shall not conduct a business of retail in LPG in cylinders except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) A person who wishes to conduct the business of retail in LPG in cylinders shall make an application for a licence to the Commission in Form LPG No.1 set out in the Schedule.

(3) An application under paragraph (2), shall be accompanied by—

(a) a copy of approved drawings in accordance with the Local Government Act; and

(b) a copy of a valid supply agreement with a person licensed to undertake wholesale business in LPG.

(4) A person licensed to conduct a business of retail in LPG in cylinders shall not purchase LPG in cylinders from an unlicensed person.

(5) A person dealing with LPG cylinders in a retail outlet shall not store the cylinders in an enclosed area.

(6) Every retailer selling LPG shall have a properly calibrated weighing instrument in accordance with the Weights and Measures Act for the verification of the net contents of LPG cylinders.

(7) A licence for retail in LPG in cylinders shall be in Form LPG No.2 as set out in the Schedule hereto and shall state the conditions of the licence.

13. Licence for transportation of LPG. Cap 265

(1) A person shall not transport LPG by road, except in accordance with the Act and the terms and conditions of a valid licence issued by the Commission.

(2) The provisions of paragraph (1), shall not apply to LPG in a private vehicle transported by a consumer in standard capacity cylinder not exceeding an aggregate quantity of forty kilograms.

(3) A person who wishes to transport or conduct the business of transportation of LPG shall make an application for a licence to the Commission in Form LPG No.1 set out in the Schedule.

(4) An application under paragraph (3), shall be accompanied by—

(a) a copy of certificate certifying that the vehicle meets the applicable Kenya Standard for vehicles transporting LPG;

(b) a valid vehicle inspection report;

(c) a valid clearance certificate from the Chief Fire Officer in accordance with the Local Government Act.

(5) A licence to transport LPG by road shall authorize the transportation of LPG in the vehicle within the area or route specified in that licence.

(6) A licensee shall not transport in his vehicle LPG from an unlicensed person or discharge from his vehicle LPG to a person who is not licensed under these Regulations.

(7) A licensee shall not—

(a) transport in his vehicle LPG from a person not licensed to possess through storage LPG in bulk quantities; or

(b) having so received LPG into his vehicle, discharge or cause to be discharged such LPG to a person who is not licensed to store LPG in bulk.

(8) A person shall not drive a vehicle or engage a driver for the purposes of transporting LPG unless such driver—

(a) has a valid driving licence;

(b) is certified in accordance with section 80(4);

(c) notwithstanding subparagraph (b), has attended a prescribed basic training course providing appropriate knowledge of LPG and petroleum products and in defensive driving;

(d) in the case of bulk LPG transportation vehicles, has driven that class of vehicle for a minimum of four years or in the case of packaged LPG cylinders has driven that class of vehicle for two years; and

(e) is of optimal health and fitness.

(9) A licence for transportation of LPG shall be in Form LPG No.2 set out in the Schedule and shall state the conditions of the licence. Licence for transportation of LPG.

14. LPG Exchange Pool.

(1) There is established an LPG Cylinder Exchange Pool to regulate the exchange of LPG cylinders among the LPG marketing companies.

(2) The management of the LPG Cylinder Exchange Pool shall be vested in the LPG Cylinder Exchange Pool Committee.

(3) The membership of the LPG Cylinder Exchange Pool Committee shall consist of—

(a) one representative from the Ministry of Energy;

(b) one representative from the Kenya Bureau of Standards;

(c) six representatives from LPG marketing companies.

(4) The LPG Cylinder Exchange Pool Committee shall, with the approval of the Commission, draw an LPG Cylinder Exchange Pool Agreement to govern the relationships among the LPG marketing companies and the operations of the Pool.

(5) A person shall not conduct a business of filling and wholesaling of LPG in cylinders unless such a person is a member of the LPG Cylinder Exchange Pool.

(6) A member of the LPG Cylinder Exchange Pool shall accept or recognize for exchange a cylinder belonging to another member.

(7) A person who is desirous of joining the membership of the LPG Cylinder Exchange Pool shall make an application to the Commission in the Form LPG No.1 set out in the Schedule.

(8) An application under paragraph (7), shall be accompanied by—

(a) a copy of certificate of ownership of a minimum of five thousand cylinders of a particular brand conforming to KS 201 – 2007 on Unified Valves for Liquefied Petroleum Gas Cylinders for Domestic Use - Specification (Third Edition);

(b) a copy of a valid licence from the Commission; and

(c) a copy of certificate of adherence to KS 06-896 on the Specification for Periodic Inspection, Testing and Maintenance of Transportable Gas Containers (excluding dissolved acetylene containers).

15. Standard capacities of LPG cylinders.

(1) The standard capacities of cylinders for filling with LPG shall be one, three, six and thirteen kilograms and the cylinders shall be fitted with unified valves.

(2) A person shall not import into Kenya or manufacture an LPG cylinder that does not meet the standard capacities and fitted with unified valves.

(3) A cylinder owner shall ensure that all LPG cylinders existing immediately before the commencement of these Regulations are fitted with unified valves.

(4) The Commission shall not allow any cylinder not in the categories specified in paragraph (1), to be filled with LPG after 1st October 2010. Standard capacities of LPG cylinders.

16. Responsibilities of licensee.

A licensee shall take all reasonable and proper steps to ensure that—

(a) the provisions of these Regulations and the conditions of the licence are known to, and observed by, all persons employed in or about the licensed premises; and

(b) unauthorized persons do not have access to the licensed premises.

17. Appeal against a decision of the Commission.

Any person aggrieved by an order or decision of the Commission made under these Regulations may, within thirty days of receipt of such order or decision appeal to the Tribunal.

18. General penalty.

(1) A person who contravenes any of the provisions of these Regulations commits an offence and, shall on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

(2) In any case where the person who contravenes any of the provisions of these Regulations is licensed under these Regulations, the Commission may suspend or revoke his licence.

19. Repeal of the Petroleum Rules under Cap. 116.

The Petroleum Rules are hereby repealed.

SCHEDULE

(r. 8,9,10,11,12,13 &14)

FORM: LPG NO. 1

APPLICATION FORM FOR LICENCE

(A separate application form must be completed in respect of each separate business establishment)

1. Name of business/applicant

2. Details of applicant:

(a) Income Tax Personal Identification Number(s)

(b) Postal address

(c) Location of business premises:

Plot No..... Building Name

Street/Market

Town/District

3. Give full details of proprietors or partners owning business or directors/shareholders of the company, as the case may be.

Name Nationality (Where applicable No. of shares held)

.....

.....

.....
.....
(any additional information should be submitted on a separate sheet of paper.)

4. Full description of the business(es) for which the licence is required
5. (a) Indicate the number and date of issue of any licence previously held under the Act.
6. State if you are or any of your partners/directors is an un-discharged bankrupt. (If so indicate the names).
7. (a) Has any previous application for a licence been rejected under the Act? (If so, give details)
.....
.....
.....

(b) Has any previous licence been cancelled under the Act?

8. (1) Certified copies of the following documents should be submitted with the application for a licence—
 - (i) if the applicant is a Kenyan, a copy of both sides of ID card or if a non-Kenyan current work permit together with copies of pages 1 and 5 of the passport;
 - (ii) relevant entry permit(s) for non-citizens;
 - (iii) either copies of business name registration certificate or certificate of Incorporation and memorandum and articles of association in case of a company (whichever is applicable);
 - (iv) lease agreement or letter from landlord confirming tenancy;
 - (v) PIN and VAT certificates;
 - (vi) applicable documents specified under these regulations;
 - (vii) the specific documents required for each type of LPG licence under the regulations.
- (2) A person who wishes to renew his licence shall only submit a photocopy of the current licence.

9. Conditions for importing and Marketing Petroleum Products in Kenya

1. Crude Oil Processing

Companies importing petroleum products for the Kenyan market shall participate in the processing of base load crude oil at the Kenya Petroleum Refineries Ltd (KPRL) and also undertake their imports through the open tender system.

2. Minimum Operational Stocks

Companies importing petroleum products for marketing in Kenya shall maintain minimum operational stocks in accordance with Legal Notice No. 44 dated 10th April, 2008. (The requirement for LPG is 15 days of sales.)

3. Submission of Sales Data

Companies marketing petroleum products in Kenya shall submit monthly sales data.

DECLARATION

1. I/We have read and understood the relevant sections of the Energy Act, No. 12 of 2006 and the regulations there under and agree to abide with them.
2. I/We hereby certify that the information given above is to my/our knowledge true and accurate.
3. I/We understand that it is an offence to give false information in an application for a licence.
4. I/We understand that it is a serious offence to divert into the Kenyan market petroleum products destined for export.

5. I/We understand that any person or company found diverting export petroleum products to the Kenyan market, either directly or indirectly shall have their licence revoked.
6. I/We understand that I/We should conduct an honest petroleum business and shall ensure that my/our Company shall not promote the diversion of export petroleum products into the Kenyan market either directly or indirectly.
7. I/We hereby confirm that our Company/Business shall abide by the above terms and conditions with regard to importation and marketing of petroleum products in Kenya. I/We also understand conditions.

Name of Company:.....

Name and ID of

Person signing

The Declaration:

Designation and telephone No.

Signature & Stamp:

Date:

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1. Date application received:
2. Date of meeting of Petroleum Licensing Committee:.....
3. Decision of Petroleum Licensing Committee.

Members present: Signature

1.
2.
3.
4.

(a) If application is deferred or rejected, date of letter advising applicant accordingly.

4. Date of review of application

Decision of Committee

Members present: Signature

1.
2.
3.
4.

5. Licence details:

Number

Date issued

Expiry date

FORM NO. 2

(reg. 8, 9, 10, 11, 12, 13)

PETROLEUM BUSINESS LICENCE

Licence is hereby granted to
of P.O. Box to carry on the following
petroleum business:

.....
on premises situated at Plot No.:

Building:

Street/Market:

Town/District:

This licence expires on:

Dated

Signature.....
(SEAL)

Director-General
Energy Regulatory Commission

Made on the 2nd July, 2009.

KIRAITU MURUNGI,
Minister for Energy.