

PETROLEUM PRODUCTS ACT, 1977**REGULATIONS REGARDING PETROLEUM PRODUCTS WHOLESALE LICENCES**

The Minister of Minerals and Energy has under sections 2B, 2D, 2E and 12C(1)(a) of the Petroleum Products Act, 1977 made the regulations in the Schedule.

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Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context otherwise indicates -

“the Act” means the Petroleum Products Act, 1977, (Act No. 120 of 1977), as amended;

“the Amendment Act” means the Petroleum Products Amendment Act, 2003 (Act No. 58 of 2003) and the Petroleum Products Amendment Act, 2005 (Act No. 2 of 2005);

“auditor” means a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);

“bulk” means 200 litres or more, per transaction of prescribed petroleum products;

“certified copy” means a photocopy of an original document that has been-

- (a) attested as a true copy of the original and is marked with the words “original seen” or “true copy of original document”; and
- (b) signed and stamped by an attorney, a notary public, a police officer, a chartered accountant, or a certified accountant, and where the stamp includes the competent person's capacity, physical address and licence number, if applicable;

“Controller” means the Controller of Petroleum Products as contemplated in Section 3(1) of the Act;

“declaration” means an affidavit, affirmation or solemn or attested declaration made before a commissioner of oaths as contemplated in

the Justices of the Peace and Commissioners Oath Act 1963, (Act No. 16 of 1963);

“prescribed petroleum products” in this Regulation refers to, petrol, diesel, paraffin, liquefied petroleum gas used for the propulsion of vehicles on public roads, jet fuel or aviation gasoline;

“selling” means an act by which a seller binds himself to the buyer to allow the other to have the full use of a petroleum product as owner for a definite price which the purchaser on his part promises to pay to the seller;

“temporary licence” means a licence issued in terms of section 2B(5) of the Act;

“training” means learnerships as contemplated in Section 16 of the Skills Development Act 1998 (No. 97 of 1998) and **“trained”** must be interpreted accordingly;

Scope of regulation

- 1 This Regulation applies to wholesale licences;

Application for a wholesale licence

- 2 Any person wholesaling petroleum products must –
 - a) apply to the Controller for a wholesale licence by completing the application form contained in Annexure A; and
 - b) lodge that application with the Controller together with the documents specified in Annexure B;
- 3 In the case of paraffin, any person purchasing or selling paraffin in quantities of less than 30,000 litres does not require a licence contemplated in regulation 2;
- 4 A wholesale licence contemplated in regulation 2 above may not be issued before the applicant has paid the application fee specified in Annexure C, into a Bank account stipulated in this regulation;

Wholesale licence evaluation procedure

- 5 In evaluating the wholesale licence application, the Controller must be satisfied that –
 - a) the applicant is the owner of the business;
 - b) the application form has been completed in full;
 - c) all the documents specified in Annexure B have been submitted with the application form;
 - d) the documents submitted with the application form are true and correct documents;
 - e) the applicant is in compliance with the Charter or has satisfactory plans to meet the requirements of the Charter, taking into account the size of the business concerned; and
 - f) the applicant has paid the application fee determined in Annexure C;

- 6 An applicant, for a wholesale licence, who qualifies in terms of section 2D of the Act, must provide proof of payment of all levies due in terms of the Central Energy Fund Act, 1977 (Act No. 38 of 1977);
- 7 An applicant, for a wholesale licence, who does not qualify in terms of section 2D of the Act, must provide proof of payment of any monies due, in terms of any Act or regulations for the purposes of rehabilitating land used in connection wholesaling activities upon the cessation of such with wholesaling activities, prior to the wholesale licence being issued;
- 8 A wholesale licence for a wholesaling activity that does not qualify in terms of section 2D of the Act, may only be issued after the Controller has been satisfied that the wholesaling activity for which the licence is applied is economically viable;
- 9 In determining economic viability, the Controller must ensure that the net present value (NPV) of the business is positive and audited to this effect;
- 10 In the event that the ownership and control of the applicant's *business* by HDSAs is less than 25%, then the applicant is required to submit plans indicating how at least 25% ownership and control by HDSAs will be reached by 2010.
- 11 The ownership and control figures referred to in regulation 10 will be published by the Controller in terms of regulation 43.
- 12 The Controller must, if satisfied that an application for a licence meets the requirements of the Act and this Regulation, issue the licence for which such application was made;
- 13 A wholesale licence must specify –
 - (a) the name of the licensee;
 - (b) the identity number or company registration number of the licensee;
 - (c) the business address; and,

(d) the date of issue of the licence

(e) licence number

Conditions of a wholesale licence

14 It must be a condition of a wholesale licence that a licensed wholesaler –

- (2) only purchases prescribed petroleum products in bulk from other licensed wholesalers or licensed manufacturers, except in the case of importation of petroleum products;
- (3) selling prescribed petroleum products in the Republic of South Africa must only sell in bulk to –
 - a) a licensed manufacturer;
 - b) a licensed wholesaler;
 - c) a licensed retailer; or
 - d) an end consumer for own consumption;
- (4) in the case of the subregulation (3)d), must ensure that the end consumer does not sell the prescribed petroleum product;
- (5) must comply with the Charter by 2010;
- (6) may not hold a retail licence except for training purposes;
- (7) must, on or before February of each year submit to the Controller the following information in respect of the preceding calendar year-
 - a) volumes of prescribed petroleum products supplied to licensed manufacturers, licensed wholesalers, licensed retailers and end-consumers;
 - b) total volumes of prescribed petroleum products purchased and the source of such petroleum products;
 - c) information in respect of progress in complying with the objectives of the Charter;

- d) the number of employees by race, gender and disabled persons
 - e) a report on the training and the number and title of the qualifications obtained by learners in the employ of the licensee;
 - f) a declaration that the licenced retail business is not owned by a wholesaler;
 - g) a declaration by an auditor on the extent of ownership, expressed as a percentage, of the business, owned by historically disadvantaged South Africans as defined in the Charter, provided that a licensee that is a sole trader need not submit such a declaration
- (8) must, if so instructed, submit to the Controller on a date and in the manner specified in the instruction –
- a) information necessary for the regulation of prices of prescribed petroleum products;
 - b) data on prescribed petroleum products purchased or sold during a specified period and closing stock levels of the prescribed petroleum products;
 - c) in respect of progress in complying with the objectives of the Charter;
- 15 A wholesale licence remains valid for so long as the licensed activity remains a going concern subject to regulation 14.
- 16 The controller may direct a licensed wholesaler to refrain from supplying prescribed petroleum products to a licensed retailer that, in the Controller's opinion, is not in compliance with the Act or is not in compliance with the conditions of its retail licence. ;
- 17 A licenced wholesaler must inform the Controller of any change of address or telephone number within 30 days of the relevant change taking effect;

- 18 Before a wholesale licensee sells a prescribed petroleum product that has specifications regulated in terms of the Act, it must declare to the buyer, in writing, which, if any, regulated specification, the petroleum product concerned conforms to.
- 19 A licensee must pay the annual licence fee specified in Annexure C before the anniversary date of the licence;
- 20 Payment of an annual wholesale licence fee must be accompanied by the licence number of the wholesale licence concerned;
- 21 In the event that the ownership and control of the applicant's *business* by HDSAs is less than 25%, then the applicant is required to submit plans indicating how at least 25% ownership and control by HDSAs will be reached by 2010.

Transfer of wholesale licence

- 22 An application for the transfer of a wholesale licence must be submitted to the Controller by completing the licence transfer form contained in Annexure [D] and stating the reasons for the transfer therein.
- 23 The application form must be –
 - c) accompanied by a certified copy of the transferee's identity document if the transferee is an individual;
 - d) accompanied by a certified copy of the transferee's registration documents, if the transferee is a corporate entity, trust or body other than an individual.
- 24 The provisions of regulations 4, 8, 15 and 16 of these Regulations shall apply *mutatis mutandis* to any such application.

GENERAL PROVISIONS

Unsuccessful applications for a licence

25 If the Controller declines to issue a licence, the applicant must be informed of that decision in writing with reasons.

Information to be submitted to the Controller by the licensee

26 A wholesale licensee must declare to the Controller that the ownership of the licenced activity has not changed.

27 The declaration contemplated in Regulation 26 above must be –

- (a) in writing;
- (b) made before or on the anniversary date of the licence date of issue;
- (c) accompanied by an auditor's written opinion confirming that the declaration is correct;
- (d) A wholesale licensee must submit to the Controller not later than the end of February of each year, information referred to in sub-regulation 14(7).

28 Form included in Annexure D

Training

29 (1) A licenced wholesaler may, for training purposes, be issued a number of retail licences that meet the provisions of these regulations, as follows:

- (a) One retail licence for the first 100 sites supplied with prescribed petroleum products by that wholesaler; and
- (b) one retail licence for every additional 200 sites supplied with prescribed petroleum products by that wholesaler; but no more than nine retail licences
- (c) one retail licence for every additional 200 sites supplied with prescribed petroleum products by that wholesaler;

but no more than nine retail licences.

- (2) An applicant for a retail licence contemplated in sub-regulation (1) must submit with the application a declaration stating that the licensed retailing activity will be used for training purposes.
- (3) A licensed wholesaler contemplated in sub-regulation (1) must, before the end of February each year submit to the Controller a declaration on the training carried out and the number and title of the qualifications obtained by learners during the preceding calendar year, at each site for which it possesses a retail licence.

Application for duplicate licence

- 30 (1) When a wholesale licence has been lost, damaged or destroyed the licensee must apply to the Controller for a duplicate thereof.
- (2) An application contemplated in sub-regulation (1) must be – accompanied by :
- (a) a certified copy of the applicant's identity document if the applicant is an individual;
 - (b) a certified copy of its registration documents, if the applicant is a corporate entity, trust or body other than an individual;
 - (c) an affidavit attesting to the facts relating to the loss, damage or destruction of the said licence.
 - (d) the fee determined in Annexure C.

Amendments to a licensee

- 31 An application for amendments to a licensee related to changes of ownership or control must be dealt with as if it is a transfer within 30 days of the change being effected.

32 In the case of change in licensee's particulars, a change in details form as indicated in annexure A, must be completed and lodged to the controller within 30 days of the change being effected.

Surrender, suspension and cancellation of licence

33 A licensee may at any time, by written notice, surrender a licence to the Controller;

34 In the event that a licensee 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 Controller may, notwithstanding any other penalty which may be imposed under the Act or any other law, and subject to Regulation 36, terminate the licence;

35 The Controller may not terminate a licence unless –

(1) the licensee has been informed in writing of the intention to terminate or suspend such licence by–

a) setting out the particulars of such failure or contravention;
and

b) calling upon the licensee to make any representations to the Controller that may be necessary, within 30 days after the date of such notice;

(2) the Controller has considered -

a) any steps taken by the licensee to remedy the failure or contravention concerned or to prevent any such failure or contravention from being repeated; and

b) any other relevant matters submitted by way of representations contemplated in sub-regulation (1)b;

36 A licence ceases to be valid if -

(a) the licence is surrendered;

(b) the wholesaling activity is no longer a going concern;

- (c) the licence is terminated by the Controller; or
- (d) the licensee fails to comply with the conditions of the licence;

37 If a licence has ceased to be valid, the licensee must surrender the licence to the Controller within a period of 14 days from the date of receipt of the notification to that effect;

Controller to make decision within reasonable time

38 A decision from the Controller as required by this Regulation must be made within a reasonable period of time taking into account the nature of the decision required, provided that if a decision regarding an application for a licence is not made within a period of 90 days after the lodging of that application, the Controller must furnish, within 15 days, if so required in writing by the applicant, reasons in writing for the delay, and thereafter shall take such decision within a period of 60 days, provided that in the first 12 months of operation of this Regulation the said period is 300 days.

39 Any decision made by the Controller under this Regulation must be conveyed in writing to the appropriate person.

Appeals

40 The Minister must consider and make a finding in respect of an appeal lodged pursuant to section 12A of the Act within 90 days from date of receipt thereof.

False declarations

41 If it is proved to the satisfaction of the Controller that any person made a material false declaration, the Controller may revoke or amend any decision or the award of any licence that was influenced by such false declaration.

Additional information

42 The Controller may request additional information from an applicant that may be necessary to enable the Controller to make a decision regarding the granting of a licence provided that such information is limited to information in substantiation of or in substitution for -

- (a) any declaration made by an applicant;
- (b) any information required from an application and not provided by the applicant; and
- (c) any reasons provided to the Controller pursuant to sub-Regulation 5

Publication of data by Controller

43 (1) The Controller must in March of each year publish data from the preceding calendar year on -

- (a) the number of valid wholesale licences;
- (b) the number of valid wholesale licences held by historically disadvantaged South Africans;
- (c) the number of wholesale licences issued;
- (d) the number of lapsed wholesale licences;

(2) The Controller shall maintain at its place of business and if possible on its website, a register of all licensed wholesalers, which shall include the following details; the name, address and licence number of each wholesaler licence.

(3) The above-mentioned register shall be available for inspection by members of the public.

Unlicensed wholesaling

44 (1)A written notice issued by the Controller pursuant to section 2A(2)(a) of the Act must -

- a) be delivered by hand or sent by facsimile or by registered post to the person concerned;
- b) state the alleged contravention;
- c) draw attention to section 12 of the Act;

(2) Pursuant to section 2A(2)(b) of the Act –

- a) the Controller may determine whether or not the cessation of an unlicensed wholesaling activity is likely to lead to a material interruption in the supply of petroleum products;
- b) if the Controller allows an unlicensed wholesaler contemplated in sub regulation (2)(a) to continue its activity, the Controller must do so in writing and stipulate that an application for a licence must be lodged within a period specified.

(3) A notice issued by the Controller pursuant to section 2A(2)(c) of the Act must –

- a) be delivered by hand or sent by facsimile or by registered post to the person concerned;
- b) specify any state of affairs that arose from the unlicensed wholesaling that must be rectified;
- c) draw attention to section 12 of the Act;

Contravention of conditions of wholesale licence

45 Pursuant to section 2A(3) of the Act the Controller -

- b) may determine whether or not a wholesaler is in contravention of its licence conditions;
 - c) must direct the licensee to comply by notice in writing;
 - d) must direct the licensee to rectify any state of affairs resulting from that person's activities;
- (1) must direct the licensee concerned to submit proof of rectification, of the contravention, if applicable;

- (2) must specify the periods within which the state of affairs must be rectified and proof thereof submitted;
- (3) any person who contravenes a provision of the Act, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 000, or to imprisonment, subject to sub-regulation (2) above.
- (4) If the Controller is not satisfied that a licensee in contravention of its licence conditions has complied with the Controller's notice as contemplated in section 2(A)2(a) of the Act or that the state of affairs has not been rectified, the Controller may decide to -
 - a) Institute legal proceedings; or
 - b) Revoke the licence; or
 - c) Both

46 In the event that the Controller decides to revoke a wholesale licence the licensee concerned must first be offered the opportunity to submit representations to the Controller in regard thereto; within 30 days after the date of that notice;

- (1) After the period in which representations can be made has expired the Controller must -
 - a) consider the representations received if any;
 - b) determine whether or not to institute legal proceedings.

Transitional licensing

47 A wholesaler that qualifies in terms of section 2D of the Act shall not be required to obtain the permission from the Controller contemplated in section 2A (2)(b) of the Act.

ANNEXURE A

APPLICATION FORM (Refer to New Application form)

MOBILE PHONE
NUMBER

FAX NO.

E-MAIL
ADDRESS

SECTION 3: INFORMATION TO BE COMPLETED IN RESPECT OF ANNUAL INFORMATION SUBMISSION

VOLUMES (LITRES) PURCHASED IN LAST CALENDAR YEAR

PETROL

DIESEL

ILLUMINATING
PARAFFIN

LIQUIFIED
PETROLEUM
GAS

JET FUEL

AVIATION
GASOLINE

VOLUMES (LITRES) SOLD IN LAST CALENDAR YEAR

PETROL

DIESEL

ILLUMINATING
PARAFFIN

LIQUIFIED
PETROLEUM
GAS

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JET FUEL

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AVIATION
GASOLINE

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

PLEASE INDICATE NUMBER OF EMPLOYEES BY RACE, GENDER AND DISABILITY

BLACK EMPLOYEES:

MALE

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FEMALE

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DISABLED

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COLOURED EMPLOYEES:

MALE

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FEMALE

--	--	--	--	--

DISABLED

--	--	--	--	--

INDIAN EMPLOYEES:

MALE

--	--	--	--	--

FEMALE

--	--	--	--	--

DISABLED

--	--	--	--	--

WHITE EMPLOYEES:

MALE

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FEMALE

--	--	--	--	--

DISABLED

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TOTAL NUMBER OF EMPLOYEES

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

PLEASE INDICATE OWNERSHIP BY HISTORICALLY DISADVANTAGED SOUTH AFRICANS (HDSA's) IN PERCENTAGE

					%
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DOCUMENTS TO BE ATTACHED TO THIS SUBMISSION OF WHOLESALE ANNUAL INFORMATION

1. A declaration by the licensee that the ownership of the licenced activity has not changed, accompanied by an auditors written opinion confirming the declaration to be true.
2. A declaration by the licensee stating that a licensed wholesaler does not own the retailing activity.
3. A declaration by the applicant stating that the applicant is in compliance with all national provincial and local government legal requirements.
4. A declaration by an auditor –
 - (a) Stating in the case of the licensee being a non-natural person, the extent of ownership of the business by historically disadvantaged South Africans, (historically disadvantaged means a person who was discriminated against in law before 27 April 1994 on the basis of race, gender and/or disability). A licensee who is a sole trader need not submit such a declaration.
5. Stating that the signatory on this application is duly authorized thereto.

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- Deleted: APPLICATION
- Formatted: Bullets and Numbering
- Formatted: Bullets and Numbering
- Formatted: Bullets and Numbering
- Deleted: "
- Deleted: n application for a new retail license must be accompanied by a
- Deleted: 1
- Deleted: . l
- Deleted: as defined in the Charter
- Deleted: -
- Deleted: T
- Deleted: e

DECLARATION

I (full names).....hereby declare that all information provided herein is within my personal knowledge true and correct

Signed at.....(place) on this..... day of.....(month) (year)

.....
Signature

I certify that the deponent:

- (a) has acknowledged that he knows and understand the contents of this application form and its annexures, that he has no objection to taking the prescribed oath and that he considers the oath binding on his conscience; and
- (b) has in the prescribed manner sworn that the contents of this application form and its annexures are true and signed same before me at (place) on thisday of(month).....(year).

COMMISSIONER OF OATHS

Name: _____

Address: _____

Capacity: _____

NOTE: If this Annual submission form is completed electronically it must be printed out, signed and submitted with the necessary supporting documents to the address below.

Submit this form to:-

**Controller of Petroleum Products
Department of Minerals and Energy
Private Bag X59
Pretoria
0001**

Or

**Controller of Petroleum Products
Department of Minerals and Energy
Mineralia Centre
234 Visagie Street
Pretoria
0001**

Enquires

Contact: Director Petroleum and Gas Regulation

Contact No.: (012) 317 8646

Fax No.: (012) 322 8570

E-Mail: petroleum.controller@dme.gov.za

ANNEXURE B**DOCUMENTS TO BE SUBMITTED WITH A WHOLESALE LICENCE APPLICATION**

An application for a wholesale licence must be accompanied by –

- (a) a certified copy of the applicant's identity document and, in the case of a non-South African citizen, a 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) a certified copy of its registration documents, if the applicant is a corporate entity or a trust;
- (c) a certified copy of the Certificate of Incorporation (CM1) if the applicant is a company;
- (d) a Certificate of Incorporation (CK1) if the applicant is a close corporation;
- (e) declaration by the applicant that it is in compliance with the Charter or a statement of its plans to meet the requirements of the Charter.
- (f) ****A** declaration by the applicant that it is in compliance with all national, provincial and local government legal requirements that are in force at the time the application is made. (SEE ACT SECTION 2D (4) (a) AND TIES TO "FALSE DECLARATIONS".
- (g) a list of all retail outlets and others which it at the time of the application intends to supply with fuel;
- (h) 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;
- (i) a list of all storage facilities intended to be used, including shared storage facilities, with specific reference to -
- (j) the location of the storage facilities;
- (k) the capacity of the storage facilities;
- (l) 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;

(m) the names of other wholesalers sharing the same storage facilities;

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

ANNEXURE C**APPLICATION AND LICENCE FEES**

Wholesale licence application fee	R 1,000
Annual wholesale licence fee	R 500
Duplicate licence application fee	R500
Temporary licence application fee	R500

Payment must be by direct deposit to the following account –

Account holder: Department of Minerals and Energy Petroleum
Products

Bank: ????????

Account Number: ??????

Branch Code: ?????

ANNEXURE D

DOCUMENTS TO BE ATTACHED

1. 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
2. If the applicant is a corporate entity or a trust, a certified copy of registration documents
3. A certified copy of a declaration by the applicant stating that she/he/it is in compliance with all national provincial and local government legal requirements.
4. In the case of an application made by a historically disadvantaged South African, a declaration by that person to that effect. (Historically disadvantaged means a person who was discriminated against on the basis of race, gender and/or disability.)
5. A certified copy of a declaration by the applicant giving reasons why any certified copy required is not provided.

DECLARATION

I (full names).....hereby
declare that all information provided herein is within my personal knowledge true and
correct

Signed at.....(place) on this..... day of.....(month)
..... (year)

.....
Signature

I certify that the deponent:

- (a) has acknowledged that he knows and understand the contents of this application form and its annexures, that he has no objection to taking the prescribed oath and that he considers the oath binding on his conscience; and
- (b) has in the prescribed manner sworn that the contents of this application form and its annexures are true and signed same before me at (place) on thisday of(month).....(year).

COMMISSIONER OF OATHS

Name: _____

Address: _____

Capacity: _____

NOTE: If this application form is completed electronically it must be printed out, signed and submitted with the necessary supporting documents to the address below.

Submit this form to:-

**Controller of Petroleum Products
Department of Minerals and Energy
Private Bag X59
Pretoria
0001**

Or

**Controller of Petroleum Products
Department of Minerals and Energy
Mineralia Centre
234 Visagie Street
Pretoria
0001**

Enquires

Contact: Director Petroleum and Gas Regulation

Contact No.: (012) 317 8648

Fax No.: (012) 322 8570

E-Mail: petroleum.controller@dme.gov.za