GUIDELINES FOR THE OPERATIONALISATION OF DOMESTIC CRUDE OIL SUPPLY OBLIGATION

ISSUED BY

NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION

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Contents

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1 INTRODUCTION

1.1 Purpose & Scope

The purpose of this document is to provide the general guidelines for the implementation of the Domestic Crude Oil Supply Obligation.

These Guidelines are made pursuant to Section 109 of the Petroleum Industry Act, 2021 and **Part III and IV** of the Production Curtailment and Domestic Crude Oil Supply Obligations Regulations 2023. It provides the mechanism for the imposition of Domestic crude oil supply obligations.

These Guidelines are applicable to all Nigerian crude Lessees and Licensed Domestic Refineries.

1.2 Definition of Terms

1.2.1 *Banking Days*

Means the days when banks in Abuja, London and New York are open for business (New York being for payment purposes only).

1.2.2 *Bank Guarantee*

Means the guarantee given by the bank on behalf of the applicant to cover a payment obligation to a third party.

1.2.3 *Business Day (s)*

Means the days when banks in Abuja, London and New York are open for business.

1.2.4 *Crude Oil*

Means crude oil or condensate or blend of both produced by the licensee or lessee from the lease area

1.2.5 *DCSO - Domestic Crude Oil Supply Obligations*

Means the obligations of an upstream crude oil producer (Lessee) to dedicate a specific volume of produced crude oil towards the domestic refineries as stipulated in **Section 109** of the Petroleum Industry Act.

1.2.6 ***Default of Payment***

has the meaning ascribed in the Supply and Purchase Agreement (SPA) between the Lessee and the Refiner

1.2.7 ***Delivery Window***

Means agreed-upon period during which the deliveries of crude oil from the facility of the producer to the refineries via pipeline, barging and trucking are scheduled to occur.

1.2.8 ***Laycan***

Means an advised 2-Day period commencing from 0001 hours on the first Day of date-range and terminating at 2359 hours on the last Day of such date-range within which Refiners' nominated Vessel, shall arrive at the Loading Terminal

1.2.9 ***Loading Terminal***

Means, for the purposes of Crude Oil delivery under these Guidelines, the berth, dock, anchorage, submarine line, single point or single berth mooring facility, off-shore location, alongside vessels or lighters or any other place within Nigeria at which Crude Oil is to be delivered under these guidelines.

1.2.10 ***Force Majeure***

has the meaning ascribed in the SPA

1.2.11 ***"M"***

means the Month of lifting/offtake.

1.2.12 ***Letter of Credit***

Means a Documentary letter of credit to be procured by the Refinery issued by Lessee's approved bank, which shall guarantee Refinery's commitment of payment to Lessee in the event of Refinery's default after lifting the crude oil on the terms of Commercial Agreement.

1.2.13 ***SSHINC***

Means Saturday, Sunday, Holiday, inclusive.

1.2.14 ***The Act***

Means Petroleum Act of 2021 or its subsequent amendments

1.2.15 ***The Regulation***

Means Production Curtailment and Domestic Crude Oil Supply Obligation Regulations of 2023 or its subsequent amendments

1.2.16 ***ETA***

Means the estimated time of arrival of the Vessel at the Loading Terminal.

1.2.17 ***Shortages / Inadequate Supply Conditions:***

Inability of an operating refinery to secure planned monthly crude oil requirement from domestic producer(s).

1.2.18 ***Smaller output capacity***

Means refinery with processing capacity of **50,000 bpd** or below.

2 MECHANISM FOR THE IMPOSITION OF DOMESTIC CRUDE OIL SUPPLY OBLIGATIONS

2.1 The imposition of DCSO on a lessee shall be based on the following assumptions-

2.2 Operating refineries, relying on information provided by the Commission pursuant to **Regulation 10(1), (2), (3)** and the provisions of **Regulation 10 (4)** of the Regulation, source for and negotiate for crude oil supply for use in their refineries from lessees.

2.3 Price for crude supply to domestic refineries by the lessee are mutually negotiated and agreed taking into consideration the Fiscal Oil price differentials published by the Commission for the relevant month being the basis for pricing Nigerian crude oil pursuant to the Act.

2.4 The Lessee and the Refiner shall agree on the loading/delivery window not later than 25th of M-2 from the 1st day of LAYCAN.

2.5 In the case of verifiable operational constraints, the lessee must notify the refiner of the revised loading/delivery window not later than twenty one (21) days from the 1st day of LAYCAN.

2.6 Refiners shall ensure adequate logistics arrangements to load within the agreed laycan (or delivery window) to avoid tank top/production curtailment or shall be subject to penalties as may be provided in the crude Supply & Purchase Agreement

2.7 All locally purchased cargoes must be discharged into the Refinery facility they are programmed for and shall not be diverted or swapped.

2.8 Utilization of the locally purchased cargoes by any Refiner for any purpose other than domestic processing, without a written approval by the Commission shall attract suspension from DCSO allocation for a period determined by the Commission in addition to any other penalty that may be imposed by the Commission including possible prosecution of the offender(s).

2.9 Where a lessee enters a long-term supply contract with a refiner in fulfilment of his Domestic Crude oil supply obligation, the obligation to sell crude to the Refiner by the Lessee under the agreement shall be subject to the refinery being in operation at the time the crude oil supply is to be effected.

ISSUANCE OF REQUEST FOR QUOTATION (RFQ) BY THE COMMISSION

2.10 The Commission, prior to issuing a Request for Quotations (RFQ) in the case of shortfall in supply of crude oil to domestic refinery pursuant to the Regulation, shall ensure that every lessee capable of meeting or contributing to the crude oil requirements of the refineries, has a portion of its forecasted production dedicated to domestic consumption, to avoid supply shortages.

2.11 The Commission shall develop metrics that determines a portion of the forecasted production to be dedicated to domestic consumption by lessees on a non-discriminatory basis.

2.12 Where a required crude oil grade involves blend of production from two or more lessees, the metrics shall take into consideration contribution from each of the lessees.

2.13 The Commission shall notify both the lessees and the refiners either in writing or via publication on its website or both, the portion of the lessee's forecasted production, that shall be reserved for supply to domestic refineries, which shall serve as the minimum volume expected to be independently sold to domestic refineries in line with the provisions of **paragraphs 2.1 to 2.9** of these guidelines.

2.14 Notwithstanding the **provisions of 2.10 – 2.13** of these guidelines, a lessee can sell the remaining portion of his production to the refiner in line with terms and conditions agreed between the lessee and the refiner.

2.15 At the end of every six(6) month cycle, the Commission shall publish the performance of Lessees and Refineries demonstrating Domestic Supply records.

2.16 Where a refinery is not successful at independently sourcing future crude oil supplies from lessees or is unable to secure the minimum volume required for its forecasted period, the Refinery shall report to the commission before 15th Business Day of M-3, stating the grade(s) involved and reasons for the inability to secure the crude oil supply from the lessee(s).

2.17 The Commission shall, based on the notification under **section 2.16** of these guidelines, intervene to avoid the potential supply shortages / inadequate supply conditions in by:

a) Directing a lessee to enter into a crude purchase agreement with a refiner where a lessee has refused, failed or neglected to enter into an agreement upon the request of a refiner. Failure to comply with a directive issued pursuant to this section within the period directed shall be basis of a non-compliance procedure against the lessee.

b) Request the parties to a negotiation of a crude purchase agreement to present the terms of their proposed contract to the Commission for consideration where the potential shortfall is due to a stalemate in commercial terms other than price. In this circumstances, Commission shall use its best offices to ensure that parties reach amicable terms.

c) Direct the parties to agree on a fair price by comparison with the Fiscal Oil Price differentials published by the Commission where the disagreement between the parties is on price.

2.18 The Commission shall issue an RFQ in accordance with the regulations where the procedures outlined in **sections 2.10 – 2.17** of these guidelines to ensure that the domestic market is always supplied under market conditions by allocating dedicated volumes to lessees, are insufficient to bring about full supply.

2.19 The Commission shall rely on its assessment of information supplied to it by the Authority on shortage in supply under the regulations or the prevailing supply conditions at any given time based on the failure of the procedures outlined in these guidelines to prevent shortage of supply.

2.20 Where the Commission issues an RFQ, the following procedures and timelines shall apply:

a) The Commission issues Request For Quotation (RFQ) for required crude oil grades and volumes to Lessees 1^{st} – 2^{nd} Business Day of M-2.

b) Lessees responds to the RFQ according to the template provided by the Commission by the 5th Business Day of M-2.

c) The Commission shares the bid with the Refiner 6th – 7th Day of M-2.

d) The refiner shall enter into a Supply and Purchase Agreement (SPA) with the Lessee on a Willing Buyer, Willing Seller (WBWS) basis on or before 8th – 11th Day of M-2.

IMPOSITION OF DCSO

e) The Commission may impose a DCSO Order on a lessee, where the commercial engagement fails by 12th – 13th business day of M-2, after Commission's test for both parties reasonability.

f) The Commission's test of reasonability shall be as follows:

(i) Where the stalemate / un reasonability is on the price, the commission shall base its position on fair price based on comparison with its published Fiscal Oil Price differentials and impose a DCSO on the lessee on or before the 14th business day of M-2.

(ii) In the event that the Commission determines that the un reasonability is on the part of the Refiner, there shall be no DCSO imposed on account of that contemplated transaction.

3 MONTHLY MEETINGS

3.1 The Commission to Schedule a Domestic Crude Refining Requirement (DCRR) stakeholders meeting between the 10th and 15th Business Day of M-2.

3.2 The Monthly Production Curtailment and lifting programming meetings to hold between 16th – 19th Business Day of M-2.

3.2.1 The cargo programmes to be presented by the lessees at this meeting shall include crude oil allocations to domestic refineries in line with the provisions of these guidelines.

4 PAYMENT INSTRUMENTS / CURRENCY OF PAYMENTS

4.1 The payment for the supply to domestic refineries shall be in either United States Dollar ($) or Naira (N) or both.

4.2 Where the payment is in both currencies, the payment split shall be as agreed in the Supply and Purchase Agreement (SPA) between the lessee and the Refiner.

4.3 The payment for Crude supply shall be secured using a **Letter of Credit** as follows:

4.3.1 The Refiner's Bank shall submit to the office of the lessee, **six (6) Banking days before the first day of laycan**, an acceptable irrevocable Letter of Credit (Shipment by-Shipment) issued by a reputable and lessee approved Nigerian / International bank in the current value of the cargo of Crude Oil delivered by lessee to refinery as security for the Crude Oil lifted.

4.3.2 Such Documentary Letter of Credit shall be for a validity period of ninety (90) days with effect from the second day of Laycan and with a minimum rating of BBB or as agreed by lessee.

4.3.3 Where the lessee and the refiner have a long term supply and purchase contract, they can have a revolving stand by letter of credit (SBLC) as a security for the supply as *part of their supply and purchase agreement.*

*4.4 Notwithstanding the provisions of **5.3**, the Lessee may wish to accept a **Bank Guarantee** from refiners with smaller output capacities as follows:*

4.4.1 *The bank guarantee shall be an irrevocable, revolving guarantee Issued by a reputable Nigerian bank for an amount equal to the sales value of the cargo of crude oil to be delivered to the refinery (or current value of a minimum volume of crude oil agreed between the parties).*

4.4.2 *The Bank Guarantee shall in the first instance, be provided to the lessee at least seven (7) banking days prior to commencement of initial delivery and be valid for one year with initial expiry date set to December 31st of the issuance year.*

4.4.3 *The Bank Guarantee shall be drawable on demand by the lessee without the refiner's consent for any owed amounts and a replacement or extension is required no later than 30 days prior to expiry and issued by the issuing bank.*

5 DEFAULTS

5.1 **Failure to respond to Commission's Request for Quotation (RFQ):**

5.1.1 The Penalties specified in **Section 18 (1)** of the Regulation shall apply to any Lessee that failed to respond to NUPRC's request for Quotation or respond outside the time frame specified in this Guideline.

5.1.2 lessees whose production is impacted by Force Majeure (FM) situations shall also provide a response to the RFQ with an attachment of their official declaration of FM, where applicable.

5.2 **Failure to enter into a contract after imposition of the DCSO or deliver crude oil under the contract for the supply of the DCSO:**

5.2.1 Subject to the Procedure under **Section 231** of the Act, the administrative penalty specified under **Section 18(2)** of the Regulation shall apply to any lessee who fails to –

a) Enter into a contract for the delivery of the DCSO imposed under **Section 2.20(e) – (f)** of these regulations.

b) Deliver under a contract for the supply of the DCSO volumes except for-

(i) Force Majeure as defined under the Supply and Purchase Agreement (SPA).

(ii) Default of the refiner under the SPA; or

(iii) Any other reason acceptable to the Commission

5.3 **Default of Payment:**

5.3.1 In the occurrence of a default in payment by the Refiner, the Commission shall not allocate DCSO to the defaulter for a period to be determined by the Commission in addition to the penalty contained in the Sales Agreement between the refiner and the Lessee.

5.4 **Failure to Lift within the scheduled laycan (or delivery window):**

5.4.1 In the event of failure to lift within the scheduled laycan (or delivery window) by the Refiner, resulting in **tank top/production curtailment**, the Defaulting Refiner:

a) Shall be suspended by the Commission from receiving DCSO allocation for a period of time to be determined by the Commission; and

b) Will be liable to pay a fine **equivalent to the delayed Royalty from the deferred volume** in addition to other failure to lift penalties agreed in the SPA with the lessee

5.5 **Failure to offtake crude:**

5.5.1 The following penalties shall apply to any Refiner - that failed to offtake the allocated DCSO (except in the event of force Majeure as defined in the SPA), in addition to any other agreed penalty in the SPA between the Lessee and the refiner:

a) For pipeline, barging or trucking deliveries, take or pay conditions shall apply.

b) For marine deliveries, the lessee shall sell the parcel of the crude oil as a distressed cargo and the defaulting refiner shall be liable for liquidated damages as provided in the SPA

5.6 **Failure to supply crude:**

5.6.1 Where the lessee failed to supply the allocated DCSO resulting in shortages for the refinery (except in the event of force Majeure as defined in the SPA), the defaulting lessee will be liable to the penalty specified under section 18(2) of the Regulation.

Approved by		
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