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INFORMATION GUIDE

GUIDELINES FOR FUEL WHOLESALE LICENCE APPLICANTS/HOLDERS

PETROLEUM PRODUCTS REGULATIONS, 2000

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GLOSSARY

TERM	DEFINITION
Wholesaler	This means any person who imports or distributes fuel for the wholesale sale thereof by that person in Namibia, or who exports fuel. No persons may import, distribute petrol, and diesel for wholesale sale thereof in Namibia or export petrol and diesel without a wholesale licence.
Wholesale sale	means the sale of fuel in bulk quantities
Storage Facility	A facility in which any petroleum product is stored, including a storage facility at a harbour terminal or inland depot
Fuel	means petrol or diesel
Eligibility for a Wholesale Licence	Any juristic person that wants to import, distribute, or export petrol, diesel or both in bulk quantities may apply for a wholesale licence

1. APPLICATION FOR WHOLESALE LICENCE

Any juristic person that wants to import, distribute, or export petrol, diesel or both in bulk quantities may apply for a wholesale licence.

An applicant must complete the prescribed **form PP/3** which is available on www.mme.gov.na or can alternatively be obtained from the Ministry of Mines and Energy, 6 Aviation Road, Sixth Floor.

An application fee of **N\$ 100** must be paid only after the application form is checked and verified by the administrators. All fees are payable at the Ministry of Mines and Energy **Cashier Office between 8:00-12:00 on working days**. A receipt will be issued to the applicant, which a copy thereof must be attached to the application as proof of payment.

The application should be **fully completed**, and documents submitted as per the **checklist attached** to the application form. **Incomplete Applications Will Not Be Considered.**

When deciding to issue a licence, the Minister may consider the following issues:

- ◆ The protection of employees, public safety, health, and the environment.
- ◆ Record of compliance with the Petroleum Products and Energy Act, 1990, the Petroleum Products Regulations and other applicable laws.
- ◆ The social upliftment of previously disadvantaged people in Namibia.
- ◆ Any chance that monopolies in the industry might have a negative impact on competition in the sale of petroleum products.
- ◆ Prevention of vertical integration (wholesalers not to become operators/dealers).
- ◆ The need for import and distribution of fuel products in the country (security of fuel supply).

The Minister may request the applicant to submit additional information relating to the above considerations. A provisional licence may be granted, until such additional information is furnished.

The Minister will make a decision within approximately **60 days**. Whenever the Minister fails to do so, the applicant may enquire in writing as to why there is a delay.

Should the application be successful a licence will be issued to the applicant upon a payable fee of **N\$ 1 000,00**. The licence is valid for as long as the applicant complies with the Regulations.

Should the Minister refuse the application, the Minister must provide written reasons for such refusal.

2. DISQUALIFICATION OF APPLICATIONS FOR A WHOLESALE LICENCE

A licence may not be issued or held by an applicant if such an applicant:

- ◆ has during the five years preceding the application for the licence been convicted of an offence under the Act or is so convicted during the currency of the licence.
- ◆ is not a Namibian citizen or is not lawfully resident in Namibia.
- ◆ is a body corporate and is not registered in Namibia or if its registration in Namibia has been cancelled.
- ◆ is or becomes an unrehabilitated insolvent.
- ◆ is or becomes subject to an order of a competent court declaring such a person to be mentally ill or disordered.

3. IMPORT/EXPORT PERMITS

Anyone who wants to import/export petroleum products into Namibia must have a **wholesale licence, and an import/export permit** (issued by the Ministry of Trade and Industry) under the Import and Export Control Act, 1994 (unless such import is from within the customs union). The Ministry of Trade and Industry will only issue an import/export permit upon approval of such request by the Ministry of Mines and Energy.

4. DUPLICATE LICENCES

One original licence will be issued to the applicant. If a licence is lost, stolen, or damaged, the licence-holder may apply for a duplicate upon completion of **form PP/8** and payment of **N\$ 100**.

5. CONDITIONS APPLICABLE TO A LICENCE

The following general conditions apply to all licences:

- ◆ The licence-holder must at all times comply with the Petroleum Products and Energy Act and the Regulations including laws relating to labour, safety, hazardous substances, security, health, and environment.
- ◆ The licence-holder may only sell petrol and diesel in bulk quantities (no retail is allowed).
- ◆ If petrol and diesel are sold to a person other than a retailer, Government institution, consumer installation or local authority, then it must be either dispensed directly into a container used for storing petrol or diesel or into the tank of a vehicle with a mass of more than

3500 kg for the purposes of propelling such vehicle (remember again this is only bulk quantities).

- ◆ The aforementioned may only be made from a dispensing point situated at the premises of the licence-holder's storage facilities (that is relevant premises).
- ◆ All permits and licences required under the Petroleum Products and Energy Act or any other law must be obtained prior to import, export of petroleum products.
- ◆ The licence-holder must inform the Minister as soon as practicable of any dangerous situation arising from the conduct of activities authorised under the licence and the remedial actions taken with regard thereto.^⓪
- ◆ The licence-holder must keep retail operation records and submit such information to the Minister yearly before or on **28th of February**
- ◆ The licence-holder may not abandon or cease operating a storage facility otherwise than in accordance with the Regulations.
- ◆ Petroleum products imported or distributed must comply with approved specifications made applicable by the Regulations.
- ◆ All applicable duties, levies, and taxes must be paid to the relevant authorities and bodies.

On the licence, provision is made for certain special conditions which the Minister may make applicable to a licence-holder relating to:

- ◆ the reporting of dangerous situations or accidents.
- ◆ preparation and submission to the Minister of assessments of the safety, health, environmental, and security risks associated with the activities authorised under the wholesale licence.
- ◆ the safe disposal of petroleum products, including the collection and discarding of used oil.
- ◆ insurance against, or guarantee for, petroleum product spills which insurance or guarantee cover cost involved in the cleaning up of such spills up to an amount not exceeding N\$ 5 000 000.

6. INFORMATION TO BE SUBMITTED TO THE MINISTER ON A YEARLY

Licence-holders **must** every **year not later than 28th of February** give to the Minister the following information:

- ◆ The total quantity of petroleum products imported and exported during that year specified according to the different petroleum products.

^⓪ A dangerous situation is a situation involving petroleum products that is immediately endangering the safety or health of a person, or the safety of a person's property or is creating an immediate risk of significant environmental harm.

- ◆ In the case of petroleum product imports, the source from where those products were obtained (the name of the seller), and in the case of petroleum product exports, the name of the export customer and the country of destination.
- ◆ All ports of entry into and exit out of Namibia used with regard to the import and export of petroleum products.
- ◆ The cost, insurance and freight (CIF) price of petroleum products referred to in the first item converted to Namibian dollars at the date of import.
- ◆ A list of all storage facilities used, including shared storage facilities, with specific reference, according to different petroleum products, and to -
 - the location of the storage facilities;
 - the capacity of the storage facilities;
 - the ownership of the storage facilities (including the ownership of the land on which the storage facilities is situated, if different) and, in the case of shared ownership, the basis of sharing; and
 - the names of other wholesalers sharing the same storage facilities.
- ◆ Retail outlets and consumer installations which the licence-holder supplies, or which the licence holder discontinued to supply, with petroleum products, specifying the name of the retail licence-holder or certificate-holder, the number of the retail licence or certificate, the name of the retail outlet, the location of the retail outlet or consumer installation, as the case may be, and the total quantity petroleum products supplied to a retail outlet or consumer installation during that year specified according to the different petroleum products.
- ◆ Any other person than a person mentioned above to whom any petroleum product was supplied, specifying the name and address of such person and the total quantity petroleum products supplied to such person during that year specified according to the different petroleum products.
- ◆ Any change of information required when the licence-holder applied for a licence in Form **PP/3**, with regard to which change it is not necessary to apply for an amendment of the wholesale licence.

The Minister may at any time ask the licence-holder to give any of the following information:

- a) any information regarding a dangerous situation and remedial measures taken in respect thereof.
- b) Any information the Minister may request regarding the storage and place of storage of petroleum products in Namibia.
- c) any information the Minister may request to enable the Minister to effectively exercise his/her powers under the Regulations.

7. TRANSFERRING OF LICENCE

A wholesale licence is **NOT** transferable. A juristic person must apply as a new applicant.

8. SURRENDER, SUSPENSION, CANCELLATION OR CEASING OF EFFECT OF LICENCE OR CERTIFICATE

A licence will cease to have effect under the following circumstances:

- ◆ Where the licence-holder by notice in writing to the Minister surrenders the licence.
- ◆ Where the licence-holder fails to comply with any provision of the Regulations or any condition of the licence, the licence may be cancelled or suspended, provided that the Minister has by written notice informed the licence-holder the Minister's intention to cancel or suspend the licence.
- ◆ Where the licence-holder becomes subject to one of the disqualifications set out in point 2 of this guideline.

GENERAL NOTES

Under any of the circumstances set out above, the licence-holder must send the original licence to the Minister within **fourteen (14) days** after it ceased to have effect. In the case of a suspension, the licence-holder does not need to send the licence to the Ministry but may not during the period that the licence is suspended conduct business as a wholesaler. Any person who contravenes or fails to comply with this provision shall be guilty of an offence.

9. AMENDMENTS OF LICENCES

(a) Change of licence information

If any information on the licence changes, the licence-holder must, prior to such change, apply to the Minister for an amendment of the licence by completing **Form PP/9** and the appropriate fee of **N\$ 100** must be paid. If the Minister finds out that some information on a licence has changed and the licence-holder failed to inform the Minister thereof, the Minister may effect such change.

(b) Alteration, Closure, and Abandonment

The licence-holder who may for whatever reason, including the closing down of the business or a change of premises, abandon the relevant premises, must give notice to the Minister at least one month before abandonment. Once the Minister has received notice, an Inspector, or other competent person authorised thereto by the Minister, will inspect the

premises to see whether the premises have been sufficiently **restored**. If the Inspector is satisfied regarding the above, the Inspector will issue a certificate of compliance in **Form PP/7**. No fee is payable.

10. DISPLAY OF LICENCE ON PREMISES

The licence-holder must display their licence at their official place of business in Namibia, where it will be noticeable/accessible.

11. GENERAL PROHIBITIONS AND DUTIES

The following prohibitions and duties shall apply:

- ◆ Nobody may falsely claim to have a licence or certificate.
- ◆ Apart from a forklift, no vehicle may be driven by gas unless the Minister's permission has first been obtained.
- ◆ Petrol may only be sold at the official wholesale price.
- ◆ Nobody may mix or blend a petroleum product so that it does not comply with the approved specifications.
- ◆ Containers used to store petroleum products must be leakproof, spillproof, and safe and suitable for storage or conveyance as per adopted specifications.
- ◆ In disposing or dumping a petroleum product, a person must do so in line with good petroleum industry practices and other laws relating to the dumping thereof.

12. MAINTENANCE OF INFRASTRUCTURE AND EQUIPMENT

The following duties and prohibitions specifically relate to licence-holders:

- ◆ Before commencing with improvement and upgrading construction work on the depot infrastructure, approved designs, drawings and sketches must be submitted to the Ministry for endorsement.
- ◆ Buildings, roadworks, structures and plant used in connection with petroleum products must be erected and maintained in such manner as to avoid significant environmental harm and/or endangering the safety or health of a person or the safety of a person's property. There are also duties relating to the plant which may not give rise to significant environmental harm and the duties of licence- and certificate-holders in this regard that must be taken notice of.
- ◆ Measuring instruments must be correct and must comply with the Trade Metrology Act, 1973, and as per the National Standard Institute (NSI) requirements.

13. STANDARDS AND SPECIFICATIONS

The Ministry will continuously adopt Standards and Specifications applicable to the petroleum industry. A list of these specifications will be published in the Government Gazette. A copy of the specifications can be inspected at the Ministry of Mines and Energy, or the licence-holder/applicant may alternatively purchase a copy from the Ministry of Justice.

Specification on the following will be made applicable:

- ◆ specifications regarding the design, construction, and maintenance of electrical equipment.
- ◆ specifications regarding the storage, distribution, and handling of petroleum products and the installation of storage tanks, and other structures, pipework, pumps, and plant.
- ◆ specifications regarding the composition of petroleum products (leaded and unleaded petrol, diesel, jet fuel, and LPG).

A licence-holder who wishes to deviate from a specification may apply to the Minister for permission to do so. The Minister will only give permission if the Minister is satisfied that the deviation will not negatively impact public safety or the environment.

14. STORAGE TANKS AND INFORMATION TO BE GIVEN YEARLY

In the case of an above-ground storage tank with a capacity of 2 200 liters or more or in the case of a below-ground storage tank with a capacity of 4 500 liters or more, a licence holder must with regard to any replacement, installation, or existing storage tank of that capacity provide yearly to the Minister (not later than **28th of February** of every year) the information required in **form PP/10**.

15. FIRE AND EMERGENCY PRECAUTIONS

- ◆ Licence-holders must ensure that buildings, roadworks, structures, and plants are designed, constructed, equipped, and maintained to prevent or minimise the danger of fires and explosions.
- ◆ All personnel involved in petroleum products must act cautiously and comply with the provisions of the Regulations and other laws relating to fires and explosions.
- ◆ Buildings, structures, and plants where petroleum products are handled or stored must be suitably signposted.

- ◆ Licence-holders must when storing, keeping, handling, conveying, using, or disposing of a petroleum product take adequate precautions to prevent the outbreak of fires.
- ◆ Adequate fire-extinguishing appliances must be maintained in a good working order (tested at least once a year) and kept in accessible places where petroleum products are kept.
- ◆ Licence-holders must have a written fire emergency plan available on their premises. Such a plan must show the location of fire-fighting equipment and include a plan of action for employees. Employees must be trained. The fire-fighting plan must be provided to employees.
- ◆ Nobody may near petroleum products throw, leave, or create any open or naked spark, light, or flame or any burning or smoldering material that may cause danger or fire explosion.
- ◆ No person may keep a cellular phone active (or any other electronic communication apparatus) within two (2) meters from a dispensing pump or within fifteen (15) meters from a vehicle while a petroleum product is being discharged from that vehicle into an underground storage tank.

16. PETROLEUM PRODUCT SPILLS

In the case of a petroleum product spill, the person in control of activities must take such steps as may be necessary in accordance with good petroleum industry practices to clean up such a spill. If it is a major spill (**more than 200 litres**), the Minister must be informed thereof by completing **Form PP/11**.

If the person fails to clean up a spill, the Minister may order the licence holder to take such steps as the Minister will specify in the notice to clean up the spill within the period specified by the Minister. If the person still fails to clean up a spill, the Minister may clean it up and recover via Court procedures the costs thereof.

17. POWERS OF INSPECTORS

Inspectors/Controllers are responsible to ensure that the Petroleum Products and Energy Act, 1990, and the regulations thereunder are complied with. An Inspector/Controller, when exercising his/her power, must show his/her certificate of appointment and provide notice in **Form PP/12**. If it is not possible to provide the notice immediately, the notice must be provided as soon as possible thereafter. A licence-holder must provide such assistance as is reasonably required by the Inspector.

(a) Prohibition Notices by Inspectors/Controllers

If an Inspector/Controller anticipates a dangerous situation, he/she may issue a prohibition notice prohibiting the activity giving rise to the dangerous situation until the risk is minimized.

If a person in control of the relevant premises fails to comply with a prohibition notice, the Inspector may take such steps as is necessary to minimize the risk. The costs thereof may be recovered from the person who failed to comply with the Inspector's prohibition notice.

(b) Action in Emergency Situations

If an Inspector/Controller anticipates a dangerous situation and there is not enough time to issue a notice in **Form of PP/12**, the Inspector/Controller may after giving notice in writing or verbally, take such action as is necessary to minimize the danger or risk. An Inspector/Controller may seek assistance if necessary.

Nobody may hinder or obstruct an Inspector/Controller in the exercise of his/her duties, use foul or abusive language towards an Inspector, fail to comply with the instruction from an Inspector/Controller, refuse information or answers, requested by an Inspector or falsely pretend to be an Inspector/Controller.

18. PENALTIES FOR CONTRAVENTION OF OR FAILURE TO COMPLY WITH THE PROVISIONS OF THE PETROLEUM PRODUCTS AND ENERGY ACT OR REGULATIONS

If a person contravenes or fails to comply with a provision of the Petroleum Products and Energy Act, 1990, such person shall be guilty of an offence and the following may be imposed on such person:

- ◆ A fine of not more than N\$ 20 000
- ◆ A term of imprisonment of not more than two years
- ◆ Both a fine and imprisonment
- ◆ Confiscation of goods used to commit the offence
- ◆ Licence may be suspended or cancelled

FOR MORE INFORMATION CONTACT THE MINISTRY OF MINES AND ENERGY AT:

**DIRECTORATE OF PETROLEUM AFFAIRS
OFFICE OF DIRECTOR**

6, Aviation Road

Private Bag 13297, Windhoek, Namibia, Tel: 061 – 284848212

www.mme.gov.na