



Extensions for Exploration and Appraisal periods

The pandemic has provoked delays in operations as services and materials providers all along the value chain have not been able to fulfill their commitments on time, and lockdown measures have limited the development of activities. Additionally, regulators have been operating irregularly since March 2020 with interrupted procedures, closure of offices, common failures in the electronic systems to submit information, and suspension of authorization procedures. According to the National Hydrocarbons Commission (CNH), there were 25 force majeure and 13 extension requests between March and July 2020. To grant some relief, CNH published Agreement CNH.E.29.001/2020, where it: i) recognized a limited force majeure, and ii) rejected the requests for extensions. In this paper we will focus on the latter: that is, the Operators' right to request an extension to Exploration and Appraisal Periods, which becomes more relevant at these times, considering not all operational delays due to COVID-19 qualify as Force Majeure.

HOW IT WORKS?

Contracts establish that at least 60 calendar days before the conclusion of the Exploration or Appraisal periods, Operators may request an extension to conclude ongoing activities that, for reasons not attributable to the Operator, are impossible to conclude within the period. Given that it can only be granted for approved activities, no new activities are allowed. In their request, Operators shall propose the required timeframe to conclude the pending activities.

APPROVAL PROCESS

Exploration Period extensions: Since there is no specific term for answering requests for Exploration Periods extensions, CNH may resolve in up to three months (article 17 of the Federal Law of Administrative Procedure). This means that the contractual term for filing with at least 60 days in advance, may not be sufficient for obtaining the approval in time.

Appraisal Period extensions: There is a 15-business day term for resolution, according to article 51 of CNH's Plan Guidelines.

There is neither a defined process nor evaluation criteria to approve extensions. The following is a compilation of what has been observed in the 14 processes that CNH has resolved up to date.

Based on past approvals, CNH evaluates the extension request based on: (i) Current status of the Contract and Plan/Program; (ii) Cause of the extension; and (iii) Extension characteristics. The evaluation process is carried out by the Unit of Technical Administration for Entitlements and Contracts (UATAC in Spanish), supported by CNH's legal and technical areas. According to the above, Operators should structure their requests based on the following:

1. **Current status of the Contract and Plan/Program**
 - Activities progress:
 - Executed vs programmed activities.
 - Minimum Work Program progress: its increment and additional commitments (if any).
 - Analysis of permits and authorization procedures for the approved activities.
2. **Origin of the extension**
 - Extension request: At least 60 calendar days before the period ends.
 - Causes/Reasons of delay:
 - Technical, economic, social, and other reasons out of Operator's control.
 - Analysis and comparison with periodic reports and/or previous Operator's notifications of any delay or problem.
 - Analysis of reasons not being attributable to the Operator (supported by the legal area of CNH).
3. **Extension characteristics**
 - Activities to be executed during the extension: Shall be activities approved in the Plan/Program (supported with exploration technical area of CNH).
 - Schedule: Shall be consistent with the one in the Plan/Program approved.
 - Extension time: Justification that the extension corresponds to the programmed activities.

RECOMMENDATIONS

- Considering COVID's current restrictions, and the fact that several regulators are increasingly defining more non-business days, procedures tend to be inconsistent and may take longer. It is recommended to request the extension more than 60 days before the conclusion of the period.
- CNH has denied requests due to inconsistencies in activities' timelines. Thus, remember to deliver the updated timeline in the format that was approved in the Plan/Program.
- Include any delays or operational problems in the monthly reports to CNH, to have additional support in case of an extension request.
- Extension request shall always include documental support for its causes.
- Agile communication with CNH is key to clarify and submit additional information requests.

EXTENSIONS VS OTHER CONTRACTUAL FIGURES

	PROS	CONS
Extension	<ul style="list-style-type: none"> • No additional commitments • No Plan/Program modification needed • Available for Exploration and Appraisal periods 	<ul style="list-style-type: none"> • Only applies for approved activities • Proof of reasons not attributable to the Operator • No defined term of extension
Additional Exploration Periods	<ul style="list-style-type: none"> • Defined term of the period, longer than the extension • Additional activities can be included. 	<ul style="list-style-type: none"> • Additional commitments (work units) • Additional compliance guarantee • Plan/Program modification may be needed
Force Majeure	<ul style="list-style-type: none"> • No Plan/Program modification needed • No additional commitments • Applies for any stage of the project 	<ul style="list-style-type: none"> • No defined term of extension or suspension • Complex legal processes • More evidence may be required

ANALYSTS



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advises on the design of the regulatory compliance strategies where she oversees that each of our suggestions are both legally viable and enforceable as well as representing the minimum government relationships wear. She has experience in advocating before high-level public servants of the energy regulators in favor of our clients, often integrating diverse stakeholders' points of view.

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We are a unique firm integrated by experts in energy regulation and public administration, conformed by a professional team with vast experience in the evolution of the energy sector during the last 10 years.

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