

THE BOTSWANA ENERGY REGULATORY AUTHORITY ACT

THE BOTSWANA ENERGY REGULATORY AUTHORITY (PETROLEUM PRODUCTS  
WHOLESALE, RETAIL AND CONSUMER INSTALLATION OPERATIONS)  
REGULATIONS, 2018

*(Made under section 74 (1))*

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PART I  
PRELIMINARY PROVISIONS

- Citation           **1.** These regulations may be cited as the Botswana Energy Regulatory Authority (Wholesale, Retail and Consumer Installation Operations) Regulations, 2018.
- Application       **2.** These regulations shall regulate the activities related to petroleum wholesale business, petroleum retail operations business, petroleum consumer installation operations and related matters in Botswana.
- Interpretation   **3.** In these regulations, unless the context otherwise requires:
- “Act” means the Botswana Energy Regulatory Authority Act;
- “applicable law” means any principal legislation, treaty, convention, proclamation, regulation, order or by-law that is customarily treated in Botswana as having legally binding force and which is relevant to matters pertaining to the regulation of petroleum wholesale business and petroleum retail business;
- “approved specification” means any specification or standard in relation to a petroleum product applied by the Authority and as approved by the BOTSWANA BUREAU OF STANDARDS pursuant to Standards Act Cap 43:07 or any other standards that are widely used for Good Petroleum Industry Practices;
- “Authority” means the Botswana Energy Regulatory Authority established under the provisions of the Act;
- “bulk quantity” means a single lot of not less than two hundred litres of a petroleum product;
- “BURS” means the Botswana Unified Revenue Services;

“COCO” stands for company owned company operated which means an arrangement where a retail outlet is owned and operated by the same company;

“CODO” stands for company owned dealer operated which means an arrangement where a retail outlet is owned by a company be it a wholesaler or not but operated by a separate dealer and includes an arrangement where a natural person owns a retail outlet but lets it to a dealer;

“Competition Authority” means the Competition Authority;

Cap. 46:09

“complaint” means a written or oral statement comprising of the facts of a matter or act complained of, related to a regulated activity, that invokes the regulatory power or jurisdiction of the Authority, and specifying the relief sought;

“complainant” means a person that has filed a complaint with the Authority pursuant to these regulations;

“conforming product” means a petroleum product that meets the approved specifications;

“consumer installation facility” means a building, a storage tank, dispensing pump or piping that an operator employs for the purpose of dispensing a petroleum product into own or hired petroleum products consuming equipment or own or hired vehicle;

“consumer installation licence” means a licence issued by the Authority authorizing a person to operate consumer installation facility;

“consumer installation licensee” means the holder of a consumer installation licence;

“consumer installation operations” means an activity necessary to operate a consumer installation facility and includes all activities in respect of such facility and any activity reasonably required in connection with obtaining, handling, possession, storage and dispensing of a petroleum product at such facility;

“Department” means the department responsible for environmental issues

“dangerous situation” means a situation involving a petroleum product that:

- (a) endangers the safety or health of a person, or the safety of a person’s property; or
- (b) creates an immediate risk of significant environmental harm;

“dealer” means the operator of a retail outlet;

“depot” means a petroleum storage facility that has been constructed and meeting the specifications prescribed under these regulations and Standards Act in respect of which wholesale business is carried out and it includes buildings, storage tanks, pipelines, pump house, loading gantry and firefighting systems;

“driver” means any person who is in command of a transport vessel;

“DODO” stands for dealer owned dealer operated which means an arrangement where a retail outlet is owned and operated by the same dealer;

“good petroleum industry practice” means any conduct related to a petroleum product intended to preserve product quality and meets generally accepted health, safety and environmental requirements;

“habitual offender” means a licensee who has been found with non-conforming products for more than two times within a licence period;

“incident” means:

- (a) an event that involves a leakage of more than two hundred litres at any point in time of a petroleum product from a regulated facility;
- (b) a spill of more than two hundred litres of a petroleum product as a result of dispensing or offloading activities;
- (c) death or personal injury occurring as a consequence of an action that is related to a regulated activity;
- (d) a fire or an event incidental thereto that results from an action that is related to a regulated activity;
- (e) an event that results in an emergency shutdown of a regulated facility; and
- (f) any other significant event that may adversely affect the conduct of a regulated activity.

“inspector” means an officer of the Authority or an agent of the Authority appointed by the Authority to perform inspection as required under the Act and regulated sector legislation;

“licence” means a license issued under the Act

“licensee” means the holder of a licence;

“licence fee” means a fee payable by a licensee as shall be prescribed by the Minister from time to time;

“Minister” means the minister responsible for petroleum affairs;

“non- conforming product” means a petroleum product that does not meet the approved specifications;

“Notification of Offence” means the notification prescribed in the First Schedule;

“operator” means a person operating a consumer installation facility, a dealer/retailer, a wholesaler or person responsible for the management and monitoring of a facility;

“petroleum” means petroleum crude;

“petroleum product” means an organic compound, pure or blended, which is derived from the refining or processing of petroleum crude oils, or synthetic fuels and include:

- (a) asphalts, bitumen, petroleum coke and other residual product;
- (b) bunkers or heavy residual fuel oils for combustion engines or industrial heat processes, such as burners for boilers or heating furnaces;
- (c) commercial gases which include methane, ethane, propane, butane and other similar petroleum gases, biogas or mixture of these gases, whether in gaseous or liquefied state;
- (d) gasoil or automotive diesel, biodiesel, industrial marine diesels or synthetic diesel;
- (e) gasoline, bio-naphtha or a bio-ethanol product;
- (f) kerosene or other similar oils for illumination or combustion applications;
- (g) lubricating oils, base oil or refined and blended finished oil;
- (h) turbo fuels for jet propulsion engines.

“petroleum product spill” means the unlawful discharge of a petroleum product of more than two hundred litres onto or into any land or water, or any structure or thing;

“regulated activity” means wholesale business, retail business or consumer installation operations;

“regulated facility” means a receiving terminal, depot, consumer installation facility or a retail outlet;

“regulated sector legislation” means:

Cap. 73:01  
Cap. 66:01  
Cap. 67:01  
Cap. 74:01  
Cap. 43:08

- (a) the Electricity Supply (Amendment) Act;
- (b) the Mines and Minerals Act;
- (c) the Petroleum (Exploration and Production) Act;
- (d) the Botswana Power Corporation Act;
- (e) the Control of Goods, Prices and Other Charges Act; and



(f) any other legislation that applies to, is used in or is relevant to the regulated sector;

“retail outlet” means any place where a petroleum product is sold or offered for sale to a customer on a retail basis, and includes the buildings, storage tanks and dispensing pumps in respect of which a retailer is conducting retail sale;

“retail business” means the sale or offer for sale of a petroleum product at a retail outlet;

“retailer” means the operator of a retail outlet and the term shall be used interchangeably with dealer;

“Sample Collection Forms” means the document issued by the Authority as appended in the Second Schedule that is to be completed by an inspector during the collection of a sample;

“supervisor” means the operator or other person responsible for the management and monitoring of a facility and is deemed to be authorized to:

- (a) grant an inspector access to a facility, answer their questions and witness the taking of samples and the carrying out of inspections; and
- (b) identify physical defects and operational deficiencies within the facility and, as required, take decisions related to the suitability of such facility for use;

“transport vessel” means any car, machinery, ship, truck, railway wagon, barge or other means of transporting a petroleum product;

“wholesaler” means an operator or any person who engages in the importation, storing or selling of a petroleum product in bulk quantity for the purpose of wholesale business; and

“wholesale business” means the importation, storing or selling of a petroleum product in bulk quantity and include transit trade in petroleum products.

## PART II LICENSING PROCEDURES

Obligation to  
obtain licence

4. - (1) No person shall conduct a regulated activity without a license. The Authority shall establish its procedure for the purposes of determining an application for:

- (a) an authorisation to operate a petroleum filling station;
- (b) an authorisation to operate a secondary facility of petroleum;
- (c) an authorization to construct petroleum infrastructure; and

(d) an authorization to carry out any regulated activity in accordance with the Act, these regulations or any other applicable legislation.

(j) The Authority shall communicate to the applicant in writing within a reasonable time, which shall not be of more than six months from the date of receipt of a valid application, any decision taken concerning an application for an authorization or an application for the renewal of an authorisation or any valid reason impeding the Authority to reach such a decision.

(2) The Authority shall only issue a consumer installation licence to:

- (a) a commercial or industrial undertaking;
- (b) a government fueling point;
- (c) an agricultural farm;
- (d) a mine; or
- (e) any other entity having a contract with institutions mentioned in (a) to (d) above to supply petroleum products to those institutions.

(3) Any person, who upon the entry into force of these regulations, was engaged in any activity or operation relating to a petroleum regulated activity and is in possession of a valid authorization to may continue to perform such activities as authorized under existing authorization conditions for the earlier of a calendar year from the entry into force of these regulations or the grant of a new authorization, whichever is the earlier:

- (a) Provided that any such person shall apply to the Authority for a new applicable authorisation as listed in regulation 4(1) within two months from the day of the sending of a notice by the Authority to apply for such an authorisation: Provided also that any such person shall comply with such authorisation conditions as established in the new authorisation that may be issued by the Authority with effect from the date that the Authority may establish.

(4) Notwithstanding the provisions of sub-regulations (1) and (2) any person who:

- (a) has been conducting a regulated activity with a licence issued by an institution other than the Authority shall within twelve months from coming into force of these regulations, apply for a licence and the Authority shall proceed issuing the licence which shall contain terms and conditions not less favourable than those contained in the licence issued by an institution other than the Authority; and
- (b) operates a consumer installation facility with the capacity less than 30,000 litres shall not require a licence from the Authority.

(5) Any person who contravenes the provisions of sub-regulations (1), (2) and (3) (a) commits an offence and shall:

- (a) for a natural person be liable to a fine not exceeding P30,000 or imprisonment for a term not exceeding five years or to both; and
- (b) for a corporate body to a fine not exceeding 10 percent of its annual turnover.

(6) Notwithstanding the penalty prescribed in sub-regulation (5) any person who contravenes the provisions of sub-regulation (4) may have its licence revoked in addition to the penalty in sub-regulation (5).

Power to enter and close facility, building or premises

**5.** Notwithstanding the penalty prescribed under regulation 4 (5), the Authority may, in the event it determines that any person has contravened the provisions of regulation 4 (1) enter upon any building, premises or facility where the said contravention occurs and close it down.

Licensing requirements

**6. – (1)** No person shall be issued with a wholesale licence unless the application of the same meets the following technical and financial requirements:

- (a) possession of a storage depot or hospitality agreement with another licensee;
- (b) possession of adequate skilled personnel; and
- (c) proof of financial capability which is either:
  - (i) an audited financial statement showing annual gross turnover of not less than P 1 500 000.00 or equivalent in convertible currency;
  - (ii) a bank guarantee or a credit facility of not less than P 1 500 000.00 or equivalent in convertible currency; or
  - (iii) a bank statement of not more than three months to the date of application showing a credit balance of not less than P 150 000.00 or equivalent in convertible currency at a bank or financial institution licensed by the Bank of Botswana to act as such.

(2) Notwithstanding the provisions of sub-regulation (1), the applicant of a licence may rely on the financial capability of its parent company in making its application for a licence under these regulations.

(3) No person shall be issued with a retail licence unless his application meets the following licensing requirements:

- (a) possession of a functioning and commissioned retail outlet;
- (b) possession of relevant authorization to the ownership and use of the land for a retail business, which shall include building permit or any other authorization by relevant authority approving the development of a retail outlet; and

- (c) proof of possession of adequate and serviced fire extinguishing equipment including:
  - (i) sand bucket for each pump island;
  - (ii) at least two fire extinguishers of 9 kg ABE Powder Type located near the dispensers or at least one extinguisher per pump island; and
  - (iii) emergency shutoff switch.

(4) Notwithstanding the generality of sub-regulation (1) and (3), the Authority may issue a wholesale licence or a retail licence with specific conditions to be fulfilled within a prescribed time to an applicant who fails to meet some of the requirements in sub-regulations (1) and (3) respectively.

Licence application

**7.** – (1) An applicant for a licence shall apply to the Authority for a licence by filling in the appropriate application forms prescribed in the Third Schedule.

(2) The application for a licence in sub-regulation (1) shall be accompanied by a non-refundable application fee to be prescribed by the Minister.

Publication of application

**8.** – (1) A licence application received by the Authority shall be evaluated to verify its completeness and legality of information contained therein and thereafter a notice of the intended license to be issued by the Authority shall be published in the *Gazette* and at least two newspapers of wide circulation in Botswana one in English and another in Setswana language with a view to soliciting comments and representations on the application.

(2) The costs of publication of notices under sub-regulation (1) shall be borne by the Authority.

(3) The public shall be invited to submit comments and representations within fourteen days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

Grant of licence

**9.** - (1) The Authority may, upon consideration of an application for a licence:

- (a) deny the application;
- (b) grant the application and issue a license.

(2) The Authority shall, while making a decision to grant or deny a licence, take into consideration:

- (a) the licensing requirements set out in regulation 6;
- (b) compliance to land ownership and land use laws;
- (c) any objection or representation received from the public pursuant to regulation 8;

- (d) the applicant's record of compliance with the Act, these regulations and other regulated sector legislation;
- (e) economic efficiency and benefit to the applicant and the public in general;
- (f) compliance of a facility on matters including:
  - (i) safety;
  - (ii) health;
  - (iii) security;
  - (iv) handling of hazardous substances; and
  - (v) environment;
- (g) any other matter relevant to the orderly conduct of a regulated activity in Botswana.

(3) The Authority may deny issuing a licence where it determines that:

- (a) the applicant does not meet the requirements of regulation 6;
- (b) the applicant's activities may not be conducted in accordance with safety, health and environment requirements; or
- (c) the applicant is applying for a licence in respect of the same activity that had its licence withdrawn or revoked in accordance with the Act in the preceding five years;
- (d) the application has violated the mandatory requirements provided under the Act and relevant regulated sector legislation.

(4) After issuance of a licence, the applicant shall be notified to come and collect it upon payment of a licence fee.

(5) The Authority shall, in the event that it denies an application for a licence, inform the applicant of such decision in writing, including the reasons thereof.

Duration of licence

**10.** - (1) A licence shall be valid for a term of years as shall be indicated on the face of such licence.

(2) A licence shall remain valid for the term stated in sub-regulation (1) of this regulation, however, the Authority may, on the written application of a licensee, extend the period for such further period as the Authority may determine.

(3) The Authority shall revoke a licence of any licensee who, without any lawful cause, fails to conduct the regulated activity for a period of six consecutive months during the licence term.

(4) Any licensee whose licence has been revoked pursuant to the provisions of sub-regulation (3) shall not be eligible for issuance of another licence for a period of twelve months from the date of revocation.

Application for transfer of licence

**11.** - (1) No licence shall be assigned or transferred to another person without a written approval of the Authority.

(2) Any transferor or assignor of a licence shall apply to the Authority by filling in the application form prescribed in the Fourth Schedule which shall be accompanied by a non-refundable fee to be prescribed by the Minister.

(3) Notwithstanding the provisions of sub-regulation (1) no application for a transfer or assignment of a licence shall be entertained by the Authority unless it is endorsed by the transferee or assignee.

(4) An application received by the Authority under sub-regulation (2) shall be evaluated to verify its completeness and legality of information contained therein and thereafter a notice of the application shall be published in at least two newspapers of wide circulation in Botswana, one in English and another in Setswana language with a view to soliciting comments and representations on the application.

(5) The costs for publication of the notice under sub-regulation (4) shall be borne by the Authority.

(6) The public shall be invited to submit comments and representations within fourteen days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

(7) The Authority shall after the expiration of the notice in sub-regulation (6) of this regulation, evaluate the application together with comments received (if any) and make a decision whether to grant or deny the application for transfer or assignment as the case may be.

Change of name

**12.** – (1) A licensee may change its name pursuant to the provisions of these regulations and applicable law.

(2) A licensee who has changed its name shall within thirty days after such change notify the Authority in writing, which notice shall be accompanied by a certificate of change of name issued by relevant authority.

Change of shareholding structure

**13.** - (1) A change of ownership where a third party becomes a majority shareholder of an entity in relation to which a licence has been issued shall require the written approval of the Authority.

(2) The party seeking approval under sub-regulation (1) shall submit the following documents in support of the application:

- (a) a covering letter addressed to the Chief Executive Officer;
- (b) a duly signed and stamped deed of share transfer;
- (c) the current shareholding structure approved by Companies and Intellectual Property Authority CIPA
- (d) tax clearance certificate from BURS; and

(e) a letter of clearance from the Competition Authority.

(3) The Authority may before approving the application for change in shareholding structure under sub-regulation (2) of this regulation consult the Competition Authority and Botswana Unified Revenue Services.

Application for  
renewal of  
licence

**14.** – (1) A licensee who wishes to renew a licence shall, not less than six months before expiration of the licence term, apply to the Authority for a renewal of the licence.

(2) Application for a renewal of a licence as provided under sub-regulation (1) shall be made by filling in the application form prescribed in the Fifth Schedule.

(3) The Authority shall, while making a decision whether to grant or deny an application for renewal of a licence, consider the applicant's compliance to the Act, relevant regulated sector legislation, these regulations and terms and conditions of the licence which is due to expire.

(4) The Authority shall, in the event it denies an application for renewal of a licence, inform the applicant of such decision in writing, including the reasons thereof.

(5) Notwithstanding the provisions of sub-regulation (3) the Authority shall not renew the licence of a licensee who has, during the term of the licence which has expired or is due to expire, resisted or willfully neglected to comply with any Order given by the Authority to the said licensee.

Licence  
suspension and  
revocation

**15.** – (1) The Authority may suspend or revoke a licence:

(a) where a licensee:

- (i) contravenes the provisions of the Act or any regulated sector legislation, or fails to comply with any lawful direction or requirement of the Authority;
- (ii) defaults on or breaches any material condition of the licence;
- (iii) is declared bankrupt, insolvent or enters into liquidation;
- (iv) is found to have presented false information which formed the basis of the licence being granted; or

(b) as may be necessary in the public interest.

(2) In deciding which decision to take under sub-regulation (1), the Authority shall take into account:

- (a) the impact of the contravention on customers and consumers;
- (b) the extent to which the licensee has achieved any financial or any other gain from the contravening act;
- (c) where a licensee has committed a similar contravention in the past;
- (d) the duration and seriousness of the contravention; and

(e) any mitigating or aggravating factors.

(3) A revocation or suspension of a licence shall not be made until a licensee has, by notice in writing, been given the opportunity by the Authority, to rectify that contravention of failure, or show cause within such time as may be specified, why the licence should not be revoked or suspended.

### PART III GENERAL OBLIGATIONS OF A LICENSEE

General  
obligations

**16.** A licensee shall at all times:

- (a) comply with:
  - (i) the Act;
  - (ii) these regulations;
  - (iii) relevant regulated sector legislation;
  - (iv) Orders and directions of the Authority;
  - (v) applicable codes and standards on safety, hazardous substances, security, health and environment; and
  - (vi) ;
- (b) establish and maintain records pursuant to the Act, the relevant regulated sector legislation and Orders and directions of the Authority;
- (c) as soon as practicable, but in any case not later than twenty-four hours after the event, notify the Authority of the occurrence of a dangerous situation or incident within a regulated facility; such notification shall comprise of the steps taken or proposed to be taken by a licensee to remedy such dangerous situation or incident or to eliminate or minimize any danger arising therefrom;
- (d) provide the Authority with full access to its records, documents, sites and assets pursuant to the provisions of the Act, the relevant regulated sector legislation and these regulations;
- (e) ensure the safe disposal of any petroleum product and waste oil;
- (f) procure and maintain in force a valid insurance cover in respect of all liabilities that may arise from the conduct of its regulated activity;
- (g) not keep fireworks or any other instruments or products in or near a facility that might pose a risk of fire or otherwise;
- (h) ensure that its petroleum products comply with the approved specifications;
- (i) not decommission a regulated facility otherwise than pursuant to the provisions of the Act, relevant regulated sector legislation and these regulations;



- (j) ensure that a supervisor is present at a regulated facility at all times, and in his absence any person employed or acting as an agent of a licensee at a facility shall perform the duties of a supervisor;
- (k) prior to effecting any major replacement or maintenance to a facility or a part thereof, notify the Authority not less than fourteen days prior to commencing such replacement or installation;
- (l) ensure that a facility and related equipment are calibrated for correct measurements and are in good working condition in accordance with approved specifications and good petroleum industry practices;
- (m) pursuant to the written directions of the Authority, monitor, record and reconcile all stocks of a petroleum product delivered to, stored in and dispensed from a regulated facility and retain such records for not less than twelve months and make the same available to the Authority on demand;
- (n) prepare a weekly stock position of a petroleum product in a regulated facility as shall be specified in writing by the Authority where necessary;
- (o) promptly notify the Authority of any apparent loss or gain of a petroleum product that is outside normal operating patterns;
- (p) maintain and make available to the Authority on demand documentary evidence demonstrating that all electrical equipment and installations in a facility relevant to the receipt, handling, storage and dispensing of a petroleum product and to areas where inflammable gases or vapours capable of producing explosive or ignitable mixtures may occur, comply with approved specification and installation procedures in accordance with existing codes, the Act and relevant regulated sector legislation;
- (q) not abandon a regulated facility other than in accordance with the Act, relevant regulated sector legislation, these regulations or directions of the Authority;
- (r) display in a conspicuous place at a regulated facility a licence or a certified copy thereof;
- (s) print a licence number on all accounting documents employed in its regulated activity, including invoices, delivery notes and receipts;
- (t) not engage in any activities that may distort or interfere with competition; and
- (u) as soon as practicable, but in any event not later than thirty days after it becomes aware of the fact, notify the Authority:
  - (i) if it is unable to conduct a regulated activity; or
  - (ii) if the conduct of a regulated activity may lead to the breach of any of these regulations or materially affect its operations.

(2) Notwithstanding the provisions of sub-regulation (1):

- (a) a wholesaler shall, at all times:
  - (i) sell a petroleum product only to a retailer and consumer installation licensee.
  - (ii) ensure that it inspects and clean its storage facilities at least once in the licence term in accordance with best petroleum industry practises.
  
- (b) a retailer shall, at all times:
  - (i) ensure that it inspects and cleans its storage facilities at least once in the licence term in accordance with good petroleum industry practises;
  - (ii) not offload a petroleum product from any vehicle to a retail outlet from 18:00 hours to 06:00 hours unless there is adequate lighting or light at the retail outlet; and
  - (iii) procure a petroleum product only from a wholesaler and establish and maintain records of such procurements pursuant to applicable law and Orders and directions of the Authority.
  
- (c) a consumer installation licensee shall, at all times:
  - (i) not engage in any sale of a petroleum product;
  - (ii) ensure that no dispensing of a petroleum product is made from a place other than from a dispensing point situated at a consumer installation facility; and
  - (iii) procure a petroleum product from a wholesaler or a retailer only.

Protection of  
lives and property

**17.** - (1) A licensee shall, while storing, keeping, handling, conveying, using or disposing of any petroleum product, take such precautions and exercise such care as may be reasonable under the circumstances in order to:

- (a) avoid endangering the safety or health of any person, or the safety of any person's property; and
- (b) prevent risk of significant environmental harm.

(2) A licensee shall dispose of a waste petroleum product in a manner and at a place intended for the safekeeping and dumping of such products pursuant to applicable law and good petroleum industry practices.

(3) A licensee shall appoint not less than one health, safety and environment officer to address and be responsible on health, safety and environment matters and obligations related to the regulated activity.

Compensation for  
loss suffered

**18.** – (1) A licensee shall be obliged to compensate any person who has suffered any loss as a result of a regulated activity.

(2) without prejudice to the rights and obligations given under any existing laws any person who has suffered loss as a result of a regulated activity shall first lodge a complaint with a licensee whose regulated activity has caused such loss with a view to reaching an amicable settlement. The complainant shall at the same time notify the Authority of the complaint.

(3) In the event no settlement is reached under sub-regulation (2), the person who has suffered loss may refer the matter to the Authority for a decision and the Authority shall deal with such matter as if it is a complaint lodged pursuant to the provisions of the Act and the Botswana Energy Regulatory Authority (Complaints Handling Procedure) Regulations, 2018.

(4) For the purpose of this regulation, a person includes an administrator, executor or executrix of the estate of a deceased person.

Efficient procurement

**19.** All licensees shall at all times employ mechanisms with a view to ensuring that they procure petroleum products efficiently.

Insurance

**20.** A licensee shall ensure that it procures and maintain adequate insurance cover for environment, personnel, customers and visitors of a regulated facility.

Maintenance of records, provision and disclosure of information

**21.** - (1) A licensee shall at all times:

- (a) keep complete and accurate records and data related to its regulated activity; and
- (b) in accordance with the Authority's requirements and pursuant to its directions, promptly provide to the Authority documents, records or information related to its regulated activity.

Confidential information

**22.** - (1) Any information received by the Authority from a licensee pursuant to these regulations and applicable law shall be presumed not to be confidential unless stated so by the licensee and the Authority shall evaluate such information and inform the licensee accordingly.

(2) A licensee shall not withhold information from the Authority on the ground that it is confidential.

(3) A licensee may request the Authority not to circulate specific data or information that it has provided to the Authority, provided, that only the Authority shall determine that such information is confidential.

(4) The Authority shall limit or prohibit the publication of any information to the public in the event it makes a determination that such information is confidential or disclosure of the said information would be detrimental to the person or business of the person or entity providing the information.

Offence

**23.** Any person who refuses to furnish information or statement as required under regulation 21 or furnishes false information or statement to the Authority commits an offence and shall be liable, on conviction, to a fine not exceeding P30,000 or in the case of a corporate body, a fine not exceeding ten percent of its annual turnover or to imprisonment for a term not exceeding five years or both.

Customer service standards

**24.** Subject to approval by the Authority and as specified in the guidelines issued by the Authority a wholesaler or retailer shall:

(a) establish:

- (i) a code of practice on consumer protection;
- (ii) service quality standards;
- (iii) performance standards;
- (iv) procedures for handling customers complaints;
- (v) programmes to inform the public on services related issues;
- (vi) an office to receive and respond to questions, concerns and complaints related to its business; and

(b) maintain trained staff to address customer issues in a timely and transparent manner.

#### PART IV ENVIRONMENTAL PROTECTION

Compliance with environmental laws and standards

**25.** - (1) A licensee shall comply with the requirements of all applicable environmental laws and standards related to a facility.

(2) Subject to applicable law a licensee shall:

- (a) carry out an environmental impact assessment before establishing a facility, or making a major improvement to an existing facility;
- (b) take all necessary preventive measures to avoid pollution resulting from operating its dispensing pumps, transfer pumps, storage tanks or other equipment at the facility.;
- (c) observe strict environmental, health, and industrial safety standards as required by applicable law;
- (d) perform an environmental audit related to regulated activity in accordance with applicable law; and
- (e) have monitoring wells and bund walls in compliance with the applicable standards.

(3) For the purpose of sub-regulation (2) (a) the term “major improvement” means an improvement that aims at expanding and/or reducing the size of a facility and increasing and/or decreasing the number of storage tanks.

Sanctions for violation of environmental laws

**26.** In the event the Authority determines that a licensee has violated these regulations, the Act, the relevant regulated sector legislation or any applicable law on matters related to protection of the environment it shall take appropriate actions pursuant to provisions of the Waste Management Act Cap 65:06 or any related legislation.

## PART V TECHNICAL PROVISIONS

Hospitality arrangements

**27.** – (1) Any person who intends to undertake petroleum wholesale business may request a depot owner to enter into a hospitality arrangement to use the said depot to conduct a wholesale business, provided that, the said depot is licensed pursuant to the provisions of these regulations.

Compliance with specifications and standards

**28.** - (1) A licensee shall comply with the approved specifications pertaining to the handling, storage and composition of a petroleum product which is consistent with the provisions of the Act, the relevant regulated sector legislation and these regulations.

(2) A licensee shall not deviate from any approved specification without prior approval of the Authority, and the Authority shall not grant such an approval unless it is satisfied that such deviation is for public interest and will not negatively affect public safety and the environment.

(3) A licensee shall not mix or blend any petroleum product unless allowed to do so in writing by the Authority.

(4) A licensee shall not use any container to store or convey a petroleum product unless such container is leak and spill proof and otherwise suitable and safe for storage and conveyance of a petroleum product.

(5) A licensee shall not use a container for storing a petroleum product which poses or may pose a risk of significant:

- (a) environmental harm; or
- (b) harm with regard to the safety or health of any person or flora and fauna.

Manhole covers be colour coded

**29.** A retailer shall in order to facilitate identification, especially during product deliveries into underground storage tanks ensure that tanks manhole covers and slabs have the following colour coding, which color shall correspond to the pump nozzles:

- |                        |   |              |
|------------------------|---|--------------|
| (a) Gasoline           | - | Green/Red    |
| (b) Kerosene           | - | Blue         |
| (c) Automotive Gas Oil | - | Yellow/Black |

Forecourt design	<b>30.</b> A retailer shall ensure that the forecourt of a retail outlet is carefully designed to enable a customer to get on and off the refueling area safely and rapidly, and to take maximum opportunity to use add-on facilities such as convenience shops, lube or wash bay, vulcanizing center, tyre alignment, air, water and balancing facilities.
Location of dispensing pumps	<p><b>31.</b> – (1) A retailer shall ensure that all dispensing pumps at a retail outlet are properly located to allow:</p> <ul style="list-style-type: none"> <li>(a) full visibility of dispensing pumps to approaching customer;</li> <li>(b) full visibility of dispensing pumps from the manager’s office for security as well as overall control; where this cannot be achieved due to design constraints Closed Circuit Television (CCTV) shall be used;</li> <li>(c) and</li> <li>(d) easy access to pumps and avoid tight turning circles or the need for maneuvering to approach refueling positions.</li> </ul> <p>(2) A retailer shall ensure that:</p> <ul style="list-style-type: none"> <li>(a) the forecourt or drive ways of a retail outlet are constructed using concrete, pavement blocks or asphalt with a provision made for a level bay to allow for accurate measurements of received petroleum products;</li> <li>(b) crash barriers are installed around the pumps for protection of pump; and</li> <li>(c) fueling and offloading areas of a retail outlet are constructed out of hard surface or concrete to protect the soil from oil spills.</li> </ul>
Earth bonding and installation Electronic Fiscal Pump Printer (EFPP)	<p><b>32.</b> A licensee shall ensure he installs and maintains:</p> <ul style="list-style-type: none"> <li>(a) the offloading area with earth bonding wire in accordance with the applicable standard; and</li> <li>(b) the dispensing pumps with Electronic Fiscal Pump Printer (EFPP) as required by the applicable law.</li> </ul>
Maintenance of oil interceptors	<p><b>33.</b> – (1) A retailer shall always ensure that a retail outlet has oil interceptors.</p> <p>(2) Fueling area and discharge for the drainage system shall be connected to the retail outlet oil interceptor.</p> <p>(3) A retailer shall ensure that the hydrocarbon content in effluent from the oil interceptor does not exceed 100 parts per million (ppm).</p>
Building designs and canopies	<p><b>34.</b> – (1) A retailer shall ensure that all buildings at a retail outlet are designed and constructed to allow safe cash handling system, drop safes, night time pay</p>

windows and are fitted with adequate number of security cameras at areas with high security risks.

(2) A retailer shall ensure that canopies at the retail outlet are constructed using non-combustible materials and are above hazardous areas related to dispensing equipment and have a minimum height from forecourt finish level in accordance with applicable standard.

(3) A retailer shall ensure that illumination provided at a retail outlet is good enough to allow clear visibility for operation and security purposes at night.

(4) A retailer shall ensure that every luminary installed at a retail outlet is suitably explosion protected.

Electrical standby generator

**35.** – (1) A stand-by electrical power generator with capacity matching the retail outlet’s electrical power requirements shall be installed to provide power to cover operations, security and lighting in cases of power outages or black-outs.

(2) A retailer shall ensure that an emergency switch is installed on all sites to cut-off power supply to all dispensing pumps in case of emergency situation including oil spill and fire.

Petroleum price billboards

**36.** – (1) A petroleum price billboard shall be erected conspicuously at a retail outlet as a free standing structure or as part of the prime sign with the minimum dimensions of:

- (a) length - 2.0 meters
- (b) breadth - 1.2 – 1.5 meters
- (c) thickness - 0.2 meters

(2) The base of the billboard shall not be less than three meters high from ground level.

(3) The prices of all petroleum products on offer for sale at a retail outlet shall be displayed on the billboard and the unit price of each petroleum product shall appear in Botswana Pula per litres.

(4) The nature of the billboard may include neon or electronic messaging, provided the prices are clearly legible to all motorists approaching a retail outlet from a minimum distance of fifty meters.

Warning signs

**37.** – (1) A licensee shall ensure that symbolic safety signs that are compliant with the applicable standards are boldly displayed at a regulated facility to communicate to customers, visitors and attendants.

(a)

\

(b)

(2) The notices and symbolic safety signs referred in sub-regulation (1) of this regulation shall be installed in the vicinity of a dispensing pump, underground tanks, filling points and vent pipes and shall be conspicuous from a distance of three to five meters.

(3) A retailer shall ensure that an underground tank's identification includes the following:

- (a) tank number;
- (b) maximum working capacity;
- (c) product grade; and
- (d) colour code.

Fire precaution

**38.** - (1) A licensee shall:

- (a) ensure that all buildings, roads, structures and plants used in connection with a facility are designed, constructed, equipped and maintained:
  - (i) in such a way as to prevent fires and explosions;
  - (ii) so as to minimize the harmful effects of fires or explosions if they occur;
- (b) ensure that personnel involved in the handling and dispensing of a petroleum product exercise caution in respect of anything that may cause fire or an explosion, and that such personnel follow applicable law on matters related to fire and explosions; and
- (c) clearly indicate a place at a facility where a petroleum product is handled or stored.

(2) A licensee shall make reasonable efforts to ensure that no person throws, leaves or creates any open or naked flame, spark or flame or any burning or smoldering material on a facility.

(3) A licensee shall ensure that no person:

- (a) keeps an engine running while a petroleum product is being loaded into a vehicle; and
- (b) receives or makes calls from a cellular telephone or any other electronic communication apparatus within a regulated facility except in places specifically designated for such activity.

(4) A licensee shall take adequate precautions to prevent the outbreak of fire when storing, keeping, handling, conveying, using or disposing of a petroleum product.



(5) A licensee shall provide adequate fire extinguishing equipment and maintain such equipment in good working condition in accordance with these regulations, applicable law and standards and pursuant to directions issued by the Authority.

(6) A licensee shall:

- (a) position the equipment described in sub-regulation (5) of this regulation in accessible places at a facility; and
- (b) in any event, not less than once a year, test the equipment described in sub-regulation (5) of this regulation pursuant to applicable law.

(7) A licensee shall establish a fire emergency plan to be employed in the event of a fire at a facility that shall:

- (a) include a suitable and adequate fire-fighting plan that comprises:
  - (i) the locations and types of all fire-fighting equipment; and
  - (ii) an action plan that identifies, *inter alia*, assembly points and the tasks of all employees;
- (b) include provisions for the training of employees to deal with a fire emergency situation, the records of which shall be preserved;
- (c) be provided to employees employed in or on the relevant premises; and
- (d) be made available to the Authority on request.

Control of  
petroleum  
product spill

**39. -** (1) A licensee shall, in the event of a petroleum product spill:

- (a) as soon as practicable and not more than twenty four hours after the occurrence of such spill, inform the Authority about such spill; and
- (b) take all necessary steps pursuant to the provisions of the Waste Management Act Cap 65:06 and applicable Standards or otherwise as may be necessary to clean up such spill.

(2) In the event a licensee fails to comply with sub-regulation (1) (b) of this regulation within the period of time established by the Authority, the Authority may, by written notice, order such a licensee to take such steps as the Authority may require in order to clean up a petroleum product spill at the licensee's cost.

(3) Any licensee who fails to comply with an order of the Authority issued pursuant to sub-regulation (2) of this regulation commits an offence and shall on conviction, be liable to:

- (a) for an individual, to a fine of not less than P30,000 or imprisonment for a term not exceeding five years or both; or

(b) for a body corporate, to a fine not exceeding ten percent of its annual turnover.

(4) Without prejudice to the provisions of sub-regulations (1), (2) and (3), any person who is affected by any spill of a petroleum product and seeks redress, shall first lodge a complaint with a licensee whose licence has caused such spill with a view to reaching an amicable settlement. The complainant shall immediately notify the Authority.

(5) In the event no settlement is reached under sub-regulation (4), the person who is affected by the spill may lodge a complaint to the Authority for compensation from the licensee who is responsible for the spill, and the Authority shall deal with such complaint in accordance with the provisions of the Act and the Botswana (Complaints Handling Procedure) Regulations, 2018.

Decommissioning  
procedure

**40.** – (1) A regulated facility may, subject to the provisions of the Act , the relevant regulated sector legislation and these regulations, be decommissioned:

- (a) after receipt of a written application for a decommissioning from a licensee;
- (b) by an Order of the Authority where it is satisfied that such facility has been abandoned by its licensee for a period of not less than three months; or
- (c) by an Order of the Authority that the same be decommissioned where the Authority is satisfied that the continued operation of such facility poses or may pose a danger to lives and property.

(2) A licensee or the owner of a facility shall, within one year from the date of complete construction of the regulated facility or grant of a licence whichever comes first, submit to the Authority for approval a decommissioning plan substantiating the following:

- (a) the intended rehabilitation plan;
- (b) bill of quantity of planned decommission approved by a registered quantity surveyor;
- (c) the intended methods to be used during decommissioning.

(3) The Authority shall, within forty-five days from the date of receipt of the plan submitted in sub regulation (2) approve with such conditions as it may deem fit.

(4) A licensee or owner of a regulated facility shall, within two years from the date of effective operation, pay to the Authority such sum of money as shall be determined by the Authority as decommissioning costs and the same shall be kept in trust by the Authority for the purpose substantiated in sub-regulation (1).

(5) The amount to be paid under sub-regulation (4) shall be determined by the Authority as per the bill of quantity and any prevailing condition as the Authority considers necessary.

(6) A licensee seeking to decommission a facility shall notify the Authority not less than thirty days prior to such decommissioning in order to enable the Authority make necessary inspections and to issue the necessary approvals.

(7) Notwithstanding sub regulation (4), if the decommissioning cost exceeds the fund in trust of the Authority, a licensee shall pay all the extra costs associated with the decommissioning of a facility, whether such decommissioning has been done following a request by the licensee or by Order of the Authority.

(8) The licensee or owner as the case may be, shall be updating the decommissioning plan in form of techniques and methods prevailing at a particular time.

Site restoration

**41.** – (1) The Authority shall, after confirming that the area where a regulated facility has been constructed has been restored to its original state by a licensee, issue a certificate of compliance to such licensee.

(2) For the purposes of sub-regulation (1) of this regulation “restore” means to:

- (a) return the area where a facility is located to its original and natural state as it was prior to the installation of such facility; or
- (b) render the area where a facility is located, or part thereof, compatible with its intended after-use, including:
  - (i) removing buildings, structures, plant and debris;
  - (ii) establishing compatible contours and drainage;
  - (iii) replacing top soil, re-vegetation, slope stabilization;
  - (iv) infilling excavations; and
  - (v) compliance with requirements of applicable environmental laws

(3) The Authority shall, before issuing a certificate of compliance under sub-regulation (1), consult the department.

**PART VI**  
**PETROLEUM SAMPLING AND TESTING PROCEDURES**  
**Sub-Part I- Sampling Process**

Sampling process to comply with the law

**42.** - (1) The Authority shall conduct sampling and testing procedures of petroleum products in accordance with the Act, these regulations and other applicable laws.

(2) The Authority shall, upon receipt of any complaint, a tip off or on its own motion, take samples and test any petroleum product from any regulated facility or a transport vessel.

(3) A licensee shall ensure that a supervisor is present during sampling.

Preliminaries to sampling

**43.** - (1) Upon arrival at a regulated facility or a transport vessel and having identified themselves, inspectors shall take samples and deliver to a supervisor, or driver, or in their absence, to any employee working at a regulated facility or a transport vessel the Sample Collection Form.

(2) A supervisor, a driver or, in their absence, any employee working at a regulated facility or a transport vessel shall be required to:

- (a) co-operate with inspectors;
- (b) comply with any instructions or requests made by inspectors pursuant to their mandate; and
- (c) grant inspectors unhindered access to any document, the regulated facility and the transport vessel as appropriate.

How samples will be taken

**44.** - (1) Inspectors shall, in each sampling process, take three samples of any type of a petroleum product from a regulated facility or a transport vessel.

(2) A sample of a petroleum product referred in sub-regulation (1) may be taken from:

- (a) an above-ground storage tank, either at the top, middle or bottom;
- (b) from each compartment in a transport vessel;
- (c) an underground storage tank, either at the top, middle or bottom or, in the case of a retail outlet, directly from the dispensing pump nozzle; and
- (d) in all tanks of the docking ships, either at the top, middle or bottom .

(3) Petroleum products samples for testing shall only be taken by an inspector using a container that meets approved specifications.

(4) The Authority shall ensure that each sample taken is:

- (a) properly labelled;
- (b) witnessed by a supervisor, driver or in their absence any other employee and an inspector; and
- (c) sealed properly with the seal of the Authority.

Sample collection forms be signed

**45.** - (1) An inspector shall complete the Sample Collection Form as appropriate that shall then be counter-signed by a supervisor.

(2) An inspector shall in the event that a supervisor, driver or, in their absence, any employee working at a regulated facility or in a transport vessel refuses or fails to counter-sign the Sample Collection Form, note that such supervisor, driver or employee has failed or refused to sign the form.

(3) An inspector shall, in respect of the samples described in sub-regulation (1):

- (a) deliver one sample to one of the laboratories listed pursuant to regulation 47 (1) for testing;
- (b) deliver one sample to a supervisor, driver or in their absence, any employee working at a regulated facility or a transport vessel to be conserved for possible re-testing; and
- (c) conserve one sample in the Authority's storage facility for possible re-testing.

(4) The Authority shall properly document the chain of custody of the samples described in sub-regulation (3).

Supervisor or driver to witness and facilitate the sampling exercise

**46.** - (1) A supervisor, a driver or in their absence any employee working at a regulated facility or the transport vessel as the case may be shall, during the sampling process:

- (a) be entitled to witness the entirety of the sampling process; and
- (b) facilitate the sampling process in any way that the inspectors may require.

(2) Petroleum products samples shall be retained by the Authority and the operator not longer than two months after the date of collection.

## Sub-Part II Testing and Re-testing Procedures

Maintenance of list of qualified laboratories

**47.** - (1) The Authority shall, at all times, maintain a list of laboratories qualified to analyze petroleum products samples in accordance with the approved specification.

(2) The Authority shall select laboratories in sub-regulation (1) on the basis of the following criteria:

- (a) the ability of the laboratory to conduct specific tests pursuant to the approved specification;
- (b) whether the laboratory is equipped with up-to-date and calibrated instruments, and supplies consistent with the scope and volume of tests to be conducted;
- (c) the laboratory's reputation in the community on matters of professionalism and ethical behavior;

- (d) information related to the laboratory's participation in voluntary accreditation programme and its current certification status;
- (e) ease of communication, particularly in respect of questions arising; and
- (f) timely delivery of test results.

(3) The costs for sampling and testing a petroleum product shall be borne by the Authority, except where a licensee request tests and sampling on his own.

(4) The Authority shall, not more than seven working days after receiving the results from a laboratory, notify the operator in writing of the results whether conforming or non-conforming, and it shall thereafter:

- (a) take no further action where test results indicate that a sample is conforming to approved specifications;
- (b) in the event the sample is found with non-conforming petroleum products the Authority shall order the person found with such non-conformity to:
  - (i) close or quarantine its regulated facility either in whole or in part;
  - (ii) dispose or blend the non-conforming petroleum product in accordance with Petroleum Industry Best Practices and environmental laws; or
  - (iii) compensate any person who has lodged and proved a complaint for any damage caused by such non-conforming petroleum products.

(5) A licensee, who has been found with non-conforming products and in the event he is aggrieved by the said result he may ask, in writing, for a re-test provided the cost of such re-test shall be borne by the said licensee.

Re-testing  
process

**48.** - (1) The Authority may, in the event that any person disputes the results under regulation 47 (5), conduct a re-test of the samples pursuant to these regulations and the costs of re-testing shall be borne by the person disputing the first results.

(2) Notwithstanding the provisions of sub-regulation (1) the re-test of the samples shall only be done where:

- (a) the Authority has received a request in writing for a re-test within five working days from the date of receipt of results;
- (b) the seals of the sample to be tested remain intact and the samples are not tempered with; and
- (c) re-test costs have been fully paid by the disputing person.

(3) The Authority shall, in the event it decides to re-test a sample, recover the sample conserved by the operator pursuant to regulation 45 (3) (b) and the

sample conserved by the Authority pursuant to regulation 45 (3) (c) to be re-tested in two separate laboratories selected by the Authority pursuant to regulation 47 (1); provided, however, that no testing shall be conducted by a laboratory that was involved in the first testing process.

Right to witness a re-test

**49. -** (1) The operator, the complainant or their representatives shall have the right to witness a re-test.

(2) In the event that an operator, complainant or their representatives refuses or fails to appear for the re-testing described in sub-regulation (1), such operator, complainant or their representative shall be deemed to have:

- (a) waived its right to witness the re-test; and
- (b) authorized the Authority to proceed with the re-testing in their absence.

(3) After receipt of the results of the re-testing, the Authority shall:

- (a) make a final determination on the test results from the two laboratories taking into account the results of the first test; and
- (b) notify the operator or any other person disputing the results of such determination.

(4) The results of the re-testing process shall be final.

### Sub- Part III

#### Procedures on Inspection of a Regulated Facility or a Transport Vessel

Procedure for inspection of regulated facility or transport vessel

**50. -** (1) An inspector may, at any time, inspect a regulated facility, a transport vessel or any document related to the conduct of a regulated activity to ensure compliance with the provisions of the Act, the relevant regulated sector legislation or these regulations.

(2) An operator shall render all necessary assistance to facilitate any inspection of its regulated facility or a transport vessel pursuant to sub-regulation (1).

(3) During inspection an inspector may:

- (a) take a sample of any substance relating to loading, handling, offloading or delivery of a petroleum product; or
- (b) make a copy or take an extract from any book, data base, account or record kept at the regulated facility, transport vessel or any other place.

(4) An inspector may, during the course of an inspection, break any seal for the purpose of taking a sample, provided, however, that such inspector shall thereafter affix the Authority's seal.

(5) No person shall offload any petroleum product from a regulated facility or transport vessel which is affixed with the Authority's seal without prior authorization from the Authority.

(6) The Authority may seek the assistance of law enforcement authorities in carrying out an investigation, inspection or impoundment of a transport vessel.

Offence

**51.** Any person who contravenes the provisions of regulation 50 (2) and (5) commits an offence and shall, on conviction, be liable:

- (a) for a natural person to a fine not exceeding P30,000 or to imprisonment for a term not exceeding five years or both; or
- (b) in the case of a corporate body, a fine not exceeding ten percent of its annual turnover.

#### Sub-Part IV

#### Procedures on Impoundment of a Transport Vessel

Procedures for impounding a transport vessel

**52. -** (1) An inspector may impound any transport vessel where he determines that:

- (a) the results are found to be non-conforming and where the products are not yet offloaded; or
- (b) continued operation of such transport vessel poses an imminent risk of injury to life or damage to property and the environment

(2) The Authority shall affix its seal on any transport vessel after impounding it and no person shall offload any petroleum product from such transport vessel without prior authorization of the Authority.

(3) The Authority may seek the assistance of law enforcement authorities, including the police force, in impounding a transport vessel.

(4) After the Authority has impounded a transport vessel pursuant to sub-regulation (1) it shall without prejudice to the penalties spelt out in these regulations and the Act, dispose of the products in the manner it deems fit,

(5) In the event of disposal by sale in terms of sub-regulation (4), the proceeds thereof shall be paid into the Authority's account.

Release of impounded transport vessel

**53. -** A transport vessel which has been impounded under the provisions of regulation 56 (1) shall only be released upon the Authority being satisfied that:

- (a) the non-conforming petroleum products therein have been disposed of;
- (b) BURS has certified in writing that it has no objection to such release if the matter was referred to it pursuant to regulation 59;



- (c) the operator has paid the appropriate fine pursuant to these regulations; and
- (d) the Authority has issued an Order in writing for the release of such unit.

Exemption from liability

**54.** - Notwithstanding the provisions of regulations 52 and 53 the Authority and its agents and/or employees are exempted from any liability arising from the impoundment of any transport vessel, and all the costs associated with the impoundment and safe keeping of such transport vessel shall be borne by an operator.

#### Sub-Part V Penalties for Non-Conforming Products

Penalties for non-conforming products

**55.**-(1) Any operator found with non-conforming petroleum product commits an offence and shall, on conviction, be liable to a fine:

- (a) not exceeding P30,000 or to imprisonment for a term not exceeding five years or both for a natural person; or
- (b) not exceeding ten percent of its annual turnover in the case of a corporate body.

(2) Without prejudice to the penalty prescribed in sub-regulation (1), the Authority may, in the event of non-conforming, order the operator found with such product to:

- (a) close or quarantine its regulated facility either in whole or in part;
- (b) dispose the non-conforming petroleum product in accordance with Good Petroleum Industry Practices and environmental laws; and
- (c) compensate any person who has lodged and proved a complaint for any damage caused by such non-conforming petroleum product.

(3) An operator shall, after receiving an Order for closing or quarantining a regulated facility, comply with such Order and the Authority shall thereupon fix a yellow tape or a signage around the regulated facility indicating that such facility has been closed under the Order of the Authority.

(4) Notwithstanding the provisions of sub-regulation (1) and (2) the Authority may:

- (a) revoke and/or suspend a licence of any habitual offender; or
- (b) deregister any transport vessel which has been found with non-conforming petroleum product for more than two times within a registration period.

Regulated facility to which licence has been revoked

**56.-** Any regulated facility of which a licence has been revoked pursuant to regulation 55 (4) (a) shall:

- (a) for DODO remain closed and not be eligible for issuance of a licence for a period of twelve months from the date of revocation; and
- (b) for CODO, be eligible for issuance of a licence and continuation of operation by another operator.

Transport vessel which has been de-registered

**57. -** Any transport vessel that has been deregistered pursuant to regulation 55 (4) (b) shall not be eligible for registration by the Authority for a period of twelve months from the date of deregistration.

Temporary closure of facility or impounding of transport vessel

**58.-** The Authority may, upon taking a petroleum product sample pursuant to these regulations, order the temporary closure of the regulated facility or part thereof, or impound a transport vessel pending release of the test results of the samples taken where:

- (a) the Authority determines that continuing the operations of a regulated facility or the transport vessel will pose an imminent risk of injury to life or damage to property and the environment;
- (b) the Authority finds that several complaints have been filed with the Authority against the same operator;
- (c) the Authority has obtained provisional results indicating that the tested petroleum products are non-conforming; or
- (d) the operator admits that the sample petroleum products are non-conforming.

Reference to BURS

**59. -** Notwithstanding the provisions of this regulation and any other penalties prescribed in the Act the Authority shall refer to BURS or any other relevant authority any person found with non-conforming petroleum products where it believes that there were attempts by such person to defraud the Government of its revenue.

#### Sub-Part VII

#### Procedures on Re-opening or De-quarantining of a Regulated Facility

Procedure on re-opening or de-quarantining of a regulated facility

**60.-(1)** A regulated facility that has been closed or quarantined pursuant to regulation 55 (2) shall be reopened or de-quarantined upon the Authority being satisfied that:

- (a) the non-conforming petroleum products therein have been disposed of in accordance with petroleum standards and environmental laws;
- (b) the operator has paid the appropriate fine pursuant to these regulations; and
- (c) the Authority has issued an order in writing for a re-opening or de-quarantining.

(2) For the purpose of sub-regulation (1) (a), a petroleum product shall be deemed to have been disposed off at a retail outlet if the inspector certifies in writing that all petroleum products in such retail outlet have been sold by the time of closing or quarantining.

(3) The operator shall, upon receipt of an order to reopen or de-quarantine a regulated facility and under direct supervision of an inspector, be allowed to remove the yellow tape or signage indicating that the regulated facility has been allowed to continue with operations.

Penalties for tampering, cutting seals and tapes or removing signage to regulated facility or transport vessel

**61. - Any person who:**

- (a) tampers with or cuts a seal or a yellow tape affixed by the Authority at a regulated facility or a transport vessel; or
- (b) removes any signage affixed by the Authority at a regulated facility or a transport vessel,

(c)

## PART VII PETROLEUM PRODUCTS PRICING

**62.** Petroleum products prices shall be reviewed and adjusted from time to time as may be necessary taking into consideration the position of the slate unit rates and Government policy on price stabilization

**63.** The Authority shall determine the appropriate retail pump price in accordance with the set Pricing Formula and shall publish a Price Schedule indicating the price of each petroleum product for a specific location;

**64.** The Pricing Formula shall be subject to the Authority's procedures on price setting;

**65.** No person shall sell by retail, either in person or through an agent or employee, at any place specified in the Price Schedule at a price exceeding the amount per litre specified in relation to that place;

**66.** A regulated supplier who conducts wholesale business shall be obliged to supply information related to its licensed activity which shall include –

- a) Import returns, including FOB price, freight charges and insurance premiums;
- b) Import documents which shall include bill of lading, invoices and related documents;
- c) Wholesale price for each petroleum product when they revise such prices;

- d) Sales volumes by type of a petroleum product and by regions;
- e) Stock positions on a monthly basis;
- f) Distribution costs; and
- g) Annual reports

**67.** A retailer shall, at all times, ensure that pump prices at the retail outlet are displayed in a conspicuous manner that is clearly visible from the road;

**68.** The pump price boards shall be located in clearly visible locations in front of petrol stations and shall show prices charged, discounts offered, and any trade incentives or promotions on offer.

**69.** A regulated supplier shall provide the information stipulated at (9) above to the Authority, within the first five (5) working days of the following month or upon such time as the Authority may determine;

**70.** (1) All resellers shall be required to pay all applicable Government Levies/Taxes.

(2) Any person who fails to comply with regulation 10(1) above commits an offence and shall be liable, on conviction, to a fine not exceeding P30,000 or in the case of a corporate body, a fine not exceeding ten percent of its annual turnover or to imprisonment for a term not exceeding five years or both.

## PART VIII COMPLIANCE AND ENFORCEMENT

Inspection of a regulated facility

**71.** - (1) The Authority may inspect any regulated facility, premises, vehicle, equipment, document or vessel with a view to checking on the compliance therein with the provisions of the Act, relevant regulated sector legislation and these regulations.

(2) The Authority shall have the right of access to inspect a regulated facility, premises, vehicle, vessel, equipment and documents, and an operator shall render such assistance to an inspector as may be required in the course of such inspection.

(3) During inspection an inspector may:

- (a) take samples of any substance or articles stored in any regulated facility, premises, vessel or vehicle;
- (b) make copies or take extracts from any book, accounts or records kept on a regulated facility, premises, vessel or vehicle;
- (c) inspect machinery, equipment, appliances, meters, fittings and apparatus; and

- (d) inspect any vehicle or vessel that is found at a regulated facility or any premises.

Notification of offences

**72.** - (1) At the conclusion of an inspection and where it is found that there was violation of the provisions of the Act, relevant regulated sector legislation and these regulations, the person responsible for such violation, shall:

- (a) where he disputes the offence, fill in Part A of the Notification of the Offence as prescribed in the First Schedule; or
- (b) where he admits the offence, fill in Part B of the Notification of the Offences as prescribed in the First Schedule;

(2) In the event the person who has been found in violation of the law and who has admitted to the offence under the provision of sub-regulation 1 (b), such person shall, within fourteen days, from the day of the said admission, be required to pay the fine prescribed.

(3) In the event the person who has been found in violation of the law and who disputed the offence under the provision of sub-regulation 1 (a), such person shall, within seven days from the date of commission of the offence be:

- (a) issued with a Compliance Order; and
- (b) charged with a criminal offence.

(4) Upon the conclusion of the inspection and where the inspector is satisfied that the continued operation of the transport vessel or a facility poses an imminent danger to the lives of people and animals or destruction of property, he may proceed to order for the closure or impoundment, as the case may be, of the said facility or transport vessel regardless of whether the said person has admitted to the offence or not.

(5) Notwithstanding the provisions of sub-regulation (4), an inspector who has decided to close a facility or to impound a transport vessel, shall note down the reasons which have compelled him to take such decision including all the available evidences.

Offence

**73.** Any person who refuses to sign in the Notification of Offence upon being required by an inspector under regulation 63 commits an offence and shall be liable, on conviction, to a fine not exceeding P30,000 or to imprisonment for a term not exceeding five years or both for a natural person or in the case of a corporate body, a fine not exceeding ten percent of its annual turnover.

Issuance of Compliance Orders

**74.** The Authority may, while discharging its regulatory functions and where it finds that there is a continued violation of the provisions of the Act, relevant regulated sector legislation and the provisions of these regulations, issue a Compliance Order to the person responsible for such violation.

Power to enter and close a facility, building or premises

**75.** – (1) Notwithstanding any provision in these regulations an inspector shall, have the right and obligation to enter upon any regulated facility, building or premises or transport vessel and close it down or impound it as the case may be where he determines that a regulated activity or regulated activity is being conducted therein in contravention of these regulations.

(2) An inspector may, while discharging his obligations under sub-regulation (1) of this regulation, seek the assistance of law enforcement institutions including the police and such institution shall provide the requested assistance to the inspector.

Obligations of inspector during inspection

**76.** - (1) During inspection an inspector shall be required to do the following:

- (a) identify himself to a licensee or customer with identity card issued by the Authority;
- (b) explain to a licensee or customer the purpose of the inspection;
- (c) conduct himself with fairness, objectivity and integrity;
- (d) not engage in any form of discrimination, bias or harassment;
- (e) refrain from taking part in duty where they have or may appear to have conflict of interest;
- (f) carry out inspection in a professional manner in accordance with the requirements of these regulations, codes, guidelines, inspection checklist, standards, applicable laws; and
- (g) not use force or abusive, threatening and insulting language to a licensee or operator.

(2) Any inspector who contravenes the provision of sub-regulation (1) of this regulation shall be dealt with in accordance with the Authority's procedures.

(3) Any person aggrieved by an act of an inspector during inspection may, within fourteen days from the date of the act, report the matter in writing to the Authority.

Prohibited acts against inspectors

**77.** - (1) A licensee shall not:

- (a) hinder or obstruct the Authority in the exercise of any of the powers conferred upon it under these regulations;
- (b) use abusive, threatening or insulting language to an employee or agent of the Authority;
- (c) deny or fail to comply with a requirement, direction or notice of the Authority; and
- (d) when required by the Authority to answer a question, deny or fail to answer such question to the best of his knowledge, information and belief.

(2) Any person who contravenes the provision of sub-regulation (1) commits an offence and shall be liable, on conviction, to a fine not exceeding P30,000 or to imprisonment for a term not exceeding five years or both for a natural

person or in the case of a corporate body, a fine not exceeding ten percent of its annual turnover.

**PART IX  
GENERAL PROVISIONS**

Appeal

**78.** Any person who is aggrieved by the decision made by the Authority under Part II and III of these regulations may lodge an appeal to the High Court.

Authority to supplement procedures as needed

**79.** Where procedures are not provided for in these regulations, the Authority may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on any matter before it.



**BOTSWANA ENERGY REGULATORY AUTHORITY**

**FIRST SCHEDULE**

*(Made under Regulation 3)*

**NOTIFICATION OF OFFENCE**

**(PETROLEUM WHOLESALE BUSINESS/PETROLEUM RETAIL OPERATION/PETROLEUM CONSUMER INSTALLATION OPERATIONS)**

For BERA Use Only	
<b>Date:</b>	<b>File Number:</b>
<b>Admin fee paid in BWP:</b>	<b>Receipt No. (Attached Copy):</b>

To..... Address.....

1. You are charged with the following offence (s):
  - (a) .....
  - (b) .....
  - .....
  - (c) .....
  - (d) .....
  - .....
  - (e) .....
  
2. If you **WISH** to admit commission of the offence (s) you should complete **“PART B”** below and send this notification, together with the statutory penalty fee for each offence to which you admit to the Authority within fourteen days from the date of service of this notification.
  
3. If you **DO NOT WISH** to admit to have committed the offence (s) you are required to complete **“PART A”** below and hand deliver this notification to the Chief Executive Officer of the Authority.



4. Penalty for each offence mentioned above shall be as provided for under the Botswana Energy Regulatory Authority Act, the relevant regulated sector legislation, the Botswana Energy Regulatory Authority (Petroleum Wholesale, Retail and Consumer Installation Operations) Regulations, 2018 or any other laws relevant to the conduct of the petroleum wholesale business, petroleum retail business or petroleum consumer installations operations.

**PART “A”- NOTIFICATION OF INTENTION TO ANSWER CHARGES**

I ..... of ..... residential or business address) being the (owner/director/manager/representative) of.....  
..... intend to respond to the Authority on the charge (s)  
.....set out in Paragraph 1 of this Notification.

Signature: .....

Date: .....

**PART “B”- ADMISSION OF OFFENCE**

I ..... of ..... residential or business address) being the (owner/director/manager/representative) of.....  
..... admit to the charge (s)  
.....set out in Paragraph 1 of this Notification and  
I undertake to pay the requisite fine of BWP..... within a period of fourteen days from the date hereof.

Signature: .....

Date: .....

**FACILITY/VEHICLE/VESSEL DETAILS**

Business Place.....

License No. ....

Vessel Registration No. ....

Signature of the person issued with the notification

.....

**ISSUED BY**

Name: .....

Designation: .....

Date: .....

Signature of the Inspector

.....



**SECOND SCHEDULE**

*(Made Regulation 3)*

**SAMPLE COLLECTION FORMS**

**PETROLEUM PRODUCT WHOLESALE BUSINESS**

For BERA Use Only	
<b>Date:</b>	<b>File Number:</b>
<b>Admin fee paid in BWP:</b>	<b>Receipt No. (Attached Copy):</b>

DATE: .....

TIME: .....

NAME OF THE COMPANY: .....

DEPOT NAME/LOCATION:

.....

PLOT NO. .... BLOCK: ..... STREET/VILLAGE: .....

DISTRICT.....

SAMPLE NO: .....

PETROL  TANK NO. ....

DIESEL  TANK NO. ....

IK (ILUMINATING KEROSENE)  TANK NO. ....

OTHERS (SPECIFY)  TANK NO. ....

BERA INSPECTOR (S) (NAMES):

SIGNATURE:

1. ....

2. ....

OPERATOR(S) (NAMES):

SIGNATURE:

1. ....

2. ....

REMARKS BY INSPECTOR (S)

.....  
.....  
.....  
.....

PURPOSE OF SAMPLING .....

.....  
.....



**SAMPLE COLLECTION FORMS**

**PETROLEUM RETAIL OPERATIONS BUSINESS**

For BERA Use Only	
<b>Date:</b>	<b>File Number:</b>
<b>Admin fee paid in BWP:</b>	<b>Receipt No. (Attached Copy):</b>

DATE: .....

TIME: .....

NAME OF THE COMPANY: .....

PETROL STATION NAME/LOCATION: .....

PLOT NO. .... BLOCK: ..... STREET/VILLAGE: .....

DISTRICT.....

SAMPLE NO: .....

PETROL  TANK NO. ....  
 PUMP NO. ....

DIESEL  TANK NO. ....  
 PUMP NO. ....

IK (ILUMINATING KEROSENE)  TANK NO. ....  
 PUMP NO. ....

OTHERS (SPECIFY)

TANK NO.

.....

PUMP NO.

.....

BERA REPRESENTATIVE (S) (NAMES):

SIGNATURE:

1. ....

.....

2. ....

.....

OPERATOR (S) (NAMES):

SIGNATURE:

1. ....

.....

2. ....

.....

REMARKS BY INSPECTOR (S)

.....

.....

PURPOSE OF SAMPLING .....

.....

.....



**SAMPLE COLLECTION FORMS**

**SAMPLE COLLECTION FORM FOR TRANSPORTERS**

For BERA Use Only	
<b>Date:</b>	<b>File Number:</b>
<b>Admin fee paid in BWP:</b>	<b>Receipt No. (Attached Copy):</b>

DATE: .....

TIME: .....

NAME OF THE COMPANY: .....

TRUCK/WAGON/BARGE NO.: .....

VILLAGE..... STREET: ..... WARD: .....

DISTRICT.....

SAMPLE NO: .....

PETROL  COMPARTMENT NO. ....

DIESEL  COMPARTMENT NO. ....

IK (ILLUMINATING KEROSENE)  COMPARTMENT NO. ....

OTHERS (SPECIFY)  COMPARTMENT NO. ....

BERA INSPECTORS (S) (NAMES):

SIGNATURE:

1. ....

2. ....

OPERATOR(S) (NAMES):

SIGNATURE:

1. ....

2. ....

REMARKS BY INSPECTOR (S)

.....  
.....  
.....  
.....

PURPOSE OF SAMPLING .....

.....  
.....





**FOURTH SCHEDULE**

*(Made Regulation 11 (2))*

**TRANSFER OF A LICENCE**

**APPLICATION FORM FOR TRANSFER A LICENCE**

<b>This section to be completed by the Current Licensee</b>			
	<b>Current Licensee to complete as appropriate</b>		
<b>Current Licensee's name</b>			
<b>Name and address of the Transferor</b>			
<b>Reason for Transfer (attach documentary proof)</b>			
<b>Address of the Regulated facility</b>			
	<b>Postcode</b>		<b>Tel No.</b>
	<b>Email</b>		
<b>Licence Particulars</b>	<b>Type of Licence:</b>		
	<b>Licence No:</b>		
	<b>Licence Duration:</b>		

		<b>Expiry Date:</b>		
<b>I agree to the Licence being transferred to the applicant(s) below:</b>				
<b>Name and physical Address of the Transferee :</b>		<b>Date:</b>		
<b>Business Organization (Sole proprietor, Company, Partnership)</b>		<b>Position:</b>		
<b>Principal Officer (only if the transferee is a company or partnership)</b>		<b>Date:</b>	<b>Company Seal</b>	
		<b>Signature:</b>		
<b>Names of Partners or Shareholders</b>		<b>1.</b>		
		<b>2.</b>		
		<b>3.</b>		
		<b>4.</b>		
		<b>5.</b>		
		<b>6.</b>		
		<b>7.</b>		

<b>This section to be completed by the Applicant(s)</b>			
<p>1. I the undersigned, being the new occupier of the premises detailed in the application, hereby apply for the transfer of the current licence and I hereby declare that the information stated herein in regard to the transferee are true to the best of my knowledge.</p> <p>2. In the event of a licence being transferred:</p> <p>(a) I agree to abide by the conditions laid down by BERA and applicable laws, and not to alter in any way the approved arrangements of the premises without the written approval of BERA, nor use the said premises for any other purpose than those prevailing at the time the licence is transferred;</p> <p>(b) the licence shall have the like effect in all respects as if no transfer had been made; and</p> <p>(c) all duties and responsibilities that were to be fulfilled by the transferor are automatically shift to the transferee as if no transfer was made.</p>			
<b>Date</b>			
<b>Signed:</b>		<b>Position:</b>	
<b>Print Name</b>			

**Ownership of the site comprising the regulated facility.**

If the transferor is not the owner of the site (i.e. a tenant), enter below the name and address of the owner or owners, as the case may be:

Details	Transferor to complete if applicable		
Name (of owner)			
Address:			
Post Code		Tel No.	
Email			

Fee <b>BWP</b>	.....	Payable to: BERA Account: .....
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Notes

1. The applicant(s), (if an individual person or partnership) must be over 18 years of age.
2. By signing the form both the transferee and transferor declare that they are authorized to make this application and that the information supplied there herein is correct.
3. This application together with the appropriate fee, should be forwarded to the Chief Executive Officer, BERA.

The application should be attached with the following documents:-

1. The original copy of a valid BERA licence in respect of the regulated facility;
2. Certified copy of tax Clearance in respect of the regulated facility;
3. Lease/ Sale agreement stamp duty paid;
4. Company Registration documents;
5. Transmission document (in case the type of transfer if by transmission i.e. death or order of the Court)
6. Proof of payment of transfer application fee; and
7. Any other document that will be required at the time of transfer
8. Relevant application form (third schedule) filled by the transferee with all necessary attachments listed in the applicable form.



**FIFTH SCHEDULE**

*(Made under Regulation 14 (2))*

**RENEWAL OF A LICENCE**

**APPLICATION FOR RENEWAL OF WHOLESALE BUSINESS LICENCE/RETAIL  
BUSINESS LICENCE/ CONSUMER INSTALLATION BUSINESS LICENCE**

<b>For BERA Use Only</b>	
Date Received:	File Number:
Time Received:	Received by:

**IMPORTANT NOTE:** Complete this form and return it with all other relevant enclosures to the Chief Executive Officer of BERA at the above address.

In order to avoid unnecessary delays, answer fully all items and submit to BERA all of the information required to consider this application. BERA will not process this application until it has been found to be complete.

When completing this form, **PRINT USING BLUE OR BLACK INK ONLY**. Where options are given, tick the relevant box. Leave no item unanswered or un-ticked. If an item seems not applicable to the specific application, you should indicate with block capitals N/A meaning Not Applicable. You should ensure that all required documentation is enclosed and that each separate sheet of information attached to the application corresponds to a specific item in the application. Where there is a requirement to provide documentation on a separate sheet, it must be on clean, clear A-4 paper.

	<b>PART I: DETAILS OF THE APPLICANT</b>
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1.	<b>Name of Applicant (Insert trading name)</b>
2.	<b>Registration Status: (Fill Where Appropriate)</b> (a) Certificate of Incorporation No..... (b) Certificate of Compliance No..... (c) Company Registration Number No..... (d) TIN No. .... (e) VAT No.....
3.	<b>Address of retail outlet:</b> (a) Physical address: Street.....Plot No..... Block No.....Building No..... (b) Postal Address: ..... (c) Telephone No: ..... (d) Facsimile: .....Cell Phone..... (e) E-Mail: .....
4.	<b>Legal status of the Applicant:</b> Sole Proprietorship Partnership Public Limited Liability Company Private Limited Liability Company Parastatal Organization Government Agency Cooperative Society Joint Venture Other (specify).....

5.	<p><b>Contact Person:</b></p> <p>(a) Name: ..... (b) Title: .....</p> <p>..... (c) Physical address:</p> <p>Street.....Plot No.....Block No.....</p> <p>Building No.....:</p> <p>(d) Postal Address: .....</p> <p>(e) Telephone Number: .....</p> <p>(f) Facsimile: .....Cell phone: ..... (g) E-mail: .....</p>
6.	<p><b>Details of the Current Licence</b></p> <p>Type of a licence:.....</p> <p>Licence No. ....</p> <p>Date Issued.....</p> <p>Expiry Date.....</p>
7.	<p><b>Has the licensee undergone any material changes (structural, legal, managerial or related to the services supplied) since its previous application?</b></p> <p>Yes – If yes, provide details.....</p> <p>.....</p> <p>.....</p> <p>..... (Use additional Sheet if Necessary)</p>
8.	<p><b>Application Fee and method of payment:</b></p> <p>(a) Amount: BWP..... (b) Mode: Cash Cheque Other (specify)..... (c) Fees Payment Receipt No. (Attach Copy).....</p>
<p align="center"><b>PART II – DECLARATION BY THE APPLICANT</b></p>	

	<p>I..... (insert name) being..... (insert title/position) hereby declare that I am authorized to make this application on behalf of the applicant and that to the best of my knowledge the information supplied herein is correct and that within a reasonable period of time after notice, I undertake to provide whatever additional information BERA may require in order to evaluate this application.</p> <p><b>SWORN/AFFIRMED</b> at..... )  by the said.....who is identified to )  me by...../known to me personally ) ..... )  the latter being known to me personally this ) <b>DECLARANT</b>  .....day of .....2018 )</p> <p><b>BEFORE ME:</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><b>COMMISSIONER FOR OATHS</b></p> <p><b>NOTE:</b>  If this application form is completed electronically it must be printed out, signed before a Commissioner of Oaths and submitted with the necessary supporting documents and submitted to BERA Head Office.</p>
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Gaborone  
....., 2018

XXXXX  
Minister for Mineral Resources,  
Green Technology and Energy  
Security