

National Petroleum Authority Act, 2005 Act 691

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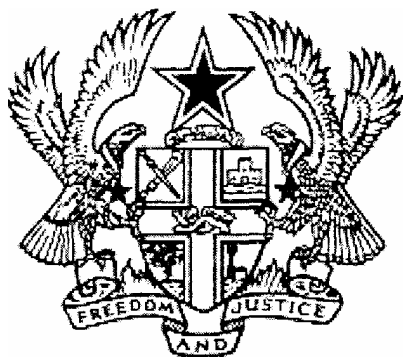
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SCHEDULE

Act 691



THE SIX HUNDRED AND NINETY-FIRST

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED
NATIONAL PETROLEUM AUTHORITY ACT, 2005

AN ACT to establish the National Petroleum Authority to regulate, oversee and monitor activities in the petroleum downstream industry; to establish a Unified Petroleum Price Fund; and to provide for related purposes.

DATE OF ASSENT: *14th June, 2005.*

ENACTED by the President and Parliament

PART I-THE NATIONAL PETROLEUM AUTHORITY

Establishment and functions of the National Petroleum Authority.

National Petroleum Authority

1. (1) There is established by this Act, a body to be known as the National Petroleum Authority.
(2) The Authority is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
(3) The Authority may for the performance of its functions acquire and hold movable or immovable property and may enter into a contract or any other transaction.

(4) Where there is hindrance to the acquisition of property, the property may be acquired for the Authority under the State Property and Contracts Act 1960 (C.A.6) or the State Lands Act, 1962 (Act 125) and the costs shall be borne by the Authority.

Object and functions of the Authority

2. (1) The object of the Authority is to regulate, oversee and monitor activities in the petroleum downstream industry and where applicable do so in pursuance of the prescribed petroleum pricing formula.

(2) To achieve the object, the Authority shall

- (a) monitor ceilings on the price of petroleum products in accordance with the prescribed petroleum pricing formula;
- (b) grant licences to applicants under this Act;
- (c) maintain a register and keep records and data on licences, petroleum products and petroleum service providers;
- (d) provide guidelines for petroleum marketing operations;
- (e) protect the interests of consumers and petroleum service providers;
- (f) monitor standards of performance and quality of the provision of petroleum services;
- (g) initiate and conduct investigations into standards of quality of petroleum products offered to consumers;
- (h) investigate on a regular basis the operations of petroleum service providers to ensure conformity with best practice and protocols in the petroleum downstream industry;
- (i) promote fair competition amongst petroleum service providers
- (j) conduct studies relating to the economy, efficiency and effectiveness of the petroleum downstream industry;
- (k) collect and compile data on
 - i. international and domestic petroleum production, supply and demand,
 - ii. inventory of petroleum products, and
 - iii. pricing of petroleum productsfor the information of the public which the Board considers necessary for the performance of its functions;
- (l) periodically review in consultation with petroleum service providers the prescribed petroleum pricing formula and publish in the *Gazette* the respective formula;

Disclosure of interest

7. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

Allowances

8. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Appointment of committees

9. (1) The Board may appoint committees consisting of members of the Board or non-members or both

- (a) to perform a function of the Board assigned to the committee, or
- (b) to advise the Board on a matter referred to the committee.

(2) A committee of the Board may be chaired by a member of the Board.

Establishment of Committees of the Board

10. (1) Despite sub-section (1) of section 9, the Board shall establish

- (a) a Consumer Services Committee,
- (b) a Technical Committee,
- (c) a Disciplinary Committee, and
- (d) a Complaints Settlement Committee.

(2) The Board shall determine the composition of these committees.

(3) Each of these committees shall perform the functions of the Board assigned to it in writing by the Board.

*Licences***Requirement for licence**

11. (1) A person shall not engage in a business or commercial activity in the downstream industry unless that person has been granted a licence for that purpose by the Board.

(2) The business or commercial activities of the downstream industry in respect of crude oil, gasoline, diesel, liquefied petroleum gas, kerosene and other designated petroleum products are

- (a) importation,
- (h) exportation,

- (c) re-exportation,
- (d) shipment,
- (e) transportation,
- (f) processing,
- (g) refining,
- (h) storage,
- (i) distribution,
- (j) marketing, and
- (k) sale.

(3) The Authority may by legislative instrument limit or expand the scope of activities under subsection (2).

Qualification for licence

12. A licence under this Act may only be granted to

- (a) a citizen of Ghana; or
- (b) a body corporate registered under the Companies Code, 1963 (Act 179); or
- (c) a partnership registered under the Incorporated Private Partnerships Act, 1962 (Act 152); or
- (d) a foreign individual or foreign company in a registered joint venture relationship with a citizen of Ghana or a Ghanaian company.

Application for licence

13. (1) A person may apply to the Board for a licence in the manner determined by the Board with the prescribed fee.

(2) The Board shall, within thirty working days of the receipt of an application, acknowledge receipt and inform the applicant in writing of the decision of the Board.

(3) The Board shall on satisfaction that an applicant has met all the preconditions including the payment of the prescribed fee, direct the entry of the applicant's name in the Register of licences established under section 20.

Conditions of licence

14. (1) A licence shall not be granted to an applicant unless the applicant has complied with any other requirement specified by the Board and any other relevant enactment.

(2) A licence granted by the Board is subject to the conditions specified in the licence.

- (3) The Board may request from the applicant where necessary,
- (a) a clearance certificate or an appropriate permit from the Environmental Protection Agency and Ghana Standards Board;
 - (b) evidence of
 - i. financial viability for the ownership or operation of the business or commercial activity,
 - ii. adequate training, qualification and experience to engage in the business or commercial activity in accordance with this Act, and
 - iii. other requirements
- in the manner and at the times the Board may determine.

Issue and renewal of licence

15. (1) Where an applicant meets the conditions required by this Act for a licence to engage in a business or a commercial activity in the petroleum downstream industry, the Board shall approve the application and issue the applicant with the licence.

(2) Despite subsection (1), the Board may for reasons in the public interest, public safety or public security decide not to issue an applicant with a licence and shall inform the applicant of its decision in accordance with subsection (1) of section 19.

(3) A licence issued is valid for the period specified on it and may be renewed upon satisfying all the conditions for renewal as specified in the licence.

(4) An application for the renewal of a licence shall be made to the Board not later than sixty days prior to its expiry and in the manner determined by the Board.

(5) The applicant who seeks to renew a licence shall pay the prescribed fee prior to the issue of the licence.

Display of licence

16. A licence issued under this Act shall be conspicuously exhibited by the licensee in a prominent place on the business premises of the licensee.

Non transferability of licence

17. A licensee issued with the licence shall not transfer that licence to another person without the prior approval of the Board.

Revocation, suspension and refusal to renew licence

18. The Board may revoke, suspend or refuse to renew a licence issued under this Act where

- (a) the provisions of this Act or the Regulations are not being satisfactorily complied with,

- (b) the continued operation of a business or commercial activity poses a risk to public health, safety and security,
- (c) the services provided by the licensee have deteriorated below the required standard,
- (d) the licensee has not complied with any of the conditions of the licence,
- (e) an offence under this Act in relation to the licensee is being investigated,
- (f) the licensee has contravened but has not been convicted of a provision of this Act.

Notice of revocation, suspension or refusal to issue or renew licence.

19. (1) Where the Board intends to revoke, suspend or refuse to issue or renew a licence under this Act; the Board shall give the applicant or licensee

- (a) thirty days prior notice of the revocation, suspension or the intention to refuse to issue or renew the licence,
- (b) reasons for the intention to revoke, suspend or refusal to issue or renew the licence, and
- (c) an opportunity to make an oral or written representation to the Board.

(2) An applicant or licensee who receives a notice may make a representation to the Board within fifteen working days from the date of receipt of the notice.

(3) The Board shall within three months after the representation take a decision on the representation and inform the applicant or licensee.

(4) The Board shall as soon as practicable inform the Minister in writing of any decision it takes on a representation.

Register

20. (1) The Board shall establish and maintain a register of licences that are granted by the Board.

(2) The Board shall enter in the register in respect of each licence

- (a) the name and particulars of the person to whom the licence is granted, and
- (b) the business or commercial activity to be engaged in by the licensee.

(3) The Board shall publish the names and particulars of licensees, periodically in the *Gazette* as determined by the Board.

(4) The register shall be opened for public inspection during the hours and subject to the payment of the fee, that may be determined by the Authority.

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Removal of names from register

21. (1) The Board shall remove from the register the name of a person
- (a) who has failed to comply with the conditions of the licence, or
 - (b) who has been found guilty of misconduct by the Disciplinary Committee.
- (2) The name of a person may be restored to the register by the Board.

Publication of licences

22. The Board shall publish in the *Gazette* a notice of each licence, suspension or revocation of a licence made under this Act.

Special requirements and authorisations relating to licences.

Application

23. Without limiting the provisions of section 14, sections 24 to 32 apply to licences for the following activities;
- (a) refinery,
 - (b) transportation,
 - (c) marketing, and
 - (d) sale.

Refinery licence

24. Where the Board grants a licence to an applicant to operate a refinery for the supply of petroleum products, it shall authorise the licensee
- (a) to convert crude oil into petroleum products for sale without discrimination to
 - (i) bulk customers of petroleum products, and
 - (ii) a person licensed under this Act to market petroleum products, and
 - (b) to obtain approval of the Authority for charges of services rendered.

Storage depots for petroleum products

25. (1) The Minister shall designate a network of strategic storage depots for petroleum products to be managed by BOST or any other body on behalf of Government.
- (2) The Authority shall by publication in the *Gazette* designate operational storage depots for petroleum products.

Operation of storage depots for petroleum products.

26. (1) Where the Board grants a licence to an applicant to operate nationwide a network of storage depots for the storage and trans-shipment of petroleum products, it shall authorise the licensee to provide services for storage and trans-shipment of

petroleum products to bulk consumers and persons licensed under this Act to market petroleum products.

(2) The Board shall grant only one licence to a person for the operation of a network of storage depots for the storage and trans-shipment of petroleum products at any particular time in the country.

(3) A person granted a licence for this purpose shall be known as the operator of storage depots for petroleum products.

Conditions for licence as operator of storage depots for petroleum products

27. Where the Board grants a licence to an applicant for the operation of storage depots for petroleum products, the following conditions are applicable for purposes of compliance;

- (a) an obligation to provide without discrimination, services on request for the storage and trans-shipment of petroleum products to bulk customers and persons licensed for the transportation and marketing of petroleum products, and
- (b) the approval of the Authority for charges for services rendered.

Bulk transportation of petroleum products

28. Where the Board grants a licence to an applicant for the bulk transportation of petroleum products through a means that the Board may determine, the Board shall include a condition that

- (a) the licensee enters into an agreement to provide services without discrimination to its customers, and
- (b) the charge for the bulk transportation of petroleum products
 - (i) through pipeline systems,
 - (ii) by barges,
 - (iii) by rail tanker wagons, and
 - (iv) bulk road vehicles,shall be subject to the approval of the Board.

Petroleum products marketing licence

29. Where the Board grants a licence to an applicant to procure and sell petroleum products the licence shall authorise the licensee to procure and sell petroleum products to

- (a) bulk customers; and
- (b) to the public through retail stations or reseller outlets.

Construction of petroleum products depots

30. A person shall not construct or operate in the petroleum downstream industry

- (a) a petroleum products retail station.

- (b) a petroleum products storage depot and pipeline,*
- (c) a liquefied petroleum gas depot, or*
- (d) an oil refinery*

without the prior written authorisation of the Board.

Display of prices on dispensing units

31. A person shall not sell or display for sale a petroleum product on a dispensing unit or flow meter unless the price of the petroleum product is indicated in cedis and pesewas.

Prohibition to sell petroleum products

32. (1) A person, other than a person licensed under this Act, shall not

- (a) sell or offer for sale a petroleum product, or*
- (b) be in possession of a petroleum product in quantities unreasonably in excess of that person's immediate requirement, or*
- (c) receive a petroleum product for sale.*

(2) Subsection (1) does not apply to petty trading in kerosene.

Monitoring of stock of petroleum products at strategic storage depots.

33. The Ministry shall

- (a) monitor the release and storage of stock of petroleum products stored at strategic storage depots, and*
- (b) ensure that minimum stock is retained as reserve stock.*

Powers and Functions of petroleum service providers and related institutions

Relationship of Authority with other institutions and petroleum service providers

34. Petroleum service providers and relevant institutions shall

- (a) in consultation with the Board, enforce standards of performance in respect of operations in the petroleum downstream industry, and*
- (b) ensure conformity with the standards and protocols prescribed by the Board.*

Refinery and manufacturing processes

35. The Board shall monitor the refinery and manufacturing processes of petroleum products to ensure the application of clean and safe technology.

Duty to set specifications of fuel products

36. The Ghana Standards Board shall after consultation with the Board

- (a) set the specifications for each type of fuel and fuel related product, and*

- (b) specify the allowable content of additives in each type of fuel and fuel related product.

Submission of reports to Board

37. (1) Where a petroleum service provider's operations in the downstream industry involves the importation, refining and marketing of petroleum products, that petroleum service provider shall submit a monthly report on a date determined by the Board that indicates details of actual

- (a) imports,
- (b) production,
- (c) domestic sales and consumption,
- (d) inventory of crude oil and products, and
- (e) exports.

(2) The Board shall within thirty days consider the content of the report and initiate the action to be taken where necessary.

(3) The report and the decision taken by the Board shall be forwarded by the Board to the Ministry of Energy.

(4) Despite subsection (1), the Board may require a petroleum service provider to submit a report

- (a) to address a specific issue, and
- (b) to furnish the Board with information

in respect of the conduct, practices, and management by that petroleum service provider related to the business or activity including relations with other relevant institutions, partnerships and individuals.

Disclosure of information by Board and submission of reports

38. (1) Subject to the provisions of this Act and any other enactment, the Board may disclose to the public information obtained by it in the performance of its functions under this Act.

(2) Despite subsection (1), the Board shall not disclose to a person

- (a) a trade secret, and
- (b) privileged commercial or financial information,

without the prior written undertaking of that person to keep the secret, information or matter in strict confidence and to use it for the purpose for which it was sought.

(3) Despite subsection (1), the Board shall not disclose to a person matters that relate to national security.

(4) The Board shall submit to the Ministry a quarterly report covering the activities and the operations of the Authority for the period of the year to which the report relates.

Liberalisation of the petroleum downstream industry and promotion of fair competition

Duties of petroleum service providers

39. (1) Despite section 37, a licensee shall from the commencement of any business or commercial activity specified under section 11 (2) submit a written quarterly report to the Board relating to the business or activity undertaken.

(2) A petroleum service provider who undertakes a business or activity that involves the importation of crude oil or petroleum products, shall ensure that the activity accords with the Basel Convention and Marpol Convention.

Promotion of fair trade practices

40. (1) The Board shall support commercial practices in the petroleum downstream industry which

- (a) serve the public interest,
- (b) achieve efficiency and cost reduction,
- (c) ensure the continuous supply of petroleum products, and
- (d) enhance environmental protection.

(2) For purposes of this section "commercial practices" includes

- (a) nationalised depot operations,
- (b) open access to storage tanks and pipeline utilisation, and
- (c) joint action on spill control and fire prevention.

(3) To ensure the observance of fair equitable practices and the enforcement of existing contracts, the Board shall monitor the conduct of relationships amongst petroleum service providers.

Promotion of new entrants

41. The Board shall formulate and establish a programme to promote new entrants as petroleum service providers in the petroleum downstream industry.

Incentives for free zone developers and enterprises

42. (1) A licensed free zone developer or enterprise licensed under the Free Zone Act, 1995 (Act 504) shall for purposes of refining and storage of petroleum products after licensing under this Act, be eligible to enjoy the same incentives offered by the Free Zone Board within the petroleum downstream industry as approved by the Board and specified in the licence issued under this Act.

(2) The provisions of this section apply only to a new entrant.

Monopoly provisions

Formation of cartels and monopolies

43. (1) The Board shall in the performance of its functions take the necessary measures in compliance with the Protection Against Unfair Competition Act, 2000 (Act 589) to prevent the formation of cartels, monopolies and unfair competition in the petroleum downstream industry.

(2) A person or an agent of that person shall not form a cartel within the petroleum downstream industry.

(3) A person shall not gain, hold or secure a monopoly of a business or commercial activity within the petroleum downstream industry.

(4) A person who contravenes or fails to comply with a provision of this section, commits an offence and is liable on summary conviction to a term of imprisonment not exceeding ten years or to a fine not exceeding five thousand penalty units calculated in a currency determined by the Minister, or to both.

Cartelization

44. (1) A person or an agent of that person shall not indulge in or assist in cartelization in the petroleum downstream industry.

(2) For the purposes of this section, "cartelization" means an agreement, combination of or concerted action by refiners, importers or dealers or their agents, to

(a) fix prices,

(b) restrict outputs,

(c) divide markets either by product or by area, or

(d) allocate markets either by products or by areas

to restrain trade or free competition and contractual stipulation that prescribes pricing levels and profit margins at variance with the prescribed petroleum formula.

(3) A person who commits an offence under this section is liable on summary conviction to a term of imprisonment not exceeding ten years or to a fine not exceeding fifteen thousand penalty units calculated in a currency determined by the Minister, or to both.

Promotion of retail competition

45. (1) To ensure the prevalence of fair prices of petroleum products and to facilitate the attainment of a genuine competitive product market at the retail level, the Board shall promote through information dissemination, the active and direct participation of the private sector in the retailing of petroleum products.

(2) The retailing of petroleum products may be effected through joint venture or supply agreements for the establishment and operation of retail stations.

- (3) The Board shall in collaboration with relevant institutions co-ordinate with (a) new entrants, and (b) existing petroleum dealers

in order to facilitate the efficient establishment, operation and maintenance of retail stations.

(4) The provisions of this section apply to LPG retailing.

(5) For purposes of this section "petroleum dealers" includes large and small retail outlets.

Complaints and settlement of disputes

Right of complaint

46. (1) A person may submit a written or oral complaint to the Complaints Settlement Committee in respect of the provision of petroleum services or pricing.

(2) The Complaints Settlement Committee shall examine and determine a complaint submitted to it and take appropriate action within a period not exceeding thirty days from the date of receipt of the complaint.

(3) A person who has made a complaint to the Complaints Settlement Committee where

(a) no action is taken on the complaint within the period specified, or

(b) that person is dissatisfied with the action taken by the Committee may submit the complaint to the Board for further investigation.

(4) The Board shall investigate a complaint received by it unless it is of the opinion that

(a) the complaint is trivial, frivolous, vexatious or not made in good faith,

(b) the complaint is the same subject already under investigation, or before a court, or

(c) the complaint is prejudicial to national security.

(5) The Board shall within fourteen working days of the receipt of a complaint make an appropriate determination together with a statement of reasons for the determination made.

Settlement of disputes

47. (1) The petroleum service providers in a dispute concerning a contractual matter that arises with respect to

(a) margins set by dealers,

(b) freight rates for the transportation of petroleum products,

(c) margins set by LPG distributors, and

(d) any other matter designated by the Board

shall negotiate in good faith to reach an amicable settlement of the dispute.

(2) Where the dispute cannot be amicably settled through negotiation, the aggrieved party may submit the dispute to the Board for arbitration.

(3) The Board shall after consultation with the Minister, set up arbitration panel under the Arbitration Act, 1961 (Act 38) to arbitrate and settle the dispute.

Administrative and financial provisions

Appointment and responsibility of Chief Executive

48. (1) The President shall in accordance with article 195 of the Constitution, appoint the Chief Executive for the Authority.

(2) The Chief Executive shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Chief Executive shall be a member of the Board.

(4) The Chief Executive shall be responsible for the day-to-day administration of the affairs of the Authority and shall ensure the implementation of the decisions of the Board.

(5) The Chief Executive may delegate a function to an officer of the Authority but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

49. (1) The President shall in accordance with article 195 of the Constitution appoint other staff of the Authority.

(2) The Authority shall have other officers and staff that are necessary for the proper and effective performance of its functions.

(3) The Authority may engage the services of advisers on the recommendations of the Board.

(4) Other public officers may be transferred or seconded to the Authority or may otherwise give assistance to it.

Funds of the Authority

50. (1) The funds of the Authority include

(a) moneys provided by Parliament,

(b) any fee or charge determined by the Board in consultation with Minister and Minister for Finance

(c) loans granted to the Authority by the Government or by any other person or body,

(d) donations, grants and gifts, and

(e) any other moneys that are approved by Parliament.

(2) Funds received by or on behalf of the Authority shall be deposited the appropriate person or authority to the credit of the Authority in an account in a

bank or banks approved by the Authority.

(3) Each payment from the Fund shall be signed by the chairperson and

(a) the Chief Executive; or

(b) the officer responsible for financial matters designated by the Board.

Expenses of the Authority

51. (1) The expenses of the Authority shall be paid from moneys provided for the Fund under section 50.

(2) Where, after having defrayed the outstanding expenses, the Authority has an excess amount, the Authority shall transfer that amount to the Consolidated Fund unless the Minister for Finance in consultation with the Minister approves the retention by the Authority of a part or the whole of that excess amount.

Account', and audit

52. (1) The Board shall keep proper books of account and records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Authority to the Auditor General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than six months after the receipt of the accounts, audit the accounts and submit a copy of the audit report to Parliament.

(4) The financial year of the Authority is the same as the financial year of the Government.

Annual report and other reports

53. (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Authority for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Borrowing powers

54. Subject to the provisions on loans in Article 181 of the Constitution, the Authority may obtain loans and other credit facilities on the guarantee of Government from the bank and institutions that the Minister for Finance approves.

Miscellaneous matters, offences and general provisions.

Procedures for dealing with complaints from consumers

55. (1) Each petroleum service provider shall establish an internal procedure for dealing with complaints by its consumers or potential consumers of petroleum services offered.

(2) The procedure shall not be established or modified unless

(a) the petroleum service provider has consulted the relevant persons or institutions that constitute a fair representation of the consumers for whom it provides the service, and

(b) the Board has approved the proposed procedure or modification.

(4) A petroleum service provider shall publish the approved procedure in the *Gazette*.

(5) The Board may direct a petroleum service provider to review its procedures or the manner it operates and make modifications accordingly.

(6) Copies of the procedure shall be lodged with the Board.

Inspectorate

56. (1) For the purpose of giving effect to this Act, the Authority shall establish an Inspectorate division of the Authority.

(2) The Board may appoint a Chief Inspector and other inspectors to carry out the functions that the Authority may determine for the purpose of enforcing this Act.

(3) An inspector authorised by the Board may at reasonable times enter premises used or suspected to be used by a petroleum service provider to investigate activities there.

(4) Where an authorised inspector enters the premises, the inspector shall

(a) ensure that displayed prices of petroleum products are consistent with the prescribed petroleum pricing formula,

(b) inspect

(i) the required licence of the petroleum service provider,

(ii) the premises,

(iii) any other thing which is relevant to the investigation, and

(c) carry out any other function to ensure that the provisions of this Act are complied with.

(4) The inspector shall at the request of the petroleum service provider responsible for the premises produce relevant authorisation.

(5) The Board shall periodically cause the inspection of premises.

Gazette notices

57. Where a provision of this Act requires publication in the *Gazette*, the Board may, in addition to or in exceptional circumstances, cause the publication to be published

(*o*) in the national daily newspapers, and

(*b*) on radio and television and the provisions of this Act shall have effect accordingly.

Misapplication of prescribed petroleum pricing formula

58. (1) A petroleum service provider shall not misapply the prescribed petroleum pricing formula to result in an overcharge of a petroleum product for a consumer.

(2) A petroleum service provider who contravenes the provisions of subsection (1) commits an offence.

False statements and withholding material information

59. (1) A petroleum service provider who makes a false statement in respect of a matter under this Act, commits an offence.

(2) A petroleum service provider who in furnishing the Board with information or producing a document for purposes of this Act or Regulations made under this Act

(*a*) makes a statement which the petroleum service provider knows to be false in a material particular, or

(*b*) produces, provides, sends or otherwise makes use of a document which is false or which the petroleum service provider knows to be false in a material particular

commits an offence.

Obstruction or interference with officers and employees of the Authority

60. A person who unlawfully obstructs or hinders an officer, agent or employee of the Authority acting in the performance of a function under this Act, or Regulations commits an offence and is liable on summary conviction to a term of imprisonment not exceeding ten years or to a fine not exceeding five thousand penalty units calculated in a currency determined by the Minister, or to both.

Other offences

61. (1) A person who unlawfully destroys or damages equipment, installation or facility for the refining, storage, bulk transportation, marketing or sale of petroleum products commits an offence and is liable on summary conviction to a term of imprisonment not exceeding ten years or to a fine not exceeding fifteen thousand penalty units calculated in a currency determined by the Minister, or to both.

(2) A person who commits an offence under this Act for which a penalty has not been prescribed is liable on summary conviction to a fine of not less than

two thousand, five hundred penalty units and not exceeding fifteen thousand penalty units calculated in a currency determined by the Minister, or to a term of imprisonment not exceeding ten years or to both.

(3) Where an offence is committed by a body corporate under this Act, every director, manager, partner, secretary or officer of that body corporate, or a person purporting to act in that capacity is liable on summary conviction to the penalty provided in respect of that offence.

(4) A person shall not be treated as having committed an offence under subsection (2) where that person proves that the offence was committed without that person's consent or connivance and that due diligence was exercised to prevent the commission of the offence having regard to the circumstances.

PART II-ESTABLISHMENT OF UNIFIED PETROLEUM PRICE FUND

Establishment and management of the Fund

Establishment of the Fund

62. There is established by this Act a Unified Petroleum Price Fund referred to in this Act as the "Fund".

Objects of the Fund

63. The objects of the Fund are to

- (a) ensure the regular supply of petroleum to all parts of the country,
- (b) ensure that prices of petroleum products include an element that represents the estimated cost of distribution, and
- (c) achieve a petroleum products distribution system which is efficient.

Sources of money for the Fund

64. The sources of money for the Fund are

- (a) moneys paid by oil marketing companies which is the difference between the UPPF margin in the price build up and actual freight cost of each oil marketing company if that oil marketing company operates below the equalisation point, and
- (b) any other money that the Minister with the approval of Parliament may determine.

Bank account for the Fund

65. Moneys for the Fund shall vest in the Board and shall be paid into a bank account opened by the Board with the approval of the Accountant -General.

UPPF Management Committee

66. (1) There is established by this Act a UPPF Management Committee consisting of

- (a) the chairperson who is the Chief Executive of the Authority,

- (b) the industry co-ordinator of oil marketing companies,
- (c) a representative of the Association of Tanker Owners' Union,
- (d) a representative of the BOST, and
- (e) the Fund Co-ordinator appointed under section 74.

(2) For purposes of this section "industry co-ordinator" means the focal person who represents the oil marketing companies.

Functions of the UPPF Management Committee

67. (1) The UPPF Management Committee is responsible for the management of the Fund and shall for that purpose

- (a) pursue policies to achieve the objects of the Fund;
- (b) collect or arrange to be collected moneys lawfully due to the Fund through procedures determined by the Authority;
- (c) account for the money in the Fund;
- (d) invest with the approval of the Minister some moneys of the Fund in safe securities it considers financially beneficial to the Fund;
- (e) pay approved expenditure charged on the Fund under this Act;
- (g) advise the Authority on the need to amend the UPPF margin in the price build up, where mileage rates exceed the UPPF margin built into the ex-pump price; and
- (h) perform any other function that is incidental to the achievement of the object of the Fund.

Meetings, tenure of office, disclosure and allowances

68. The provisions in sections 5 to 8 on meetings, tenure of office, disclosure of interest and allowances apply to the UPPF Management Committee for the Fund with the necessary modifications.

Disbursement from the Fund

69. (1) An oil marketing company shall, if it operates beyond the equalisation point, be paid from the Fund, the monetary value of the difference between the UPPF margin in the price build up and the actual freight cost.

(2) Payments made into and out of the Fund shall be by monetary transactions other than cash transactions.

(3) A cheque for payment out of the Fund shall be signed by the chairperson of the Board and either

- (a) the Chief Executive, or
- (b) the Fund Co-ordinator.

Operation of the Fund

- 70.** (1) The UPPF Management Committee shall for purposes of operating the Fund consult with the Authority to fix transportation rates for distances from
- (a) a crude oil refinery, or
 - (b) a bulk supply point
- to other locations in the country.
- (2) The rates fixed may be reviewed periodically by the UPPF Management Committee after consultation with the Authority, to reflect current economic trends.
- (3) The cash flow of the Fund shall, depending on the equalisation point, be based on the locations from which the oil marketing companies operate.
- (4) An oil marketing company shall not be paid moneys owed to it out of the Fund until it has complied with section 71.

Submission of reports by oil marketing companies

- 71.** (1) Each oil marketing company shall submit to the co-ordinator
- (a) a detailed report on monthly sales analysis based on locations, and
 - (b) delivery notes in respect of the sales mentioned in the report not later than the tenth day of the month following the month to which a report relates.
- (2) An oil marketing company shall keep a record of the copy of the report and delivery notes for a period of six years.
- (3) The co-ordinator shall on receipt of the reports, subject them to scrutiny and prepare a summary indicating the amounts to be paid to or received from each oil marketing company.
- (4) The summary shall after verification be put before the UPPF Management Committee as soon as practicable, for approval.
- (5) The report and delivery notes shall, when requested by the Board, be made available by an oil marketing company to any auditor appointed by the Auditor General.

Submission of report by UPPF Management Committee

- 72.** (1) The UPPF Management Committee shall submit a quarterly report to the Board.
- (2) The Board shall within fourteen days after receipt of the report submit the report to the Minister.

*Administrative, Financial and Miscellaneous provisions***Administrative expenses of the Fund**

73. (1) The administrative and other expenses of the Fund shall be subject to the approval of the Board.

(2) The UPPF Management Committee may, after defraying expenses of the Fund, and with the approval of the Board in consultation with the Minister direct in writing that a part of any excess moneys located in the bank account for the Fund be utilised in the execution of a designated project related to the petroleum downstream industry.

Fund Co-ordinator and functions

74. (1) The Board shall appoint a person with managerial experience in the petroleum downstream industry as the Fund Co-ordinator.

(2) The co-ordinator shall hold office on the terms and conditions specified in the letter of appointment.

(3) The co-ordinator shall be a member of the UPPF Management Committee.

(4) The co-ordinator shall

(a) be responsible for the day-to-day administration of the affairs of the UPPF Management Committee, and

(b) ensure the implementation of the decisions of the Board except that the co-ordinator shall not perform a function related to the distribution of petroleum products in the petroleum downstream industry.

Exemption

75. The Fund is exempt from payment of any form of tax.

Accounts and audit for the Fund.

76. (1) The UPPF Management Committee shall keep proper books of account and records in relation to them in the form approved by the Auditor-General.

(2) The UPPF Management Committee shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General or an auditor appointed by the Auditor-General shall not later than three months after the receipt of the accounts audit the accounts and forward a copy of the audit report to the Minister.

(4) The Auditor-General may request an oil marketing company to furnish the Auditor-General with

(a) a detailed report on analysis of sales based on locations,

(b) delivery notes on the sales report mentioned in paragraph (a), and (c) other information the Auditor-General may require for the efficient execution of duties.

(5) The oil marketing company shall comply with the request within fourteen days from the date of receipt of the request.

(6) In addition to the annual audit, technical audits may be conducted on selective basis by the Auditor-General or by an auditor appointed by the Auditor General.

Annual report relating to the Fund

77. (1) The UPPF Management Committee shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall within one month after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

(4) The UPPF Management Committee shall also submit to the Minister any other reports which the Minister may require in writing.

Penalties for misconduct

78. (1) Where a person connives or colludes with a bulk transporter to make false representations to the fund co-ordinator in respect of petroleum products not delivered to destinations for which they had been collected, the Authority shall suspend the licences of that person and the bulk transporter for the period that the Authority shall determine.

(2) Where a person fails to submit

(a) the monthly report on analysis of its sales at different locations, and

(b) delivery notes in respect of the sales

to the fund co-ordinator later than the tenth day of the month following the month to which the report relates, payment out of the Fund to that person for services rendered in respect of the sales shall be delayed for three months.

(3) A person who falsifies a calibration certificate of its bulk road vehicle with the sole aim of cheating and causes the shortage and under delivery of petroleum products to retail outlets shall be sanctioned by the Disciplinary Committee established under section 10 (1).

(4) Where a transporter's own vehicle is involved in an act that results in the contravention of a provision of this Act, the Authority may suspend or revoke the licence of that transporter.

Offences related to transportation of petroleum products

79. (1) Where a transporter or an agent of that transporter compromises the quality and purity of petroleum products, that transporter or agent commits an offence and is liable on summary conviction to a term of imprisonment not exceeding two years or to a fine not exceeding five thousand penalty units calculated in a currency determined by the Minister or to both.

(2) A driver of a bulk road vehicle who adulterates a petroleum product commits an offence and

- (a) is liable on summary conviction to a term of imprisonment not exceeding two years or to a fine not exceeding five thousand penalty units calculated in a currency determined by the Minister, or to both; and
- (b) shall be prohibited from driving a bulk road vehicle that belongs to a member of the Tanker Owners' Union.

Regulations

80. (1) The Authority may by legislative instrument make Regulations to

- (a) prescribe the criteria and determinants for the formulation by the Board of the prescribed petroleum pricing formula;
- (b) prescribe quality of services provided for petroleum products;
- (c) provide for the procedure for submission of complaints and investigation and determination of complaints, in respect of a matter arising under this Act;
- (d) prescribe, modify and review the prescribed petroleum pricing formula;
- (e) provide for competitive bidding procedures for the procurement of petroleum products and crude oil;
- (f) provide for the discipline of licensees;
- (g) provide guidelines for marketing operations and fair competition in the petroleum downstream industry;
- (h) prescribe standards of performance for the provision of petroleum services;
- (i) provide for the protection of consumers;
- (j) prescribe testing facilities for quality control of crude oil and petroleum products in the petroleum downstream industry;
- (k) regulate licensing;
- (l) prescribe the fees, and charges to be paid under this Act;

- (m) provide for the inspection of petroleum service providers' premises;
- (n) control the importation, exportation, landing, loading, unloading and transportation of petroleum products;
- (o) provide for the storage, handling and sale of petroleum products and for licensing of places in which petroleum products are stored; and
- (p) regulate the handling of petroleum products in the fuelling of aircraft;
- (q) preserve the quality and purity of petroleum products and crude oil;
- (r) provide for the effective operation of strategic storage depot;
- (s) provide for any other matter necessary for the effective implementation of the provisions of this Act.

(2) Regulations issued under subsection (1) shall be signed by the chairperson of the Board.

(3) Despite the Statutory Instruments Act, 1997 (Act 539) the penalty for contravention of the disciplinary regulations shall be a fine not exceeding two thousand five hundred penalty units calculated in a currency determined by the Minister.

Interpretation

81. In this Act, unless the context otherwise requires,

"Authority" means the National Petroleum Authority established under section I of this Act;

"Basel Convention" means the global agreement, ratified by several member countries and the European Union to minimize the generation of hazardous wastes in terms of quantity and hazardousness, dispose of hazardous wastes as close to the source of generation as possible, and reduce the movement of hazardous wastes;

"Board" means the governing board of the Authority;

"BOST" means Bulk Oil Storage and Transportation Company registered under the Companies Code 1963 (Act 179) and charged with maintaining the country's strategic stocks of petroleum products;

"bulk customer" means a customer that takes delivery of quantities of petroleum products in excess of four thousand five hundred litres;

"bulk supply" means a petroleum product of a quantity that exceeds four thousand five hundred litres;

"bulk road vehicle" means a road tanker designed to transport in bulk a minimum of four thousand, five hundred litres of petroleum products;

"bulk supply point" means designated locations including the refinery or depots where bulk road tankers obtain bulk supplies of petroleum products and distribute them to retail outlets or consumer points;

- "bulk transporter" means a transporter duly licensed to transport in bulk a minimum of four thousand, five hundred litres of petroleum products;
- "cartel" means a group of business persons which combine to control the production and marketing of petroleum products to avoid competition with one another;
- "crude oil" means oil in its natural state before it has been refined or otherwise treated and excludes water, bottoms or sludge, sediments and foreign substances;
- "Commissioner" means the Commissioner of Customs, Excise and Preventive Service; "court" means the High Court; "dealer" means a person who is contracted by a licensed oil marketing company, operates a filling or service station and is engaged in the marketing and direct sales of petroleum products to motorists, end users, and other consumers and includes a retailer and a reseller;
- "dealer's margin" means the aggregate of the cost incurred by a dealer in retailing petroleum products at a retail station and the return on investment;
- "delivery notes" means notes or invoices issued by an oil marketing company for the exact quantity of petroleum products ordered by a consumer to be delivered or supplied by a bulk road vehicle to a retail outlet or consumer and includes a retailer;
- "designated petroleum product" means a petroleum product designated by the Minister by publication in the *Gazette* as a product to which the provisions of this Act apply;
- "distribution margins" includes primary distribution margin, BOST margin, marketers margin, dealer's margin and U.P.P.F margin;
- "Energy Commission" means the Commission established under the Energy Commission Act, 1997 (Act 541);
- "equalisation point" means a predetermined distance where the actual freight cost for the transport of a petroleum product from a Refinery or a storage depot to other locations in the country, is equal to the UPPF margin built into the retail price of the product, and form the basis for determining amounts to be paid in respect of the actual delivery point
- (a) by an oil marketing company into the Fund, or
 - (b) from the Fund to an oil marketing company;

- "ex-refinery price" means the amount of money equivalent to the actual cost of importing finished petroleum products and not exceeding the import parity price;
- "ex-pump price" means the price at which a given quantity of a petroleum product is sold at a retail station dispensing pump;
- "full cost recovery" means the level at which the ex-refinery price of petroleum products is equated to the import parity price; "Fund" means the Fund established under section 62; "Free Zones Board" means the Board established under the Free Zone Act, 1995 (Act 504);
- "Ghana Standards Board" means the Board established under the Standards Decree, 1973 (NRCD.173);
- "import parity price" means the ceiling price equivalent to the cost of importing finished petroleum products into storage depots along the coast 15km inland of Ghana as determined by the prescribed petroleum pricing formula;
- "licensee" means a person issued with a licence under this Act; "LPG" means liquefied petroleum gas;
- "LPG distributor" means a person engaged in importing, re-exporting, exporting, refilling, transporting, marketing and selling of LPG to end users and other consumers;
- "marketers margin" means the aggregate of the cost incurred by the oil marketing companies in ensuring availability of petroleum products at the retail stations and the return on investment;
- "Marpol Convention" means the Convention for the Prevention of Pollution from Ships and is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes; and it is a combination of two treaties adopted in 1973 and 1978;
- "Minister" means the Minister responsible for Energy;
- "Ministry" means Ministry of Energy;
- "new entrant" means a petroleum service provider who is licensed and has operated in the petroleum downstream industry for a period not exceeding one year and includes a free zone developer and enterprise;
- "oil marketing company" means a company registered as an oil marketing company by law in Ghana and licensed under this Act to procure and sell petroleum products to bulk customers and the general public through retail stations and reseller outlets;

- "operating storage depot" means a depot designed to hold stock of petroleum products for sale to licensees and bulk customers;
- "petroleum products" means products created through the refining of crude oil by distillation, cracking, solvent refining and chemical treatment which turn out as primary stocks in the form of liquefied petroleum gas, naphtha, gasoline, kerosene, aviation turbine kerosene, gas oil, residual fuel oils, waxes and petrolatum, asphalt, bitumen, coke, lubricants refinery petroleum fractions and include other petroleum designated products;
- "petroleum services" means services provided by petroleum service providers and includes petroleum importation, refining, storage, bulk distribution, marketing and sale of petroleum products;
- "petroleum service provider" means a person issued with a licence to operate in the petroleum downstream industry and includes a new entrant or any other person authorised by the Board to do so;
- "prescribed petroleum pricing formula" means the formula which equates the ex-pump price to the aggregate of the ex refinery price, taxes, levies and distribution margins;
- "primary distribution margin" means the cost for the transportation of petroleum products from the refinery or from the bulk supply point to the various storage depots nationwide;
- "relevant institutions" means an institution which for the purposes of this Act needs to collaborate with the Authority and includes the Ghana Standards Board and the Environmental Protection Agency;
- "refiner" means a person duly licensed to refine crude oil into petroleum products;
- "reseller" means a person who is sponsored by a licensed oil marketing company to operate a reseller outlet and is engaged in the direct sale of petroleum products to motorists, end users and other consumers; and uses hand-operated or a mechanised pump to dispense the petroleum products;
- "reseller outlet" means the registered office of a reseller where petroleum services are offered;
- "retail outlet" means the registered sales point of a dealer where petroleum services are offered and includes a station;
- "strategic storage depot" means a depot designated to hold stocks of petroleum products, and is an integral part of a network of storage depots;

"Tanker Owners' Union" means an association of tanker owners engaged in the haulage and distribution of petroleum products to retail outlets throughout the country;

"transporter" means a person engaged in the transportation, distribution, haulage and carriage of petroleum products, in bulk or packed form, from the oil companies, refineries, and depots to the petroleum retail and consumer outlet stations;

"UPPF" means the buffer used to compensate transporters for transporting petroleum products nationwide;

"UPPF Management Committee" means Unified Petroleum Price Fund Management Committee established under section 66; and

"UPPF margin" means the cost incurred by a transporter in the haulage of petroleum products from the depots to the retail outlets nationwide.

Modification of existing enactments

82. The provisions of an enactment of relevance to this Act and in force at the commencement of this Act shall have effect subject to the modifications necessary to give effect to this Act and to the extent that the provisions of an enactment are inconsistent with this Act, the provisions of this Act shall prevail.

Repeals and consequential amendments

83. The provisions set out in column I of the Schedule to this Act are repealed or amended to the extent specified in relation to them in column 2.

Saving and transitional provisions

84. (1) The Authority shall for purposes of this Act issue guidelines

(a) in accordance with the Public Procurement Act, 2003 (Act 663) for determination of

(i) inconclusive tender processes carried out by an administrative body responsible for that

(ii) tender processes carried out by oil marketing companies; and

(b) other transitional measures related to the implementation of this Act.

(2) A person who before the coming into force of this Act holds a valid licence to engage in a business or commercial activity for the importation, exportation, refining, storage, bulk transportation, marketing or sale of petroleum products shall within two weeks of the coming into force of this Act, notify the Board of this fact.

(3) The Board shall within two weeks of the receipt of the notification under subsection (2) verify and certify the licence.

(4) The total sum of money located in any bank immediately before the coming into force of this Act which constitutes moneys intended for the Fund established under section 62 including interest accrued on them, is hereby transferred into the Fund.

(5) Any agreement entered into in conformity with an existing law shall remain in force and shall not be affected by the coming into force of this Act.

(6) The person holding office as co-ordinator immediately before the coming into force of this Act and responsible for administering the payment and disbursement of moneys to oil marketing companies shall perform functions in that regard in accordance with section 69 (1) until the appointment of a co-ordinator in compliance with section 74.

(7) A person appointed under the Energy Commission Act 1997, (Act 541) for purposes related to petroleum product services, who is qualified and suitable for appointment to an office or position in the Authority, may be appointed for the Authority on the recommendation of the Minister.

SCHEDULE

Section 86

Repeals and consequential amendments

Enactment	Extent of repeal and amendment
1. The Petroleum Regulations, 1959 (LN.206)	Parts II and III are repealed.
2. Petroleum (Amendment) Regulations, 1961 (L.I 123)	Instrument revoked.
3. Petroleum (Bulk Haulage Rates) Regulations, 1968 L.I. 609	Instrument is revoked
4. Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L.64)	Section 2 is amended by the repeal of paragraph (d) of subsection (3).
5. Energy Commission Act, 1997 (Act 541)	<p>(a) by the substitution for the long title of the following “AN ACT to establish an Energy Commission; provide for its functions relating to the regulation, management, development and utilisation of energy resources in Ghana; provide for the granting of licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas; and to provide for related matters.”;</p> <p>(b) Section 2 is amended as follows (i) by the repeal of paragraph (b) of subsection (2) and the substitution of the following— “(b) advise the Minister on national policies for the</p>

	<p>efficient economical and safe supply of electricity and natural gas, having due regard to the national economy;</p> <p>(ii) by the repeal of paragraph (h), (i) and (j);</p> <p>(iii) by the repeal of paragraph (k) and the substitution of the following “(k) maintain a register of public utilities”;</p> <p>(c) by the repeal of paragraph (b) of section 11;</p> <p>(d) by the repeal of Part IV;</p> <p>(e) Section 42 is amended by the repeal of paragraph (a) and the substitution of the following “(a) promotion of energy efficiency and productive uses of electricity and natural gas”;</p> <p>(f) subsection (3) of section 44 is amended by the addition of the words, “except that this shall be on the approval by the Minister of a budget presented by the Commission after the word “Commission” on line 3;</p> <p>(g) Section 51 is amended by the repeal of paragraph (c) of subsection (1) and the substitution of the following “(c) such other information relating to” public utilities.”;</p> <p>(h) Section 54 is amended by the repeal of paragraphs (b) and (d) of subsection (1);</p> <p>(i) Section 56 is amended by the repeal of paragraph (b);</p>
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6. Public Utilities Regulatory Commission Act, 1997 (Act 538).

(j) Section 57 is amended as follows

(i) by the deletion of the definition of “bulk customer” and the substitution of the following

“ “bulk customer” means a customer that purchases or receives electric power, or natural gas of such amount or level as the Commissioner may specify”;

(ii) by the deletion of the following definitions

“crude oil”,
“hydrocarbon fuels”,
“lubricants”,
“petroleum”, and
“petroleum products”.

Section 49 is amended by the substitution for the meaning of “public utility” and “service” of the following

“ “public utility” means a person engaged in the provision for a fee, whether directly or indirectly, of the following services to the public:

- (a) the supply, transmission or distribution of electricity;
- (b) the supply, transmission or distribution of water;
- (c) other public utility services excluding a service

	<p>involving or related to a petroleum product, that Commission shall by legislative instrument prescribe on recommendation of the Minister with responsibility for the service”;</p> <p>““service” includes the supplying or furnishing of a commodity other than a petroleum product, derived directly from the business in which a public utility is engaged to the consumer and the placing at the disposal of the consumer the facilities employed in or connected with the supply of that commodity;”.</p>
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