

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 69 OF 2017

The Energy Regulation Act
(Laws, Volume 24, Cap 436)

**The Energy Regulation (Petroleum Marking
and Monitoring) Regulations, 2017**

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY PROVISIONS

Regulation

1. Title
2. Application
3. Interpretation

PART II

MARKING OF PETROLEUM PRODUCTS

4. Establishment of marking programme
5. Procurement of marking company
6. Functions of marking company
7. Marking of petroleum products
8. Prohibition of unauthorised marking
9. Prohibition of unauthorised possession of marker
10. Prohibition of selling, distributing or transporting unmarked petroleum product
11. Prohibition of adulteration and dumping of petroleum products
12. Prohibition of possession of non-conforming or adulterated petroleum product

PART III

GENERAL PROVISIONS

13. Investigations and cessation of operations
14. Powers of inspector
15. Testing of petroleum product
16. On-site testing
17. Dispute of petroleum test results
18. Closure, quarantine and disposal
19. Unauthorised removal of seals
20. Reopening of closed facility
21. General penalty

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

IN EXERCISE of the powers contained in section 27 of the Energy Regulation Act, the following Regulations are made:

PART I

PRELIMINARY PROVISIONS

	Title
1. These Regulations may be cited as the Energy Regulation (Petroleum Marking and Monitoring) Regulations, 2017.	Application
2. (1) These Regulations apply to a marking, quality control and related activity.	
(2) These Regulations do not apply to a petroleum product transiting through the Republic of Zambia.	Interpretation
3. In these Regulations, unless the context otherwise requires—	
“adulterate ” means the addition of an inferior, unsuitable or unauthorised element or compound into a marked or unmarked petroleum product in order to compromise the quality of the petroleum product;	
“Agency ” means the Zambia Environmental Management Agency established under section 8 of the Environmental Management Act, 2011;	Act No. 12 of 2011
“approved marker” means a chemical approved by the Board for the purpose of marking;	
“ Authority ” means the Zambia Revenue Authority established under section 9 of the Zambia Revenue Authority Act;	Cap. 321
“authorised officer ” means a member of staff of a marking company appointed as such under regulation 5(3) for the purposes of these Regulations;	
“ Board ” means the Energy Regulation Board established under section 3 of the Act;	Cap. 436
“ bulk quantity ” means a single quantity exceeding two hundred litres or equivalent of a petroleum product;	
“ detector test ” means the analysis of a petroleum product sample to check the level of a marker using a type of technology agreed upon by the Board and a marking company;	

“dumping ” means the smuggling or diversion into the local market of a petroleum product exempted from tax or in transit;

“full capacity ” in relation to a tanker or storage tank, means the maximum operating capacity of the tanker or storage tank;

“inspector ” means a person appointed as such under section 5 of the Act;

“law enforcement agency ” means the Zambia Police Service, the Anti-Corruption Commission, the Drug Enforcement Commission or the Agency;

“law enforcement officer ” means—

(a) a police officer of or above the rank of inspector;

(b) an officer of the Anti-Corruption Commission;

(c) an officer of the Drug Enforcement Commission;

(d) an officer of the Agency;

(e) an officer performing duties on behalf of Interpol; or

(f) any other person appointed as such by the Minister for the purpose of these Regulations;

“licence ” means a licence issued by the Board and

“licensee ” shall be construed accordingly;

“licensed activity ” means an activity licensed by the Board;

“licensed facility ” means a depot, receiving terminal or retail outlet in respect of which an operator conducts its licensed activity, and includes a transportation unit;

“marked petroleum certificate ” means a certificate issued by a marking company under regulation 7(3);

“marker ” means a bio-chemical substance capable of being introduced into a petroleum product in small quantities for the purpose of identification and maintenance of the quality of the petroleum product without compromising the quality of the petroleum product;

“ marking ” means the introduction of a marker into a petroleum product;

“marking and monitoring unit” means the marking and monitoring unit established under regulation 4;

“marking company” means a company contracted by the Board to mark a petroleum product;

“marking detector” means a device used to distinguish a marked petroleum product from an unmarked petroleum product through the introduction of a marker;

“marking programme” means the petroleum marking programme established under regulation 4;

“marking system” means the process and equipment used during marking;

“marking terminal” means a place specified in the Second Schedule for the purposes of marking;

“non conforming product” means a petroleum product that has failed a detector test or an approved analytic testing method;

“over-mark” means the introduction of a marker into a petroleum product beyond the approved tolerance limit;

“petroleum feedstock” means crude oil or a commingled or noncommingled petroleum product which complies with the required specifications in a refinery;

“petroleum product” means petrol, diesel, kerosene or low sulphur gas oil;

“refinery” means a licensed facility for the refining of petroleum feedstock into a petroleum product;

“site” means the location where a sample of a petroleum product is collected for purposes of testing; and

“transport unit” means a railway tank wagon, pipeline or a bulk road tanker that an operator uses to transport a petroleum product.

PART II

MARKING OF PETROLEUM PRODUCTS

Establishment
of marking
programme

4. (1) There is established a petroleum marking programme administered by the Board.

(2) The Board shall establish a marking and monitoring unit for purposes of these Regulations.

(3) The cost of the marking programme shall be met from funds determined and availed for that purpose by the Board.

Procurement
of marking
company

5. (1) The Board shall procure the services of a marking company for purposes of implementing the marking programme under these Regulations.

(2) The Board shall ensure that a marking company procured under subregulation (1) has the demonstrated ability to operate, implement and effectively manage a petroleum marking programme.

(3) A marking company shall appoint suitably qualified persons as authorised officers to implement the marking programme.

Functions of
marking
company

6. (1) The functions of a marking company are to—

(a) mark petroleum products in accordance with these Regulations and any written directives of the Board which are consistent with these Regulations;

(b) provide marking detectors to the marking and monitoring unit;

(c) maintain the integrity of the marking programme;

(d) advise the Board on the most effective means of implementation of the marking programme;

(e) train members of the marking and monitoring unit and any other person authorised by the Board for purposes of the marking activities;

(f) provide equipment required for the marking and monitoring activities; and

(g) perform any other function that the Board may direct.

(2) The Board may, in writing, give a marking company such directions as the Board considers necessary for the better carrying out of these Regulations.

7. (1) A marking company shall mark a petroleum product for domestic use or export from the Republic as set out in the First Schedule.	Marking of petroleum product
(2) A marking company shall mark the petroleum product referred to in subregulation (1) at a marking terminal specified in the Second Schedule with an approved marker in the presence of a licensee.	
(3) A marking company shall issue to a licensee whose petroleum product has been marked in accordance with these Regulations a marked petroleum certificate in the Form set out in the Third Schedule.	
(4) A marked petroleum certificate is <i>prima facie</i> evidence that a petroleum product has been marked in accordance with these Regulations.	
8. (1) A person shall not mark a petroleum product except under the authority of the Board and in accordance with these Regulations.	Prohibition of unauthorised marking
(2) A person who contravenes subregulation (1) commits an offence.	
9. (1) A person shall not be in possession of an approved marker without lawful authority.	Prohibition of unauthorised possession of marker
(2) A person shall not facilitate the unlawful possession of an approved marker by any person.	
(3) A person who contravenes subregulation (1) or (2) commits an offence.	
10. (1) A licensee shall not sell, distribute, transport or avail an unmarked petroleum product to the public.	Prohibition of sale, distribution or transportation of unmarked petroleum product
(2) A person who contravenes subregulation (1) commits an offence.	
11. (1) A person shall not adulterate or cause the adulteration of a petroleum product.	Prohibition of adulteration and dumping of petroleum product
(2) A person shall not dump or cause the dumping of a petroleum product.	

(3) A person who contravenes subregulation (1) or (2) commits an offence.

Prohibition
of
possession
of
nonconforming
or
adulterated
petroleum
product

12. (1) A person shall not keep or maintain an adulterated, unmarked, over-marked or non-conforming petroleum product in that person's possession or any premises.

(2) A person shall not sell, distribute or transport or cause to be sold, distributed or transported an adulterated, unmarked, overmarked or nonconforming petroleum product.

(3) A person who contravenes subregulation (1) or (2) commits an offence.

(4) The Board shall suspend or revoke the licence of a licensee convicted of an offence under this regulation in accordance with the provisions of the Act.

PART III

GENERAL PROVISIONS

Investigations
and
cessation of
operations

13. The Board may, with the assistance of a law enforcement agency

(a) carry out investigations on an adulterated, unmarked, over-marked or nonconforming petroleum product; and

(b) order the cessation of operation of a licensed facility or site in which an adulterated, unmarked, over-marked or non-conforming petroleum product is stored or kept.

Powers of
inspector

14. (1) An inspector may, at any time—

(a) inspect a licensed or unlicensed facility and take a sample of a petroleum product for verification and analysis; or

(b) in connection with law enforcement, seal off a licensed facility in which is kept a petroleum product that—

(i) is adulterated, unmarked, over-marked or non conforming;

(ii) is marked with an unauthorised marker; or

(iii) has been dumped.

(2) An inspector may affix a seal on the licensed facility upon sealing off the facility.

(3) An inspector may, in the company of a law enforcement officer, impound a transport unit that the inspector reasonably suspects to contain an adulterated, unmarked, over-marked or nonconforming petroleum product.

(4) A person shall not offload or remove a petroleum product from a facility that has been sealed off without the prior written authorisation of the Board.

15. (1) An inspector may take a sample of a petroleum product from a licensed or unlicensed facility for the purposes of carrying out a test to determine the level of a marker in the sample and the quality of the petroleum product.

Testing of
petroleum
product

(2) An inspector may, in the course of carrying out an inspection—

(a) make a copy or extract of a document or extract relating to the loading, handling, offloading or delivery of a petroleum product; or

(b) break any seal on a road tank vehicle for purposes of taking a sample, and thereafter affix a seal and record the seal numbers.

(3) An inspector shall submit the results of the tests carried out under subregulation (1) to the Board, marking company and licensee from which the sample was taken.

16. (1) An inspector may conduct an on-site inspection of a petroleum product and shall take and retain three samples of the petroleum product for the purposes of testing, storage in case of a dispute in results and independent testing in case of a dispute in results of the second sample.

On-site
testing

(2) An inspector shall, after the conclusion of an onsite test of a petroleum product, submit to the Board and the licensee the written results of the test within twentyfour hours and not later than seventytwo hours after the conclusion of the testing of the petroleum product.

17. (1) A person may, in writing to the Board, dispute the results of a test of a petroleum product under regulation 15 or 16 within twenty-four hours of receiving the test results.

Dispute of
petroleum
test results

(2) Where the results of a test of a petroleum product are disputed in accordance with subregulation (1), the sample of the petroleum product collected under regulation 15(1) or 16(1) shall be submitted to a laboratory located at the registered office of a marking company for testing, upon payment by the person disputing the results of a fee for the test.

(3) The test referred to in subregulation (2) shall be conducted in the presence of an inspector.

(4) The laboratory shall, within twentyfour hours but not later than seventy-two hours after receiving the sample, submit the test results to the Board.

(5) The Board shall, in the event that it disputes the results in subregulation (4), submit a further sample of the petroleum product in the presence of the person contesting the results to an independent laboratory and the results of such test shall be final.

Closure,
quarantine
and disposal

18. (1) The Board may order a licensee in possession of a non conforming product to—

(a) close or quarantine the licensee's licensed facility in whole or in part; or

(b) dispose of or blend the nonconforming

product in accordance with a direction of the Board.

(2) The Board shall cause a seal to be placed at a licensed facility where the Board orders a closure or quarantine and the seal shall be *prima facie* evidence that the licensed facility has been closed by order of the Board.

(3) The licensee named in the order referred to in subregulation (1) shall comply with the order.

(4) A licensee ordered by the Board to dispose of a nonconforming product shall dispose of the product in the presence of an inspector in accordance with the environmental protection directives issued by the Agency.

(5) Despite subregulation (1), the Board may suspend or revoke a licence under this regulation in accordance with the provisions of the Act.

19. (1) A person shall not, without lawful authority, cut, break or otherwise interfere with a seal applied to a licensed facility by the Board or a marking company.

Unauthorised
removal of
seals

(2) A person who contravenes subregulation (1) commits an offence.

20. The Board may, in writing, direct an inspector to reopen or dequarantine a licensed facility closed or quarantined under regulation 18 upon being satisfied that—

Reopening
of closed
facility

(a) a nonconforming product has been disposed of or blended in accordance with a direction of the Board; and

(b) the Authority and the Agency have certified, in writing, that they do not object to the re-opening or dequarantining of the facility.

21. A person who commits an offence under these Regulations for which a penalty is not provided is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment for a period not exceeding two years, or to both.

General
penalty

FIRST SCHEDULE

(Regulation 7(1))

MARKING OF PETROLEUM PRODUCT

<i>Fuel</i>	<i>Domestic</i>	<i>Road</i>	<i>Mines Rebate</i>	<i>Export Rebate</i>	<i>Diplomatic Missions</i>
1. Petrol	A	B	C	C	B
2. Diesel	A	B	C	C	B
3. Kerosene	C			C	B
4. Low Sulphur Gasoil	A				

A, B and C indicate different types of marker that are uniquely identifiable.

SECOND SCHEDULE

(Regulation 7(2))

MARKING TERMINALS

1. The Ndola Fuel Terminal
2. The Indeni Petroleum Refinery Company tankage in Ndola
3. Depots owned by the Government of the Republic of Zambia
4. Depots owned by private companies

THIRD SCHEDULE

(Regulation 7(3))

MARKED PETROLEUM CERTIFICATE

Name of marking company:.....

Name of authorised officer:.....

Place of marking:.....

Date of marking:

Name of licensee/representative:.....

Type of petroleum product:.....

Storage type and serial No:.....

Destination of petroleum product:.....

This is to certify that has
been marked by an approved marker and meets the requirements of the Energy Regulation
(Petroleum Marking and Monitoring) Regulations, 2017.

Dated theday of....., 20.....

.....
Authorised Officer

LUSAKA

14th September, 2017

[MOE.64/9/4]

D. MABUMBA,
Minister of Energy