



THE PETROLEUM INDUSTRY ACT

Nigerian Upstream Petroleum Commercial Regulations 2023

In exercise of the powers conferred on it by Section 8 of the Petroleum Industry Act, No. 6, 2021 (“the Act”) and all other powers enabling it in that behalf, The Nigerian Upstream Petroleum Regulatory Commission (“the Commission”) makes the following, Regulations-

PART 1

OBJECTIVES AND APPLICATION

1. Objectives:

(1) The objective of these Regulation is to establish a framework for the economic regulation of commercial operations in upstream oil and gas ventures and all matters related thereto.

2. Scope of Application

(1) These Regulation shall apply to licensees and lessees in relation to the commercial aspects of field development plans in upstream petroleum operations pursuant to section 79(2) of the Act.

PART II

Field Development Plans (“FDP”)

3. Evaluation of FDP

- (1) All FDP submitted pursuant to Section 79(2) of the Act shall include technical and commercial information on all activities in the plan including but not limited to:
 - (a) FDP scope and work breakdown structure
 - (b) The FDP work activities, deliverables, and milestones schedule
 - (c) Annual cost estimation at Class 3 project gate of -10% lower case, base case, and 20% upper case estimate, and consisting of-
 - i. acquisition costs,
 - ii. estimated oil and gas royalties at forecasted average annual fiscal prices
 - iii. estimated direct production costs including treatment, processing, transportation,
 - iv. estimated operating costs including general, sales and administrative costs, environmental remedial funds contributions, HCDTF,
 - v. estimated decommissioning and abandonment costs,
 - vi. estimated finance cost including interest expenses,
 - vii. estimated depreciation and amortization,
 - viii. estimated capital costs consisting of development and facility costs,
 - ix. commercial evaluation showing that the forecasted project expenditure based on the planned costs shall allow for maximum economic recovery from the project based on the economic indicators specified in these Regulations.
- (2). In addition to any other requirements for the approval of an FDP as may be provided for in the Act or any regulation in force, the Commission shall base the approval of an FDP on the following:
 - (a) a determination that the forecasted project expenditure based on the planned costs shall allow for maximum economic recovery from the project based on the economic indicators specified in these Regulations.
 - (b) The commercial evaluation of the FDP through acceptable methods of economic valuation determines that the FDP as projected indicates a favorable and positive return on investment.
 - (c) benching marking against similar projects and international best practice
- (3) The Commission may direct a licensee or lessee to revise any cost projection in an FDP before the approval of the FDP in line with Section 79(9) of the Act, where the

Commission is of the opinion that any cost item(s) in an FDP appears sub-optimal when benchmarked against similar projects and international best practices.

4. Execution of Field Development Plans

- (1) Pursuant to the approval of an FDP, a licensee or lessee shall submit a report containing a full financial breakdown of actual costs and up-to-date budget performance when making any of the following applications:
 - (a) milestone engineering approvals for design,
 - (b) fabrication,
 - (c) construction: and
 - (d) decommissioning and Abandonment

PART III

ANNUAL WORK PROGRAM AND BUDGET

5. Requirement to submit an Annual Work Programme and Budget for Approval

- (1) All licensees and lessees shall submit to the Commission an Annual Work Programme and Budget of activities to be carried out on the license area or lease area in a given year for approval.
- (2) An application for the approval of an Annual Work Programme shall be made by the lessee or licensee at least 90 days to the 31st of December of every year.
- (3) No activity shall be carried out on any license area or lease area in any given year unless such activity is contained in an Annual Work Programme and Budget approved by the Commission.

- (4) Any expenditure by a licensee or lessee for upstream petroleum operations not captured in an approved annual work program or budget shall be ineligible for taxation deduction purposes in respect of operations under a licence or lease.
- (5)) An application for Annual Work Programme and Budget approval shall in a form and manner prescribed by the Commission and shall be accompanied by the payment of an application fee.
- (6) The application fee shall be as prescribed by the Nigeria Upstream Petroleum Fees and Rent Regulations made pursuant to the Act.
- (7) Within 30 days of the submission of an application, the Commission shall notify the licensee or lessee in writing of its review comments on the application.

6. Content of an Annual Work Programme application

- (1) An Annual Work Programme application shall be in a manner prescribed by the Commission and shall contain the following:
 - (a) A list of activities to be carried out by the licensee or lessee with respect to the license area or lease area during the year, including activities relating to host community development, recruitment of Nigerians and manpower development,
 - (b) The planned dates (commencement and duration) for the activities listed in
 - (c) Detailed plans for the implementation of activities listed in (a).
 - (d) The budget for each of the activities listed in (a).
 - (e) The summary of the budget for all the activities listed in (a).
 - (f) Details of all regulatory approvals, permits and authorizations required to carry out any of the activities listed, whether or not such approvals, permits and authorizations are required from other agencies of Government.

- (g) Statement indicating reporting requirements under all applicable laws to the license or lease and the plan for compliance in relation to its work programme activities.
- (2) In addition to the following, the Annual Work Programme application shall include a report in summarized form of the previous year's work programme activities and performance.
- (3) An Annual Work Programme and Budget application shall be submitted with the following documents:
- (a) Concession situation map,
 - (b) Updated statement of payment of all statutory fees,
 - (c) Statement of Reserves situation and reservoir studies, where applicable,
 - (d) Statement of Production status and forecast, where applicable,
 - (e) Nigerian Content Development plan approval, where applicable,
 - (f) Organisational structure and statement of Nigerian staff disposition indicating plans to achieve an all-inclusive representation of Nigerians in the organisation,
 - (g) Five-year strategic plan.

7. Approval of Annual Work Programme and Budget

- (1) The Commission shall approve an Annual Work Program before 1st January of the applicable year where the application fulfills the following conditions:
- (a) It is a commercially and economically viable using a benchmarking process for determination of average cost issued periodically by the Commission and published on its website

- (b) It is Operationally feasible,
- (c) It is environmentally sustainable and safe,
- (d) It meets occupational safety and industrial health requirements,
- (e) The licensee and lessee is up to date in meeting applicable statutory fee payments,
- (f) It has incorporated any adjustments and amendments by the Commission arising from a review by the Commission which in the Commission opinion are necessary and required to achieve the optimal implementation of the work programme.

(2) A licensee or lessee shall submit a copy of the approved Annual Work Programme and Budget to the Federal Inland Revenue Service (FIRS). Any expenditure outside of the approved Annual Work Programme and Budget shall not be considered cost for the purpose of recoverability.

8. Amendments/modifications of an approval of Annual Work Programme and Budget

- (1) A licensee or lessee may amend or modify an approved Annual Work Programme and Budget in the following manner:
 - (a) Where before start of the implementation date the Licensee or Lessee opts to do so,
 - (b) Where after the start of the implementation date, the licensee or lessee opts to do so or the Commission by a written notice directs the licensee or lessee

- (2) Where the amendment/modification is at the instance of the licensee or lessee as in Regulation (7)(1) (a) , the licensee or lessee shall make an application in the manner prescribed by the Commission accompanied by a statement of justification for the proposed amendment(s)/modification(s). The payment of the applicable fee shall be as provided for in Nigeria Upstream Petroleum Fees and Rent Regulations.
- (3) The application shall be submitted at least 30 days to the start date of the implementation of the Annual Work Programme and Budget.
- (4) Where the amendment/modification is after the start date of the approved annual work programme and it is at the instance of the licensee or lessee, the licensee or lessee shall make an application in the manner prescribed by the Commission accompanied by a statement of justification for the proposed amendment(s)/modification(s). The payment of the applicable fee shall be as provided for in the Nigeria Upstream Petroleum Fees and Rent Regulations.
- (5) Where the amendment/modification is after the start date on the written directive of the Commission, the licensee or lessee shall make the application in the prescribed manner within thirty (30) days of the notice and shall not be required to make any payments.
- (6) In any of the cases above, the Commission shall promptly approve/disapprove the application for amendment/modification following a review in the manner prescribed in this regulation and notify the licensee or lessee and the amended/modified annual work programme shall replace the former one.

9. Disapproval of an application for approval of Annual Work Programme and Budget

- (1) The Commission may disapprove Annual Work Programme and Budget before the start date if the application fails to meet any or all of the conditions stated in these Regulations for approval of an Annual Work Programme and Budget.

- (2) Where the Commission disapproves an application, the Commission shall notify the licensee or lessee in writing of the rejection and the reason for the rejection and require the licensee or lessee to submit a fresh application within a specified period as may be determined by the Commission.
- (3) The licensee or lessee shall submit a new application in the prescribed manner accompanied by the payment of the applicable fees and the Commission shall process the application in line with these regulations.

10. Work Programme Reporting Obligations

- (1) All licensee or lessee shall submit a quarterly report on the implementation of their Annual Work Programme and Budget to the Commission by no later than 14 days after the end of that quarter.
- (2) The report shall contain the following:
 - (a) detailed information on the progress made in implementing the Annual Work Programme and Budget, including any challenges encountered and how they were addressed;
 - (b) detailed information on the licensee or lessee's compliance with other laws relating to operations under the license or lease and the Work Programme obligations under the license or lease;
 - (c) provide details of any planned changes or modifications to their operations;
 - (d) provide details of any significant events or incidents that have occurred during the reporting period, including any accidents, spills, or other environmental or safety incidents and actions taken by licensee or lessee to manage, mitigate, remedy, or contain the consequences of the event or accident;
 - (e) provide information on any research and development activities carried out during the reporting period;
 - (f) provide information on projects implemented by the host community trusts under the licence or lease;

(g) provide information on any Nigerian content development initiatives carried out during the reporting period.

11. Annual Work Programme and Budget Performance Evaluation

- (1) The Commission shall use the approved annual work programme and budget to evaluate the performance of a licensee or lessee in any given year.
- (2) The Commission may in carrying out the performance evaluation in respect of an approved work programme in any given year, and in line with regulation 10(h)(i) and ii of the Act undertake work program implementation monitoring visits to the licensee or lessee and field inspections of their area of operation, provided that the Commission shall give to the licensee or lessee at least 7 days' notice in writing of its intention to carry out the visit and a list of all places, equipment's, operations and books that shall be inspected during such visit.
- (3) The Commission may, in carrying out implementation visits to the licensee or lessee and field inspections of their operational areas may engage technical experts as needed to evaluate the licensee or lessee's performance.
- (4) The Commission shall, at the end of any inspection visit, notify to the licensee or lessee in writing its observations, findings and opinions with respect to the implementation of the approved work program and may issue any advise, opinion or directives, which in the Commissions opinion, is required and necessary to achieve the optimal implementation of the work programme.
- (5) The Commission shall publish a yearly ranking of all licensees and lessees based on their performance in the implementation of the annual work program on a licence/lease basis and compliance with all the laws applicable to operations under a licence or lease in Nigeria.

12. Technical Engagements

- (1) The Commission may engage the licensee or lessee on a regular basis to discuss the implementation of their Annual Work Programme and Budget and any issues or challenges that may arise.
- (2) The technical engagements may take the form of meetings, workshops, or other events as determined by the Commission.
- (3) The licensee or lessee shall participate in the technical engagements as required and provide any information or data requested by the Commission.
- (4) The Commission may use the information gathered through the technical engagements to evaluate the licensee or lessee's performance and make any necessary adjustments to the Annual Work Programme and Budget.

13. Administrative Penalties and Sanctions

- (1) The Commission shall impose administrative penalties on a licensee or lessee for failure to comply with the provisions of any laws relating to operations under the license or lease and the Work Programme obligations under the license or lease.
- (2) A licensee or lessee who-
 - (a) Fails to submit an Annual Work Programme and Budget in accordance with these regulations shall attract an administrative penalty of \$10,000.00 and an additional \$1,000.00 for every day in default;
 - (b) Submit false or misleading information in a work programme, shall attract an administrative penalty of \$10,000.00;

- (c) Fails to satisfy the reporting obligations with respect to work programme under this part, shall be liable to an administrative penalty of \$10,000.00 and an additional \$1,000.00 for every day in default;
- (d) Fails to satisfy the reporting obligations with respect to work programme under this part, shall be liable to an administrative penalty of \$10,000.00 and an additional \$1,000.00 for every day in default;
- (e) Fails to participate in technical engagements as required by the Commission, shall be liable to an administrative penalty of \$10,000.00;
- (f) Executes work activities outside the scope of the Work Programme approved by the Commission, shall be liable to an administrative penalty of \$100,000.00 and an additional \$1,000.00 for every day in default.

14. Notice of Intent to discontinue the implementation of an approved Annual Work Programme and Budget

- (1) The licensee or lessee shall provide notice of their intent to discontinue the implementation of an approved Annual Work Programme and Budget at any time during the year.
- (2) The notice shall be provided in writing using a method prescribed by the Commission.
- (3) The notice of intent to discontinue shall include the reasons for the discontinuance and relevant information on the status of the licensee or lessee's operations.
- (4) The Commission shall acknowledge receipt of the notice of intent to discontinue within 14 days and shall require the Licensee or Lessee to submit a new application in line with the provisions of these regulations.
- (5) The Commission may approve the notice of discontinue of an approved Annual Work Programme and Budget if it is satisfied with the reasons stated in the notice and thereafter require the licensee or lessee to submit a new application in line with these Regulations.

- (6) Where the licensee or lessee fails to make a new application within the time specified by the Commission, the failure by the licensee or lessee to submit a new application may be considered an intention to surrender the licence or lease by the licensee or lessee and the Commission may direct the licensee or lessee to surrender the licence or lease in accordance with the Act or any laws in force.

15. Breach of Regulations

- (1) Where the Commission determines that the licensee or lessee has breached any of the provisions of these regulations with respects to the Work Programmes, it may take any of the following actions:
 - (a) Issue a written warning to the licensee or lessee detailing the breach and the steps that must be taken to remedy the situation.
 - (b) Impose an administrative penalty on the licensee or lessee as prescribed in Regulation 13 .
 - (c) Suspend or revoke the license or lease of the licensee or lessee in accordance with the provisions of the Act.
- (2) The Commission shall provide a written explanation for any action taken under this regulation.

16. Appeals

- (1) The licensee or lessee may appeal any decision made by the Commission with respect to Work Programmes.

- (2) The said appeal shall be made in writing to the Commission within 30 days of receipt of the decision.
- (3) The Commission shall review the appeal, subject it to regulatory compliance scrutiny, and provide a written response of its decision within 60 days of receipt.
- (4) The decision of the Commission on an appeal shall be final.

17. Reports

- (1) Pursuant to these regulations, all licensees and lessees shall submit the following reports to the Commission:
 - (a) Annual Planned maintenance and integrity assessment;
 - (b) End of Project Report for each Project;
 - (c) All reports under this section shall be in a form and manner required by the Commission and shall include details of actual expenditures incurred.
- (2) The Commission may request for explanations from a licensee or lessee for any significant differences in cost estimates post approval of the operation compared to the estimates prior to the approval and the licensee or lessee shall comply.

18. Commercial and Economic Considerations for Approval of FDP and annual work program and budget

- (1) The Commission shall evaluate the commercial and economic aspects of Field Development Plans and Annual Work Programs and Budgets by considering and ensuring that:
 - (a) The proposal conforms with benchmarked costs established by the Commission to ensure that project delivery costs are optimized, and Government take from the venture is maximized.

- (b) The Proposal conforms with benchmarked costs established by the Commission to ensure that project delivery costs are optimized and Government take from the venture is maximized.
- (c) The estimated cost is authorized within the class 3 project gates of a optimal - 10%, base case, and pessimistic +20% estimates. Cost overrun above the pessimistic project gates as approved will be classified as a new plan and shall be subject to an application for an approval.
- (d) The proposal is supported by appropriate cost monitoring requirements submitted by the licensee or lessee including:
 - i. Revenue projection
 - ii. Class 3 estimates of the Unit Production Cost
 - iii. Class 3 estimates of the Unit Development Cost (UDC)
 - iv. Class 3 estimates of the Unit Operating Cost (UOC)
 - v. Class 3 estimates of the Unit Technical Cost (UTC)
 - vi. Class 3 estimates of the Unit Finance Cost
 - vii. Basis of Estimate (BoE) containing but not limited to the following information:
 - I. Purpose of the proposal
 - II. Proposal Scope Description
 - III. Methodology of the estimate preparation
 - IV. Classification of the cost estimate
 - V. Design Basis
 - VI. Planning basis
 - VII. Cost basis
 - VIII. Assumptions
 - IX. Exclusions
 - X. Exceptions
 - XI. Risks
 - XII. opportunities
 - XIII. Containment
 - XIV. Contingency
 - XV. Management Reserve
 - XVI. Reconciliation
 - XVII. Estimate validation/benchmarking
 - XVIII. Estimate Quality Assurance
 - XIX. Estimating Team
 - XX. Capital Cost Recovery period.

- (e) The Proposal shows acceptable socio-economic profitability and is reasonably robust against changes in the price for development of oil and natural gas projects.
- (f) The project investment appraisal and profitability were measured with the following capital budgeting techniques:
 - i. Net Present Value (NPV)
 - ii. Internal Rate of Return (IRR)
 - iii. Break-even Analysis
 - iv. Return on Investment
 - v. Economic Sensitivity Analysis
 - vi. Economic Value Added (EVA)
- (g) That revenue projection are based on a conservative estimate of the amount of producible oil and/or gas attributable to a property or project and an estimation of the economic value of the predicted future production.
- (h) That the sensitivity analyses for financial parameters provide a good picture of the project's range of uncertainty, preferably in the form of a tornado diagram including a clear statement on how uncertainty in cost estimates are to be dealt with, given as an anticipated value.
- (i) That profitability assessments, uncertainty assessments, cost and tariff profiles, including the assumptions for the assessments such as-Currency exchange rates, Inflation, Crude oil price annual escalation index, Unit tariffs for processing, transportation, storage, and lifting of crude oil, and natural gas products, respectively, Environmental taxes and Tax assumptions, have opportunity to adapt to changed capacity requirements.
- (j) That there is a risk analyses of uncertainties and impact on the project's economics including geological, technical, engineering, operational, financial, political risks.

19. Oversight Procedure and Requirements

(1) Pursuant to these regulations, a licensee or lessee shall submit to the Commission the commercial details of any of the following agreements at least seven days before entering into such agreements:

- (a) Gas Supply Agreement
- (b) Crude Handling Agreement; and
- (c) Any similar agreements of a commercial nature

(2) The submission of the commercial information under this paragraph shall be in the format annexed to be prescribed by the Commission.

(3) The commercial information under this regulation shall be the basis of any suggestions or amendments by the Commission to the licensee or lessee on optimization of costs under such agreements which the licensee or lessee shall comply with.

20. Power to Direct communications and co-operation between Licensees and Lessees:

(1) The Commission shall have the power to direct licensees and lessees to communicate or co-operate with each other in the implementation of FDP or an annual work program where such communication or Co-operation would further the Government's policy goals of maximising the economic recovery of hydrocarbons, promoting efficient infrastructure development and protection of the environment.

PART IV

TRANSFER OF ASSETS AND RENEWAL OF CONTRACTS

21. Application of this section

(1) This section shall apply to all types of contractual arrangements among interest holders in the upstream oil and gas industry including, joint ventures, production sharing contracts, risk service agreements, concessions, service contracts, profit sharing contracts among others.

- (2) Where a licensee enters into negotiations to transfer their assets to a third party, revise or renew any contract to which section (1) applies, the licensee shall notify the Commission prior to the execution of the Contract and seek the Commission's opinion on whether the proposed contract conforms with the economic principles provided in this Regulations.
- (3) The notification shall contain the following information:
- (a) Details of the Licensee
 - (b) Details of the Contractual Party or Parties
 - (c) Summary of commercial terms of the Contract
 - (d) FDP Approval;
 - (e) any other relevant document the Commission may request.

PART V MISCELLANEOUS

22. Interpretation

In addition to the definitions contained in section 318 of the Petroleum Industry Act, 2021, in these regulations, unless the context otherwise requires –

“Act” means Petroleum Industry Act, 2021;

“applicable law” shall be the laws, regulations and decrees of Nigeria;

“approval gate” refers to each stage of the projects lifespan for which the approval of the Commission is required such as....

“block” means a licence area or lease area, or part of a licence or lease area, as the case may be;

“Commission” is the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) pursuant to Section 4 of the Act;

“Costs” includes Concept Engineering costs, FDP Subsurface Studies (pre- and post-FDP), Associated Gas Elimination and Monetization, Unitization Studies, FDP Approvals, Geotechnical Survey/Geophysical Survey, Permits, Front End Engineering Design (FEED), Detailed Engineering Design, Fabrication, Construction, Pre-commissioning, Commissioning, Life Extension, Modification & revamps, Drilling Costs, Well Completion and Hook-up Costs, Well Operations (intervention and workover, testing, diagnostics.) costs, Asset integrity and maintenance, Decommissioning/Abandonment costs

“exploration area” means the area of the petroleum prospecting licence, less any appraisal area, retention area, no interest area and lease area;

“maximum economic recovery” means the recovery of economically recoverable petroleum in a manner that creates the maximum project value for investors and the State, through:

- (a) creating infrastructure in an optimal configuration,
- (b) achieving optimal levels of field performance,
- (c) creating cost effective production,
- (d) applying new and emerging technologies to their optimum effect, and
- (e) permitting decommissioning in the most effective way.

“maximum efficient rate” means the maximum rate, according to good international petroleum industry practices, at which crude oil or natural gas can be produced without excessive decrease of reservoir pressure or loss of reservoir energy.

"month" means a calendar month

“Nigerian” means citizen of Nigeria and “non-Nigerian” shall be construed accordingly;

"notice" means any notice, consent, request and other document authorized or required to be given pursuant to regulations under the Act

“Off-cycle MER test” means MER tests that are required in addition to the compulsory half-yearly MER tests specified in this Regulation.

“quarter” means quarter of a calendar year;

“relevant area,” in relation to an petroleum exploration license, petroleum prospecting license or petroleum mining lease, means the area affected by the license or lease;

“termination,” in relation to a petroleum prospecting license or a petroleum mining lease, means expiration by effluxion of time or otherwise or any other form of termination, including termination by the licensee or lessee and, in relation to any part of the relevant area in respect of which a lessee surrenders his lease, that surrender.

“UDC” means Unit Development Cost.

“UOC” means, Unit Operating Cost.

“work commitment guarantee” is a bank guarantee or letter of credit to guarantee the work to be undertaken as provided for under the lease or licence. “year” means a

period of a year from any day during the year, in accordance with the Gregorian calendar

- a. In these regulations “license or lease” and “the licensee or lessee” means, unless the context otherwise requires, a petroleum prospecting license or a petroleum mining lease and the holder of such a license or lease, respectively.
- b. Any reference in these regulations (however expressed) to a petroleum exploration license, a petroleum prospecting license or a petroleum mining lease includes, unless the context otherwise requires, a reference to any extension or renewal of the license or lease.

23. Citation

These Regulations may be cited as the Commercial Operations (Upstream Oil and Gas Industry) Regulations 203.

MADE at Abuja this..... day of2023

ENGR. GBENGA KOMOLAFE, FNSE

Commission Chief Executive

Nigeria Upstream Petroleum Regulatory Commission