

DEPARTMENT OF MINERALS AND ENERGY**DRAFT PETROLEUM PRODUCTS AMENDMENT BILL AND REGULATIONS TO BE PROMULGATED IN TERMS OF THE DRAFT BILL**

The Draft Petroleum Products Amendment Bill, 2001 and Regulations to be promulgated in terms of the draft Bill, attached hereto, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General
Attention: Mr. H T Burger
Department of Minerals and Energy
Private Bag X 59
PRETORIA

Written comments may also be faxed to (012) 317-9388 or sent by e-mail to theuns@mepta.pwv.gov.za

Copies of the draft Bill can be obtained from:

- Government Printers (Pretoria);
- Communications Chief Directorate at the Head Office of the Department; and
- Department's Home page (www.dme.gov.za)

Written comments must be received not later than 30 September 2001

EXPLANATORY NOTES TO THE DRAFT PETROLEUM AMENDMENT BILL AND THE REGULATIONS TO BE PROMULGATED IN TERMS OF THE BILL

1. In order to allow for the promulgation of the regulations it is deemed necessary that the Petroleum Products Act be amended to allow regulations be made specifically relating to:-
 - a. the licensing of retail outlets and petroleum product wholesalers; including:-
 - i. the granting of licences;
 - ii. the form and manner in which an application for a licence shall be made;
 - iii. the application fees and the licence fees payable;
 - iv. conditions, restrictions or privileges applicable to licences;
 - v. criteria or procedures to be applied in the evaluation of an application for a licence;
 - vi. the form and duration of a licence and the obligations of a licence-holder to furnish information to the licensing authority;
 - vii. the consequences of the contravention of, or the failure to comply with a licence.
 - b. conducting of business in respect of petroleum products, including-the prohibition of self-service by consumers and the prevention of vertical integration in the oil industry;
 - c. the records and information to be kept in respect of licences and registrations by

- the licensing authority;
- d. the maintenance of security and the continuity of petroleum product supplies and the maintenance of contingency and reserve petroleum product stocks;
 - e. the specifications for quality control and other standards in respect of petroleum products, including the incorporation by reference into the regulations of specifications prescribed by or issued under any other law and the prohibition on the blending or mixing of such products with other substances;
 - f. appropriate transitional provisions for the phasing-in of the provisions of the regulations made under this section;
2. The regulations to be promulgated in terms of the Amended Act will consequently and, amongst other, enable the Minister to grant retail and wholesale licenses. The criteria for the issuance of a retail license are envisaged to be the following:
- a. the need for facilities and services to be provided for consumers and the extent to which the interests of petroleum product consumers shall be served;
 - b. the economic and social upliftment of historically disadvantaged South Africans;
 - c. the need for rural and regional development;
 - d. the maintenance of employment opportunities in the petroleum product retail industry;
 - e. the possibility of a monopolistic condition in the petroleum product retail sale industry detrimental to the public interest and the extent to which fair and reasonable competition in the retail sale of petroleum products shall be affected;
 - f. the prevention of vertical integration by wholesalers of the petroleum product retail sale industry;
 - g. the number of retail outlets already operated by the person with regard to whom the decision has to be made;
 - h. any recommendation by a person or a body to which the matter has, in terms of the regulations, been referred to,
 - i. any matter relevant to the orderly provision of petroleum products in South Africa.
3. In respect of the wholesale industry and in addition to above, for which purpose any reference to "retail sale" shall also be construed as a reference to a wholesale site the following criteria will also be relevant:
- a. the need for import, export and distribution of wholesale fuel to be provided in South Africa.
 - b. any significant negative impact such decision may have on the petroleum industry; and
 - c. the extent to which the interest of fuel consumers shall be served.

DRAFT

PETROLEUM PRODUCTS AMENDMENT BILL

To amend the Petroleum Products Act in order to provide for the licencing of persons involved in the sale of certain petroleum products, to establish a licencing authority to issue licences, to provide for the promulgation of regulations relating to licences, and for matters connected therewith.

BE IT ENACTED by the Parliament of South Africa, as follows: --

Amendment of section 1 of Act 120 of 1977

1. Section 1 of the Petroleum Products Act, 1977 (Act No. 120 of 1977), (hereinafter referred to as the principal Act), is hereby amended ?
 - a. by the substitution for the definition of "Minister" for the following definition:
"Minister" means Minister of Minerals and Energy";
 - b. by the insertion of the following definition after the definition of "Minister";
"licencing authority" means the licensing authority designated by the Minister in terms of section 2; and
 - c. by the deletion of the definition of "service".

Amendment of section 2 of Act 120 of 1977

2. Section 2 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).

Insertion of sections 2A and B in Act 120 of 1977

2. The following section is hereby inserted after section 2 of the principal Act:

"Prohibition on certain activities

2A

1. No person may, without a licence issued by the licencing authority ?
 - a. conduct the business of a wholesaler of petroleum products;
 - b. own or develop a retail outlet for the sale of petroleum products; or
 - c. conduct the business of a retailer of petroleum products.
2. The licensing authority may -
 - a. determine whether any person is engaged in any activity referred to in subsection (1);
 - b. direct that any person engaged such activity ceases it forthwith.

Determination by Minister

2B

1. The Minister may ?
 - a. determine and define the class or category of petroleum products to which section 2A(1) applies;
 - b. on such conditions as he or she may determine ?
 - i. designate any person in the public service as the licensing authority contemplated in that section; or
 - ii. designate any other regulatory authority with knowledge and expertise of the petroleum sector as the licensing authority referred to in that section.
 - c. As many persons as are necessary shall assist the licensing authority to perform or exercise his or her powers, duties and functions under this Act and the regulations.
 - d. A determination under subsection 1.a. must be made known in the Gazette and shall be done after it has been published for comment.

Licensing

2C

1. Licenses shall be issued by the licensing authority in terms of regulations promulgated by the Minister under subsection 3.
2. The licensing authority shall, in issuing licences ?
 - a. promote an efficient and internationally competitive retail petroleum industry;
 - b. facilitate an environment conducive to investment;
 - c. ensure countrywide availability of petrol and diesel at competitive prices;
 - d. ensure compliance with product, environmental, health and safety standards;
 - e. promote advancement of historically disadvantaged South Africans;
 - f. promote employment opportunities and small business development in the petroleum sector; and
 - g. comply with Government policy as determined from time to time.
3. The Minister may, without derogating from his or her general powers to make regulations, promulgate regulations relating to ?
 - a. the licensing of the wholesale sale of petroleum products or classes thereof, the development of retail outlets and the retail sale of petroleum products or classes thereof, including-
 - i. the different kinds of licences that may be granted;
 - ii. the form and manner in which an application for a licence shall be made, including the procedures relating to the lodging of applications, the consideration of applications, and the granting or refusal of licences;

- iii. the application and other fees payable for licences;
 - iv. conditions or restrictions which may be imposed by the licensing authority in respect of a particular licence or a category of licences, and the criteria subject to which its discretion shall be exercised, including the rights, duties and obligations of licensees in the storage, handling and sale of petroleum products ;
 - v. criteria or procedures to be applied in the evaluation of an application for a licence;
 - vi. the form and period of validity of a licence;
 - vii. the obligations of a licence-holder to keep records and to furnish returns, and the kind of information to be furnished;
 - viii. the discontinuance of a business conducted in terms of a licence, and the procedures relating to such discontinuance;
 - ix. amendments to, and the transferability and transfer of, licences;
 - x. the consequences of the contravention of, or the failure to comply with the regulations, or of any restriction or condition relating to a licence, including fines for the contravention thereof or the failure to comply therewith, the unconditional or conditional suspension or cancellation of a licence, the procedures to be followed in connection with the imposition of fines or the suspension or cancellation of a licence, and the effects thereof;
- b. the conducting of business in relation to petroleum products by a licensee, including the prohibition on the sale of petroleum products except to certain persons, the prohibition on discounting, and the prohibition on self-service by consumers;
 - c. the records and information relating to licencees to be kept by the licensing authority, the confidentiality thereof and the supply thereof to third parties;
 - d. the maintenance of security and the continuity of supply of petroleum products by licencees;
 - e. the specifications for quality control and other standards in respect of petrol and diesel and other petroleum products, including the incorporation by reference into the regulations of specifications prescribed by or issued under any other law and the prohibition on the blending or mixing of petroleum products with other substances to be adhered to by licencees; and
 - f. transitional provisions for the licencing of outlets in the developmental or operational stage, and the licensing of existing wholesalers and retailers of petroleum products.
- 4.
- a. Any person directly affected by a decision of the licencing authority in terms of this section may, notwithstanding any other rights that such a person may have, appeal to the Minister against such decision.
 - b. An appeal in terms of paragraph (a) shall be lodged in the manner set out in the regulations and shall be accompanied by --

- ii. a written explanation setting out the nature of the appeal;
 - iii. any documentary evidence on which the appeal is based.
- c. The Minister shall, within the period set out in the regulations, consider the appeal on the documents before him or her and shall give his or her decision thereon, together with written reasons therefor, within the period thus specified.
5. The Minister shall, prior to promulgating a regulation under subsection 4, publish the proposed regulations in the Gazette and invite comment thereon within the period set out therein."

Amendment of section 3 of Act 120 of 1977

3. Section 3 of the principal Act is hereby amended by the repeal of subsections 4 and 5 thereof.

Deletion of section 4A of Act 120 of 1977

4. Section 4A of the principal Act is hereby deleted.

Deletion of section 4B of Act 120 of 1977

5. Section 4B of the principal Act is hereby deleted.

Deletion of section 5 of Act 120 of 1977

6. Section 5 of the principal Act is hereby deleted.

Deletion of section 8 of Act 120 of 1977

7. Section 8 of the principal Act is hereby deleted.

Deletion of section 10 of Act 120 of 1977

8. Section 10 of the principal Act is hereby deleted.

Deletion of section 11 of Act 120 of 1977

9. Section 11 of the principal Act is hereby deleted.

Substitution of section 12 of Act 120 of 1977

10. The following section is hereby substituted for section 12 of the principal Act:

"12. Offences and penalties

Any person that contravenes this Act or any regulation made thereunder, shall be guilty of an offence and liable on conviction to a fine not exceeding R 1000 000,00 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment."

Deletion of section 12A of Act 120 of 1977

11. Section 12A of the principal Act is hereby deleted.

Short title

12. This Act shall be called the Petroleum Products Amendment Act, 2001.

PROPOSED DRAFT REGULATIONS TO BE PROMULGATED IN TERMS OF THE DRAFT PETROLEUM PRODUCTS AMENDMENT BILL, 2001

INDEX

CHAPTER 1 DEFINITIONS AND APPLICATION

1. Definitions

CHAPTER 2 DETERMINATION OF PETROLEUM PRODUCTS AND DESIGNATION OF LICENSING AUTHORITY

2. Determination of petroleum products

3. Designation of licensing authority

CHAPTER 3 LICENCES

Part I Classification of licenses

4. Licensing

Part II Wholesale Licence

5. Application for wholesale licence

6. Grant, issue and form of wholesale licence

7. Criteria for decisions relating to wholesale licence

8. Conditions of wholesale licence

9. Information to be submitted to licensing authority by wholesale licence-holder

Part III Site Licence

10. Application for site licence

11. Grant, issue and form of site licence

12. Criteria for decisions relating to site licence

13. Conditions of site licence
14. Information to be submitted to licensing authority by site licence-holder

Part III Retail Licence

15. Application for retail licence
16. Grant, issue and form of retail licence
17. Criteria for decisions relating to retail licence
18. Conditions of retail licence
19. Commencement and cessation of business under retail licence
20. Information to be submitted to licensing authority by retail licence-holder

Part IV General

21. General disqualification for licence
22. Application for duplicate licence
23. Amendment of licence
24. Surrender, suspension and cancellation of licence
25. Licensing authority to make decision within reasonable time
26. Appeals

CHAPTER 4 PROHIBITIONS, DUTIES, SPECIFICATIONS, AND STANDARDS,

Part I Prohibitions

27. Falsely claiming to hold a licence
28. Sale of fuel
29. Prohibition of benefits
30. Prohibition of self-service
31. Prohibition of mixing or blending of petroleum products

Part II General Duties, Specifications and Standards

32. Duty with regard to correct measures
33. Specifications and standards

CHAPTER 5 MISCELLANEOUS

Part I Information and Records

- 34. Supply of false or misleading information
- 35. Register and information to be kept

Part II General

- 36. Penalties
 - 37. Confidentiality
 - 38. Transitional provisions
-

CHAPTER 1 DEFINITIONS

Definitions

- 1. In these regulations, unless the context otherwise indicates, a word or expression defined in the Act shall have that meaning, and:

"**bulk quantity**" with regard to petrol, means a single quantity of xxx litres or more, and with regard to diesel, yyy litres or more;

"**fuel**" means petrol and diesel;

"**Government institution**" means any department, division, office, or agency of State

"**licence**" means a wholesale licence, a site license or a retail licence;

"**licence-holder**" means the holder of a licence; and

"**petroleum products**" means fuel;

"**retail**" means the sale of fuel to end consumers, and "retailer" has a corresponding meaning;

"**the Act**" means the Petroleum Products and Act, 1977 (Act No. 120 of 1977); and

"**wholesale**" means the sale of fuel to a person other than an end consumer, and wholesaler has a corresponding meaning.

CHAPTER 2

DETERMINATION OF PETROLEUM PRODUCTS AND DESIGNATION OF LICENSING AUTHORITY

Determination of petroleum products

2. The petroleum products to which regulation 2A, B and C of the Act and these regulations apply shall be petrol and diesel, unless stated otherwise.

Designation of licensing authority

3. (1) The Director: Hydrocarbons in the Department is hereby designated in terms of regulation 2B of the Act as the licensing authority.

(2) The licensing authority shall be assisted by such officers in the Department as are designated by the Director General for this purpose.

CHAPTER 3

LICENCES

Part I Classification of licences

Licensing

4. The following licences may be granted and issued in respect of the activities mentioned in regulation 2A(1) of the Act --
 - a. a wholesale licence;
 - b. a site licence; or
 - c. a retail licence

Part II Wholesale Licences

Application for wholesale licence

5. (1) Any person desiring to conduct business as a wholesaler shall apply to the licensing authority for a wholesale licence by duly completing the applicable form as set out in Annexure B, and shall lodge such application with the licensing authority together with such other documents or records as may be required by or under these regulations.

(2) An application for a wholesale licence shall be accompanied by ?
 - a. a certified copy of the applicant's identity document and, in the case of a non-South African citizen, permanent residence permit or employment permit and proof of residence in South Africa, or proof of domicile in South Africa, as the case may be;
 - b. if the applicant is a body corporate, a certified copy of its registration documents;
 - c. a list of all retail outlets and others which it at the time of the application intends to supply with fuel;
 - d. a list of the ports of entry or exit from where it intends to import or export, as the case may be, fuel into or from;
 - e. a list of all storage facilities intended to be used, including shared storage

facilities, with specific reference to ?

- i. the location of the storage facilities;
- ii. the capacity of the storage facilities;
- iii. the ownership of the storage facilities (including the ownership of the land on which the storage facilities are situated, if different) and, in the case of shared ownership, the basis of sharing;
- iv. the names of other wholesalers sharing the same storage facilities.

(3) The information required under sub-regulation (2)(e) shall be provided in respect of all the different petroleum products which are to be stored in such facilities.

(4) The licensing authority may request such additional information from an applicant as to enable it to make an informed decision regarding the issue of the wholesale licence.

(5) An application in terms of sub-regulation (1) shall be accompanied by the appropriate application fee indicated in Annexure A.

Grant, issue and form of wholesale licence

6. (1) The licensing authority shall consider an application for a wholesale licence and grant the application and issue a wholesale licence to the applicant subject to the general conditions set out in regulation 7.

(2) If the licensing authority refuses to grant a wholesale licence, it shall inform the applicant of such refusal in writing, including the reasons therefor.

(3) A wholesale licence granted under this Part shall be issued in the form as set out in Annexure B.

(4) A wholesale licence is valid from the date of issue thereof.

Criteria for decisions relating to wholesale licence

7. (1) In making a decision in respect of the grant or issue of a wholesale licence, the licensing authority shall take the criteria set out in regulation 2C(2) of the Act into consideration.

Conditions of wholesale licence

8. The following conditions apply to all wholesale licences ?

- a. the wholesale licence-holder shall at all times comply with the Act, these regulations and all other applicable laws, including laws relating to labour, safety, hazardous substances, security, health and environment;
- b. the wholesale licence-holder may sell fuel only in bulk quantities;
- c. all relevant import and export, and wholesale sale, of fuel, approvals and permits as required under the Act or any other applicable law shall be obtained prior to any import into, export from or wholesale sale of fuel in, South Africa;
- d. the wholesale licence-holder shall keep such records and shall submit such information to the licensing authority as are required by or under these regulations;

- e. petroleum products imported or distributed shall comply with approved specifications as made applicable by or under these regulations; and
- f. all applicable duties, levies and taxes shall be paid to the relevant authorities and bodies;(g) a licence shall not be transferable.

Information to be submitted by wholesale licence-holder

9. (1) A wholesale licence-holder shall supply to the licensing authority, on written notice by the licensing authority and within the period specified in the notice ?

- a. any information the licensing authority may request regarding the storage and place of storage of petroleum products in South Africa by that wholesaler;
- b. any information the licensing authority may request in order to enable it to effectively exercise its powers under these regulations.

(2) Every wholesale licence-holder shall submit to the licensing authority not later than 28 February of each year, the following information in respect of the preceding year ?

- a. the total quantity petroleum products imported and exported during that year specified according to the different petroleum products;
- b. in the case of petroleum product imports, the source country from where those products were obtained, and in the case of petroleum product exports, the name of the export customer and the country of destination;
- c. all ports of entry into and exit out of South Africa used with regard to the import and export of petroleum products;
- d. the cost, insurance and freight (CIF) price of petroleum products referred to in paragraph (a), converted to South African Rands at the date of import;
- e. a list of all storage facilities used, including shared storage facilities, with specific reference, according to different petroleum products, to ?
 - a. the location of the storage facilities;
 - b. the capacity of the storage facilities;
 - c. the ownership of the storage facilities(including the ownership of the land on which the storage facilities is situated) and, in the case of shared ownership, the nature of sharing;
 - d. the names of other wholesalers sharing the same storage facilities;
- f. retail outlets which it supplied with petroleum products, specifying the name of the retail licensee, the location of the retail outlet, and the total quantity of petroleum products supplied to that outlet during that year specified according to the different petroleum products;
- g. any other person than a person mentioned in paragraph (f) to whom any petroleum product was supplied, specifying the name and address of such person and the total quantity petroleum products supplied to such person during that year specified according to the different petroleum products;
- h. any change of the information required for the consideration of an application in terms of regulation 4.

Part III

Site license

Application for site licence

10. (1) Any person that plans to develop a retail outlet shall apply to the licensing authority for a wholesale licence by duly completing the applicable form set out in Annexure B, and shall lodge such application with the licensing authority together with such other documents or records as may be required by or under these regulations.

(2) Any person intending to develop a retail outlet shall, prior to lodging an application with the licensing authority as contemplated in sub-regulation (1), advertise his intention to apply for a licence in at least two newspapers circulating in the area of the proposed outlet.

(3) An advertisement as contemplated in sub-regulation (3) shall contain --

- a. the particulars referred to in sub-regulation (5); and
- b. the envisaged monthly volume of petroleum products that will be sold there;
- c. an invitation to any person who may object to the granting of the licence to lodge such objection with the licensing authority, together with substantiated reasons, within sixty days from the placing of the advertisement.

(4) An application for a site licence shall be accompanied by ?

- a. a certified copy of the applicant's identity document and, in the case of a non-South African citizen, permanent residence permit or employment permit and proof of residence in South Africa, or proof of domicile in South Africa, as the case may be;
- b. if the applicant is a body corporate, a certified copy of its registration documents;
- c. a description of the proposed site, together with a site plan, giving geographical co-ordinates and the envisaged outlay and storage capacity of the outlet, as well as a map of the area indicating other existing or planned retail outlets that could compete with the activities to be carried on from the proposed site;
- d. a draft business plan, setting out the envisaged date of completion of all developments on the site, the envisaged day when retail activities are commenced with and the assumed turnover in volume from the sale of petroleum products, together with a motivated and substantiated explanation for any assumptions made;
- e. if the owner or developer of the site is also a wholesaler of petroleum products, a declaration to that effect;
- f. a declaration, or, if applicable, a draft agreement, setting out what the relationship between the owner or developer of the site, and the operator thereof, will be; and
- g. copies of all other necessary approvals already obtained that relates to that site.

(5) The licensing authority may request such additional information from an applicant as may be necessary to enable it to make an informed decision regarding the issue of a site licence.

(6) An application in terms of sub-regulation (1) shall be accompanied by the

appropriate application fee indicated in Annexure A.

Grant, issue and form of site licence

11. (1) The licensing authority shall consider an application for a site licence together with any objections received, and may grant the application and issue a site licence to the applicant subject to the general conditions set out in regulation 12.
- (2) If the licensing authority refuses to grant a site licence, it shall inform the applicant of such refusal in writing, including the reasons therefor.
- (3) A site licence granted under this Part shall be issued in the form set out in Annexure B.

Criteria for decisions relating to site licence

12. (1) In making a decision in respect of the grant or issue of a wholesale licence, the licensing authority shall take the criteria set out in regulation 2C(2) of the Act into consideration.

Conditions of site licence

13. The following conditions shall apply to all site licences ?
 - a. the site shall be as specified and must be developed in accordance with the documentation supplied to the licensing authority by the applicant in its application;
 - b. the licence shall lapse if development does not take place or is not finalised within six months of the envisaged completion date specified in the application, or if retail sales does not commence within the period specified in regulation 18;
 - c. no retail license shall be issued without a valid site licence for that site; and
 - d. the site licence does not in any way relieve the holder thereof from obtaining any other Government, local authority or other approval for the development of that site.
 - e. the licence shall not be transferable.

Information to be submitted to licensing authority by site licence-holder

14. (1) A site licence-holder shall supply to the licensing authority, on written notice by the licensing authority and within the period specified in the notice ?
 - a. any information the licensing authority may request regarding the ownership of the site or any relationship between the owner of the site and the operator thereof;
 - b. any information the licensing authority may request in order to enable it to effectively exercise its powers under these regulations.

Part IV Retail Licenc

Application for retail licence

15. (1) Any person desiring to conduct the business of a retailer of petroleum products and operate a retail outlet shall apply to the licensing authority for a retail licence by duly completing the applicable form as set out in Annexure B, and shall lodge such application with the licensing authority together with such other documents or records as may be required by these regulations.

(2) An application for a retail licence shall be accompanied by ?

- a. a certified copy of the applicant's identity document or, in the case of a non-South African citizen, a permanent residence permit or an employment permit and proof of residence in South Africa or proof of domicile in South Africa, as the case may be;
- b. if the applicant is a body corporate, a certified copy of its registration documents;
- c. a declaration by a supplying wholesaler that it agrees to supply fuel to the applicant;
- d. if applicable, a list of all buildings, structures and plant and any other item or assistance a wholesaler agrees to supply to the applicant in the event of a successful application;
- e. a declaration by the applicant setting out the relationship between himself or herself and any supplying wholesaler;
- f. in the case of an applicant being a wholesaler, a written confirmation whether the applicant intends to operate the proposed retail outlet itself;
- g. a copy of the site licence for that site.

(3) The licensing authority may request such additional information from an applicant as to enable it to make an informed decision regarding the issue of a retail licence.

(4) An application in terms of sub-regulation (1) shall be accompanied by the appropriate application fee indicated in Annexure A.

Grant, issue and form of retail licence

16. (1) The licensing authority shall consider an application for a retail licence and may grant the application and issue a retail licence to the applicant subject to the general conditions set out in regulation 17(1) and any special conditions determined in terms of regulation 17(2).

(2) If the licensing authority refuses to grant a retail licence, it shall in writing inform the applicant of such refusal and give reasons therefor.

(3) A retail licence shall be issued in the form set out in Annexure B.

Criteria for decisions relating to retail licence

17. In making a decision in respect of the grant or issue of a wholesale licence, the licensing authority shall take the criteria set out in regulation 2C(2) of the Act into consideration.

Conditions of retail licence

18. (1) The following general conditions apply to all retail licences ?

- a. the retail licence-holder shall at all times comply with the Act and these

regulations and all other applicable laws, including laws relating to labour, safety, hazardous substances, security, health and environment;

- b. the retail licence-holder shall keep such records and shall submit such information to the Minister as are required by or under these regulations;
- c. petroleum products sold to consumers shall comply with approved specifications made applicable by or under these regulations;
- d. the retail licence-holder shall at all times display such permits, licences and certificates relating to the sale of petroleum products and other services provided at the retail outlet, as may be required by any other law; and
- e. the retail licence-holder may not obtain fuel by means of wholesale sale for purposes of retail sale from any person other than a wholesale licence-holder;
- f. the retail licence-holder may only sell fuel in bulk quantities by dispensing it directly into ?
 - i. a container, other than the tank of a vehicle, used for the storage of fuel; or
 - ii. the tank of a vehicle with a mass of 3 500 kilograms or more and only for purposes of propelling such vehicle,
- g. no retail licence-holder may sell petrol in quantities of less than 200 litres at a time at any price other than the price determined under the Act;
- h. no retail licence shall be issued unless there is a valid site licence for that site; and
- i. a retail licence shall only be valid for the site specified therein, and may not be transferred.

(2) The licensing authority may, in addition to the general conditions imposed under regulation 17(1), impose conditions that are specific to any individual retail licence in order to adhere to the criteria specified in regulation 2C of the Act.

Commencement and continuation of business under retail licence

- 19. (1) A retail licence-holder must commence with retail sales at the relevant premises within a period of six months after the date on which a retail licence has been issued to the licence-holder.
- (2) The licensing authority may extend the period of time referred to in sub-regulation (1) for consecutive periods of six months at a time.
- (3) If, without the prior written approval of the licensing authority, the business of retail sales from a relevant premises is not conducted for a continuous period of more than three months during the validity of the retail licence, the licence may be cancelled.

Information to be submitted to Minister by retail licence-holder

- 20. (1) A retail licence-holder shall supply to the licensing authority, on written notice by the licensing authority and within the period specified in the notice ?
 - a. any information the licensing authority may request regarding the ownership of the site or any relationship between the owner of the site and the retail licence

holder;

- b. any information the licensing authority may request in order to enable it to effectively exercise its powers under these regulations.

(2) Every retail licence-holder shall submit to the licensing authority not later than 28 February of each year, the following information in respect of the preceding year-

- a. confirmation that the retail outlet is still in operation and that for no continuous period of more than three months in the preceding year or portion of a year the business of retail sales from the relevant premises was not conducted;
- b. any change of the information requested in terms of regulation 14 for an application for a retail licence;
- c. the total throughput of petroleum products through that outlet, specified by product.

Part V General

General disqualification for licence

21. (1) A licence may not be issued to a person, nor may any person hold a licence if such person

- a. has during the five years preceding the application for the licence or certificate been convicted of an offence under the Act, or is so convicted during the currency of the licence or certificate, as the case may be;
- b. is not a South African citizen or is not lawfully resident in South Africa, or, in the case of a body corporate, is not registered in South Africa, as the case may be, or loses his or her South African citizenship, or the right to be lawfully resident in South Africa, or, in the case of a body corporate, its registration in South Africa is cancelled, as the case may be;
- c. is or becomes, as the case may be, an unrehabilitated insolvent; or
- d. is or becomes subject to an order of a competent court declaring such person to be mentally ill or disordered, as the case may be.

(2) The licence of any licensee becoming subject to a disqualification set out in sub-regulation (1), shall lapse from such date.

Application for duplicate licence

22. When a licence has been lost, damaged or destroyed the holder thereof may apply to the licensing authority for a duplicate thereof.

Amendment of licences

23. Any application for the amendment of a licence shall be dealt with as if it is an application for a new licence: Provided that the licensing authority may, in its discretion, authorise deviations from the requirements relating to applications if it is of the opinion that the proposed amendment is not material or does not affect the rights of other parties detrimentally.

Surrender, suspension and cancellation of licence

24. (1) A licence-holder may at any time by notice in writing to the licensing authority surrender the licence or certificate.

(2) If a licence-holder who fails to comply with any provision of the Act or these regulations or any condition of a licence or contravenes any such provision or condition, the licensing authority may, notwithstanding any other penalty which may be imposed under the Act or any other law and subject to sub-regulation (3) -

- a. cancel the licence; or
- b. suspend the licence for such period of time as it may deem appropriate.

(3) The licensing authority may not cancel or suspend a licence unless -

- a. it has by written notice informed the licence-holder of its intention to cancel or suspend such licence ?
 - i. setting out the particulars of the alleged failure or contravention; and
 - ii. calling upon the licence-holder to make such representations to the licensing authority as such holder may deem necessary or expedient within a period of 30 days after the date of such notice;
- b. the licensing authority has taken into account -
 - i. any steps taken by such licence-holder to remedy the failure or contravention concerned or to prevent any such failure or contravention from being repeated;
 - ii. any other matters submitted to it by way of the representations made under paragraph (a).

(4) The effect of a suspension of a licence or certificate is that no act may be legally performed thereunder until such suspension has been lifted.

(5) A licence shall lapse if -

- a. the licence-holder becomes subject to a disqualification set out in these regulations
- b. the licence is surrendered; or
- c. the licence is cancelled.

(6) If a licence ceases to have effect, the licence-holder shall surrender the licence to the licensing authority within a period of 14 days from the date on which it so ceased to have effect.

Licensing authority to make decision within reasonable time

25. (1) Any decision made or approval given under these regulations shall be done within a reasonable period of time taking into account the nature of the issue at hand.

(2) If a decision regarding the grant or issue of a licence is not made within a period of 60 days after the lodging of an application, the licensing authority shall furnish, at the written request of the person in respect of whom the decision has to be made, such

person with written reasons for the delay.

(3) Any decision reached under these regulations shall be conveyed in writing to any person directly affected thereby: Provided that the licensing authority may, in its discretion, decide to make it known in the media.

Appeals

26. (1) Any person appealing against a decision of the licensing authority shall within 30 days of such decision being made known under regulation 25 lodge such appeal in writing with the Minister, accompanied by the documentation specified in the Act.

(2) The licensing authority shall, upon an appeal being lodged, supply the Minister with its decision and the reasons therefor.

(3) The Minister shall consider such appeal on the documents supplied under sub-regulations (1) and (2) and shall give his or her finding thereon within 60 days from the date of receipt thereof.

(4) An appeal shall be accompanied by the relevant application fee set out in Annexure A.

CHAPTER 4

PROHIBITIONS, DUTIES, SPECIFICATIONS AND STANDARDS,

Part I Prohibitions

Falsely claiming to hold a licence

27. Any person who falsely claims or purports to be a licence-holder shall be guilty of an offence.

Sale of fuel

28. (1) No retail licence-holder may dispense any fuel directly into the tank of a fuel driven vehicle or vessel otherwise than against payment in cash, and no person shall receive fuel from a retail licence-holder so dispensing it to such person directly into the tank of such vehicle or vessel otherwise than against payment in cash.

(2) For the purpose of this regulation ?

a. "payment in cash" means ?

- i. payment in notes or coins which are legal tender in South Africa;
- ii. payment by cheque which is not post-dated and which is drawn on a current account with a banking institution registered as such in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
- iii. payment by traveller's cheque;
- iv. payment by postal order or money order;
- v. payment by any instrument?
 - aa. which is payable on demand;

- bb. which may be deposited with any banking institution referred to in subparagraph (ii); and
- cc. which may be cleared through the ordinary settlement process of the banking system; or

vi. an advance payment made to the retail licence-holder concerned ;;

(3) Sub-regulation (1) shall not apply to a Government institution or organisation exempted therefrom in writing by the licensing authority; and

(4) Any person who contravenes, or fails to comply with, any provision of this regulation shall be guilty of an offence.

Prohibition of benefits

29. (1) No retail licence-holder may -

- a. supply or offer to supply petrol at a retail outlet other than by way of sale at the price determined under the Act; or
- b. as a condition of or as a result of any sale of petrol at a retail outlet give or offer any benefit to any consumer.

(2) For the purpose of this regulation, "benefit" means ?

- a. any money, article, service or concession having a commercial value; or
- b. anything whatsoever, which, either by itself or in conjunction with any other thing or with the performance of any act, entitles or purports to entitle the recipient thereof to receive such money, article, service or concession, or to participate in any competition.

Prohibition of self-service

30. (1) No retail licence-holder shall sell fuel at any retail outlet and no person shall purchase fuel at any retail outlet in terms of any business practice, method of trading, agreement, arrangement or understanding according to which the sale of fuel at a retail outlet is effected in accordance with a system of self-service.

(2) No wholesaler shall supply fuel to any retail outlet if fuel is sold at such retail outlet in a manner prohibited in sub-regulation (1).

(3) Any person who contravenes, or fails to comply with, any provision of this regulation shall be guilty of an offence.

Prohibition of mixing or blending of petroleum products

31. No licence-holder may sell such petroleum product or a mixture or blend of such petroleum product if such petroleum product or mixture or blend does not comply with the specifications approved by the licensing authority for this purpose.

Part II

General Duties, Specifications and Standards

Duty with regard to correct measurements

32. (1) A licence-holder or other person using a measuring instrument for trade in petroleum products shall at all times ensure that such measuring instrument is correct and complies with the requirements of the Trade Metrology Act, 1973 (Act No. 77 of 1973)
- (2) Any person who contravenes or fails to comply with any provision of sub-regulation (1) shall be guilty of an offence.

Specifications and standards

33. For the purposes of these regulations, the fuel standards of the South African Bureau of Standards shall apply and be deemed to be incorporated therein.

CHAPTER 5

MISCELLANEOUS

Part I Information and records

Supply of false or misleading information

34. (1) No person shall furnish false or misleading information, or make any false or misleading statement knowing such information or statement to be false or misleading, in connection with any application, statement, record or other document submitted to any authority in terms of these regulations.
- (2) Any person who contravenes, or fails to comply with, any provision of this regulation shall be guilty of an offence.

Register and information to be kept

35. (1) The licensing authority shall cause a register to be kept of all licences issued under these regulations.
- (2) The following information shall be recorded and kept up to date in the register to be kept in terms of sub-regulation (1) --
- a. the name and address of every licence-holder;
 - b. the licence number and date of issue.
 - c. the type of licence;
 - d. the relevant premises to which the licence relates, if applicable;
 - e. particulars regarding storage tanks;
 - f. in the case of a wholesale licence, particulars regarding storage facilities; and
 - g. any special conditions attached to the licence or certificate.
- (3) The register referred to in sub-regulation (1) shall be kept available for public inspection during office hours.

Part II

General

Penalties

36. Any person found guilty of an offence under these regulations shall on conviction be liable to a fine not exceeding R 1000 000,00 or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

Confidentiality

37. No person may not divulge any information relating to information obtained, whether by that person or some other person, in the course of the administration or implementation of these regulations except ?
- a. if authorised by or under an Act of Parliament or a Court of Law;
 - b. with the consent of the person from whom the information was obtained or to whom the information relates; or
 - c. in the course of legal proceedings arising out of the administration or enforcement of the Act or the regulations.

Transitional provisions

38. (1) Any person who, at the commencement of these regulations ?

- a. is active as a wholesaler of petroleum products;
- b. is in the process of establishing a retail outlet; or
- c. conducts business as a retailer of petroleum products,

shall, subject to sub-regulation (2), be deemed to be the holder of a licence for that activity.

(2) Any person referred to in sub-regulation (1) shall apply for a retail licence, wholesale licence, as the case may be, within a period of six months from the date of the commencement of these regulations: Provided that ?

- a. the licensing authority may, in its discretion, authorise such deviations from the requirements relating to licence applications as it may deem appropriate in the circumstances;
- b. a licence referred to in sub-regulation (1) shall lapse after six months after commencement of these regulations if no licence application is brought within that period.

(3) The Minister may by notice in the Gazette extend the period of six months referred to in sub-regulation (1) for consecutive periods of six months at a time.

(4) Notwithstanding any other provision to the contrary in these regulations, an applicant as contemplated under sub-regulation (2) is entitled to be issued with a licence: Provided that --

- a. the general conditions relating to licences shall apply; and
- b. an applicant is not subject to any disqualification set out in these regulations.