

PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 31 OF 2017

CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT

By virtue of the powers vested in me in terms of sections 9 and 12 of the Broad Based Black Economic Empowerment (B-BBEE) Act 53 of 2003 as amended by the B-BBEE Act 46 of 2013 (B-BBEE Act), I, Dr. Rob Davies, Minister of Trade and Industry, hereby:

- a) Inform members of the public of the intention of the Department of Energy and the Petroleum and Liquid Fuels Industry to align the B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter to the B-BBEE Act, the B-BBEE Codes of Good Practice and the B-BBEE Policy Framework to ultimately serve as a Sector Specific Code of Good Practice.
- b) Issue a Proclamation that highlights the objectives, the process of the alignment of the B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter to the B-BBEE Act, the B-BBEE Codes of Good Practice, the B-BBEE Policy Framework and rationale for the development of a Sector Specific Code of Good Practice.
- c) Request all major stakeholders to interact with the South African Petroleum and Liquid Fuels Industry Interim/Steering Committee using the contact details provided in this Proclamation and to participate in the alignment process.



Dr Rob Davies, MP
Minister of Trade and Industry

14 August 2017

PUBLIC PROCLAMATION

B-BBEE PETROLEUM AND LIQUID FUELS

SECTOR TRANSFORMATION CHARTER

1. INTRODUCTION

- 1.1** This proclamation is published in line with Section 12 (a) of the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003 as Amended by Act 46 of 2013 which states the following:

“The Minister must publish in the Gazette for general information and promote a transformation charter for a particular sector of the economy, if the Minister is satisfied that the Charter —

- (a) has been developed by major stakeholders in that sector; and
- (b) advances the objectives of this Act”

2. PURPOSE

- 2.1** The purpose of this proclamation is to inform the South African public of the intention of the Minister of Energy to align the B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter for the South African Petroleum and Liquid Fuels Industry, annexed as Schedule 1 of the Petroleum Products Act, 1977 (Act No. 120 of 1977) (“the PPA”) as amended, with the B-BBEE policy framework through a consultative process with all major stakeholders; and to ensure:
- 2.2** The B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter will, upon promulgation in terms of Section 9 of the B-BBEE Act, serve as the Petroleum and Liquid Fuels Sector Codes of Good Practice.
- 2.3** Stakeholder consultation will be undertaken to endeavour for inclusive participation by all major sector stakeholders, in compliance with Section 12 of the B-BBEE Act.

- 2.4 The Minister of Energy has appointed a Steering Committee, after which a B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter Council will be established in line with Statement 003 Guidelines of the Amended Codes of Good Practice to lead the development of a B-BBEE aligned Petroleum and Liquid Fuels Sector Code for the Petroleum and Liquid Fuels Sector.

3. IMPLICATIONS OF SECTION 10 (1) OF THE B-BBEE ACT AND THE GUIDELINES ON THE PETROLEUM AND LIQUID FUELS B-BBEE SECTOR CODES OF GOOD PRACTICE

- 3.1 The Sector Code will be a B-BBEE strategy of the Sector to be applied in terms of section 10(1) of the B-BBEE Act which provides the following:

“Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in—

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;
- (b) developing and implementing a preferential procurement policy;
- (c) determining qualification criteria for the sale of state-owned enterprises;
- (d) developing criteria for entering into partnerships with the private sector; and
- (e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment.”

- 3.2 The Sector Code will be adopted after a structured, inclusive engagement and negotiations between the Department of Energy, the Petroleum and Liquid Fuels industry and all other relevant stakeholders who have majority commercial interest in the Sector as envisaged in the B-BBEE Act: Statement 003: Amended Guidelines for Developing and Gazetting of Sector Codes

- 3.3 A draft B-BBEE aligned Petroleum and Liquid Fuels Sector Code will be agreed to by all the stakeholders, submitted to the Minister of Trade and Industry for issuance by notice in the Gazette for a 60-day Public Commentary period before it is approved as a final binding document.

4. OBJECTIVES FOR ALIGNMENT OF THE B-BBEE PETROLEUM AND LIQUID FUELS SECTOR TRANSFORMATION CHARTER TO B-BBEE POLICY FRAMEWORK

- 4.1** To acknowledge and recognize the specific characteristics within the Petroleum and Liquid Fuels industry which were brought about by apartheid policies and resulted in the Petroleum and Liquid Fuels industry being a highly racialised Sector.
- 4.2** To address the following shortcomings in implementation of transformation through the sector-specific regulatory regime including the Charter signed in 2000 when compared to the B-BBEE policy framework:
 - 4.2.1** All barriers to B-BBEE transformation in the sector;
 - 4.2.2** Representation of black women, youth and disabled across the petroleum value chain that is disproportionate to the South African demographics; and
 - 4.2.3** Lack of meaningful operational involvement and active participation by black people, especially women and youth in the Sector
- 4.3** To incorporate and support the sector including sub-sector peculiarities and the following elements in the B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter, without deviating from the broad principles of the Generic Codes of Good Practice:
 - 4.3.1** Supportive Culture;
 - 4.3.2** Meaningful participation of non-refining or independent Wholesalers regardless of size;
 - 4.3.3** Private and Public Sector Procurement;
 - 4.3.4** Access to Joint Facilities;
 - 4.3.5** Ownership of Joint Facilities;
 - 4.3.6** Refining Capacity;
 - 4.3.7** Sustained Access to Petroleum Retail Network;
 - 4.3.8** Financing; and

4.3.9 Terms of Credit to black people.

4.4 To enhance sustainable strategic partnership between government and the Petroleum and Liquid Fuels industry in order to achieve sustainable transformation of the Petroleum and Liquid Fuels industry.

4.5 To support and incorporate the unique features of the Petroleum and Liquid Fuels Sector, without deviating from the broad principles of the Generic Codes of Good Practice including the following:

4.5.1 Effects of pricing mechanism on the accounting definition of Exempted Micro Enterprises (EMEs), Qualifying Small Enterprises (QSEs) and Large Enterprises and the adverse unintended consequences on Enterprise and Supplier Development;

4.5.2 Effects of very low margins inherent in the oil and gas industry even for non-regulated products/feedstock which a high volume. For example, while crude oil is not regulated, there are restrictions on the margins that can be demanded and sustained;

4.5.3 Prohibition of vertical integration for new entrants which has adverse unintended consequences for independent non refining wholesalers;

4.5.4 The need for set-asides (import of crude and finished product) for independent non refining wholesalers whereas oil majors are still "vertically integrating" through their Black shareholders, forming co-owned entities that are now positioned to compete with independent non-refining wholesalers; and

4.5.5 The uniqueness of the Petroleum and Liquid Fuels Sector;

4.5.5.1 where feedstock (crude) is not locally available; and

4.5.5.2 where supply shortfalls are mitigated with importation of petroleum product.

4.6 To strengthen monitoring, evaluation and enforcement of compliance targets for broad-based black economic empowerment against which all entities conducting business in the sector can be regulated. It will further provide a detailed and substantive plan to the sector to incrementally improve compliance with B-BBEE legislation and policies.

5. RATIONALE FOR ESTABLISHMENT OF A B-BBEE PETROLEUM AND LIQUID FUELS SECTOR TRANSFORMATION CHARTER

5.1 The premise for the alignment is informed by the following identified areas when compared to the B-BBEE policy framework, amongst others:

5.1.1 The B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter does not have clear indicators of the requirements carrying more weight and priority than the other. The B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter is biased towards Ownership, Management Control and Enterprise Development and narrow based. The Sector Code will thus provide for weights, indicators and minimum compliance targets, bonus points/incentives.

5.1.2 The Sector Code will prioritise incentives to address identified sector-specific economic transformation implementation shortcomings for all strategic elements including: all barriers to inclusive transformation in the petroleum and liquid fuels sector; underrepresentation of women, youth and disabled across the value chain; lack of meaningful participation by black people, especially women and youth in the sector and; barriers to access to market despite the promulgation of the licencing regime in the Sector.

5.1.3 Based on the Petroleum and Liquid Fuels Charter Final Audit Report - 5th August 2011", available on http://www.energy.gov.za/files/media/Pub/PetroleumAndLiquidFuelsCharter_AuditReport.pdf the inadequate transformation across the sector, particularly the Petroleum Retail part of the value chain as indicated by the structural impediments to transformation including land ownership; and lease tenure linked to site licence regulation. This should take into account a system of allocation of sites; volumes pumped; strategic location of sites; and equitable ownership in Company Owned Retailer Owned (CORO) sites, in line with section 2E of the Petroleum Products Amendment Act of 2003.

5.1.4 The inadequate transformation across the value chain (e.g. refining, wholesale);

5.1.5 The need to provide for inclusion of Socio-Economic Development with codes for Supportive Culture; Private and Public Sector Procurement; Access and Ownership of

Joint Facilities; Refining Capacity; Sustained Access to Petroleum Retail Network; Financing and; Terms of Credit to black people.

5.1.6 To provide for supply of all products and services including (e.g. importing and supply of Crude Oil) by black people as envisaged in the B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter and is not catered for in the Generic Codes.

5.1.7 Thresholds in the current Generic Codes have unintended adverse consequences in the classifications of entities (EME's and QSE's) within the sector as they disincentivise enterprise and supplier development in the sector.

6. IDENTIFIED RELEVANT PETROLEUM & LIQUID FUELS SECTOR STAKEHOLDER CATEGORIES

6.1 The following stakeholders were identified; however, the list is not exhaustive. Stakeholders with interest are hereby requested to participate in this process:

6.1.1 INDUSTRY BODIES/ ASSOCIATIONS:

6.1.1.1 South African Petroleum Industry Association (SAPIA);

6.1.1.2 South African Petroleum Retailers Association (SAPRA);

6.1.1.3 Fuel Retailers Association (FRA);

6.1.1.4 Liquid Fuel Wholesalers Association (LFWA); and

6.1.1.5 Liquefied Petroleum Gas Safety Association of South Africa (LPGSASA)

6.1.2 RELEVANT CHAMBER OF COMMERCE REPRESENTED IN THE SECTOR

6.1.3 GOVERNMENT DEPARTMENTS WITH JURISDICTION OVER THE SECTOR:

6.1.3.1 Department of Energy

6.1.3.2 Department of Trade and Industry (**the dti**)

6.1.4 LABOUR BODIES AND TRADE UNIONS:

6.1.4.1 CEPPWAWU;

6.1.4.2 SOLIDARITY;

6.1.4.3 NUMSA;

6.1.4.4 SACWU;

6.1.5 INDUSTRY REGULATORS:

6.1.5.1 National Energy Regulator of South Africa (NERSA);

6.1.5.2 National Ports Authority

6.1.6 CIVIL SOCIETY ORGANISATIONS:

6.1.7 INSTITUTIONS OF HIGHER LEARNING:

6.1.7.1 University of Johannesburg Centre for Competition, Regulation and Economic Development (CCRED);

6.1.8 SECTOR EDUCATION AND TRAINING AUTHORITY:

6.1.8.1 CHIETA

6.1.9 STATE OWNED ENTITIES:

6.1.9.1 Transnet

6.1.9.2 CEF Group

7. KEY STAKEHOLDERS WHO ARE PARTICIPATING IN INTERIM STEERING COMMITTEE:

7.1 INDUSTRY ASSOCIATIONS/BODIES:

7.1.1 South African Petroleum Industry Association (SAPIA);

7.1.2 South African Petroleum Retailers Association (SAPRA);

7.1.3 Fuel Retailers Association (FRA);

7.1.4 Liquid Fuel Wholesalers Association (LFWA);

7.1.5 Liquefied Petroleum Gas Safety Association of South Africa (LPGSASA);

7.2 GOVERNMENT DEPARTMENTS WITH JURISDICTION OVER THE SECTOR:

7.2.1 Department of Energy

7.2.2 Department of Trade and Industry

7.3 LABOUR BODIES AND TRADE UNIONS:

7.3.1 CEPPWAWU;

7.4 INDUSTRY REGULATORS:

7.4.1 National Energy Regulator of South Africa (NERSA);

7.5 CIVIL SOCIETY ORGANISATIONS:

7.5.1 WOESA

8. CATEGORIES OF STAKEHOLDERS WHO MUST BE CONSULTED

- 8.1 Key enterprises, corporates within the Petroleum & Liquid Fuels Sector Public Industry Bodies,
- 8.2 Government Department with jurisdiction over the sector
- 8.3 Chamber of Commerce
- 8.4 Labour bodies or the relevant trade unions within the Petroleum and Liquid Fuels sector (e.g. Women in Oil and Energy etc.)
- 8.5 Industry Regulators e.g. NERSA, National Ports Authority
- 8.6 Parliament (Cabinet and relevant Portfolio Committees)
- 8.7 Civil society
- 8.8 Institutions of higher learning
- 8.9 Other relevant players with interest in the sector

9. PROPOSED SECTOR SPECIFIC CODE DEVELOPMENT PROCESS

In line with the Statement 003 Guidelines, the alignment process will follow this order:

- 9.1 Appointment of a Steering Committee
- 9.2 Public Proclamation;
- 9.3 Consultation with Stakeholders;
- 9.4 Negotiation & Drafting;
- 9.5 Submission of a Draft Sector Code for Public Commentary and review;
- 9.6 Analysis of Comments
- 9.7 Submission to **the dti** for ratification; and
- 9.8 **the dti** to publish Sector Code after ratification.

10. STEERING COMMITTEE

A Steering Committee has been established to initiate the process for alignment of the B-BBEE Petroleum and Liquid Fuels B-BBEE Sector Transformation Charter.

11. CONTACT DETAILS

11.1 Members of the public are encouraged to participate in this process by submitting inputs or comments to the following address:

The Secretariat
Steering Committee
B-BBEE Petroleum and Liquid Fuels Sector Transformation Charter

Department of Energy
Private Bag x 96
0001 or
192 Visagie Street
Pretoria
0001

Email address: Petroleumsectorcode@energy.gov.za



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MS MMAMOLOKO KUBAYI, (MP)

MINISTER OF ENERGY

DATE: 13 106/2017