



PETROLEUM COMPLIANCE ENFORCEMENT

FRAMEWORK

A. Purpose of the compliance framework

The Energy Regulatory Authority Act (Chapter 13:23) of 2011 provides that ZERA shall perform licencing and regulatory functions over procurement, production, transportation, transmission, distribution, importation and exportation of energy derived from any energy source.

Activities in the petroleum sector specifically cover procurement, production, transportation, distribution, importation and exportation of petroleum products. The purpose of this document is to provide the framework within which compliance enforcement will be undertaken within ZERA in petroleum sector regulation. It covers the critical processes and approaches to compliance enforcement.

The compliance enforcement framework is anchored within some of the principles that ZERA has set itself being transparency and fairness. In line with the principle of transparency, ZERA will endeavour to undertake its enforcement activities using tools and methods that are participative and require the presence of the affected parties. At the same time, ZERA will ensure that affected parties are given an opportunity to present their positions. In line with the Petroleum Act, affected parties can also petition other bodies outside ZERA.

In the discharge of compliance enforcement, ZERA will apply the principles, methods and approaches in this framework consistently to ensure fairness and accountability in enforcement.

B. Objectives of the framework

The objective of the regulatory framework is to ensure that there is full compliance to regulations, codes and standards in the petroleum sector. The framework provides the mechanisms through which enforcement will be conducted as well as educate operators who will be affected by the framework.

C. Scope of the framework

This framework applies to entities undertaking business in the regulated activities in the petroleum sector as espoused in the Energy Regulatory Authority Act and Petroleum Act.

Any new areas of operation covered by new laws will also be subject to the framework.

D. The Legal Framework

The Compliance and Enforcement framework is guided by the Energy Regulatory Authority Act (Chapter 13:23), the Petroleum Act (Chapter 13:22) and regulations promulgated under the Acts as listed below:

- Petroleum (Liquid Petroleum Gas) Regulations, 57 of 2014
- Petroleum (Fuel Pricing) Regulations, 80 of 2014
 - Amendment No. 1 SI 20 of 2015
 - Amendment No. 2 SI 100 of 2015
- Petroleum (Mandatory Blending of Anhydrous Ethanol with Unleaded Petrol) Regulations SI 17 of 2013
 - Amendment No. 1 SI 147A of 2013
 - Amendment No. 2 SI 81 of 2015
 - Amendment No.3 SI 125 of 2015
- Petroleum (Fuel Quality) Regulation 23 of 2013
 - Amendment No.1 SI 171 of 2014

The legislative framework provides the basis of the licensee compliance to protect and promote the interests of different stakeholders in order to achieve the following objectives:

- Fair pricing;
- Promotion of fair competition;
- Promotion of safety;
- Protection of environment;
- Promote lawful conduct of operators;
- Deter and punish serious offences.

ZERA has developed this framework with the objective of ensuring that enforcement is applied transparently and consistently in line with the relevant laws. It is necessary to recognise that the implementation of this framework requires close collaboration

with other arms of Government that also seek to promote order, safety and protect the environment.

E. Stakeholder engagement initiatives

ZERA through its ongoing stakeholder activities as enshrined in the Acts will continue to conduct educational awareness campaigns on the critical regulatory compliance issues. The framework is further supported by enforcement procedures that guide the process of enforcing compliance.

F. Users of the compliance framework

The compliance enforcement framework provides a tool for use by ZERA officers responsible for the enforcement of the licence conditions issued to the different operators in the petroleum sector.

G. Responsibilities of the operators

It is the responsibility of the petroleum sector operators to acquaint themselves with the provisions of the relevant Acts and regulations governing the petroleum sector to ensure that there is compliance as they undertake their day-to-day activities associated with the provision of petroleum sector products.

At the same time, operators have rights to be heard through representations as enshrined in the Petroleum Act. They also have rights to appeal against decisions made by ZERA to the Administrative Court.

H. Powers of inspectors

The areas where compliance is expected are the technical and non-technical requirements which accompany different licences as terms and conditions. Section 55 of the Petroleum Act provides that ZERA may appoint inspectors to undertake compliance enforcement.

The Act empowers ZERA officers to enter premises at reasonable times to inspect books, storage, trucks and any other facilities used to dispense fuel.

ZERA will equip compliance officers with relevant tools and recording equipment to ensure that evidence is collected, stored and can be relied upon when called upon. Officers are expected to demonstrate any non-compliance to the affected parties and for minor non-compliances, officers will provide advice and education specifically

indicating areas that require correction and the timeframes within which the corrections should be undertaken.

I. Information dissemination and education

ZERA will continue to make sure that the affected stakeholders are provided with information on the areas where compliance is expected of them. However, it is the responsibility of the operators to make sure that they are familiar with the provisions of all the relevant Acts and regulations as well as conditions to their respective licences.

In the provision of information, ZERA will utilise all the modes available to ensure wide coverage.

J. Compliance enforcement mechanisms

The Acts and regulations provide a number of tools that are available for purposes of enforcement. These include:

1. Compliance notices –issued in terms of section 39 of the Act notifying an operator of the intention to issue an order and affording an operator an opportunity to make representations on a matter within a specified time.

Section 55 of the Act also provides that a notice may be issued to an operator requiring an operator to produce a licence within 7 days.

2. An order – issued in terms of section 39 specifying a penalty for each day an operator is in default of compliance with specific timeframes.
3. Civil proceedings may also be brought against an operator by ZERA.

K. Changes in legislation

ZERA will endeavour to make sure that all stakeholders are made aware of any changes in the legislation that affects the day to day operations of licenced companies.

It still remains the responsibility of the operators to ensure that they are always up to date with all new regulations that may be published from time to time.

ZERA will put all efforts to ensure that where necessary, transitional arrangements before full compliance is expected are out in place.

L. Natural justice

In accordance to the provisions of the Petroleum Act, ZERA will ensure that:

1. Operators are given an opportunity to provide written or oral representations to any allegations before decisions are made;
2. Any written submissions are carefully considered and taken into account when the final position is being made;
3. Operators are not hindered from appealing to the Administrative Court on any decision that would have been made against them.

M. Assessment of risk and investigation procedures

During compliance enforcement, ZERA will make an assessment of the potential risks to stakeholders a violation will likely cause. In some cases, warnings will be issued where operators will be given timeframes within which to correct deviation from the standard expectations.

Where a matter is considered serious, has been committed intentionally and is meant to self-enrich an operator, more serious measures including closures will be instituted. In all cases the investigations undertaken by ZERA will ensure that the operator is made fully aware of how a position has been reached. Cases that require third party or external verification will be referred to reputable institutions.

All investigations will be undertaken with the full knowledge and participation of the operator being investigated and actions taken will be in accordance to the assessment on the level of potential risks that a violation may cause.

ZERA will apply transparent investigation processes in accordance to the relevant legislation and will fully explain any violation in accordance with the codes, standards and regulations

Enforcement activities by the appointed inspectors will be carried out through a combination of routine and ad-hoc programs. More ad-hoc compliance checks will be undertaken on operators with previous records of violation.

In accordance to regulations, ZERA will make public all cases where operators have been charged for violating the specific provisions in their conditions of operation.

N. Application of sanctions

All sanctions imposed by ZERA will be in accordance with the Acts and regulations and other legal instruments applicable at each time.

O. Cancellation of licence

Where it is necessary to cancel a licence, ZERA will cancel the licence of an operating entity in terms of the provisions of the Petroleum Act which involves according the affected parties an opportunity to make representations on the matter and issuing the relevant notices.

In the event that a licence has been cancelled, an operator still reserves the right to make an appeal through the Administrative Court.

P. Licence terms and conditions

As part of the licencing process, every licence is accompanied by specific terms and conditions specifying all the compliance issues expected of the operator. It is the responsibility of every operator that they are fully conversant with the terms and conditions of their licence.

Where needed, ZERA will provide full explanation on the meaning and intention of any of the conditions appended to the licence.

In the event that any condition to a licence is changed during the tenure of a licence all operators will be informed accordingly.

Q. Communication of outcomes

Where a decision has been made by ZERA on an operator in terms of a specific violation, communication in writing will be send to the offending party.

The communication will specify what is expected of the operator in terms of continuance of operations and effective date of the decision.

R. Collaboration with other regulators

In the implementation of this compliance framework, ZERA will collaborate closely with other relevant regulators including those regulating environmental and competition. In that regard, law enforcement agents and local authorities and other Government agencies will also be called upon to assist in enforcing compliance.

Where ZERA has noted violation of other laws applicable to petroleum operators outside its jurisdiction, such matters will be referred to the relevant institutions.

Where other agencies have been called upon to assist in specific areas within ZERA mandate, the responsibility still remains with ZERA to make the final determination on a violation to the Petroleum Act and Energy Regulatory Authority Act.

S. Compliance checklists

As part of enforcement, ZERA has developed checklists which basically are tools used to enforce compliance focusing on specific issues. Based on the checklists, a score of 75% is considered as the minimum that an operator can score. Anything below that minimum score is not acceptable.

ZERA will explain the basis of any of the scores to the operator. These are attached as Annexure 2.

T. Specific terms and conditions

Each licence is issued under strict operating conditions. The following conditions are attached as annexures to the compliance framework:

- a. Retail licence conditions;
- b. Procurement licence conditions;
- c. Wholesale licence conditions;
- d. Production (of ethanol) licence conditions.
- e. Production (ethanol blending) licence conditions.

ANNEXURE 1: LICENCE CONDITIONS

A. GENERAL CONDITIONS FOR ALL PETROLEUM LICENCES

1. Major shareholding (51%) should be held by Zimbabweans.
2. Clear management structures and brief profile of management should be provided.
3. A licensee must be Zimbabwean registered and should provide CR14 and CR2 forms.
4. A licensee should provide verifiable details of physical addresses, telephone numbers, faxes and any other contact details.
5. All petroleum installations should abide by the requirements of the Environment Management Agency and other statutes applicable to the petroleum fuels trade.
6. Licence fees shall be payable annually and subject to periodic review as deemed appropriate by ZERA.
7. The Authority may at all reasonable times enter the premises of a licensee for the purpose of inspections.
8. All records required to be kept in terms of this licence shall be retained for a period of at least 5 years;
9. A licensee shall submit to the Authority an annual statement of accounts;
10. This licence will be issued subject to these general conditions and any other special conditions for each application deemed appropriate by ZERA.
11. The licence shall be subject to renewal, amendment and cancellation in terms of the Petroleum Act [Chapter 13:22]
12. This licence shall not be ceded, assigned or transferred without prior consent of the Authority.
13. If the licensee is convicted by a court of law for contravening any term herein the Authority may publish such conviction in the media and the licensee, by the terms hereof, hereby waives its right, if any, to sue the Authority for any liability arising therefrom.
14. The Licensee shall indemnify ZERA against any claims which may be made against ZERA by any third party as a result of or in relation to the activities of the Licensee pursuant to the operation of this licence.

SPECIAL CONDITIONS – ETHANOL PRODUCTION (MANDATORY BLENDING)

1. The Production Licence shall be applicable to the production of ethanol for the purpose of mandatory blending as set out in Statutory Instrument (SI) 17 of 2013 – Petroleum (Mandatory Blending of Anhydrous Ethanol with Unleaded Petrol) Regulations 2013 as amended;
2. The licensee has the capacity to produce the output as declared to ZERA.
3. The ethanol produced shall meet the minimum level of purity of 99.3 % ethanol and shall comply with the specifications stipulated in Petroleum Fuel Quality Regulations, 2013, SI 23 of 2013.

4. An ethanol plant shall be equipped with suitable laboratory facilities and a quality management system that meets international standards as established through audits that will be done by ZERA or their appointed agent.
5. A licensee shall provide ZERA with the type, source(s) and quantity of the feedstock to be used in the production of ethanol.
6. The licensee shall submit to ZERA statistical returns in terms of section 5(2), (3) and (4) of SI 17 of 2013.
7. The licensee shall prepare and submit to the Authority each year an annual statement of accounts.
8. The licensee shall submit to ZERA the projected production plans on an annual basis for purposes of national fuel security planning.
9. Production records shall always be available for inspections on request by ZERA inspectors or its appointed agents.
10. The anhydrous ethanol for sale under this licence shall only be produced by _____ at _____.
11. The licensee shall sell all the ethanol produced at a price not exceeding that as fixed in terms of statutory instrument 17 of 2013
12. This licence shall remain valid subject to the continued subsistence of the joint venture between _____ and the Government of Zimbabwe. In the event that the joint venture is terminated this licence will lapse.

This licence shall be valid for 20 years from date of issue subject to fulfilment of any of these licence conditions.

B. SPECIAL CONDITIONS - RETAIL

1. The Licensee shall only purchase fuel from a procurement licensee (wholesale) or a production licensee licensed under the Petroleum Act (Chapter 13:22) of 2006 and the Energy Regulatory Authority Act (Chapter 13:23) of 2011;
2. The Licensee shall keep records of all sources of the fuel being sold;
3. The Licensee shall ensure that fuel dispensing equipment is calibrated according to the standards as set out under Trade Measures Act (Chapter 14:23).
4. The Licensee shall on a monthly basis submit to the Ministry and ZERA a price build-up showing the amount by which the pre-cost of fuel has increased during the month to which the return relates;
5. The Licensee shall clearly display on site the type and prices of all the fuels being sold;
6. The licensee shall prepare and submit to the Authority each year an annual statement of accounts.
7. The Licensee shall display firefighting equipment on site;
8. The Licensee shall be expected to ensure that personnel manning the site are appropriately skilled;
9. The Licensee shall sell products whose quality meets the relevant standards in Statutory Instrument 23 of 2013 and Statutory Instrument 147A of 2013.

10. The licensee shall sell all petroleum products at prices not exceeding those prescribed under statutory instrument 80 of 2014 – Petroleum (Fuel Pricing) Regulations, 2014.

C. SPECIAL CONDITIONS – PROCUREMENT

1. All imported products shall comply with the following Standards Association of Zimbabwe standards; Diesel – ZWS 751, Unleaded Petrol – ZWS 753, Illuminating Paraffin – ZWS 963, LPG – ZWS 965.
2. A licensee shall develop a quality policy, quality objectives and quality procedures. The quality procedures shall include, assurance that quality product is received and dispensed, control of nonconforming product and customer complaints.
3. A licensee shall appoint a quality representative who will have a responsibility over all quality issues and documents.
4. A licensee shall keep a record of quality certificates for all products imported and such records shall be available to ZERA inspectors or its appointed agents on request;
5. The licensee shall prepare and submit to the Authority each year an annual statement of accounts;
6. An importer of fuel shall have sufficient facilities to prevent outbreaks of fire;
7. An importer of fuel shall comply with the requirements of the Petroleum Industry Code as set by ZERA and amended from time to time and other applicable statutes applicable to the petroleum trade including the Environmental Management Agency;
8. The licensee shall not sell products to an unlicensed wholesale/retail operator;
9. The licensee shall sell all petroleum products at prices not exceeding those prescribed under statutory instrument 80 of 2014 – Petroleum (Fuel Pricing) Regulations, 2014.

D. SPECIAL CONDITIONS – PRODUCTION (BLENDING)

1. Blended fuel shall meet fuel quality specifications in terms of Petroleum (Fuel Quality) Regulations published in Statutory Instrument 23 of 2013 and Statutory Instrument 147A of 2013.
2. The anhydrous ethanol used for blending shall have minimum purity of 99.3% ethanol.
3. Every blender of anhydrous ethanol and unleaded petrol shall keep records of the quantities of blend made i.e. ethanol and petrol used. Analysis records or test certificates showing compliance with the specifications stipulated in Statutory Instrument 23 of 2013 shall be kept.
4. Fuel system blending installations/facilities shall have sufficient measures to prevent outbreaks of fire.
5. All fuel blenders shall purchase anhydrous ethanol only from licenced producers.

6. Blending of anhydrous ethanol and unleaded petrol shall be licenced at specific individual sites and not to companies per se.
7. The licensee shall sell all petroleum products at prices not exceeding those prescribed under statutory instrument 80 of 2014 – Petroleum (Fuel Pricing) Regulations, 2014.

E. SPECIAL CONDITIONS - LPG RETAIL

1. The Licensee shall only sell LPG procured from an entity licenced under the Petroleum Act (Chapter 13:22) of 2006 and the Energy Regulatory Authority Act (Chapter 13:23) of 2011;
2. The Licensee shall keep records of all sources of the LPG being sold;
3. The Licensee shall ensure that weighing equipment is calibrated according to the Trade Measures Act (Chapter 14:23) for verification of the net contents of LPG cylinders.
4. The Licensee shall clearly display on site the prices of LPG being sold;
5. Personnel filling LPG shall be appropriately trained and certified to carry out the task.
6. The Licensee shall sell LPG that meets specifications as provided in Statutory Instrument 57 of 2014;
7. The Licensee shall have adequate firefighting equipment on site;
8. A Licensee shall not fill cylinders above 15kg belonging to other brand owners without permission from the brand owner.
9. The Licensee shall report any accident/incident involving LPG to ZERA within 48 hours.

F. SPECIAL CONDITIONS – LPG WHOLESALE/PROCUREMENT

1. All imported LPG shall comply with specification as provided in statutory instrument 57 of 2014 and shall be accompanied by a quality certificate from the supplier.
2. A licensee shall in writing and within 48 hours report to ZERA, any accident/incident involving LPG
3. A licensee shall have a minimum storage capacity of 40 tonnes.
4. The licensee shall prepare and submit to the Authority each year an annual statement of accounts;
5. An importer/wholesaler of LPG shall have sufficient facilities to prevent outbreaks of fire and a clearance certificate from the Chief Fire Officer.
6. An importer of LPG shall comply with the requirements of the Petroleum Industry Code as set by ZERA and amended from time to time and other applicable statutes applicable to the petroleum trade;
7. The licensee shall not sell products to an unlicensed retail operator;
8. The Licensee shall ensure that all weighing equipment is calibrated according to the standards as set out under Trade Measures Act (Chapter 14:23).
11. Personnel manning the site shall be appropriately trained and certified to handle LPG.

12. The Licencee shall not conduct business of wholesale trade in LPGas in cylinders (9kg and above which are branded) without the authority of the brand owner for cylinders.

G. SPECIAL CONDITIONS – PETROLEUM WHOLESALE

1. All products sold shall comply with Standards Association of Zimbabwe standards as per Statutory Instrument 23 of 2013 and any other subsequent fuel quality standards set by the Authority;
2. A wholesaler shall develop a quality policy and quality procedures. The quality procedures shall include, assurance that quality product is received and dispensed;
3. A wholesaler shall appoint a quality representative who will have a responsibility over all quality issues and documents.
4. All wholesalers shall keep a record of quality certificates for all products sold and such certificates/records shall be availed to ZERA inspectors on request
5. No wholesaler shall sell fuel to unlicensed retail operators,
6. A wholesale facility shall have sufficient measures to prevent outbreaks of fire.
7. A wholesaler shall comply with the requirements of the Petroleum Industry Code as set by ZERA and amended from time to time. The wholesaler shall also comply with statutes applicable to the petroleum trade and other statutes including requirements of the Environmental Management Agency.
8. The licencee shall prepare and submit to the Authority each year an annual statement of accounts.
9. The licencee shall sell all petroleum products at prices not exceeding those prescribed under statutory instrument 80 of 2014 – Petroleum (Fuel Pricing) Regulations, 2014.

ZIMBABWE ENERGY REGULATORY AUTHORITY					
CHECKLIST FOR RETAIL SITES					
NAME OF OIL MARKETING COMPANY:					
SITE :					
PHYSICAL ADDRESS AND CONTACT NUMBERS:					
No.	ITEM	CURRENT STATUS	SCORE	WORK INSTRUCTIO	DEADLINE
A	General (20 points)				
1	Inlet and outlet (02)				
2	Potholes, cracks, protrusions (02)				
3	Tank manholes labeled (03)				
4	First Aid Kit (02)				
5	Canopy condition (06)				
6	Functioning Toilet (03)				
7	Water finding paste (02)				
B	Dispenser (5 points)				
8	Fuel Dispenser solidly fixed (02)				
9	Dispenser labeled (03)				
C	Safety, Fire, Environment (75 points)				
10	Pump Island Crash Barriers (4)				
11	Emergency numbers (02)				
12	Forecourt condition(06)				
13	Forecourt Drainage (06)				
14	Interceptor (06)				
15	Emergency Shut Off Switch (06)				
16	Electrical Wiring - MCB (04)				
17	Vent Pipes Position (04)				
18	Vent Pipes Height (04)				
19	Fire Extinguisher Validity (08)				
20	Fire Extinguisher Type (08)				
21	Sand Bucket (05)				
22	Training records (04)				
23	Uniform/PPE (04)				
24	Danger warning signs (04)				
		TOTAL SCORE			
		% PERCENT COMPLIANCE			
Comments:					
Inspected by:					
Signature:					
Date:					
I acknowledge the contents of the document as having been served upon me by the above named official :					
Name of Company Official:					
Position:					
Signature:					

FUEL RETAIL COMPLIANCE CHECKLIST
PETROLEUM ACT (CHAPTER 13:22) OF 2006

NAME OF COMPANY							
SITE/TRADING NAME							
PHYSICAL ADDRESS							
CONTACT PERSON							
TELEPHONE NUMBER, EMAIL							
NAME OF FUEL SUPPLIER							
	FOCUS ITEM	MAXIMUM SCORE	ACTUAL SCORE		ACTION BY (DATE)		
1	License status (L/NL)	15					
2	ZERA license displayed (Y/N)	5					
3	Forecourt fuel price billboards (Y/N)	10					
4	Compliance to procure from licensed fuel procurement company (Y/N)	15					
5	Compliance to regulated fuel price (Y/N)	15					
6	Availability of records of training (Y/N)	5					
7	Submission of returns on volumes and pricing (Y/N)	10					
8	Availability of annual statement of accounts (Y/N)	15					
9	Uniformed personnel (Y/N)	5					
10	Availability of first aid kit (Y/N)	5					
	TOTAL SCORE	100					

***MINIMUM SCORE = 75%**
Inspected by _____ **Signature** _____ **Date** _____
 I acknowledge the contents of the document as having been served upon me by the above named official:
Name of company official: _____
Position _____ **Signature** _____