

NATIONAL PETROLEUM AUTHORITY (PETROLEUM PRODUCT MARKING)
REGULATIONS, 2012 (LI 2187)

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NATIONAL PETROLEUM AUTHORITY (PETROLEUM PRODUCT MARKING)
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IN exercise of the power conferred on the Authority by section 80(1) (j) and (q) of the National Petroleum Authority Act, 2005 (Act 691), these Regulations are made this 24th day of July, 2012.

Regulation 1—Purpose of Regulations

The purpose of these Regulations is to

- (a) provide for a petroleum product marking scheme to
 - (i) preserve and protect the quality and purity of petroleum products; and
 - (ii) detect and prevent the adulteration of petroleum products; and
- (b) monitor the quality and purity of petroleum products.

Regulation 2—Application of Regulations

These Regulations apply to

- (a) petroleum service providers;

- (b) agents of petroleum service providers;
- (c) oil marketing companies;
- (d) transporters; and
- (e) petroleum product marking companies.

Regulation 3—Procurement of services of petroleum product marking company

- (1) The Authority shall in furtherance of these Regulations procure the services of a petroleum product marking company, in compliance with the provisions of the Public Procurement Act, 2003 (Act 663) to ensure the marking of petroleum products in the country.
- (2) The Authority shall procure a petroleum product marking company that has a proven record of ability to operate, implement and manage the petroleum product marking scheme established under regulation 4.

Regulation 4—Petroleum product marking scheme

- (1) There is established by these Regulations a petroleum product marking scheme.
- (2) The Authority shall collaborate with the petroleum product marking company procured in accordance with regulation 3 to ensure the effective operation of the scheme.

Regulation 5—Functions of petroleum product marking company

A petroleum product marking company shall

- (a) maintain the integrity of the petroleum product marking scheme;
- (b) mark petroleum products in the country in accordance with the directives of the Authority to preserve and protect the quality and purity of petroleum products;
- (c) supply marking detectors to the Inspectorate Division of the Authority for monitoring activities for the petroleum product marking scheme;
- (d) provide the Authority, the Customs Division of the Ghana Revenue Authority, the Environmental Protection Agency and the Standards Authority with
 - (i) monthly reports on operations and evaluation of petroleum product marking activities in accordance with the terms determined by the Authority as contained in a contract; and
 - (ii) related information that the Authority, Customs Division of the Ghana Revenue Authority Environmental Protection Agency and the Standards Authority may require in the discharge of their duties;
- (e) recruit, train and equip Ghanaians with the necessary skills and technology for the purpose of petroleum product marking activities, and
- (f) carry out any other functions as may be agreed on with the Authority.

Regulation 6—Possession of marker

(1) A person other than an authorised representative of a petroleum product marking company shall not take possession of a marker.

(2) A duly authorised representative of a petroleum product marking company may process a marker for the performance of duties under these Regulations.

Regulation 7—Marking of petroleum products

(1) A Petroleum product marking company shall pursuant to the directives of the authority mark the following petroleum products destined for sale in the country:

(a) diesel;

(b) petrol;

(c) kerosene;

(d) premix;

(e) marine gas oil; and

(f) any other designated petroleum product.

(2) The products referred to in subregulation (1) shall be marked with a marker approved by the Authority with the prior approval of the Environmental Protection Agency.

(3) A petroleum service provider or oil marketing company that intends to load or transport a petroleum product shall present that petroleum product to a petroleum product marking company for marking.

(4) The marking of petroleum products shall take place at the premises of a refinery or operating storage depot after loading of the petroleum product into a bulk road vehicle and before transportation of the petroleum product to the retail outlet.

(5) The driver of a bulk road vehicle loaded with a petroleum product destined for a retail outlet or facility of a bulk customer in the country shall not leave the refinery or operating storage depot with that petroleum product unless the petroleum product has been marked in the presence of the driver of the bulk road vehicle and a representative of the oil marketing company concerned.

Regulation 8—Petroleum product marking certificate

(1) A petroleum product marking company which has marked a petroleum product in accordance with regulation 7 shall on completion of marking of the petroleum product, issue the driver of the bulk road vehicle concerned with a petroleum product marking certificate in the form set out in the Schedule.

(2) A petroleum product marking certificate shall bear the signatures of the petroleum product marking company, the representative of the oil marketing company and the driver of the bulk road vehicle.

(3) A petroleum product marking certificate issued under subregulation (1) is prima facie evidence of the completion and accuracy of the marking required to be made under regulation 7.

Regulation 9—Testing of petroleum product

- (1) A petroleum service provider shall cooperate with an inspector for the purposes of testing a petroleum product.
- (2) An inspector may at any time
 - (a) stop a bulk road vehicle at any place in the country; or
 - (b) approach a retail outlet or facility of a bulk customerin order to take samples of petroleum products and carry out testing to determine the presence and concentration levels of the markers in the samples at no cost to the petroleum service provider.
- (3) After an inspector has taken a sample under subregulation (2) that inspector shall
 - (a) re-seal the bulk road vehicle to avoid tampering with the petroleum product whilst in transit; and
 - (b) record the seal numbers.
- (4) The Authority, may with the assistance of the law enforcement agencies
 - (a) carry out investigations related to the testing of petroleum products;
 - (b) test petroleum products
 - (i) at retail outlets;
 - (ii) at facilities of bulk customers;
 - (iii) carried by bulk road vehicles on highways; and
 - (iv) at any other location in the country; and
 - (c) impound bulk road vehicles carrying adulterated or unmarked petroleum products.
- (5) Subregulation (4) (c) does not apply to unmarked petroleum products in transit and destined for export.

Regulation 10—On-site testing of petroleum product

- (1) Where an inspector of the Inspectorate Division of the Authority conducts an on-site test of a sample of a petroleum product, that inspector shall within twenty-four hours and not later than seventy-two hours of the sample being taken submit the written results of the on-site analysis test to the Authority, the sponsoring oil marketing company and the owner of the retail outlet from which the sample was taken.
- (2) In the event that a person contests the results of the on-site testing, that person shall
 - (a) take the sample of the petroleum product that is the subject of contention to a laboratory located at the head office or any zonal office of the petroleum product marking company concerned, or the premises of the Standards Authority for further testing at a fee to be determined by the laboratory responsible for testing the sample;

(b) pay the fee for the laboratory test; and

(c) within twenty-four hours and not later than one hundred and twenty hours of the sample being taken, submit the laboratory test results to the Authority, the sponsoring oil marketing company, and the retail outlet or driver of the bulk road vehicle.

Regulation 11—Diluted or adulterated petroleum product

(1) A petroleum service provider shall not dilute or adulterate the marker concentration in the petroleum product.

(2) A petroleum service provider shall not wilfully take possession of a diluted, unmarked, overmarked or adulterated petroleum product.

(3) A driver of a bulk road vehicle shall not wilfully take possession of a diluted, unmarked or overmarked petroleum product.

(4) Where a petroleum product is determined to be adulterated, the product shall be restored to the required specification at an oil refinery or a petroleum blending depot to be determined by the Authority at a cost to the person in whose possession the adulterated product was found.

Regulation 12—Offences and penalties

(1) An oil marketing company that releases a bulk road vehicle after loading petroleum products destined for a retail outlet or a facility of a bulk customer in the country without ensuring that the petroleum products are marked or not overmarked commits an offence and is liable on summary conviction to a fine of not less than two thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than three years and not more than five years or to both.

(2) A transporter or any other person that transports an unmarked, overmarked or adulterated petroleum product destined for a retail outlet or facility of a bulk customer in the country commits an offence and is liable on summary conviction to a fine of not less than two thousand penalty units and not more than five thousand penalty units or to a term of imprisonment of not more than two years or to both.

(3) An oil marketing company or any other person that offers for sale or sells an unmarked, overmarked or adulterated petroleum product at a retail outlet commits an offence and is liable on summary conviction to a fine of not less than two thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than three years and not more than five years or to both.

(4) A person, found in possession of any quantity of markers contrary to regulation 6 (1) commits an offence and is liable on summary conviction to a fine of not less than two thousand five hundred penalty units and not more than fifteen thousand penalty units, or to term of imprisonment of not less than five years and not more than ten years or to both.

(5) A petroleum service provider

(a) that contravenes regulation 11 (1) commits an offence if the results of a test or analysis reveal that the marker concentration in the petroleum product has been diluted or adulterated to the prohibited level; and

(b) found in possession of diluted, unmarked, overmarked or adulterated petroleum products contrary to regulation 11 (2),

commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not more than two years or to both.

(6) A driver of a bulk road vehicle found in possession of a diluted, unmarked, overmarked or adulterated petroleum product contrary to regulation 11 (3) commits an offence and is liable on summary conviction to a fine of not less than three thousand penalty units and not more than five thousand penalty units or to a term of imprisonment of not less than five years and not more than ten years or to both.

(7) Where a person fails to restore an adulterated petroleum product to the required specification contrary to regulation 11 (4), the Authority shall immediately revoke the licence of the person until the person has paid the cost of restoration.

(8) A person who unlawfully obstructs, refuses or hinders an inspector acting in the performance of a function under these Regulations commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to a term of imprisonment of not more than ten years or to both.

(9) A petroleum product marking company that contravenes a provision of these Regulations commits an offence and

(a) is liable on summary conviction to a fine of not less than ten thousand penalty units and not more than fifteen thousand penalty units; or

(b) the Authority may terminate the contract between it and the petroleum product marking company.

(10) Where an offence is committed by a body corporate under these Regulations, every director, manager, partner, secretary or officer of that body corporate or a person purporting to act in that capacity is liable on summary conviction to the penalty provided in respect of that offence.

(11) A person shall not be treated as having committed an offence under subregulation (10) where that person proves that the offence was committed without that person's consent or connivance and that due diligence was exercised to prevent the commission of the offence having regard to the circumstances.

Regulation 13—Interpretation

In these Regulations, unless the context otherwise requires,

"adulterate" means the addition of inferior, unsuitable or unauthorized element or compound of another product into a marked or unmarked petroleum product;

"dilute" in relation to a petroleum product means a marked petroleum product that has been unlawfully blended with a similar but unmarked petroleum product, such that the marker concentration is lower than the quantity allowed;

"Environmental Protection Agency" means the Environmental Protection Agency established by the Environmental Protection Agency Act, 1994 (Act 490);

"full capacity" in relation to a bulk road vehicle or storage tank means operating at its maximum volume;

"inspector" means an officer authorised by the Authority to perform functions in respect of inspection for the purpose of these Regulations;

"law enforcement agencies" includes the Police Service, the Military Police, the National Security Agencies and Officers of the Bureau of National Investigations;

"marine gas oil" means diesel designated for use by local marine vessels and river barges;

"mark" means the introduction of a chemical substance in trace quantities into a petroleum product;

"marker" means a special chemical substance for which a petroleum product marking company has proprietary rights and which can be introduced into a petroleum product in small quantities without affecting the quality of the product;

"marking detectors" means specialised proprietary equipment used to distinguish marked petroleum products from unmarked petroleum products through the process of testing;

"onsite" means the physical location where a sample of a petroleum product is collected for testing;

"petroleum blending depot" means a depot designated to hold stocks of petroleum products and that has facilities for the blending of petroleum products;

"petroleum product marking company" means a body corporate authorised by the Authority to mark petroleum products in the country in accordance with these Regulations;

"overmark" means when an excess amount of marker beyond five percent of the acceptable concentration levels is introduced into a petroleum product;

"petroleum marking certificate" means a document issued under regulation 8 (1) and in the form set out in the Schedule indicating that a petroleum product has been marked;

"petroleum product marking activities" means the processes deployed to mark petroleum products and to generate monthly reports for submission to the entities specified in regulation 5 (1) (d);

"premix" means a blend of twenty-nine parts of gasoline and one part of marine mix oil;

"refinery" means a company duly licensed under the Act to refine crude oil into petroleum products;

"Standards Authority" means the Standards Authority established by section 1 of the Standards Authority Act, 1973 (NRCD 175);

"total capacity" means the maximum volume of a petroleum product that can be contained in a bulk road vehicle or storage tank at a time;

"total value" means the ex-pump value of a petroleum product determined by the full capacity of the tank; and

"zonal office" means an office designated by the Authority for petroleum product marking activities in the country.

SCHEDULE

(regulation 8(1))

CERTIFICATE OF MARKING OF PETROLEUM PRODUCTS

Customer Ref. Loading

Tanker Head

Loading Depot: Date:

Compartment Fuel type Volume for Tanker Trailer Reg.

1 Remarks (to be filled by petroleum product marking company)

2

3

4

5

6

7

Total Litre to Mark

Petroleum Product Marking Company attestation

Petroleum Product Marking company stamp

Name:

Position:

Signature:

Acceptance (to be filled by tanker driver after marking)

I hereby certify that marking as per this order was done in my presence.

Name: Signature:

Transport Date:

Witnessed by (Oil Marketing Company rep.)

Name: Signature:

Internal Information (to be filled by petroleum product marking company)

Details of marking processor

Fuel Type Total Marked Litres:

Diesel

Petrol

Kerosene

MR. KOJO FYNN

Chairperson of the Authority

Date of Gazette Notification: 26th July 2012.

Entry into force 11th September, 2012