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RECENT DEVELOPMENTS IN THE UPSTREAM, MIDSTREAM, AND DOWNSTREAM LEGAL AND REGULATORY FRAMEWORK FOR PETROLEUM MEASUREMENT IN NIGERIA'S PETROLEUM SECTOR

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INTRODUCTION

The Nigerian oil and gas sector has been experiencing significant regulatory changes aimed at enhancing transparency, accuracy, and efficiency in the measurement of crude oil and natural gas production. Key among these changes are the Nigerian Upstream Petroleum Measurement Regulations, 2023, and the Regulatory Action Plan (RAP) 2024-2026 issued by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). Additionally, the Nigerian Midstream and Downstream Petroleum Authority introduced the Petroleum Measurement Regulations, 2023, and the Midstream Gas Flare Regulations, 2023. This article provides an objective analysis of these developments, focusing on the opportunities and potential challenges for metering service providers.

OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

- **The Upstream Petroleum Measurement Framework**

  The RAP 2024-2026, issued in January 2024, outlines NUPRC's commitment to auditing all measurement points, establishing metering plans for all licensees and leases, and ensuring the deployment of licensed metering service providers. The goal is to enforce measurement regulations that ensure accurate crude oil accounting, prevent leakages, and increase government revenue through proper royalty assessment and remittances.

  The Nigerian Upstream Petroleum Measurement Regulations, enacted in May 2023, are designed to combat crude oil theft, ensure transparent transactions, and align with fiscal and regulatory obligations.

  These regulations mandate that lessees and licensees must have a metering plan approved by the NUPRC, involving licensed metering service providers. This shift opens a new market for third-party metering service providers, previously managed solely by lessees and licensees.

- **The Midstream and Downstream Petroleum Measurement Framework**

  The Nigerian Midstream and Downstream Petroleum Authority made the Petroleum Measurement Regulations, 2023, on February 9, 2023, and the Midstream Gas Flare Regulations on March 14, 2023, pursuant to sections 33 and 106(1) of the Petroleum Industry Act 2021 (PIA). These regulations aim to determine the basis for calculating revenue accruing to the government, licensees, contractors, and other parties involved in midstream and downstream petroleum operations and to ensure accurate measurement and allocation of various petroleum products.

Historical Context

Prior to the PIA 2021 and the subsequent Regulation in February 2023, there was less clarity regarding the general licensing requirements and legal obligations of licensees and lessees in measurement operations in the midstream and downstream sectors. Existing guidelines focused more on technical standards and methods of measurement. The Department of Petroleum Resources (DPR) issued various guidelines that continue to apply, provided they do not conflict with the PIA, until amended or replaced by the NMDPRA.

Responsibilities for Midstream and Downstream Operations

Licensees or permit holders are responsible for installing appropriate measurement systems and maintaining performance records under the Regulations.

No Clear Requirements for Licensing Measurement Service Providers

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Non-compliance

The failure to install or operate required systems can result in the Authority licensing a third party to do so, with costs borne by the non-compliant licensee.

A COMPARISON OF THE UPSTREAM AND MIDSTREAM AND DOWNSTREAM MEASUREMENT REGULATIONS

We have highlighted some key differences between the upstream measurement regulations and those applicable to the midstream and downstream sectors in the table below.

S/N	Upstream	Midstream and downstream
1.	Requires licensees and lessees to submit a metering plan to the Commission for approval or the Commission may impose a metering plan on the license or lessee.	No requirement to submit a metering plan.
2.	Requires licensees and lessees to compulsorily engage licensed third-party metering services providers to install and operate the metering system.	The licensees or permit holders may install and operate the measurement system themselves or engage licenced third-party contractors to provide the services.
3.	Ownership of the metering system shall be transferred to the Commission upon full cost recovery and reasonable profit by the metering services provider.	No requirement for the compulsory transfer of ownership of the measurement system to the Commission.
4.	The Commission is required to carry out technical audit of existing metering systems as a condition precedent to enforcement of the regulations.	There is no requirement for the Authority to conduct an audit of existing measurement systems of licensee and permit holders before the commencement of the regulations. The regulations are applicable immediately.

OFFENCES AND PENALTIES

The Regulation retained offences under the existing Guidelines, with some modifications in the quantum of administrative penalties that will be applicable in certain instances, as detailed in its 3rd Schedule. Where no specific penalty is stipulated for an offence under this schedule, the Authority is empowered to impose an administrative penalty not exceeding $250,000 (two hundred and fifty thousand United States dollars).

A person who fails to obtain a required license, permit, or authorisation, fails to provide required information, makes a false declaration, or submits false or insufficient information to the Authority under the Regulation, or fails to comply with the Regulations or any directive or condition of any permit or license, may have their license, permit, or authorization suspended or revoked by the Authority, in addition to other sanctions, fines, and penalties contained in the Act and the third schedule to the Regulations. The table below outlines some administrative penalties in the Guidelines that have been increased by

S/N	Description of offence	Administrative penalty
1.	Engagement of non-Authority accredited contractors for fabrication, construction, calibration, testing etc. of any critical equipment or facility.	Increased from $5,000 to $250,000 in addition to suspension for a period of not more than a year.
2.	Failure to allow Authority representatives witness out-turn verification at the port of discharge.	Increased from $50,000 to $250,000
3.	Tampering with Metering Systems or its ancillary Equipment without approval	Increased from $100,000 to $2,000,000
4.	Falsification of Proving System Calibration/Meter Proving reports.	Increased from $30,000 to $250,000
5.	Failure to Recertify Auto sampler when due	Increased from $25,000 to $50,000

The increased administrative penalties are expected to deter licensees and lessees from non-compliance with the prescribed measurement standards in the midstream and downstream sectors. Unlike the upstream measurement regulations, which require certain regulatory steps to be taken prior to full application, the midstream and downstream regulations do not mandate any preconditions for their implementation. Additionally, the midstream and downstream regulations do not stipulate criteria for licensing third-party service providers. The Authority is expected to issue further guidelines, directives, or notices to clarify these licensing requirements under paragraph 16(1) of the Regulations.

POTENTIAL OPPORTUNITIES FOR METERING SERVICE PROVIDERS

The new regulations create potential opportunities for providers, including the following:

1. Commercial Metering Services:

Providers can offer installation, operation, and maintenance of metering equipment on a commercial basis to lessees, licensees, and the NUPRC.

2. Technical Audits and Equipment Upgrades:

The NUPRC mandates independent technical audits to ensure compliance with regulatory standards, necessitating the services of metering providers for equipment upgrades and replacements.

3. Licensing and Local Content Requirements:

Providers must be licensed by the NUPRC, with a 20-year license term. Companies

POTENTIAL CHALLENGES

While these legal and regulatory changes present numerous opportunities, they also pose several challenges, including the following:

(a) **Compliance and Enforcement**

Ensuring that all lessees and licensees comply with the new regulations and use licensed providers might be challenging. Continuous monitoring and strict enforcement by the NUPRC will be crucial.

(b) **Capacity and Expertise Development:**

Developing local expertise and infrastructure to meet the demand for metering services requires substantial investment in training programs and capacity-building initiatives. This need for rapid upskilling and infrastructure development could pose a barrier, especially for smaller and newer companies attempting to enter the market. Policies from the Nigerian Content Development and Monitoring Board (NCDMB) could play a crucial role in addressing this challenge given its efforts to promote local content in the oil and gas industry by supporting training and development programs that enhance the capabilities of Nigerian companies and workforce.

(c) **Financial and Investment Barriers:**

The regulations necessitate significant capital investment for the provision of metering equipment and services. While the NUPRC has outlined a cost structure designed to ensure sustainability, the upfront costs and long-term financial commitments may deter smaller providers from participating. This financial burden could limit the diversity and competitiveness of service providers in the market. To address these barriers, a multi-faceted approach may be effective, including government grants and subsidies, tax incentives, low-interest loan programs, public-private partnerships, and capacity-building initiatives.

(d) **Implementation Complexity:**

The complexity of the new regulations and the requirement for extensive technical audits and equipment upgrades could lead to delays and operational disruptions. Companies may face difficulties in aligning their current practices with the new standards, resulting in temporary production slowdowns or increased operational costs. To address these challenges, a strategic approach is essential, including phased implementation, pilot programs, enhanced technical support, streamlined regulatory processes, and continuous stakeholder engagement.

(e) **Stakeholder Concerns about Engagement and Clarity:**

While the NUPRC has engaged with stakeholders during the formulation of these regulations, some industry participants have called for more continuous and transparent engagement. There is a need for ongoing dialogue to address uncertainties and provide clarifications on the regulations' practical implications. Stakeholders have emphasized the importance of clear communication channels to facilitate smooth implementation and compliance.

CONCLUSION

The Nigerian Upstream Petroleum Measurement Regulations and the RAP 2024-2026, alongside the midstream and downstream regulations, represent transformative opportunities for the oil and gas sector. By fostering a competitive market for metering services, these regulations aim to enhance the accuracy and transparency of crude oil measurement, combat theft, and ensure proper royalty payments. Despite the potential challenges, the proactive approach by the NUPRC and the Nigerian Midstream and Downstream Petroleum Authority, coupled with stakeholder collaboration, is likely to drive the sector toward greater efficiency and profitability. Addressing the identified challenges strategically and proactively will be crucial for realizing the full potential of these regulatory changes.

Disclaimer: *This update is authored by Folake Elias-Adebowale, Elo Adhekpukoli, Josephine Ukpong, and Anjolaoluwa Shittu of Udo Udoma & Belo-Osagie. It is intended for information purposes only and shall not be construed as legal advice on any subject matter in any circumstances. It does not and shall not be construed as creating any relationship, including a client/attorney relationship, between readers and our firm or any author or serve as legal advice. The opinions expressed in this publication are the opinions of the individual authors and may not necessarily reflect the opinions of the firm or of any individual attorney. You should contact your attorney to obtain advice with respect to any particular issue or problem. For more information about our oil and gas and other practice group offerings, please visit our website at www.uubo.org or email us at ogteam@uubo.org.*