

When to submit a proposed revision of an EP

Document No: N-04750-GL1705 A515816

Date: 11/09/2020

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1. Introduction

Environments in which petroleum activities are conducted are dynamic and can result in changes to the environmental impacts and risks identified in the accepted environment plan (EP) for the activity. Some of these changes require that a proposed revision to the EP be submitted for reassessment under certain circumstances. NOPSEMA has chosen to develop guidance on when a change is likely to trigger the requirement to submit a proposed revision of an EP.

2. Purpose

This document provides guidance on NOPSEMA's interpretation of the requirements to revise an environment plan (EP) under regulation 17, 18 and 19 of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations). This guideline should assist the reader to understand the EP revision requirements of the regulations.

Core concepts

Regulation 17 requires the titleholder to determine whether a change, or proposed change of circumstances or operations, triggers a requirement to revise and resubmit the EP.

A proposed revision of an EP may also be required under regulation 18 (at the request of NOPSEMA) or regulation 19 (every five years).

3. Background

Over the life of a petroleum activity a number of changes may occur or be proposed. These could be due to any number of situations. The regulations envisage an EP as being the cornerstone of a titleholder's environmental management and, like any plan the EP is a live, dynamic document. As such, the EP must allow for appropriate change to reflect the current realities facing the titleholder in managing impacts and risks arising from the activity. Similarly, the regulations stipulate that under some situations a revision of the EP is required to be assessed and accepted by NOPSEMA. Regulations 17, 18 and 19 specify these situations.

4. Requirements for submission of a proposed revision

Some changes will require a proposed revision of the EP prior to, or as soon as practical after, the change to circumstances or operations. Regulation 17 requires a proposed revision of an EP to be submitted to NOPSEMA:

- before commencement of a new activity. A proposed revision of an EP may be submitted, with NOPSEMA's approval, as an alternative to submitting a new EP.
- before the commencement of any significant modification or new stage of the activity that is not provided for in the accepted EP.
- before or, as soon as practicable after the occurrence of any significant new or significant increase in environmental impact or risk, including a series of new or increases in impact or risk.
- if there is a change in titleholder that will result in a change in the manner in which the environmental impacts and risks of an activity are managed.

Regulation 18 allows for NOPSEMA to request a proposed revision from a titleholder and regulation 19 requires titleholders submit a proposed revision to NOPSEMA for assessment every five years, whether or not there has been any change in the activity.

Further detail on each of these requirements is provided in the sections below. Appendix A provides a flow chart suggesting how a titleholder may consider whether or not a proposed revision is required and may assist titleholders in their determination.

4.1. Subregulation 17(1) – New activity

A new activity is interpreted by NOPSEMA as a broad change to the type of activity being conducted. As a guide, this is likely to result in a change to the extent that the regulatory levy category applied to the activity would change. In this case, the titleholder may choose whether to submit a new EP for the new activity or whether to submit a proposed revision under subregulation 17(1). Titleholders should contact NOPSEMA for advice on the implications of this choice for their specific circumstances.

4.2. Subregulation 17(5) – Significant modification or new stage of the activity

For the purposes of this subregulation, *modification* means a change to how the activity is being managed and/or conducted. Only significant modifications require a proposed revision of an EP to be submitted to NOPSEMA. A new stage means a change to the temporal (when) or spatial (where) limits of the activity, or a change to the types of operations provided for in the EP.

Titleholders should be aware that proposed revisions of seismic or exploration drilling EPs submitted under subregulation 17(5) will be subject to a new public comment period, as described in NOPSEMA's Environment plan assessment policy (N-04750-PL1347).

4.2.1. Significant modification to an activity

A significant modification is likely to be a planned change initiated by the titleholder. It is incumbent on the titleholder to ensure that all specific activities, tasks or actions required to complete the activity are provided for in the accepted EP. A proposed revision is required when a titleholder wishes to conduct operations or manage environmental impacts and risks of that activity in a significantly different way than specified in their accepted EP.

A modification is defined broadly to ensure all changes are captured by regulation 17 - modifications to an activity can, and periodically will, occur without the need for submission of a proposed revision of an EP to NOPSEMA. As the definition of modification is broad, a relatively high threshold of significance can be specified by the titleholder. Doing so will allow insignificant modifications to proceed in a timely manner.

It is important to define how decisions will be made about the significance of a modification. Where the changes are significant the titleholder must submit a proposed revision of the EP under subregulation 17(5) before the commencement of the significantly modified activity.

When designing (or reviewing) the process or system where the regulation 17(5) criteria are considered, the titleholder should have criteria that they will use to determine when a proposed revision may be required. Aspects of environmental management that are expected to feature in titleholders' 'significance' criteria with regard to modifications include, but are not limited to:

- continual reduction of the impacts and risks of the activity to ALARP

Core concepts

Titleholders are expected to have criteria for determining a significant modification.

Any new stage requires a proposed revision.

- the effect the change has on the ability to demonstrate environmental performance outcomes and standards are being met
- the criticality of the aspect being changed (i.e. a management system change is likely more critical because of its coverage of all impacts and risks as opposed to an individual item of equipment)
- the degree of deviation from how the activity was described in the EP
- the effect the change has on meeting legislative obligations, such as the requirement to remove property and equipment from the title area.

To determine the significance of the modification requires a starting basis against which the changed state can be assessed. As the legally binding document accepted by NOPSEMA, the accepted EP is considered the basis against which all change is to be assessed.

4.2.2. New stage of an activity

In relation to a new stage of an activity, the titleholder may choose what is involved in a particular stage of the petroleum activity and provide adequately for those operations in an EP. Before progressing past the stage provided for in the EP and into a new stage, the titleholder must submit a proposed revision, and it must be accepted by NOPSEMA. The new stage of an activity cannot commence prior to the proposed revision being accepted by NOPSEMA as it is an offence under regulation 7.

NOPSEMA is of the view that, among other scenarios, the following situations constitute a new stage of an activity that must be provided for in an accepted EP:

- change to the timing of the activity as described in the accepted EP;
- change to the spatial limits of the activity detailed in the accepted EP;
- cessation of production;
- commencement of decommissioning and removal of equipment.

4.3. Sub regulation 17(6) - New or increased impact or risk

For clarity, a new impact or risk is one that was not assessed in the accepted EP. An increased impact or risk is one with greater extent, severity, duration or uncertainty than is detailed in the accepted EP. NOPSEMA expects titleholders to consider all sources of information about new or increased impacts or risks including, but not limited to:

- changes to the activity or to the assumptions that underpinned the basis of the risk and impact assessment in the accepted EP that result in new or increased impact(s) or risk(s)¹
- changes in knowledge of environmental impacts, environmental risks or legislative requirements (for instance, the following sources may be relevant):
 - new or revised publications regarding matters of national environmental significance
 - new knowledge about the existing environment or the effects of the titleholder's activity thereon

¹ The impacts and risks of a modification or new stage of an activity should be considered separately to, and after, determining whether or not there is a significant modification or new stage of the activity.

- information provided by stakeholders
- changes in legislation.

A proposed revision must be submitted to NOPSEMA before the occurrence of a significant new or significant increase in environmental impact or risk, if it is reasonable to expect that the titleholder was aware of it in advance of it occurring. If the titleholder was unaware of such an impact or risk in advance, the proposed revision must be submitted as soon as practicable after the titleholder becomes aware of a new or increased impact or risk.

A revision to an EP is also required before or, as soon as practicable after the occurrence of a series of new environmental impacts or risks, which, taken together, amount to the occurrence of a significant new or significant increase in the environmental impacts or risks. This requirement means that each increase in impact or risk must be considered in the context of all relevant changes made since the EP was accepted. This is to test whether these changes together are a series of changes that may or may not result in a significant increase in impact or risk. Alternatively, the titleholder may become aware of a series of increases in impacts or risks that previously had not been considered. NOPSEMA expects that these are also considered as a series. The purpose of this provision is to ensure multiple changes, which in isolation may be insignificant, don't cumulatively amount to a significant new or increased impact or risk.

To determine the significance of the new or increased environmental impact or risk requires a starting basis against which the changed state can be assessed. As the legally binding document accepted by NOPSEMA, the accepted EP is the basis against which all change is to be assessed. NOPSEMA considers this basis to be the information provided to detail the impacts and risks in the accepted EP (for subregulation 13(5)(a)) as the point of comparison to the new or increased impact or risk.

NOPSEMA expects that titleholders' have criteria for determining what a significant change from the impacts and risks detailed in the EP might be. When designing (or reviewing) the process or system where the subregulation 17(6) criteria are considered, the titleholder should have criteria that they will use to determine when a proposed revision may be required.

Aspects of environmental management that are expected to feature in titleholders' 'significance' criteria with regard to impacts and risks include, but are not limited to:

- comparisons to the acceptable levels of impact and risk defined in the EP
- comparisons to the assumptions made when establishing the acceptable levels of impact and risk defined in the EP
- consideration of published Department of the Environment and Energy management/guidance materials, Commonwealth reserve management arrangements and contemporary scientific knowledge of the environment and its response to pressures associated with the activity
- current legislative requirements relevant to the activity or environmental feature being considered

Core concepts

Subregulations 17(5) and 17(6) can both be triggered by one change, or proposed change.

Titleholders are expected to have criteria for determining a significant increase/new impact or risk.

It is expected that titleholders will include assessment of both regulations as independent tests of determining if a proposed revision is required.

- changes that may have occurred to the environment affected by the activity (including biological, social and cultural aspects of the environment).

4.4. Subregulation 17(7) - Change of titleholder

If there is a change to the titleholder undertaking the activity that will in turn result in any change to the manner in which the environmental impacts and risks of the activity are managed, a revision to the EP is required. Examples of the types of changes that may occur and that would constitute a change to the manner in which the environmental impacts and risks of the activity are managed include, but are not limited to, changes to:

- the environment policy that is applicable to that activity
- the environmental management system applied to the activity
- support contracts for providers that assist the titleholder to manage environmental impacts and risks
- procedures and/or controls that manage environmental impacts and risks
- spill response arrangements
- chain of command, roles and responsibilities of personnel.

Any organisation considering purchasing an offshore oil and gas asset with the intention to take over in an operating capacity is advised to seek advice from NOPSEMA specific to their circumstances.

4.5. Regulation 18 - Revision at request of the regulator

NOPSEMA may request the titleholder to submit a proposed revision of an EP. Such a request must set out the matters to be addressed in the revision, the timeframe for making the revision and the grounds for this request. The Environment Regulations set out a process for titleholders to submit information to NOPSEMA outlining why such a revision should not occur, why the matters to be addressed (the terms of the revision) should be different from those proposed and/or why the timeframe should be different. This type of submission must be made within 21 days of receiving the request. NOPSEMA may consider a longer period, on a case-by-case basis, based on information provided by the titleholder as to why a 21 day period is unreasonable. NOPSEMA must consider such a submission.

If NOPSEMA requests the titleholder to do so, the titleholder must submit a proposed revision of an EP to NOPSEMA as soon as practicable. A typical period of 60 days will be applied from the date of the request for revision, but may be amended with consideration of the specific circumstances of the titleholder.

4.6. Regulation 19 - Five-year revision

For activities that are designed to extend beyond five years, the EP for that activity must be revised at least every five years, whether or not there has been a change in the activity or the environmental impacts and risks. The proposed revision must be submitted to NOPSEMA at least 14 days prior to the end of the five-year period.

This five-year period commences on the date the most recent revision of the EP was accepted or on the date notified by NOPSEMA (if NOPSEMA notifies the titleholder of such a date).

5. Other relevant regulatory requirements

5.1. Regulation 7 – operations must comply with the accepted EP

It is an offence of strict liability to undertake an activity in a way that is contrary to the EP in-force for the activity. The definition of 'in-force' is provided in the Environment Regulations. NOPSEMA's interpretation of this definition is that the in-force EP is the accepted EP until either:

- a regulation 25A notification is made by the titleholder and it has been accepted by NOPSEMA
- NOPSEMA withdraws acceptance of the EP
- NOPSEMA accepts a proposed revision of the EP (which then becomes the in-force EP).

Titleholders should note that it may be an offence under regulation 7 to commence significantly modified activity or a new stage of an activity before the proposed revision has been accepted or the titleholder has written consent from NOPSEMA to proceed.

5.2. Regulation 8 – operations must not continue if new or increased environmental risk identified

It is an offence of strict liability to undertake an activity after the occurrence of any significant new or increase in an existing environmental impact or risk arising from the activity where it is not provided for in the EP in force for the activity. This regulation does not apply in relation to an activity if the titleholder submits a proposed revision of the environment plan in force for the activity in accordance with subregulation 17(6) and NOPSEMA has not refused to accept the revision.

5.3. Regulation 20 – form of a proposed revision

NOPSEMA's preference is that the form of the proposed revision is a revision to the EP in its entirety. Titleholders should discuss their individual circumstances with NOPSEMA if they believe that revision to a part of the EP may be appropriate. If a titleholder proposes to revise and submit part of the EP, this should be agreed with NOPSEMA prior to making a submission.

5.4. Regulation 22 – effect of non-acceptance of proposed revision

If NOPSEMA assesses a proposed revision and determines that the EP does not meet the requirements of the Environment Regulations, then NOPSEMA must refuse to accept the proposed revision to the EP. If a proposed revision is not accepted, then the EP that was in-force immediately prior to submission remains in force as if the revision had not been proposed. Should NOPSEMA decide to escalate enforcement action for an activity, refusal to accept a revision is one of the grounds for withdrawing an EP.

5.5. Subregulation 27(4) – Storage of records

Titleholders are reminded that it is an offence under subregulation 27(4) to fail to maintain records relating to reaching a decision as part of the implementation strategy, which includes consideration of changes under regulation 17.

6. Compliance monitoring of regulation 17

In line with our compliance strategy, NOPSEMA will use all means available to determine if titleholders continue to comply with the *Offshore Petroleum Greenhouse Gas Storage Act 2006*, relevant regulations and their EP. One of the tools that NOPSEMA uses to determine compliance is planned inspection.

NOPSEMA may inspect a titleholder's processes to determine whether, in connection with a change, they have identified if a regulation 17 requirement to submit a proposed revision has, or potentially will be triggered. NOPSEMA may also inspect to determine if the titleholder has properly considered regulation 17 in other changes relating to the activity.

NOPSEMA expects planned, reasonably foreseeable changes to have been assessed against the requirements of regulation 17 prior to the change occurring and that this assessment is documented. NOPSEMA expects that unplanned and unforeseen changes are assessed against the requirements of regulation 17 as soon as practicable after the change has occurred. In both cases, NOPSEMA expects the level of evaluation and documentation to be equivalent to that expected in an EP submission.

If it is determined during inspection, or by other means, that a titleholder's processes did not enable compliance with regulation 17, or the titleholder has failed to implement their processes, resulting in a new stage to the activity, significant modification to the activity, a new threat or an increased risk to the environment, enforcement action will be contemplated in line with NOPSEMA's enforcement policy (N-05000-PL0067).

Core concepts

NOPSEMA may inspect a titleholder's processes to determine if they can appropriately identify regulation 17 requirements.

NOPSEMA may inspect the implementation of a titleholder's processes for specific changes to determine if regulation 17 has been complied with.

7. Relevant legislation

All regulatory references contained within this guideline are from the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the associated Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations.

8. Related documents

PL1347 – Environment plan assessment policy

PL1903 – Section 572 Maintenance and removal of property policy

PL0067 – Enforcement policy

For more information regarding this guideline, contact the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA):

- Telephone: +61 (0)8 6188 8700, or
- e-mail: environment@nopsema.gov.au