# INDUSTRY HIGHLIGHTS:

## NUPRC Moves to Enforce Domestic Crude Supply Obligations of Lessees and Licensees in the Nigerian Upstream Petroleum Industry

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## Introduction

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) has communicated its resolve to enforce the domestic crude oil supply obligations to ensure adequate supply of crude oil to domestic refineries. This was revealed at a stakeholders' meeting between NUPRC and oil producers on 1 November 2023.

NUPRC enjoined the crude oil producers to provide the details of their committed and uncommitted barrels in order to enhance transparency and accountability. NUPRC's resolve to enforce the domestic crude supply obligation is aimed at addressing the current challenges of availability of feedstock for local refiners.

## The Domestic Crude Supply Obligation

The Petroleum Industry Act 2021 (PIA) empowers NUPRC to impose Domestic Crude Supply Obligations (DCSO) on upstream operators, licensees and lessees[1] with the power to mandate the allocation of a specified percentage of their produced crude oil and condensate for sale in the domestic market.[2]

The sale to domestic market in fulfilment of DCSO by lessees is subject to the following conditions:[3]

i. crude oil may only be sold to operating refineries ("qualified buyer");

ii. the price for crude oil will be subject to negotiations, having regard to the prevailing international crude oil prices;

iii. crude sales may be subject to payment guarantees as agreed by the parties; and

iv. payment for crude oil supplied may be in United States Dollars or Naira, as may be agreed by the parties.

## The Production Curtailment and Domestic Crude Supply Obligations Regulations 2023

The NUPRC[4] issued the **Production Curtailment and Domestic Crude Supply Obligations Regulations 2023 ("the Regulations)** on 24 May 2023 to provide a mechanism for the enforcing domestic crude supply obligations on upstream petroleum operations, including applicable penalties for non-compliance, amongst others.

Some key provisions of the Regulations are discussed below:

i. **Imposition of the domestic crude supply obligation (DCSO):**

Every upstream production is subject to a DCSO to be imposed by the NUPRC, and crude production above the relevant DCSO maybe exported without restriction, subject to applicable laws.

The Regulations empower NUPRC to make the satisfaction of the DCSO a pre-condition for the grant of crude oil export license as follows: (a) all applications for crude export permit must be processed and endorsed by NUPRC; (b) approval of export permits shall involve a consideration of the production quota allocated by NUPRC vis-a-vis any DCSO of the lessee; (c) NUPRC shall not approve any export permit which may violate a DCSO.[5]

ii. **Publication of Crude Refining Requirements:**

The Regulations mandate NUPRC to publish, on a bi-annual basis, on its official website and in three national dailies the domestic crude refining requirements of all operating refineries in Nigeria based on the information provided by the Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).

1 For the purpose of this article, we shall refer to lessees and licensees are lessees for ease of reference.
2 Section 109 of the PIA
3 Section 109(4) of the PIA
4 Pursuant to its powers under Section 109(2) of the PIA
5 Regulation 9

The aforementioned publication shall include the following details: (a) total number of operating refineries in each period; (b) name plate crude requirement of each refinery; (c) annual forecasted daily crude requirement of each refinery in each period; (d) name and location of each refinery; and (e) crude specification or grade for each refinery.

NUPRC shall also provide information on its website at the time of the publication of information on the operating refineries, on: (a) upstream production forecasts for the same period based on a daily rate; (b) their name, location and terminal stream; (c) names of the operator, licensee or lessee; (d) crude specification or quality produced.

iii. **NUPRC to issue Request for Quotations to all licensees in event of shortage:**

Under the PIA, the NMDPRA has the duty to notify NUPRC of supply shortfalls of crude oil to local refineries or the existence of inadequate crude oil supply to local refineries.[6] Upon receipt of such notification, NUPRC shall issue a Request for Quotations (RFQ) to all upstream operators requesting the submission of quotations for supply of crude to meet the shortfall in supply.[7]

The RFQ shall indicate: (a) the required volume of crude; (b) the location for the supply and the crude oil specification or grade; (c) the price at which the crude will be supplied; (d) timeline for responses.

Where NUPRC receives a response to an RFQ, it shall communicate same to the available refinery and this shall be the basis of a crude supply contract on a willing buyer, willing seller basis.[8]

NUPRC may impose an obligation on a licensee or lessee to supply the crude volumes required where parties fail to consummate the crude supply transaction or due to insufficient quantities or unreasonable demands of seller.[9] The NUPRC will not impose an obligation where it is satisfied that the failure to enter into the contract on willing buyer, willing seller terms is due to the unreasonable behaviour of a buyer.[10] NUPRC shall notify NMDPRA of its decision.

iv. **Conditions for imposition of obligation to supply:**

The NUPRC will identify and select the upstream operators to supply crude based on: (a) proximity and accessibility of the upstream production to the refinery's location; and (b) the crude specification meeting the refinery's grade requirements.[11]

Where more than one upstream producer meets the above criteria, NUPRC shall allocate volumes to each producer based on the weighted proportion of its total production, taking into consideration any existing DCSO, their export commitment and production quotas. [12]

v. **Domestic Sale of Crude Oil:**

The Regulations provide that a licensee or Lessee with DSCO can only sell its allotted volumes of crude oil to the specific refinery nominated by NUPRC. The crude supply contract may include payment guarantees and upstream sellers may stipulate acceptable potential acceptable guarantors.[13]

DCSO obligations must be satisfied before crude export permits can be issued in a given quarter. However, where there is no demand by any operating refinery in a relevant quarter, this restriction will not apply.

6 Regulation 11
7 Regulation 12
8 Regulation 12(3)
9 Regulation 12(4)
10 Regulations 12(5)
11 Regulation 13(1)
12 Regulation 13(2)
13 Regulation 14

vi. **Periodic reporting:**

Every operator with DCSO shall submit a monthly report to NUPRC on their compliance and utilisation of production in terms of DCSO and their crude export. The report shall contain: (a) the details of the refinery crude was sold to; (b) name and location of the refinery; (c) volume of crude sold; (d) price of crude oil sold; (e) date of sale; (f) mode of transportation; (g) dates of loading and discharge of crude; (h) points of loading and discharge; (i) quantity of crude discharged; and any other relevant information.

A lessee shall in addition to other obligations imposed under the Regulations, include in its monthly report to NUPRC, any failure or underutilisation of its production quota within the period covered by the report.[14]

vii. **General administration of Domestic Crude Supply Obligations:**

The Regulations mandate NUPRC to manage the DCSO regime by putting in place measures to ensure that: (i) local refineries are notified of DCSO crude oil volumes allocated for supply in each quarter and; (ii) the terms and conditions for sale of allocated crude oil to local refineries with respect to pricing, payment guarantees, and currency of payment are well publicised to all refineries.

viii. **Penalty for non-compliance:**

The Regulations empower NUPRC to impose the following administrative fines on non-complying licensee and lessees:

1. Fine of $10,000 (Ten Thousand US Dollars) for failure to submit a response to a RFQ or submission of response to RFQ outside the timeline indicated in the RFQ.

2. Payment of an amount equivalent to 15% of fiscal price[15] of the imposed DCSO volume for: (a) failure to enter into a contract for delivery of DCSO volumes; or (b) failure to deliver under a contract for supply of DSCO volumes (except in event of force majeure; default of buyer under the crude supply contract or any other reason acceptable to NUPRC).

## The implication of current developments in the Nigerian oil and gas industry

NUPRC's recent intervention is aimed at ensuring adequate supply of crude and condensate to local refiners in Nigeria. The Regulations have been commended by industry watchers and stakeholders particularly the Crude Oil Refineries Association of Nigeria (CORAN) which has welcomed the development as a firm step towards expanding local refining capacity from the current 27,000 barrels per day to about 400,000 barrels per day.

This development signals NUPRC's readiness to implement the relevant provisions of the PIA and the Regulations. The NUPRC has taken a further step by issuing a directive requiring some producing licensee and lessees to supply 483,000 barrels per day to local refineries in Q1 and Q2 of 2024. This directive is based on projections that four refineries will commence operation in Nigeria in 2024.

Notwithstanding the fact that the renewed enforcement of the DCSO is well intentioned, there is the need to balance the domestic crude supply regime with typical investment realities as most producers may have committed their crude production elsewhere under funding terms. It is therefore important to ensure that regulatory oversight on the DCSO does not inadvertently cause contract defaults for operators and investors.

NUPRC should therefore intensify stakeholder engagements in the upstream petroleum sector. We envisage that the DCSO will also require an increase in crude production which means more funding is needed, as well as synergy in regulatory and operating environment.

14 Regulation 8

15 The Regulations defines fiscal price as prices determined by the Commission for the computation of royalty.

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