

PETROLEUM REFINERIES (INCENTIVES, REGULATION AND
MISCELLANEOUS PROVISION) BILL, 2015

ARRANGEMENT OF SECTIONS

Section:

1. Objectives of the Act.
2. Application and scope.
3. Requirement for licensees.
4. Licensing Process, etc.
5. Declaration and register of declarations.
6. Affected licenses. .
7. Expiration, modification or revocation of declaration.
8. Assignment of license and compliance with license conditions. .
9. Issuance of direction.
10. Modification of direction.
11. Non-compliance with direction.
12. Register of directions.
13. Register
14. Access to register by public.
15. Regulations, guidelines, etc.
16. Regulatory review.
17. Exclusive competence on competition laws.
18. Anti-competition practices.
19. Dominant operators.
20. Exemptions.
21. Products pricing.
22. Exportation of refined products.
23. Offences.
24. Modifications to existing legislations. .
25. Incentives and related matters.
26. Application of Cap. 17 to refineries.
27. Interpretation.
28. Short Title.

A BILL

FOR

AN ACT TO PROVIDE FOR THE LICENCING, REGULATION AND INCENTIVES
PETROLEUM REFINERIES IN NIGERIA AND FOR OTHER MATTERS

Sponsored by Hon. Uzoma Nkem-Abonta

| | Commencement

BE IT ENACTED by the National Assembly of the Federal
Republic of Nigeria as follows:

1 1. The primary objective of this Act is to create a regulatory
2 framework for the Nigerian petroleum refining industry and all matters
3 related thereto and without detracting from the generality of the foregoing,
4 specifically to —

Objectives of
the Act

5 (a) promote the implementation of national policy(ies) relating to
6 petroleum products refining as may from time to time be modified and
7 amended;

8 (b) establish a regulatory framework for the petroleum refining
9 industry;

10 (c) encourage local and foreign investments in the Nigerian
11 petroleum refining industry;

12 (d) ensure fair competition in all sectors of the Nigerian petroleum
13 refining industry and also encourage participation of Nigerians in the
14 ownership, control and management of petroleum refineries; and

15 (e) ensure the provision of certain incentives to encourage the
16 refining of petroleum products in Nigeria for local use and for export.

17 2. This Act applies to the refining of petroleum products in whole
18 or in part within the territory of Nigeria.

Application and
Scope

19 3.—(1) No person shall operate a petroleum refinery in Nigeria
20 unless he is authorized to do so under an operating licence under this Act.

Requirement
for Licence

21 (2) Any person who acts in breach of sub-section (1) of this section

1 commits an offence and is liable upon conviction to —

2 (a) a fine not less than the initial fee for the licence,

3 (b) a fine not exceeding ten times the initial fee for the licence,

4 (c) imprisonment for a term not exceeding one year, or

5 (d) both such fine and imprisonment:

6 Provided that upon conviction, the person shall also forfeit to the Federal
7 Government of Nigeria the property, facilities, installations and equipment
8 used by him in such venture.

Licencing
process, etc

9 4.—(1) The Department shall from time to time determine and cause
10 to be published a regulation on its licencing process specifying, among others,
11 the persons or classes of persons who are eligible generally to apply for
12 licences.

13 (2) Subject to the sub-section (3) of this section, the Department shall
14 from time to time determine and publish its licencing procedures which may
15 include but shall not be limited to auction, selection process, public tender
16 invitation or competitive bidding process.

17 (3) The Department shall at all times be guided in the formulation of
18 licencing procedures, issuance of petroleum refinery licences and Preparation
19 of licence conditions and terms, by principles of and consideration for—

20 (a) transparency, fairness and non-discrimination;

21 (b) the need to promote fair competition and investment in the
22 petroleum refinery industry;

23 (c) the need to ensure the provision of qualitative, affordable and
24 readily available petroleum products in all parts of Nigeria;

25 (d) such other principles and considerations as the Department may
26 from time to time consider necessary and in the national interest.

Declaration and
registrations

27 5.—(1) The Department may, from time to time, make written
28 declarations that licenses are subject to such terms and conditions, or enjoy
29 such benefits, as the Department deems fit.

30 (2) Any declaration on the conditions of license shall be consistent

1 with the objectives and provisions of this Act which are relevant to the
 2 particular undertaking, matter or activity.

3 (3) The Department shall register every declaration as soon as
 4 practicable and shall further maintain a register of all such declarations in
 5 accordance with this Act.

6 6.—(1) The Department shall, before making a declaration under
 7 section 5 of this Act, give the affected licensees written notice of its intention
 8 to do so together with draft copy of the declaration, and the licensees may
 9 make written submission to the Department thereon with the time period
 10 specified by the Department but not less than thirty days from the date of the
 11 written notice.

Affected
 Licenses

12 (2) The Department shall, in deciding on the next course of action,
 13 take into consideration any submission made by the affected licensees and
 14 the principle specified in section 4 (3) of this Act.

15 7.—(1) The Department may at any time amend, modify, vary or
 16 revoke any license condition or declaration regarding a license.

Expiration,
 modification or
 revocation of
 declaration

17 (2) The procedure set out in sections 5 and 6 of this Act shall apply
 18 mutatis mutandis in respect of any amendment, modification, variation or
 19 revocation of a license condition or declaration.

20 8.—(1) The grant of a license shall be personal to the licensee and
 21 shall not be operated by, assigned, sub-licensed or transferred to any other
 22 party unless the prior written approval of the Department has been granted.

Assignment of
 Licence and
 compliance with
 Licence
 conditions

23 (2) A licence shall at all times comply with the terms and conditions
 24 of his license and the provisions of this Act and its subsidiary legislation.

25 9.—(1) The Department may, from time to time, issue directions in
 26 writing to any person regarding the compliance or non-compliance of any
 27 licensing conditions or provisions of this Act or its subsidiary legislation,
 28 including but not limited to the remedy of a breach of any license condition
 29 or the provisions of this Act or its subsidiary legislation.

Issuance of
 direction

30 (2) The Department shall, before issuing a direction under

1 subsection (1) of this section, issue a notice in writing to the person specifying
2 the nature of required compliance and the person shall be granted an
3 opportunity to be heard or may submit a written submission within a
4 reasonable time period specified in the notice on the reasons for his conduct or
5 activity.

6 (3) The Department shall, after the expiry of the notice specified in
7 subsection (2) of this section take into consideration any reasons provided by
8 the, person before making a decision in relation to the relevant conduct or
9 activity of the person.

10 (4) After due consultation of any reasons provided by the person, the
11 Department may issue a direction under subsection (1) of this section requiring
12 the person to take specific action towards ensuring that the person does not
13 contravene or continue to contravene any of the conditions of his license or any
14 of the provisions of this Act or its subsidiary legislation.

15 (5) The Department shall give the person written notice of its
16 direction not later than thirty days from the date the decision was made on the
17 direction and the person shall comply with the direction issued by the
18 Department.

Modification of
direction

19 **10.** The Department may modify, vary or revoke a direction and the
20 procedure set out in section 9 of this Act shall apply mutatis mutandis in respect
21 of any modification, variation or revocation of a direction.

Non-compliance
with direction

22 **11.** Without prejudice to any other provisions of this Act or a license
23 condition, a person who fails to comply with a direction of the Department
24 shall be liable to the payment of fine to the Department in such amount as the
25 Department may, at its discretion impose.

Register of
directions

26 **12.** The Department shall maintain a register of all directions issued
27 by the Department, including any written instrument modifying, varying or
28 revoking a direction, in accordance with the provisions of this Act.

Register

29 **13.—(1)** The Department shall maintain a register of all matters that
30 are required to be registered under this Act and its subsidiary legislation.

1 (2) The Department may, at its discretion, summarize the contents
2 of a material for inclusion in the register and exclude therefrom aspects of
3 the material if it considers such exclusion necessary and justified on the
4 grounds of public interest or safety, amongst others.

5 14.—(1) A person may, on payment of the charge, if any to be
6 decided, by the Department—

Access to register
by public

7 (a) inspect the register; and

8 (b) make a copy of, or take extracts from the register.

9 (2) The Department shall from time to time publish guidelines in
10 regard to its various registers giving details of the registers and including,
11 amongst others, access and procedures for members of the public.

12 15.—(1) The Department may make and publish regulations for,
13 all or any of the following issues—

Regulations,
guidelines, etc.

14 (a) written authorizations, permits, assignments and licenses
15 granted or issued under this Act;

16 (b) any fees, charges, rates or fines to be imposed pursuant to or
17 under this Act or its subsidiary legislation;

18 (c) hoarding of refined petroleum products and related offences;

19 (d) permits and licences to export refined petroleum products;

20 (e) any matter for which this Act makes express provision; and

21 (f) such other matters as are necessary for giving full effect to the
22 provisions of this Act and for their due administration.

23 (2) The Department may also make and publish guidelines on any
24 matter for which this Act makes express provision and such other matter as
25 ate necessary for giving full effect to the provisions of this Act and for their
26 due administration.

27 (3) Regulations made under this Act shall not come into effect
28 Unless it is approved by a simple resolution of the National Assembly.

29 16.—(1) Subject to subsection (2) of this section, the Department
30 may make review, as at when it deems necessary, any rules, guidelines and

Regulatory
review

1 regulations made under this Act that are in effect at the time of the review and
2 may in the process modify or vary, or repeal any such rules or regulations—

3 (a) which are no longer necessary in the national interest;

4 (b) which are no longer necessary to ensure the objects of this Act 'or
5 its subsidiary legislation; or

6 (c) for any other reason that the Department thinks relevant.

7 (2) The procedure set out in section 16 of this Act shall apply mutatis
8 mutandis in respect of any modification, variation or revocation of a regulation
9 or guideline.

Exclusive
competence on
competition laws

10 17. Notwithstanding the provisions of any other enactment, the
11 Department shall have exclusive competence to determine, pronounce upon,
12 administer monitor and enforce compliance of all persons with competition
13 laws and regulations whether of a general or specific nature, as it relates to the
14 Nigerian petroleum refining industry.

Anti-competition
practices

15 18.—(1) A licensee shall not engage in any conduct which has the
16 purpose or effect of substantially lessening competition in any aspect of the
17 Nigerian petroleum refining industry.

18 (2) The Department may from time to time publish guidelines or
19 regulations which clarify the meaning of substantial lessening of competition
20 in the Nigerian petroleum refining industry and such guidelines or regulations
21 may include references to—

22 (a) the relevant economic market;

23 (b) global trends in the relevant market;

24 (c) the impact of the conduct on the number of competitors;

25 (d) the impact of the conduct on barriers to entry into the market;

26 (e) the impact of the conduct on the cost and profit structures in the
27 market; and

28 (f) any other matter which the Department is satisfied are relevant.

29 (3) A licensee shall not enter into any understanding, agreement or
30 arrangement, whether legally enforceable or not, which provides for —

- 1 (a) rate fixing;
- 2 (b) market sharing;
- 3 (c) boycott of another competitor;
- 4 (d) boycott of a supplier or equipment;
- 5 (e) boycott of any other licensee.

6 (4) A licensee shall not, any time or in any circumstance, make it a
7 condition for the provision or supply of a product or service in a refinery that
8 the person acquiring such product or services in the refinery is also required
9 to acquire or not to acquire any other product or service from him or from
10 another person.

11 **19.—**(1) The Department may determine that a licensee is in a Dominant
operators
12 dominant position in any aspect of the Nigerian petroleum refinery market.

13 (2) The Department may publish guidelines and regulations which
14 clarify how it shall apply the test of "dominant position" to licensees.

15 (3) The guidelines and regulations in subsection (2) of this section
16 may specify the matter which the Department may take into account,
17 including -

- 18 (a) the relevant economic market;
- 19 (b) global technology and commercial trends affecting market
20 power;
- 21 (c) the market share of the licensee;
- 22 (d) the degree of product or service differentiation and sales
23 promotion in the market; and
- 24 (e) any other matter which the Department is satisfied are relevant.

25 (4) The Department may direct a licensee in a dominant position in
26 the petroleum refinery market to cease a conduct in that market which has or
27 may have the effect of substantially lessening competition in any aspect of
28 the Nigerian petroleum refinery industry, for authorization for the conduct.

29 **20.—**(1) A licensee may apply to the Department prior to engaging Exemptions
30 into any conduct which may be construed to have the purpose or effect of

1 substantially lessening competition in any aspect of the Nigerian petroleum
2 refinery industry, for authorization for the conduct.

3 (2) Notwithstanding the provisions of the Act, the Department may
4 authorize the conduct if the Department is satisfied that the authorization is in
5 the national interest.

6 (3) The Department may, before authorizing the conduct, require the
7 licensee to submit an undertaking regarding his conduct in any matter relevant
8 to the authorization.

9 (4) A licensee may withdraw an application made under subsection (1)
10 of this section at any time prior to authorization by the Department.

Product pricing

11 **21.—**(1) Holders of licenses shall not impose prices for refined
12 products until such prices have been approved by the appropriate authority.

13 (2) Holders of licenses shall supply products at the prices so approved
14 by; the appropriate authority and shall not depart therefrom without prior
15 written approval by the appropriate authority of such proposed changes in
16 prices.

17 (3) Holders of licenses shall publish the prices of products and the
18 modification thereto as may approved from time to time by the appropriate
19 authority.

20 (4) The prices established by a licensee shall be on the basis of such
21 principles as the appropriate authority may from time to time stipulate in its
22 guideline or regulation including the following—

23 (a) prices shall be fair and not discriminatory;

24 (b) prices shall be cost-oriented;

25 (c) prices shall not contain discounts that unreasonably prejudice
26 competitive opportunities of other providers; and

27 (d) prices shall be structured and levels set to attract investments into
28 the petroleum refining industry.

29 (5) The appropriate authority may intervene in such manner as it
30 deems appropriate in determining and setting the prices for any non-

1 competitive product or service for good cause or as the public interest may
2 require.

3 (6) The appropriate authority may from time to time make such
4 regulations on determination and publication of product price and such
5 regulations shall not be valid unless it is approved by a regulation of the
6 National Assembly.

7 (7) The regulations and rules which may be made by the
8 appropriate authority under subsection (6) of this section may include but
9 not limited to—

10 (a) rules about product prices and variation of rates;

11 (b) rules about the publication or disclosure of prices;

12 (c) price rate models that may be applicable to specified licenses or
13 products.

14 (8) Notwithstanding any other provision of this Act, the
15 appropriate authority shall prescribe and enforce appropriate financial
16 penalties upon any holder of license who exceeds the prices duly approved.

17 **22.—(1)** Any holder of license under this Act may export any kind
18 or quantity of refined petroleum products provided that he does so subject to
19 the provisions of this Act and regulations made thereto.

Exportation of
refined products

20 (2) The Department may make regulations prescribing such
21 requirements concerning local supply of refined petroleum Products that
22 must be met by any licensee under this Act before he is authorized to export
23 refined petroleum products.

24 (3) The Department shall ensure at all times that local requirement
25 for refined petroleum products are met before authorizing any licensee to
26 export.

27 (4) The Department may also grant licenses to certain persons to
28 refine exclusively for exportation, provided that such licensees shall be
29 exempted from all incentives under this Act.

30 **23.—(1)** Any person who exports refined petroleum products

Offences

1 without the appropriate licenses or permits commits an offence and on
2 conviction, is liable to a fine of seven times the value of the goods or to
3 imprisonment for a term not exceeding 1 year or to both such fine and
4 imprisonment.

5 (2) Any person who uses any technical facilities which compromises
6 public safety as may be defined from time to time by the Department commits
7 an offence and on conviction, is liable to a fine not below ₦1,000,000 or to
8 imprisonment for a term not exceeding 1 year or to both such fine and
9 imprisonment.

10 (3) Any refined petroleum product in respect of which an offence has
11 been committed under this section shall be forfeited to the Federal Government
12 of Nigeria.

Modification to
existing legislations

13 **24.—**(1) The provisions of any law or enactment conferring
14 regulatory functions on any other department or agency of government shall be
15 read with such modifications so as to bring them into conformity with the
16 provisions of this Act.

17 (2) Where any other law or enactment is inconsistent with the
18 provisions of this Act, the provisions of this Act shall prevail and that other law
19 shall, to the extent of such inconsistency, be void.

Incentives and
related matters

20 **25.—**(1) Licensees under this Act shall be entitled to the following
21 incentives—

22 (a) legislative provisions pertaining to taxes and levies shall not apply
23 to refineries under this Act;

24 (b) crude oil to be procured by licensed refineries under this Act at 50
25 per cent of the prevailing market prices or the cost of production of crude
26 whichever is lower;

27 (c) rent-free land for a period of 10 years; after which rent shall be
28 determined by the appropriate authorities; and

29 (d) up to 25 per cent of production to be exported against a valid
30 permit and on the supervision of the Department.

1 (2) The Department shall be the only agency to give all approvals
2 and cancel all licenses.

3 (3) The Department shall simplify all procedure necessary for
4 licensing and investments in petroleum refineries in Nigeria.

5 **26.** The provisions of the Industrial Development (Income Tax
6 Relief) Act with respect to pioneer status shall apply to any licensee under
7 this Act who sens at least 70 per cent of his annual production for
8 consumption within Nigeria.

Application of
Cap. 17 to
refineries

9 **27.** In this Act, unless the context otherwise requires—

Interpretation

10 "Department" means the Department of Petroleum Resources;

11 "Licencee" means a person who either holds a licence granted under this
12 Act.

13 **28.** This Bill may be cited as the Petroleum Refineries (Incentives,
14 Regulation and Miscellaneous Provisions) Bill, 2015.

Short Title

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the licencing and regulation of petroleum refineries in Nigeria. It also seeks to make provision for incentives aimed at encouraging investments in petroleum refineries.