

**THE WATER SUPPLY AND SANITATION ACT
(CAP 272)**

**THE WATER SUPPLY AND SANITATION (PRIVATE BOREHOLES SERVICES) RULES,
2013**

(Made under section 28(1) (m))

ARRANGEMENT OF RULES

**PART I
PRELIMINARY PROVISIONS**

1. Citation
2. Application
3. Interpretation

**PART II
REGISTRATION AND DEREGISTRATION PROCEDURES**

4. Obligation to Apply for a Registration
5. Offence
6. Deregistration Procedures
7. Offence

**PART III
OBLIGATIONS OF THE PARTIES**

8. Obligations of an Operator
9. Obligation of a Licensee

**PART IV
TARIFFS**

10. Tariff Application Procedures
11. Appeal
12. Offence

**PART V
GENERAL PROVISIONS**

13. Compensation for Existing Infrastructure
14. Inspection
15. Offence

16. Transitional Provisions
17. General Penalty
18. Authority to Supplement Procedures

SCHEDULES

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PART I
PRELIMINARY PROVISIONS

Citation **1.** These rules may be cited as the Water Supply and Sanitation (Private Boreholes Services) Rules, 2013 and shall come into operation on the date of publication in the *Gazette*.

Application **2.** – (1) These rules shall, subject to the provisions of sub-rule (2), regulate the operations of private borehole services including the procedures for the registration and deregistration of private borehole operators in a licensed area.

(2) Save for the obligations mentioned under rule 8 (a), (b), (c) and (f) these rules shall not apply to persons having a private borehole for own use.

Interpretation **3.** In these rules, unless the context otherwise requires:

- Cap 273 “Act” means the Water Supply and Sanitation Act;
- “applicable law” means any principal law, rule, order, by-law or any other written law which is relevant to matters pertaining to rule of the operations of private borehole services, water resources management and water quality;
- “Authority” means the Energy and Water Utilities Regulatory Authority established under the provisions of the EWURA Act;
- “borehole” means a deep hole drilled into the ground to obtain water from an underground aquifer;
- “cap price” means the maximum price per cubic meter of water to be charged for the supply of water by an operator to a customer as approved by the Authority;
- "certificate of registration" means a certificate issued by a licensee to an operator upon registration under rule 4 (5) and shall be as prescribed in the

First Schedule;

“customer” means any person who is supplied with water by an operator from a borehole;

Cap. 414

“EWURA Act” means the Energy and Water Utilities Regulatory Authority Act;

“Guidelines” means the instructional manual prepared by the Authority to regulate the operations of borehole services in a licensed area;

“inspector” means an officer of a licensee authorized to act as such;

“licensee” means a Water Supply and Sanitation Authority or any other entity licensed by the Authority to provide water supply and sanitation services;

“licensed area” means an area in which a licensee is authorized to provide water supply and sanitation services;

“operator” means any person who supplies water to a customer from a borehole;

"storage facility" means a container constructed or manufactured from materials which does not affect water quality stored in it before distribution;

“tariff” means any charge, fee, price or rate charged for the provision of the services as shall be approved by the Authority;

Cap. 285

“Tribunal” means the Fair Competition Tribunal established under the provisions of the Fair Competition Act; and

"Water Use Permit" means any permit to use or divert, dam, store, abstract or use water from surface or underground water source registered under the provisions of the Water Resources Management Act and may also mean a water right issued under the Water Utilization (Control and Rule) Act.

PART II REGISTRATION AND DEREGISTRATION PROCEDURES

Obligation to
Apply for
Registration

4. - (1) No person shall supply water in a licensed area using a borehole unless such borehole is registered by a licensee pursuant to the provisions of these rules.

(2) Without prejudice to the provisions of sub-rule (1), any existing operator shall, within three months after coming into force of these rules, apply to a licensee for registration of each borehole under the provisions of these rules.

(3) An application for registration under sub-rules (1) and (2) shall be in the form prescribed by a licensee and shall contain the following:

- (a) the applicant's full name, business address, telephone and fax numbers, email address, and web page address (if available);
- (b) technical details of a borehole;
- (c) a certified copy of Water Use Permit, if applicable;
- (d) certified copies of the latest water quality tests undertaken by the Ministry, Tanzania Bureau of Standards or any accredited laboratory; and
- (e) a non-refundable application fee of TZS 100,000 per borehole or such other amount as the Authority shall from time to time prescribe.

(4) A licensee shall, upon receipt of an application under sub-rule (3) and satisfying itself to the completeness of the application, evaluate such application by taking into account:

- (a) its compliance with applicable law;
- (b) the applicant's past records;
- (c) borehole's compliance with technical requirements as prescribed in the Second Schedule;
- (d) the capacity of a borehole; and
- (e) the water quality standards applicable in Tanzania.

(5) The operator shall, after the conclusion of evaluation of the application under sub-rule (4), approve, refer back or deny the application.

(6) A licensee shall,

- (a) where it has approved the application, issue a certificate of registration; and
- (b) where it has referred back or denied the application, notify the applicant in writing, including reasons for such referral or denial.

(7) Where the applicant is not satisfied with the licensee's decision under sub-rule (6), he may lodge a complaint with the Authority for determination.

(8) An operator shall, upon approval of the application and issuance of the certificate of registration by a licensee under sub-rule (6), be deemed to be an

agent of the licensee.

(9) An operator shall, at all times, comply with the terms and conditions contained in the certificate of registration.

(10) The period of registration under sub-rule (6) shall be two years and may be extended for a similar term upon application by an operator.

Offence

5. Any person who contravenes the provisions of sub-rules (1) and (2) of rule 4 commits an offence and shall, upon conviction, be liable to a fine not exceeding one hundred and fifty thousand shillings or imprisonment for a term of one month or to both.

Deregistration
Procedures

6. – (1) A licensee may deregister a borehole where it is found that:

- (a) the quality of water from the said borehole no longer complies with the Tanzania's Water Quality Standards for drinking water;
- (b) the continued operation of the borehole is hazardous to environment and it poses danger to lives and properties;
- (c) the applicant has provided false or inaccurate information related to the operation and technical details of the borehole;
- (d) the operator has ceased to carry out water supply business;
- (e) the operator sells water at a price which is above the cap price; or
- (f) the operator has failed to carry out its obligations under these rules and the Guidelines.

(2) Any operator whose borehole has been deregistered under this rule shall surrender to a licensee the certificate of registration and shall thereafter cease to provide water supply service using the said borehole.

(3) Any borehole that has been deregistered shall not be eligible for registration for a period of twelve months from the date of deregistration.

Offence

7. Any operator who shall continue providing water supply services using a borehole that has been deregistered by a licensee under rule 6 commits an offence and shall, upon conviction, be liable to a fine of one hundred and fifty thousand shillings or imprisonment for a term of one month or to both.

PART III
OBLIGATIONS OF THE PARTIES

Obligations of
an Operator

- 8.** An operator shall, at all times during the registration period:
- (a) supply to a customer clean and safe water which comply to Tanzania's water quality standards for drinking water;
 - (b) ensure that all pipes, fittings and removable equipment connected to the borehole are maintained in such a way as to prevent contamination during the supply of water;
 - (c) provide all necessary assistance to an inspector to facilitate inspection of a borehole;
 - (d) display a certified copy of the registration certificate and a poster indicating the cap price in a conspicuous place adjacent to a borehole;
 - (e) on an annual basis, carry out and report water quality tests regarding pH, turbidity, faecal coliforms, fluoride, iron, manganese and salinity to a licensee and as shall be directed by the licensee from time to time;
 - (f) at all times ensure that a borehole meets the technical requirements set out in the Schedule;
 - (g) ensure that a borehole has a mechanism to measure water level; and
 - (h) comply with:
 - (i) Orders and directions of the Authority;
 - (ii) Orders and directions of a licensee;
 - (iii) applicable law;
 - (iv) these rules and the Guidelines; and
 - (v) applicable codes and standards.

Obligations of a
Licensee

9. – (1) A licensee being the principal of an operator shall ensure that during the registration period the operator performs its obligations under these rules and the Guidelines.

(2) Notwithstanding the generality of sub-rule (1), a licensee shall, during the registration period:

- (a) monitor the quality of water supplied by an operator;
- (b) submit to the Authority quarterly reports on performance of operators;
- (c) respond to customer complaints with regards to water supply services by operators;
- (d) monitor the price of water supplied by an operator; and
- (e) on annual basis publish, in news papers of wide circulation both in Kiswahili and English newspapers, a list of all operators, including

their telephone numbers, business addresses and location.

PART IV

TARIFFS

Tariff
Application
Procedures

10. – (1) A licensee shall, on its own motion or upon receipt of a request from the licensee or an operator submit a proposed tariff pursuant to this Part.

(2) Notwithstanding the provisions of sub-rule (1), a licensee shall, at least once after every 24 months submit to the Authority an application for tariff review for borehole services, provided, that no application for tariff review shall be made within twelve months from the date of the last approval.

(3) Subject to sub-rule (1), a licensee shall conduct a consultative meeting with operators before submitting a proposed tariff to the Authority.

(4) The tariff application by a licensee shall be in a form of a letter addressed to the Director General of the Authority and shall be supported by the following:

- (a) written justification of the proposed tariff and the proposed effective date;
- (b) minutes and signatures of the attendees of the consultation meeting(s);
- (c) detailed computation in Microsoft Excel format which demonstrate how the proposed tariff was reached; and
- (d) detailed benefits that the customers shall get out of the proposed tariff.

(5) The Authority shall, upon receipt of the application under sub-rule (4), evaluate such application in order to satisfy itself as to the correctness and completeness of the application and thereafter shall conduct an Inquiry pursuant to Section 19 of the EWURA Act.

(6) The Inquiry under sub-rule (5) shall be concluded within 45 days after receipt of a complete application.

(7) After the conclusion of the inquiry the Authority shall set the tariff which shall be in a form of a cap price which shall thereafter be published in the *Gazette*.

(8) The Authority shall, on quarterly basis, publish in newspapers of wide circulation, both in English and Kiswahili, the prevailing cap price.

Appeal **11.** Any person who is aggrieved by the decision of the Authority under rule 11 (7) may appeal to the Tribunal under the provision of the Fair Competition Act.

Offence **12.** Any operator who sells or offers for sale water at a price above the cap price, commits an offence and shall, on conviction, be liable to a fine of one hundred and fifty thousand shillings or imprisonment for a term of one month or to both.

PART V GENERAL PROVISIONS

Compensation for Existing Infrastructure **13.** – (1) In the event a licensee start to provide water supply service to an area with limited or no supply, all operators in the said area, shall cease to provide borehole services to customers in the said area; and the licensee shall, subject to the provisions of sub-rule (2), be at liberty to use the existing infrastructure owned by the said operators.

(2) A licensee shall, in the event it decides to use the existing borehole and infrastructure owned by an operator, compensate the said water operator at the amount that as shall be agreed upon by the parties and approved by the Authority.

Inspection **14.** – (1) An inspector may as per the instructions from a licensee inspect a borehole and any document necessary for the supply of water services; and an operator shall render all required assistance in the course of such inspection.

(2) During inspection, an inspector may:

- (a) make copies or take extracts from any such book, accounts or records kept by an operator; and
- (b) inspect machinery, equipment, appliances, meters, fittings and apparatus.

(3) Notwithstanding the provisions of sub-rule (1), the Authority may, at any time, inspect a borehole and request for any document necessary for the supply of water services by a borehole and take any appropriate action as required by these rules, the Act and the EWURA Act.

(4) Where upon investigation a licensee concludes that an operator has not complied with any condition of these rules, the Act, the EWURA Act or other applicable law, a licensee may:

- (a) take appropriate actions as provided under these rules including deregistering a water tanker; or
- (b) take such other actions as it deems appropriate to protect the interests

of customers.

Offence

15. Any operator who:

- (a) hinders or obstructs the Authority or an inspector in the exercise of any of the powers conferred upon him by these rules, the Act and applicable law;
- (b) uses abusive, threatening or insulting language to an inspector;
- (c) refuses or fails to comply with any order or direction of an inspector; and
- (d) when required by the Authority or an inspector to answer a question, refuses or fails to answer such question to the best of the operator's knowledge, information and belief,

commits an offence and shall, upon conviction be liable to a fine of one hundred and fifty thousand shillings or imprisonment for a term of two months or to both.

Transitional Provisions

16. Any person who is providing borehole services in a licensed area shall within six months after coming into force of these rules, adjust his operations and upgrade his borehole and the associated infrastructure in order to comply with the provisions of these rules.

General Penalty

17. - (1) Any person who is in breach of any provision of these rules for which no specific penalty is prescribed shall be liable to a fine of one hundred and fifty thousand shillings or imprisonment for a term of six months or to both.

(2) An operator who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions concern borehole services.

Authority to Supplement Procedures

18. Where procedures are not provided for in these rules, the Authority may do whatever is necessary and permitted under the Act, the EWURA Act and applicable law to enable it to effectively and completely adjudicate on the matter before it.

FIRST SCHEDULE

Certificate of Registration

(Made under Rule 3)

SECOND SCHEDULE

Technical Requirements of a Borehole

(Made under Rule 8 (f))

A borehole shall:

- (a) be located in a manner that it can allow adequate access for inspection, maintenance, repair, renovation, water treatment and testing;
- (b) have a minimum depth of twenty meters;
- (c) not be within a radial distance of 50 meters from cattle watering pools, latrines, soak pits and other health hazards. Any pit-waste (solid waste) should be placed downstream of the well to avoid contamination of the water by leachate;
- (d) be located in a place which is not subject to seasonal flooding or surface water contamination and it shall be constructed in such a manner that seasonal flood will not get into it;
- (e) unless otherwise required, be located upgradient of any potential or known source of contamination;
- (f) have a concrete slab with a minimum thickness of 15 cm constructed around the well casing and shall extend at least sixty (60) centimeters in all directions, sloping away from the well casing;
- (g) have a well casing extending at least thirty centimeters above the concrete slab of the floor;
- (h) in case a submersible pump is used, have the top of a casing effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables;
- (i) have a discharge piping:
 - (i) equipped with a check valve, a shutoff valve, a pressure gauge and a means of measuring flow (water meter);and
 - (ii) provided with a raw water sampling tap prior to the well discharge pipe check; and
- (j) be connected to a storage facility.

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Haruna Masebu
Director General