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MINISTRY OF PETROLEUM AND MINING
STATE DEPARTMENT FOR PETROLEUM

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 When replying please quote:
 Ref. No. MOPM/D/CPMF/1/3

THE NATIONAL ASSEMBLY
 OFFICE OF THE PRINCIPAL SECRETARY
 PAPER

ESTABLISHED 1992

DATE: 17 AUG 2021

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TABLED
 by: *deal*
 Date: *20th August, 2021*

CLERK-AT-TABLE:
13/08/21

② Heads Table
to register, cause reference to committee
acknowledged progress 16/8/21

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Office
Tabung

Clerk of the National Assembly
 National Assembly
 Clerk's Chambers
 NAIROBI

Acting: The Committee on Delegated Legislation

RE: THE PETROLEUM DEVELOPMENT LEVY (AMENDMENT) ORDER, 2021

Reference is made to the above matter.

Pursuant to the Statutory Instruments Act, 2013, this Ministry hereby submits the **PETROLEUM DEVELOPMENT LEVY (AMENDMENT) ORDER, 2021** published as Legal Notice 77 of 2021 on 13 May 2021 (enclosed) for consideration by the National Assembly Committee on Delegated Legislation.

After publication and approval of the Petroleum Development Levy Order, 2020, it was discovered that the AGO (Diesel) had been inadvertently omitted from the First Schedule. This Amendment Order of 2021 therefore amends the First Schedule of the Petroleum Development Levy Order, 2020 by inserting AGO (Diesel) and its respective rate of levy.

In addition to the Amendment Order, we hereby enclose the Explanatory Memorandum, Regulatory Impact Assessment, approval of the Petroleum Development Levy Order, 2020 given on 17 February 2021 and relevant materials on the Order.

Andrew N. Kamau

NATIONAL ASSEMBLY RECEIVED
12 AUG 2021
 DEPUTY CLERK
 P. O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY RECEIVED
11 AUG 2021
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 P. O. Box 41842 - 1000, NAIROBI

Copy to:

Hon. John K. Maingi, EGH
Cabinet Secretary
Ministry of Petroleum & Mining
NAIROBI



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

05 AUG 2021

Our Ref: AG/LDD/165/2/5
Your Ref: MOPM/P/21/2

3rd August, 2021

The Principal Secretary
Ministry of Petroleum and Mining
Office of the principal Secretary
Nyayo House
P.O. Box 30582-00100
NAIROBI

RE: THE PETROLEUM DEVELOPMENT LEVY ORDER, 2020

This has reference to your letter dated the 5th July, 2021, under Ref. No. MOPM/P/21/2, and the request for the published copy of the Petroleum Development Levy (Amendment) Order, 2021.

Kindly find enclosed herewith a copy of the published Order. It was published as Legal Notice No. 77 of 2021 on the 13th May 2021 as a Special Issue of the Kenya Gazette.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copy to: Hon. P. Kihara Kariuki
Attorney-General

Mr. Kennedy Ogeto
Solicitor-General

M.N. Nzioka (Mrs.)
Deputy Solicitor-General

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 AUG 2021	DAY: TUESDAY
TABLED BY:	LOM
CLERK-AT THE-TABLE:	Moses Temuna

C. Kamungo, for info.
[Signature]
618

Encl.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0722529995
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SPECIAL ISSUE

589

Kenya Gazette Supplement No. 98

13th May, 2021

(Legislative Supplement No. 35)

LEGAL NOTICE NO. 77

THE PETROLEUM DEVELOPMENT FUND ACT

(Cap. 426C)

IN EXERCISE of the powers conferred by section 3 (1) of the Petroleum Development Levy Fund Act, the Cabinet Secretary for Petroleum and Mining makes the following Order—

THE PETROLEUM DEVELOPMENT LEVY (AMENDMENT)
ORDER, 2021

1. This Order may be cited as the Petroleum Development Levy (Amendment) Order, 2021. Citation.

2. The Schedule to the Petroleum Development Levy Order, 2020, is amended by inserting the following new row immediately after the row containing tariff code 2710.19.29 of the description "other medium oils and preparations"— L.N. 124/2020.

<i>Tariff Code</i>	<i>Description</i>	<i>Rate of Levy (KSh.)</i>
2710.19.31	AGO (Diesel)	5,400 per 1,000 litres at 20°C

Made on the 1st April, 2021.

JOHN K. MUNYES,
Cabinet Secretary for Petroleum and Mining.



MINISTRY OF PETROLEUM AND MINING

**EXPLANATORY MEMORANDUM TO
THE PETROLEUM DEVELOPMENT LEVY (AMENDMENT) ORDER,
2021**

PART I

Name of the Statutory Instrument: **The Petroleum Development Levy (Amendment) Order, 2021**

Name of the Parent Act: **The Petroleum Development Fund Act, 1991**

Enacted Pursuant to: **Section 3(1) of the Petroleum Development Fund Act, 1991**

Name of the Ministry/ Department: **Ministry of Petroleum and Mining**

Gazetted on: **13 May 2021**

Tabled on:

PART II

1.0 Purpose of the Statutory instrument

The regulatory objective and justification of the **Petroleum Development Levy (Amendment) Order, 2021** is to insert AGO (Diesel) and the respective rate of levy in the First Schedule of the **Petroleum Development Levy Order, 2020**.

The Amendment was published following the detection of the inadvertent omission of AGO (Diesel) from the First Schedule of the Order.

The **Petroleum Development Levy Order, 2020** was published as as Legal Notice No. 124 on 10 July 2020.

The **Petroleum Development Levy (Amendment) Order, 2021** was published as Legal Notice 77 on 13 May 2021, but was forwarded to the Ministry of Petroleum and Mining on 3 August 2021.

2.0 Legislative Context

The **Petroleum Development Levy Order, 2020** was published as as Legal Notice No. 124 on 10 July 2020. The Order was considered and approved by the National Assembly Committee on Delegated Legislation at its sitting of 17 February 2021 and communicated *vide* letter NA/AA&OSC/CDL/CORR/2021/015 of even date.

Upon publication and approval of the Order, it was discovered that AGO (Diesel) was omitted from the First Schedule. The **Petroleum Development Levy (Amendment) Order, 2021** therefore rectifies the omission by inserting the following row:

2710.19.31	AGO (Diesel)	5,400 per 1,000 litres at 20°C
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3.0 Consultation

During the development of the **Petroleum Development Levy Order, 2020**, engagements were held with relevant stakeholders as evidenced in the following documents, copies whereof were reviewed by the Committee in February 2021:

- i. Article by the Kenya Private Sector Alliance summarising a meeting with the Ministry on 13 March 2020;
- ii. Annex 9 of the cost of services study showing an attendance for the study's stakeholder forum on 28 September 2017;
- iii. Petroleum Pump Pricing presentation;
- iv. Meeting Notes on Macro Crude Oil Trends / Crisis;
- v. Other relevant documentation.

5.0 Impact

Passing of the Amendment will ensure that AGO (Diesel) is lawfully included in the First Schedule of the Order thereby closing any lacuna in levying the product.

6.0 Contact

The contact below can answer any queries regarding this statutory instrument.

Charles Kamunya
Ministry of Petroleum and Mining
charles.kamunya@petroleum.go.ke

REGULATORY IMPACT STATEMENT (RIS)

THE PETROLEUM DEVELOPMENT LEVY (AMENDMENT) ORDER, 2021

AUGUST, 2021

Introduction

The Regulatory Impact Statement for the Petroleum Development Levy (Amendment) Order, 2021 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 2013 (No. 23 of 2013). Section 6 of the Act requires the regulation making authority to prepare a regulatory impact statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Sections 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

1.0 A Statement of the Objectives and Reasons for the Proposed Petroleum Development Levy (Amendment) Order, 2021

The regulatory objective and justification of the Amendment is to ensure that AGO (Diesel) is lawfully included in the First Schedule of the Petroleum Development Levy Order, 2020 thereby closing any lacuna in levying the product.

2.0 Statement on the Effect of the Proposed Levy Order

The Amendment is not expected to have any adverse effect in the petroleum public or private sector because levying of AGO (Diesel) has been in effect since the commencement of the Petroleum Development Levy Order, 2020 in July, 2020.

3.0 Statement on Regulatory and Non-Regulatory Options

3.1 Option 1: Maintaining the *Status Quo*

Maintaining the status quo exposes a potential lacuna in law, given that all other petroleum products are included in the First Schedule to the Petroleum Levy Order, 2020.

3.2 Option 2: Passing the Amendment

Passing and operationalization of the Amendment will properly bring the levying of AGO (Diesel) under the Petroleum Development Levy Order, 2020.

4.0 Recommendations

~~The Regulatory Impact Assessment recommends approval and operationalization of the~~
Petroleum Development Levy (Amendment) Order, 2021.

REPUBLIC OF KENYA

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NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref:NA/AA&OSC/CDL/CORR/2021/015

17th February, 2021

Mr. Andrew Kamau, CBS
Principal Secretary
State Department for Petroleum
Ministry of Petroleum & Mining
P.O. Box 30582-00100
NAIROBI

Dear Mr Kamau

RE: APPROVAL OF THE PETROLEUM DEVELOPMENT LEVY ORDER, 2020 (LEGAL NOTICE NO. 124 OF 2020)

Reference is made to your letter Ref:MOPM/P/21/2 dated 14th July, 2020 submitting the Petroleum Development Levy Order, 2020 (Legal Notice No. 124 of 2020) for parliamentary approval.

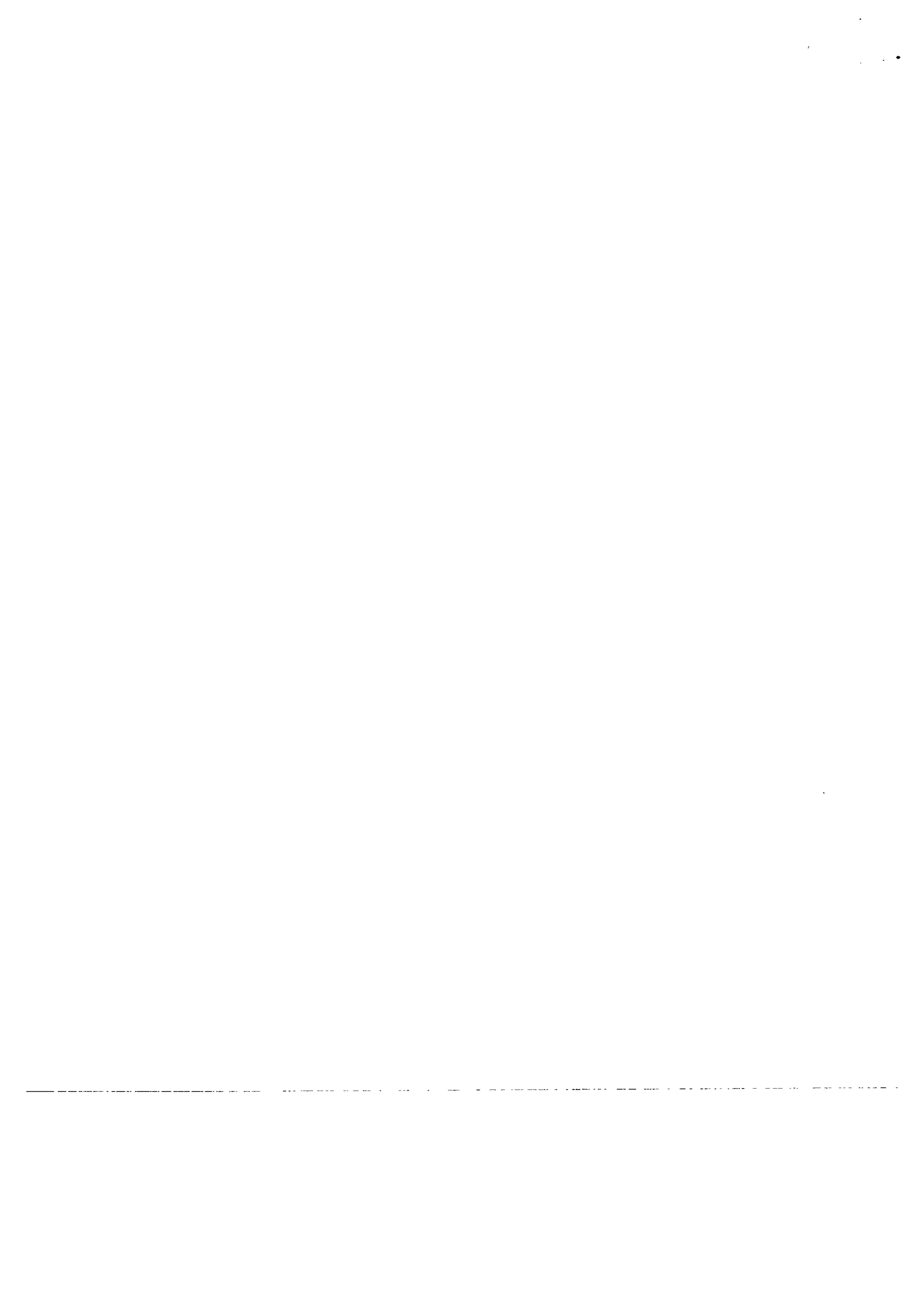
The purpose of this letter is to inform you that the Committee on Delegated Legislation at its sitting held on 17th February, 2021 satisfied itself that the **Petroleum Development Levy Order, 2020 (Legal Notice No. 124 of 2020)** is in accord with the Constitution of Kenya, the Interpretation and the General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No. 23 of 2013*) and the Petroleum Development Fund Act (*No. 4 of 1991*) pursuant to which it is made.

This is, therefore, to convey the resolution of the Committee, in accordance with Standing Order 210(4) (a) of the National Assembly and the Statutory Instruments Act, 2013 that the above instrument as gazetted be and is hereby **acceded to.**

Yours

A handwritten signature in black ink, appearing to be 'J. Ndombi'.

JEREMIAH W. NDOMBI
For: CLERK OF THE NATIONAL ASSEMBLY



SPECIAL ISSUE

1535

Kenya Gazette Supplement No. 116

10th July, 2020

(Legislative Supplement No. 75)

LEGAL NOTICE No. 124

THE PETROLEUM DEVELOPMENT FUND ACT, 1991

IN EXERCISE of the powers conferred by section 3(1) of the Petroleum Development Fund Act, 1991, the Cabinet Secretary for Petroleum and Mining makes the following Order—

THE PETROLEUM DEVELOPMENT LEVY ORDER, 2020

This Order may be cited as the Petroleum Development Levy Order, 2020 and shall come into operation on 15th July, 2020.

1. In this Order, unless the context otherwise requires—

“Authority” means the Energy and Petroleum Regulatory Authority established under the Energy Act, 2019.

“collector” means the Commissioner of Customs and Excise;

“levy” means the Petroleum Development Levy imposed by paragraph 2;

“cabinet secretary” means for the time being the Cabinet Secretary in charge of petroleum

“oil marketing company” means a person licensed under the Petroleum Act, 2019 to import petroleum products into Kenya;

“petroleum fuels” means petroleum products listed in the First Schedule;

“petroleum development fund” means a fund created under section 4 of the Petroleum Development Fund Act, 1991;

“remitter” means an oil marketing company registered by the collector.

2. There shall be paid a levy on all petroleum fuels consumed in Kenya with a tariff code and description specified in the first and second columns, respectively, of the First Schedule, at the rates specified in relation thereto in the third column of that Schedule.

3. The levy shall be paid to the Petroleum Development Fund.

4. The levy shall also be used for matters relating to the development of the oil industry including to stabilize local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority. The Cabinet Secretary may by writing to the administrator, request for a draw down from the Petroleum Development Fund to stabilize local petroleum pump prices where he deems it necessary.

5. An oil marketing company shall on or before the last day of the month immediately following the month in which he becomes an oil marketing company register with the collector as a remitter.

6. A person registered as a remitter who ceases either permanently or temporarily to be an oil marketing company shall, within thirty days of so ceasing, notify the collector accordingly in writing specifying the reasons for his ceasing to be a remitter.
7. (a) The remitter shall pay the levy to the collector immediately at the time of importation of petroleum fuel.
- (b) The collector shall maintain records of importation of petroleum fuels and submit to the Cabinet Secretary a monthly return of payment of the levy received during the month.
- (c) The collector shall remit to the Petroleum Development Fund all the levy paid during the month.
8. Without prejudice to any other form of remedy, any monies payable under this Order that remains unpaid for a period of thirty (30) days after the date that the same ought to be paid shall be recoverable summarily by the collector as a civil debt due and payable to the Petroleum Development Fund.
9. Notwithstanding the provisions of paragraphs 6 and 7, if a remitter fails to pay an amount payable by way of a levy within the time prescribed by this Order a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.
10. The Petroleum Development Order, 1992 is revoked.

JOHN K. MUNYES.

Cabinet Secretary for Petroleum and Mining.

FIRST SCHEDULE

<i>Tariff Code</i>	<i>Description</i>	<i>Rate of Levy (KSh.)</i>
2709.00.10	Condensates	5,400.00 per 1,000 litres at 20°C
2710.00.21	Aviation spirit (gasoline)	5,400.00 per 1,000 litres at 20°C
2710.00.22	Motor spirit (gasoline), premium	5,400.00 per 1,000 litres at 20°C
2710.00.24	Jet fuel (spirit type)	5,400.00 per 1,000 litres at 20°C
2710.00.25	Special boiling point spirit and white spirit	400.00 per 1,000 litres at 20°C
2710.00.29	Other light petroleum oils and preparations	400.00 per 1,000 litres at 20°C
2710.00.32	Kerosene	400.00 per 1,000 litres at 20°C
2710.00.39	Other medium petroleum oils and preparations	5,400.00 per 1,000 litres at 20°C
2710.00.41	Diesel oil (industrial, heavy, black, for low speed marine and stationery engines)	5,400.00 per 1,000 litres at 20°C
2710.00.43	Other gas oil	5,400.00 per 1,000 litres at 20°C
2710.00.44	Residual fuel oils (marine furnace similar fuel oils engines) of 125 cSt	400.00 per 1,000 litres at 20°C
2710.00.45	Residual fuel oils of 180 cSt	400.00 per 1,000 litres at 20°C
2710.00.46	Residual fuel oils of 280 cSt	400.00 per 1,000 litres at 20°C
2710.00.47	Other residual fuel oils	400.00 per 1,000 litres at 20°C
2711.11.00	Liquefied natural gas	400.00 per 1,000 litres at 20°C
2711.12.00	Liquefied propane	400.00 per 1,000 Kg at 20°C
2711.13.00	Liquefied butanes	400.00 per 1,000 Kg at 20°C
2711.14.00	Liquefied ethylene, propylene, butylenes and butadiene	400.00 per 1,000 Kg at 20°C
2711.19.00	Other liquefied petroleum gases	400.00 per 1,000 Kg at 20°C
2711.21.00	Natural gas in gaseous state	400.00 per 1,000 Kg at 20°C
2711.29.00	Other petroleum gases	400.00 per 1,000 Kg at 20°C
2713.20.00	Petroleum bitumen	400.00 per 1,000 Kg at 20°C
2713.90.00	Other residues of petroleum oil or oils obtained from bituminous minerals	400.00 per 1,000 Kg at 20°C
2714.10.00	Bituminous or oil shale and tar sands	400.00 per 1,000 Kg at 20°C
2714.00.00	Bitumen and asphalt or asphalts and asphaltic rocks	400.00 per 1,000 Kg at 20°C
2715.00.00	Bituminous mixtures	400.00 per 1,000 Kg at 20°C