

28th January, 2014

LEGAL NOTICE No. 8

THE ENERGY ACT, 2006
(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 Regulations—

THE ENERGY (LICENSING OF PETROLEUM ROAD TRANSPORTATION BUSINESS) REGULATIONS, 2013

PART I — PRELIMINARY

Citation.

1. These Regulations may be cited as the Energy (Licensing of Petroleum Road Transportation Businesses Regulations, 2013.

Application.

2. These Regulations shall not apply to-

(a) the Kenya Defence Forces,

(b) petroleum contained in a vehicle for use by that vehicle; or

(c) petroleum transported in containers whose combined volume does not exceed one thousand litres.

PART II - PETROLEUM ROAD TRANSPORT LICENSING

Prohibition against conducting petroleum road transportation business without licence.

2. (1) A person shall not carry out the business of petroleum road transportation unless he is licenced in accordance with these Regulations.

(2) The Commission or its agents shall direct a person who is engaged in the business of petroleum road transportation business without a licence to cease such a business until such time as the person obtains the required licence.

Application for licence

4.(1) A person who intends to carry out the business of petroleum road transportation shall make an application to the Commission for a licence or renewal of licence in Form I set out in Part I of the First Schedule.

(2) An applicant shall, in making an application under paragraph (1), submit to the Commission, the documentation and information specified in Part II of the First Schedule.

Evaluation and Determination application.

5. (1) In evaluating an application for a petroleum road transportation business licence under regulation 5, the Commission shall take into account the criteria specified in Part III of the First Schedule.

(2) The Commission may require the applicant to submit to it, such additional information as it considers necessary to enable it determine the application for the issuance of a licence.

Form of the licence.

6. (1) The Commission shall, upon approving an application under regulation 6, issue to the applicant a licence in Form 2 set out in Part IV of the First Schedule.

(2) The Commission shall specify the conditions for the issuance of the licence in the licence issued under paragraph (1).

Inquiries by potential licensees.

7. (1) A person who intends to make an application for a Petroleum Road Transportation business licence may request from the Commission, such information as he may require for purposes of making the application.

(2) The Commission may, upon receipt of a request under paragraph (1), submit to the applicant such information as is in the possession of the Commission as the applicant requires.

(3) Any discussions with, notifications or requests for information from the Commission or its agents shall not confer any right to any person to the grant of a licence.

Obligation of road Transportation Business licensees.

8. In carrying out the business of petroleum road transportation, a licensee shall-

- (a) transport only petroleum products that which meet the Kenya Standard;
- (b) ensure that the business complies with the requirements of the Act and all the other applicable laws;
- (c) transport petroleum only for persons who hold a valid petroleum business licence issued under the Act;
- (d) only use transport import route designated or prescribed;
- (e) load petroleum only from petroleum storage facilities that are licenced under the Act;
- (f) discharge petroleum only to a licensed facility, to an end user for own consumption or, in the case of petroleum intended for export, at the destination outside Kenya;
- (g) ensure that all vehicles used in the transportation of petroleum have valid petroleum road tanker permits issued by the Commission;
- (h) ensure that the vehicles used in the transportation of petroleum are driven only by persons in possession of valid certificates issued under the Act;
- (i) ensure that there is an emergency preparedness and response plan that meets the criteria set by the Commission;
- (j) implement regular pre-loading vehicle inspection in accordance with a checklist approved by the Commission;
- (k) ensure that petroleum tankers are only driven between 6.30am and 6.30pm;
- (l) ensure petroleum road tankers are only parked in designated parking areas where they exist or at least one hundred meters from any building where designated parking does not exist;

(m) ensure that the provisions of these Regulations and the conditions of the licence and vehicle permits are known to, and by all persons employed in or about the licensed premises or the petroleum road tankers; and

(n) ensure that unauthorized persons do not have access to the petroleum road tankers.

Power of inspection.

9. (1) The Commission may inspect any vehicle, premises, or facility reasonably suspected of being used for the business of transportation of petroleum products for the purpose of ascertaining whether the provisions of the Act and these Regulations relating to such transportation of petroleum products have been complied with.

(2) Where the Commission determines that the vehicle, premises or facility do not meet the requirements of the Act or these regulations, the Commission may issue, in writing, such directions as it considers appropriate to the owner, occupier, driver or person in charge of such vehicle, premises, or facility to ensure compliance.

(3) Where a directive issued under paragraph (2) requires a petroleum transportation business licensee to execute any repairs to the licensed vehicle which, in the opinion of the Commission, may be necessary, the licensee shall execute the repairs within such period as may be specified by the notice.

Reporting of Accidents or incidents.

10. (1) A petroleum road transportation business licensee shall send —

(a) an initial report in writing to the Commission within forty eight hours; and
Power of inspection

(b) a detailed report within fourteen days, of any accident involving the transportation of petroleum which causes loss of life, personal injury, explosion, oil spill, fire or any other incident or accident causing significant harm or damage to the environment or property.

PART III - PERMITS FOR PETROLEUM TANKERS

Prohibition against use of a petroleum road tanker without a valid certificate.

11. (1) A person shall not use or cause a petroleum road tanker Prohibition against to be used for transportation of petroleum by road within Kenya except use of petroleum road tanker without in accordance with these Regulations.

(2) Where a person appointed by the Commission determines that a person using a petroleum road tanker has not obtained a permit he shall direct that person to—

(a) cease using the petroleum tanker; and

(b) apply for the requisite permit.

Application for Permit

12. (1) A person who intends use a petroleum road tanker shall apply to the Commission for a permit or renewal of a permit in Form 3 set out in Part I of the Second Schedule.

(2) An applicant shall submit to the Commission the application under paragraph (1) together with the documentation and information specified in Part II of the Second Schedule.

Form of Permit.

13.(1) The Commission shall consider an application made to it under regulation 17 and shall, upon approving the application, issue a permit in the Form 4 set out in Part III of the Second Schedule.

(2) The Commission may, in issuing a permit under paragraph (1), impose such conditions as it considers necessary which shall be set out in the permit.

Inquiries by potential licensees.

14.(1) The Commission may furnish any person interested in making an application for a petroleum road tanker permit with any necessary information in the Commission's or its agent's possession.

(2) Any discussions with, notifications or requests for information from the Commission shall not confer any right to any person to the grant of permit.

PART IV- CERTIFICATION OF PETROLEUM TANKER DRIVERS

Prohibition against driving of a petroleum road tanker without a valid certificate.

15. (1) A person shall not drive a petroleum tanker for the purpose of transportation of petroleum within Kenya unless the person is in possession of a valid certificate issued under the Act

(2) Where a person appointed by the Commission determines that a person is driving a petroleum road tanker without a valid certificate he shall direct that person to—

(a) cease driving the petroleum road tanker; and

(b) obtain the requisite certificate within the prescribed period.

Application for Certificate.

16. (1) A person who intends to drive a petroleum road tanker shall make an application to the Commission for a certificate or renewal in Form 5 set out in Part I of the Third Schedule.

(2) An applicant shall submit to the Commission the application together with the documentation and information specified in Part II of the Third Schedule.

Form of Certificate.

17. (1) The Commission shall consider an application made to it under paragraph 16 and shall, on approving the application, issue to the applicant a certificate Form 6 set out in Part III of the Third Schedule.

(2) The Commission may, in issuing a certificate under paragraph (1), impose such conditions as it considers necessary which shall be set out in the certificate.

Inquiries by Potential Applications.

18. (1) The Commission shall furnish all persons interested in making an application for a petroleum road tanker driver certificate with such necessary information as may be in the possession of the Commission.

(2) Any discussions with, notifications or requests for information from the Commission or its agents shall not confer any right to any person to the grant of a certificate.

Possession of Certificate.

19. (1) A driver of a petroleum road tanker shall at all times when driving or in any way, controlling a petroleum road tanker have in his possession, his certificate, or a certified copy thereof.

(2) Any certificate issued in terms of these Regulations—

(a) remains the property of the Commission;

(b) may be modified, suspended, revoked or amended at any time subject to compliance with the Act;

(c) may not be tampered with or defaced in any manner; and

(d) is not transferable without the written consent of the Commission or its agents.

Obligations of Certificate holder.

20. A petroleum road tanker driver shall-

(a) not drive or allow another person to drive a petroleum tanker in his custody unless such tanker has a valid petroleum road tanker permit issued by the Commission;

(b) not tamper with the quality of the petroleum in his custody;

(c) not divert the petroleum destined for export into the local market;

(d) ensure that he operates the petroleum road tanker in accordance with the requirements of the Act, and other applicable laws;

(e) transport petroleum only for petroleum business licensees in possession of valid licences issued by the Commission under the Act or petroleum imported through an import route designated or prescribed;

(f) load petroleum only from petroleum storage facilities in possession of a valid licence issued by the Commission under the Act;

(g) discharge petroleum only to a facility in respect of which a licence has been issued under the Act, to an end user for own consumption or, in the case of petroleum intended for export, at a destination outside Kenya;

(h) comply with the emergency preparedness and response plan that has been put in place by the petroleum transport business licensee;

(i) implement regular pre-loading vehicle inspection in accordance with a checklist approved by the Commission or its agents; and

(j) comply with arrangements for the safe parking of petroleum road tankers in accordance with the emergency preparedness and response plan.

(k) park petroleum road tanker in designated parking areas where they exist or one hundred meters from any building where designated parking does not exist.

(l) not park petroleum road tanker one hundred metres from any building when tanker is loaded or empty.

(m) always adhere to the written instructions of the Commission.

Offences.

21. The Commission may, notwithstanding any penalties Mat may be imposed under the Act, suspend or revoke the licence, permit or certificate issued to a person under the Act who contravenes an provision of these Regulations.

FIRST SCHEDULE

(r.4,6)

PART 1

FORM 1

APPLICATION FORM FOR A PETROLEUM ROAD TRANSPORTATION BUSINESS 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 Person & Identification Number(s): _____

(b) Postal address: _____

(c) Email Address: _____

(d) Location of business premises:

I. Plot No: Building Name:

II. Street/Market:

III. Town/District:

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

<i>Name</i>	<i>Nationality</i>	<i>(Where applicable No. of shares held)</i>

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

4. Give full details of directors of the company:

<i>Name</i>	<i>Nationality</i>	<i>Passport/ID No.</i>

--	--	--

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

5. Full description of the business (es) for which the licence is required:

6. (a) Indicate the number and date of issue of any licence previously held under the Act:

(a) Indicate the period for which the licence is being applied (maximum is one year from the date of issue):

7. State if you are or any of your partners/directors is an undischarged bankrupt (If so indicate the names):

8. (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?

9. (a) Criteria to be met for new application and for renewal of a licence is attached at the back of the application form.

(b) Certified copies (by advocate / commissioner of oaths) of documents as per criteria specified above should be submitted together with the licence application.

10. CONDITIONS FOR PETROLEUM ROAD TRANSPORTATION BUSINESS:

Compliance with:-

- a) Energy Act, 2006 and any other subsidiary legislation regulation issued there under.
- b) Environmental Management and Co-ordination Act, 1999
- c) Traffic Act
- d) Proof of adequate insurance cover
- e) Relevant Kenya Standard on Petroleum Tankers
- f) Any other subsidiary legislation regulations from the above Acts.

DECLARATION

- i. I/We have read and understood the relevant sections of the Energy Act, No. 12 of 2006 and the related regulations issued therein, and agree to abide with them.
- ii. I/We hereby certify that the information given above is to my/our knowledge true and accurate.
- iii. I/We understand that it is an offence to give false information in an application for a licence.
- iv. I/We commit to conduct an honest petroleum business.
- v. I/We hereby confirm that our Company/Business shall only transport petroleum from licensed facilities to only other licensed facilities or end consumers.
- vi. I/We commit that our Company/Business shall provide parking for our tankers and only park petroleum tankers at parking designated for such tankers

Name of Company: _____

Name and ID of Person signing the Declaration: _____

Designation and telephone No.: _____

Signature & Stamp _____

Date: _____

Email address: _____

FOR OFFICIAL USE ONLY

1. Date application received: _____

2. Date of meeting of Petroleum Licencing Committee: _____

3. Decision of Petroleum Licencing Committee: _____

Members present	Signature
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

4. If application is deferred or rejected, date of letter advising applicant accordingly:

5. Date of review of application: _____

Decision of Committee: _____

Members present	Signature
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

6. Licence details:

No.: _____ Date issued: _____ Expiry date: _____

PART II

QUESTIONNAIRE TO BE FILLED BY NEW APPLICANTS FOR A PETROLEUM ROAD TRANSPORT BUSINESS LICENCE

1. Name of applicant: _____

2. Nature of business (Sole Trader, Partnership, Private Company or Public Company): _____

3. Certificate of Incorporation/Registration Number and date: _____

a) Country of Incorporation: _____

b) Physical address: _____

c) Postal address: _____

d) Telephone/ fax: _____

e) Email address: _____

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

<i>Name</i>	<i>Nationality</i>	<i>(Where applicable No. of shares held)</i>

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

5. Give full details of directors of the company:

<i>Name</i>	<i>Nationality</i>	<i>Passport/ ID No.</i>

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

6. Give details on equity capital including other sources of financing:

7. Indicate bank references: _____

8. Indicate details of business to be carried out: _____

9. Indicate if you:

(a) Own petroleum tankers (If so, give details including permit numbers and capacity): _____

(b) Have contract arrangement with tanker owners (If so, give details including copies of any agreements):

10. Give details of measures you have taken/you propose to take to ensure that the product you handle does not endanger life or pollute the environment:

11. Any additional information that the applicant wishes to give:
(If space provided above is not adequate use plain paper where applicable and attach to this questionnaire)

Name of Company: _____

Name and ID of Person signing the Declaration: _____

Designation and telephone No.: _____

Signature & Stamp: _____

Date: _____

PART III

LICENCE EVALUATION CRITERIA FOR NEW PETROLEUM ROAD TRANSPORTATION BUSINESS LICENCE

<i>Criteria</i>
Completed Application form
Completed detailed Questionnaire
Certified copy of Memorandum and Articles of association
Certified copy of Certificate of Incorporation
Certified copy of PIN registration certificate
Certified copy of VAT registration certificate
Certified copy of valid Tax compliance Certificate
Certified copies of Identification documents for directors ID/passport
Certified of a valid entry permit for foreign directors
Certified copy of Lease agreement/proof of ownership of Premises e.g. title documents
List of tankers issued with valid permits

LICENCE EVALUATION CRITERIA FOR RENEWAL OF PETROLEUM ROAD TRANSPORTATION BUSINESS LICENCE

<i>Criteria</i>
Completed Application form
Certified copy of valid Tax compliance Certificate
Copy of previous licence
List of tankers with valid permits
Annual performance data

PART IV

FORM 2

PETROLEUM BUSINESS LICENCE

No. ERCI _____

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

LICENCE NAME

On premises situated at:

Plot No.: _____

Building: _____

Street/Market: _____

Town/District: _____

This licence expires on: _____
Dated this: _____
Signature _____

(SEAL),
Director General.
Energy Regulatory Commission.

SECOND SCHEDULE

(r.12, 13)

PART I

FORM 3

APPLICATION FORM FOR A PETROLEUM TANKER PERMIT

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

1. Name of applicant/proponent: _____

2. Details of applicant/proponent: _____

a) Income Tax Personal Identification Number(s): _____

b) Postal address: _____

c) Email Address: _____

d) Site location:

I. Plot No.: _____

II. Street/Market: _____

III. Town/County: _____

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. Give full details of directors of the company:

Name	Nationality	Passport/ ID No.

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

5. Full description of the petroleum tanker:

6. Specify the carrying capacity of the tanker:

7. Give details on equity capital including other sources of financing:

8. Indicate bank references:

9. CONDITIONS FOR ISSUANCE OF A PETROLEUM TANKER PERMIT:

Compliance with:

(a) Energy Act 2006.

(b) Environmental Management and Co-ordination Act, 1999

(c) Traffic Act

(d) Relevant Kenya Standard on Petroleum Tankers

(e) Any other subsidiary legislation regulations from the above Acts.

10. DECLARATION

i. I/We have read and understood the relevant sections of the Energy Act, No. 12 of 2006 and the related petroleum rules and regulations, and agree to abide with them.

ii. I/We hereby certify that the information given above is to my/our knowledge true and accurate.

iii. I/We understand that it is an offence to give false information in an application for a petroleum tanker permit.

iv. I hereby confirm that our Company/Business shall abide by the above terms and conditions with regard to operation of the petroleum transport.

Name of Company: _____

Name and ID No. of Person signing the Declaration: _____

Designation and telephone No.: _____

Signature & Stamp: _____ Date: _____

Email address: _____

11. FOR OFFICIAL USE ONLY

1. Date application received:

2. Date of review:

3. Decision:

4. If application is deferred or rejected, date of letter advising applicant accordingly:

5. Permit details:

No.: _____ Date issued: _____ Expiry: _____ date

PART II

INFORMATION AND DOCUMENTS TO ACCOMPANY APPLICATION FOR PETROLEUM TANKER PERMIT

<i>CRITERIA</i>	<i>PETROLEUM</i>	<i>LPG</i>
Application form	Yes	Yes
Proof of ownership of Tanker/vehicles	Yes	Yes
Certificate of tanker compliance with relevant Kenya Standard	Yes	Yes
Valid Tanker certificate from Fire department	Yes	Yes
Valid vehicle inspection certificate from MVI	Yes	Yes
Valid Tanker calibration (W&M)	Yes	Yes

PART III

FORM 4

PETROLEUM TANKER PERMIT

PERMIT NO.

This petroleum tanker permit authorizes the transport of petroleum products (except LPG) in the tanker whose details appears below

Tanker No.: _____

Chassis No.: _____

Maximum Capacity: _____

This Permit expires on: _____

Dated this: _____

Signature: _____

Chairperson,

Petroleum Licensing Committee.

THIRD SCHEDULE

(r.16, 17)

PART I

FORM 5

APPLICATION FORM FOR A PETROLEUM ROAD TANKER DRIVER
CERTIFICATE

1. Name of applicant: _____

2. Details of the applicant: _____

a) National Identification Number:

b) PIN: _____

c) Passport Number (if any issued):

d) Postal address:

e) Level of Education:

3. Details of Driving License:

a) License Number: _____

b) Date issued: _____

c) Class of Vehicle for which license issued:

4. Driver Experience:

a) Number of years experience driving under Class BCE license: _____

b) Indicate number of years driving Petroleum tankers:

c) Indicate number of years driving LPG tankers:

5. Details of Employer (Petroleum Road Transportation Company):

a) Petroleum Road Transportation License Number: _____

b) Date License Issued: _____

6. For Certificate renewal, indicate number and date of previous certificate issued:

7. (a) Has any previous application for a certificate by the applicant been rejected under the Act? (If so, give details):

(b) Has any previous certificate in respect of the applicant been cancelled under the Act?

DECLARATION

i. I hereby certify that the information given above is to my/our knowledge true and accurate.

ii. I understand that it is an offence to give false information in an application for a petroleum tanker driver certificate

iii. I understand that it is a serious offence to divert into the Kenyan market petroleum products destined for export and will lead to cancellation of the petroleum tanker driver certificate.

iv. I understand that it is a serious offence to engage in petroleum products adulteration, either directly or indirectly and that it can lead to cancellation of the petroleum tanker driver certificate.

v. I understand that the tanker under my care shall load products only from those facilities licensed by the Commission under the Act

Name of Applicant: _____

ID No. of Applicant: _____

Postal Address: _____

Telephone Number: _____

Signature: _____

Date: _____

FOR OFFICIAL USE ONLY

1. Date Certificate application received:

2. Date of meeting of Petroleum Licencing Committee:

3. Decision of Petroleum Licencing Committee:

Members present	Signature
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

4. If application is deferred or rejected, date of letter advising applicant accordingly:

5. Date of review of application: _____

Decision of Committee: _____

Members present

1. _____

2. _____

3. _____

4. Signature

6. Certificate details:

No.: Date issued: Expiry: date

PART II

APPLICATION CRITERIA FOR A PETROLEUM ROAD TANKER DRIVER CERTIFICATE

DESCRIPTION	PETROLEUM	LPG
Application form	Yes	Yes
Certificate of formal education within minimum KCSE or equivalent	Yes	Yes
Valid driving license with more than four years experience	Yes	Yes
Professional drivers training certificate from a school approved by ERC	Yes	Yes
Basic Training on Handling of LPG	Yes	Yes
Valid medical certificate indicating applicant is fit for the job	Yes	Yes
Valid certificate of good conduct from relevant authorities	Yes	Yes

FORM 6

PART III

PETROLEUM ROAD TANKER DRIVER CERTIFICATE

Photograph

Number _____

Name: _____

National ID No.: _____

PIN NO. _____

This Certificate authorizes the Holder to drive a petroleum road tanker (Except LPG tankers).

Date of Issue:

Expiry Date:

Director General, Energy Regulatory Commission

This Certificate Shall Remain Valid upto Expiry Date Indicated on Front Side Subject to the Being in the Register Maintained by the Commission at www.erc.go.ke.

This Certificate is the Property of the Energy Regulatory Commission and Should be Surrendered on Expiry, or if Found to:

ENERGY REGULATORY COMMISSION
P.O. BOX 42681-00100 NAIROBI KENYA
TEL +254-202847000/200, Fax: +254202717603
Cell: 0722200947: 0734414333
Email: infor@erc.go.ke

(SEAL),
*Director General,
Energy Regulatory Commission.*

Made on the 19th December, 2013.

D. K. CHIRCHIR,
Cabinet Secretary for Energy and Petroleum.