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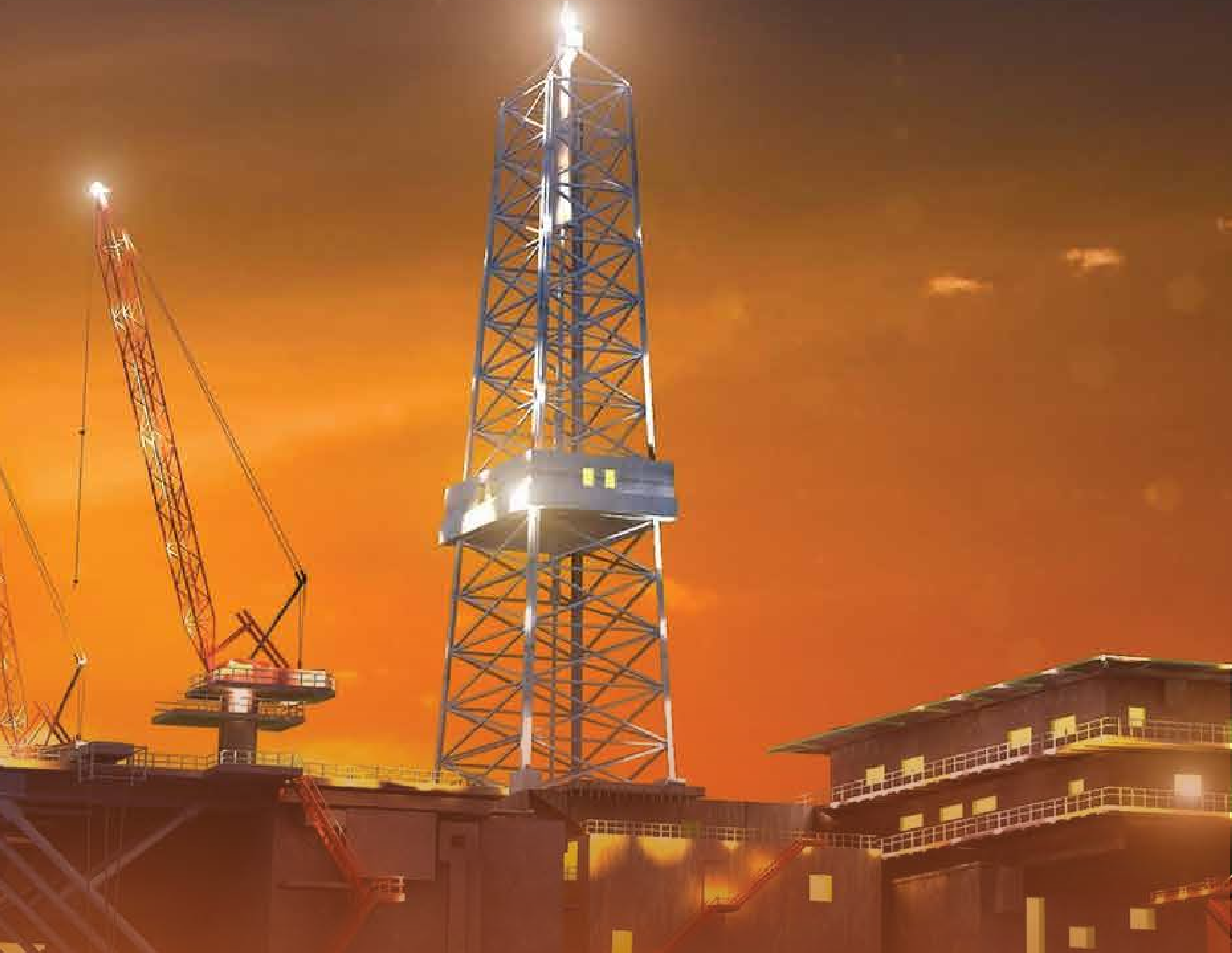


NIGERIAN MIDSTREAM AND DOWNSTREAM PETROLEUM REGULATORY AUTHORITY (NMDPRA)

REGULATIONS & UPDATES

Dear Valued Partner,

The Nigerian Midstream and Downstream Petroleum Regulatory Authority (mostly referred to as either "The Authority" or "NMDPRA") was established by the Petroleum Industry Act (PIA) 2021. It formally commenced operations in August 2021. It is responsible for the regulation of the midstream and downstream petroleum operations in Nigeria, which includes its technical, operational, and commercial activities.

Notably, the NMDPRA encompasses a merger of three now defunct regulatory agencies namely; the Petroleum Products Pricing Regulatory Agency (PPPRA), Petroleum Equalization Fund {Management} Board (PEFMB), and the Midstream and Downstream Divisions of the former Department of Petroleum Resources (DPR). This merger has brought about the creation of distinct regulator for the midstream and downstream petroleum industry. It is part of the plan to ensure the full optimization of the midstream and downstream sector of the petroleum industry in Nigeria, thereby encouraging investment.

NMDPRA in exercise of its powers provided under the PIA has since commencing operations released twelve new Regulations governing petroleum operations in the midstream and downstream Sector. We have in this newsletter provided for:

- An overview of the NMPRA Regulations
- Application and coverage for the licences and Permits provided under the Regulations
- Duration for the Licences and Permits
- Qualification to apply for the Licences and Permits
- Offences and Penalties provided for under the Regulations.

Overview of the NMDPRA Regulations

01 *Gas Distribution Systems Regulations, 2023.*

- Summary of Regulations.

The Regulations establish the procedure for the grant of a gas distribution license for gas distribution in a local distribution zone. It also provides penalties for default in complying with the provisions of the regulations.

- Application of the Regulations.

The Regulations apply to activities connected with gas distribution within a local distribution zone, including systems in existence prior to the commencement of the Regulations.

- Licence covered under the Regulations.

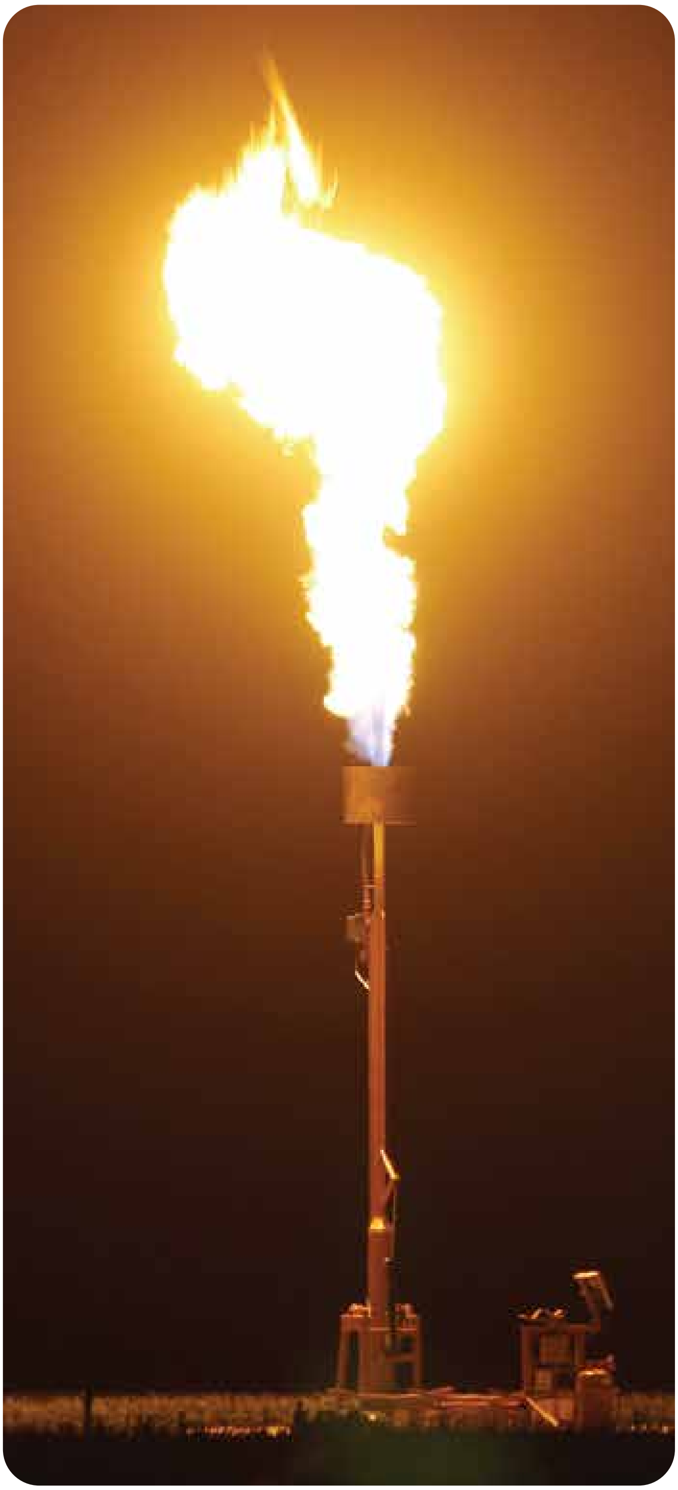
The license covered under this regulation is the Gas Distribution License. It confers on the holder the exclusive right to distribute and sell natural gas within a geographical limit within a local distribution zone determined by the Authority.

- Duration.

A Gas Distribution License as provided under the Regulations is valid for a term of 25 years and may be renewed for another term of 25 years subject to terms and conditions as may be prescribed by the Authority.

- Offences and Penalties.

Entities found in default of the provisions of the regulation (including the non-provision of requisite progress reports detailing targets achieved and clearances obtained) and persons who carry out gas distribution without the requisite licenses may, in addition to the sanctions, fines and penalties contained in the Act, be liable to an administrative penalty of not more than $1,000,000 USD and any licence granted in these Regulations may be suspended or revoked.



02 *Gas Trading and Settlement Regulations, 2023.*

Summary of Regulations.

The Regulations in line with the provisions of the PIA, regulates the establishment and operations of gas trading and settlement exchange platforms. It prescribes the principles for the secure, and efficient trading of natural gas; and seeks to promote an efficient and robust gas trading.

- Application of Regulations.

The Regulations apply to all activities connected with establishing and operating trading and settlement systems for natural gas and other gas commodities on exchange platforms.

- Licence covered by the Regulations.

The licence and permit covered under the Regulations are the Gas Trading Licence and the Gas Clearing House Authorisation. The Gas Trading Licence confers on the holder the right to establish and operate a gas exchange, while the Gas Clearing House Authorisation confers on a holder the authority to act as a clearing house for a gas exchange.

An application for a Gas Trading Licence must comply with the rules of the Securities and Exchange Commission (SEC) in relation to commodities trading.

- Duration.

A Gas Trading and Settlement Licence or a Clearing House Authorisation, upon grant is expected not to exceed a period of 10 years from the date of its issuance unless such licence or authorisation is withdrawn or cancelled.

- Persons Qualified to Participate in Gas Trading and Settlement Exchange:

The Regulations provide for the following qualified persons to carry out gas trading and settlement exchange:

a. Exchange operators
b. Natural Gas Transmission Line Operators
c. Gas Producers
d. Gas Shippers
e. Wholesale Gas Suppliers and Distributors; etc.

- Offences and Withdrawal of Licence.

A notice of non-compliance may be issued to a licence-holder under the Regulations where the operations of the gas exchange or a clearing house are in violation of the Regulations or the terms and conditions of its licence or authorisation; or where the gas exchange or a clearing house is suspected of malpractice with respect to gas trading and settlement; etc.

Also, where the Authority is of the opinion that the licence or authorisation granted to a gas exchange or a clearing house should, in the interest of the trade or in public interest, be withdrawn, the Authority may serve a written notice on such gas exchange or clearing house, to show cause as to why such licence or authorisation should not be withdrawn, and after giving an opportunity of being heard in the matter, the Authority may withdraw such licence or authorisation granted to the gas exchange or the clearing house. The withdrawal of the licence or authorisation shall not affect the validity of any contract made before the date of withdrawal.

03 *Midstream Downstream Penalties and Enforcement Mechanisms Regulations, 2023*

- Summary of Regulations.

In line with the PIA, the Regulations provide a framework for the application, administration, and enforcement of penalties in the midstream and downstream sector and provide the instruments and notices for enforcement of penalties.

- Application of Regulation.

The Regulations apply to the administration and enforcement of penalties and sanctions in the mid-stream and downstream petroleum operations.

- Offences and Penalties.

Penalties in midstream and downstream petroleum operations shall be as prescribed under the PIA (such as failure to comply with the provisions of the PIA and any regulations made thereof, making incorrect accounts by omitting or understating profits, false statements and returns, etc.) and the other regulations made by the Authority based on the nature and impact of regulatory breaches.

The NMDPRA is required to issue the following notices where the NMPRA reasonably believed a person is about to commit or has committed an offence:

a. Potential incidence of non-conformity (issued to prevent an imminent penalty and provide an opportunity for corrective measures);
b. Incidence of non-conformity (one or more offences have occurred or deemed to have occurred, the failure to address such offence has arisen despite earlier notifications, and opportunity is provided for a person to make representation in regard to the incidents);
c. Notice of non-compliance (a person fails to prevent the incident stated and no representation is made to prevent a penalty being issued); or
d. Demand notice (which is a formal notification conveying NMDPRA decision and penalty on a person who has failed to resolve the incidences as stated in the notices).

Where a person fails to comply with a cease-and-desist order issued by the NMDPRA, the NMDPRA may levy a fine not exceeding 5% of the annual turnover of the company for the preceding year or revoke the licence of any person who fails to comply with a cease-and-desist order. Prior to the revocation of the licence, the NMDPRA is required to serve a notice of default to the licence/permit holder and give the licensee/permit holder 60 days within which to remedy the default.

04 *Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023.*

- Summary of Regulations.

The Alternative Dispute Resolution (ADR) Regulations establishes the Midstream and Downstream Petroleum ADR Centre, and provides the procedure for timely and cost -efficient alternative dispute resolutions mechanisms for the midstream and downstream petroleum industry.

- Application of Regulations.

The ADR centre established under this Regulations shall; provide administrative supervision of dispute resolutions at the Centre in accordance with the rules adopted by the Centre or those agreed upon by the parties to disputes; resolve disputes through ADR methods in accordance with the relevant rules adopted by the Centre; conclude agreements and memoranda of understanding with competent courts within and outside Nigeria on matters related to; (i) enforcement of arbitral awards and decisions issued by the Arbitration Tribunals of the Centre, and (ii) ratification of settlement agreements mediated by the mediators and conciliators registered with the Centre; etc.

Furthermore, as prescribed by the provisions of the Regulations, the ADR centre shall in delivering its objectives of dispute resolution utilize several mechanisms prescribed under the Regulations including expert determination, conciliation, mediation, arbitration, etc. The fees payable by parties who submit to ADR as provided under the Regulations shall be disclosed and explained by the Centre, at the filing of a dispute.

05 Midstream Gas Flare Regulations, 2023.

- Summary of Regulations

The Midstream Gas Flare Regulations established in line with provisions of the PIA, regulates gas flaring in the industry and sets the criteria for gas flaring in midstream petroleum operations for safety purposes, which includes emergency shutdown with depressurization.

The Regulations categorize acceptable gas flare under the midstream and downstream sector. They include safety flaring; initial start-up flaring during commissioning and start-up phases of a plant or process unit; continuous flaring (when the plant or process unit is in operation); and non-continuous operational flaring on a planned or unplanned basis for scheduled maintenance, equipment shutdowns, etc.

- License covered by the Regulations.

The Regulations provide for the grant and revocation of permits to flare gas. It also provides for the issuance of permits to access flare gas. A permit to access flare gas is transferable under the Regulations upon satisfaction of the terms and financial requirement stipulated in the Regulations including submission of an investment proposal by the party seeking transfer; and payment of service charges.

- Duration.

The permit to access flare gas shall be valid for a term of one calendar year and renewable for a further term of one year. The duration for the flare gas is to be provided in the guidelines to be issued by NMDPRA.

- Offences and Penalties.

An Operator is liable to a fine of $0.50 (USD) per 28.317 standard cubic meters of gas flared beyond one million standard cubic feet (1MMSCF). However, where the gas flared or vented is beyond one million standard cubic feet but less than ten million standard cubic feet (between 1-10 MMSCF), then the penalties payable shall be $1.00 (USD) per 28.317 standard cubic metres. Where the gas flared is greater than ten million, the Operator will be liable to a fine of $1.50 per 28.317 standard cubic meters of the gas flare.

Operators who fail to obtain licenses, or provide required information, or make false declarations, etc., are liable to a penalty issued by the NMDPRA of not more than US $100, 000 and in addition, any permit, licence or authorization granted to such operator may be suspended, cancelled or terminated.

06 National Strategic Stocks Regulations 2023.

a. Summary of Regulations.

b. The Regulations is made pursuant to the requirement for regulation on national strategic stock under the PIA. It establishes the national strategic stocks for petroleum products in Nigeria, sets out the rules for administration of the national strategic stocks, and stipulates the public service levy for the funding of the national strategic stock. It also makes provisions for penalties for failure to comply with the provisions of the Regulations.

c.

d. Application of Regulations.

e. The Regulations apply to activities connected with the establishment, administration, financing, storage, and distribution of national strategic stocks of petroleum products in Nigeria, including the designation of the strategic locations across the country where the national strategic stocks shall be maintained.

f.

g. The Regulations provide for the payment of a national strategic stock levy of not more than 5% of the retail price of petroleum products which shall be collected by the NMDPRA on wholesale basis at wholesale points. The debit note for the levy shall be issued by NMDPRA to the wholesalers of petroleum products.

h.

i. Offences and Penalties.

j. Some of the penalties and offences provided under the Regulation are as follows;

k.

l. Non-payment of the levy as stipulated by the Regulation is an offence penalized by the payment of 10% of the amount unpaid which shall be added for each month, after the date on which payment should have been made, and the suspension of the operations of a facility until payment is made.

m. A facility owner who fails to maintain the stock levels for the petroleum products designated as national strategic stocks, commits an offence and is liable to an administrative penalty of 120% of the inventory cost of the volume released, and in addition shall replenish the stock within 24 hours from the date of issuance of the administrative penalty by the NMDPRA.

n. Defaulters of the Regulations shall in addition to sanctions and fines provided under the PIA, be liable to pay to the NMDPRA an administrative penalty not more than $100,000 (USD) and may have any licence issued by the NMDPRA revoked.

07 Assignment or Transfer of Licence and Permit Regulations 2023.

- Summary of Regulations.

The Assignment or Transfer of Licence and Permit Regulations in line with the provisions of the PIA, establishes the procedure for the assignment or transfer of licences and permits in the midstream and downstream petroleum industry, provides the fees payable for such assignment and transfers, and prescribes the sanctions and penalties for default.

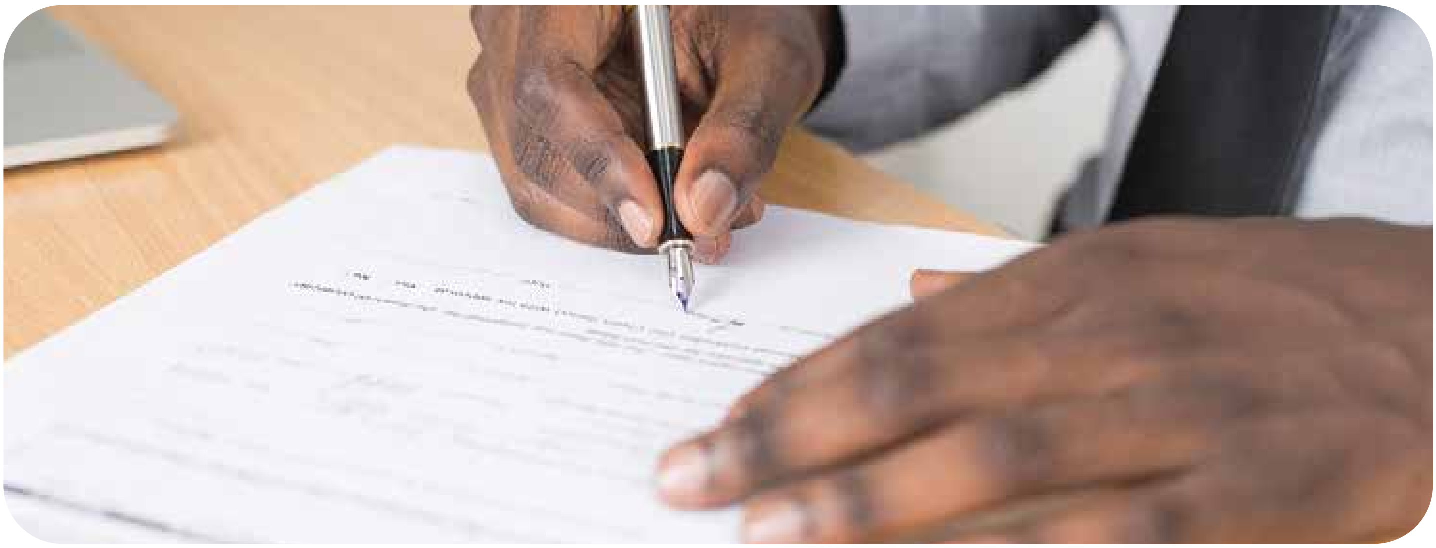
- Application of Regulations.

The Regulations apply to the assignment or transfer of licenses or permits granted by the Authority for midstream and downstream petroleum operations. It prohibits the transfer of licences or permits, or any rights arising therefrom to any person without the prior written consent of the NMDPRA. Hence, an intending transferor shall, prior to any transfer, notify the NMDPRA of its intention. Where the NMDPRA fails to communicate its decision within the stipulated 21 working days upon receipt of the notification, the transferee can apply for the transfer or assignment of the licence or permit. The NMDPRA shall then conduct its due diligence and communicate its approval or refusal within ninety (90) days.

- Offences and Penalties.

Operators found in default of the provisions of this Regulations, shall be liable for administrative penalties as follows:

a. For transfer of midstream processing facilities, installations, terminals and pipelines licence - $100,000 (USD) per licence or permit transferred or assigned (in contravention of the regulation), and where the transfer has been approved, such licence may be suspended or revoked.
b. For blending facilities and petroleum product storage facilities licences - $ 50,000 or its Naira equivalent. Such licence may be revoked where approved.
c. For oil and gas retail outlets licence - N2, 000,000 per licence or permit. Additionally, such licence may be suspended or revoked where approved.



08 *Gas pricing and Domestic Demand Regulation 2023*

- Summary of Regulation.

The Regulations control and regulate the price of marketable natural gas and identifies unregulated markets to ensure they are also properly regulated.

- Application of the Regulations.

The Regulations provide for the domestic base price of regulated marketable natural gas, stating that the domestic base price shall be determined by the NMDPRA on the 1st of April each year and shall be determined based on the export parity price, or the domestic gas supply price whichever is lower between the two. The Regulation further provides that subject to the determination of specific allowance by the NMDPRA, the gas transportation tariff shall be US$0.50 per MMBtu

- Licences covered by the Regulations.

The Regulations make provisions for the issuance of a Domestic Gas Aggregation Licence. The Licence empowers the licensee to obtain from the NMDPRA the domestic gas delivery obligation volumes allocated to gas producers. It also provide for the Domestic Gas Aggregators rights to negotiate pricing and tariffs for the sale of natural gas to wholesale domestic consumers within the framework set by the regulatory authority (NMDPRA), rights to be involved in the development, construction, and maintenance of gas infrastructure, including pipelines, storage facilities, and distribution networks, to ensure the efficient delivery of natural gas to domestic consumers, and rights to access and purchase natural gas from upstream producers, gas processing plants, or other sources.

- Duration of License.

The Domestic Gas Aggregation Licence shall be valid for a period of two (2) years, effective from the date of the grant of the licence.

- Offences and Penalties.

Failure to obtain required licences; or to provide requisite information; or the making of false or insufficient declarations; or willfully failing to comply with any other provisions of the Regulations is penalized with administrative penalties not exceeding $100,000 (USD) in addition to the revocation, cancellation, or suspension of prior licences granted.

09 *Midstream and Downstream Petroleum Operations Regulation 2023*

- Summary of Regulation.

In exercise of the powers conferred on it by the PIA, the NMDPRA by this regulation provides the rules governing the operations of companies in the Nigerian midstream and downstream sector generally, establishes the procedure for the grant of licences and permits, and prescribes the sanctions and penalties for non-compliance with the Regulations.

- Application of the regulation.

The Regulations is applicable to operations in the midstream and downstream petroleum sector.

- Licences covered by the Regulation.

The licenses provided in the regulation are categorized into two; (i) licenses for midstream and downstream gas operations; and (ii) licences for midstream and downstream petroleum liquids operations. Some of the gas operations licenses provided under the Regulations include; Gas Processing License, Bulk Gas Storage License, Gas Transportation Network Operator License, Gas Distribution System Network, Wholesale Gas Supply Licence, etc.

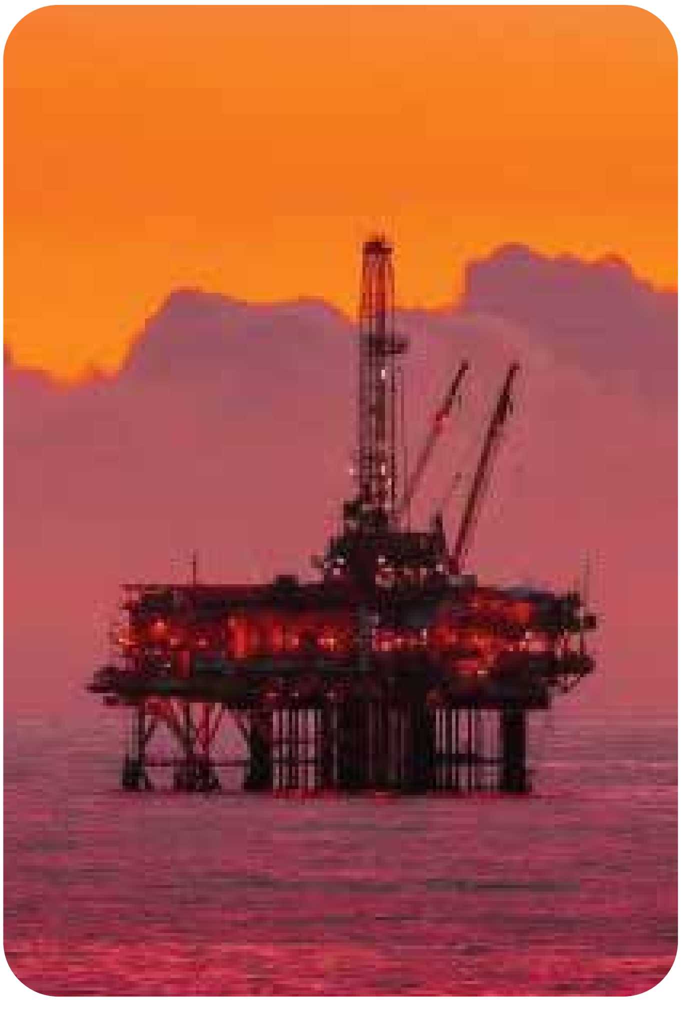
Some of the petroleum liquids operations licenses provided under the Regulations are: Hydrocarbon Processing Facility Operations Licence, Petroleum Transportation Pipeline Licence, Wholesale Petroleum Liquids Supply Licence, Bulk Petroleum Liquids Storage, etc

- Duration of Licence.

Licences issued pursuant to this Regulations expires at the end of the year issued, except otherwise stated in the licence. The Regulations also provide for the renewal of the licences and permits obtained. An application for renewal is to be made not less than 30 days, before the expiration of the original license.

- Offences and Penalty.

Operators failing to obtain licences as required, or failing to provide requisite information to the NMDPRA, shall be held in default of the Regulations and the NMDPRA may impose a penalty not exceeding $1,000,000 (One million) USD, in addition to sanctions and confiscation of equipment.



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10 Natural Gas Pipeline Tariff Regulation 2023

- Brief Summary of the Regulation

Established in line with provisions of the PIA, the Regulations establish a framework to determine a sustainable gas transportation pipeline tariff regime, and provide a tariff methodology for the transportation and transmission of natural gas through the pipeline transportation networks.

- Application of the Regulation.

The Regulations is applicable to all gas transportation pipelines and gas transportation networks in accordance with the PIA. The NMDPRA circulates the guidelines, directives and notices for the implementation of the Regulation.

- License covered under the Regulation.

While the Natural Gas Pipeline Tariff Regulations do not establish any licences, its provisions govern licences and licence-holders operating in the midstream and downstream gas industry mainly, the gas transportation network operation licence, and gas transportation pipeline licence

- Offences and Penalties

Infraction of the provisions of the Regulations is penalized by a penalty of not less than $1,000,000 (USD) or its naira equivalent.

11 Petroleum (Transportation and Shipment) Regulation 2023

- Summary of the Regulation

The Regulations and in line with provisions of the PIA, regulates activities relating to the transportation, loading, lifting, shipment and export of natural gas or its derivatives, crude oil or its derivates, condensate, petroleum liquids, petroleum products and other forms of petroleum liquids in Nigeria.

- Application of the Regulation.

The Regulation applies to all activities relating to the transportation, shipment, and export of crude oil, petroleum liquids and petroleum products in Nigeria whether onshore or offshore. No specific licences are established by the regulation. The Regulations apply to all licences and licence-holders covering transportation, shipment, and export of crude oil and petroleum derivatives.

- Offences and Penalties

Offenders under the Regulations are liable to pay an administrative penalty of $100,000 (USD) or an amount equivalent to the monetary value of the petroleum product transported or shipped illegally.

12 Petroleum Measurement Regulations 2023

- Summary of the Regulation

Pursuant to the provisions of the PIA, these Regulations ensure the accurate measurement and allocation of crude oil, petroleum liquids and petroleum products.

- Application of the Regulation

The Regulation applies to static and dynamic measurements for natural gas or its derivatives, petroleum liquids and petroleum products. The Regulations are applicable to all licences granted under the midstream and downstream petroleum operations.

- Offences and Penalties

Operators who fail to obtain the required licenses or violate any of the provisions of the Regulations are liable to administrative penalties provided under their specific licences, and/or revocation of the license and permits. Where no specific penalty is provided for an offence under the Regulations, the NMDPRA may impose a penalty not exceeding $250,000 (USD).

Application for Midstream and Downstream Oil and Gas Industry Licences and Permits.

Pursuant to the provisions of the PIA 2021, the NMDPRA has launched a digital application portal system for the grant of Midstream and Downstream Industry Oil and Gas Service Permits (MDOGISPs) to sector service operators. This new licensing regime and service permits replaces the defunct Department of Petroleum Resources (DPR) administered Oil and Gas Industry Service Permits (OGISPs) and portal regime, which prior to the PIA regulated all streams of the petroleum industry operations.

Operators rendering services in the midstream and downstream industry shall now register, apply and obtain relevant permit(s) through the MDOGISP portal system. The failure to obtain the requisite permits through the platform attracts penalties (as already stated above) under the Regulations, which may include, sealing or destruction of premises and facilities, imposition of fines, confiscation of equipment and materials, etc.

Conclusions

One of the objectives of the PIA is the deepening of the Nigerian midstream and downstream petroleum industry. One of the tools it seeks to achieve this is the creation of a separate regulator for midstream and downstream petroleum operations. One of the effect of this is that oil and gas exploration and production companies and holders of mining leases may be bound by the Regulations as prescribed by the NMDPRA as it relates to operations and activities downstream the measurement point of the petroleum mining lease.

The NMDPRA has directed, pursuant to the provisions of the PIA that, all holders of subsisting leases, licenses and permits that are engaged in midstream and downstream petroleum operations are to register and use separate companies for each stream of operation on or before 31st August 2023.

[1]Section 31 PIA 2021

[2]Regulation 3, Gas Distribution System Regulation 2023

[3]Sections 33;126 and 159 PIA

[4]Regulation 3 of Gas Trading and Settlement Exchange Regulation 2023

[5]Sections 33(i); and 231 ibid

[6]Sections 297 to 300 ibid

[7]Regulations 8 and 9 of the Midstream, Downstream Alternative Dispute Resolution Regulation 2023

[8]Section 33 (y) PIA

[9]Regulation 6 of Midstream Gas Flare Regulation 2023

[10]Regulation 13 of the Midstream Flare Gas Regulation 2023

[11]Sections 33(m) and 181 of the PIA, 2021.

[12]Regulation 20 of the National Strategic Stocks Regulation 2023

[13]Sections 33, 117 PIA, 2021

[14]Sections 33, 125(3) and 174(3) PIA 2021

[15]Section 32(c), 33(n), 113, 122. 123, 124(2) PIA

[16]Sections 33, 113(6), 175 PIA, 2021

[17]Sections 33, and 106(1) ibid

[18]Sections 32(11) and 218 ibid

[19]which are categorized into two, namely, General major permits and Specialised permits.

[20]Sections 212 and 302 (3) PIA.

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