

# Financial Assurance for petroleum titles

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## 1. Purpose

This policy documents NOPSEMA's systematic and consistent approach to implementing the financial assurance requirements (regulations 5G) of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations). This includes NOPSEMA's validation and endorsement of approaches for demonstrating financial assurance, and NOPSEMA's administrative approach for ensuring compliance with financial assurance as a prior condition for acceptance of an environment plan.

This policy should be read in conjunction with NOPSEMA's Environment Assessment Policy (N-04750-PL1347) and Financial Assurance Guideline (N-04730-GL1381).

## 2. Scope

This policy applies to all petroleum activities carried out in relation to any of the titles listed in section 571(1) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). This policy contains information relevant to titleholders and title applicants.

## 3. Estimating the sum of financial assurance

Titleholders have a duty under section 571 of the OPGGS Act to maintain sufficient financial assurance to meet obligations and duties established within the OPGGS Act and relevant legislative instruments. The financial assurance requirements apply to the costs, expenses or liabilities that may arise over the life of a petroleum title.

NOPSEMA is of the view that section 571(2) of the OPGGS Act requires titleholders to estimate the sum of the greatest reasonably credible costs, expenses and liabilities that may arise from a worst-case petroleum incident as described in the environment plan for the activity, with particular reference to:

- termination or control of the incident
- operational response measures required for containment, clean up and remediation of the environment
- carrying out environmental monitoring of the impact of the petroleum incident.

Financial assurance estimations are not required to cover:

- ordinary operating costs or compliance costs of the titleholder in meeting its obligations under the OPGGS Act and regulations; or
- civil liabilities for unidentifiable and inestimable costs that may be associated with future compensation claims from third parties.

Where a petroleum activity has no foreseeable spill risk scenarios and no other foreseeable unplanned events associated with the activity, there can be no cost estimation. In this case, the validation and endorsement process discussed in Sections 6 and 7 of this policy will not apply. GL1381 sets out the arrangements in place for such circumstances.

#### **4. Financial assurance does not 'cap' liability of titleholders**

The financial assurance demonstration under the Environment Regulations requires titleholders to estimate the greatest reasonably credible costs, expenses and liabilities that may arise from an offshore petroleum activity, which is typically considered to be the control, response and monitoring of a worst-case spill scenario. This does not restrict liabilities and costs to those associated with such matters.

The titleholder is responsible for the full extent of any costs expenses, liability and damages that occur including any civil liability damages that might be pursued through civil action in a court of law, or under the 'polluter pays' statutory duty under the OPGGS Act, regardless of the level of financial assurance that the titleholder holds.

The financial assurance requirements of the legislation do not modify or cap liability as determined in a court of law, or under the 'polluter pays' statutory duty currently in force under the OPGGS Act.

Any entity who has, or may be, financially disadvantaged as a direct result of planned operations or unplanned incidents associated with offshore petroleum activities, is entitled to seek compensation from the responsible party directly, or through civil proceedings via the courts. Under the OPGGS Act and regulations, NOPSEMA does not have a role in mediating these arrangements or facilitating stakeholder claims for compensation.

#### **5. Financial assurance must be demonstrated as a pre-condition to accepting an environment plan**

In accordance with the Environment Regulations, NOPSEMA cannot accept an EP unless it is reasonably satisfied that the titleholder is compliant with the financial assurance obligations under the OPGGS Act and compliance with these obligations is demonstrated in a form that is acceptable to NOPSEMA.

This policy and GL1381 sets out the steps a titleholder is required to follow to demonstrate financial assurance in a form acceptable to NOPSEMA. In summary, the acceptable form is:

- using an independently-validated and NOPSEMA-endorsed method to estimate the greatest reasonably credible costs, expenses and liabilities associated with responding to a worst-case spill incident, cleaning up and monitoring the impacts of the incident
- making a declaration of compliance with section 571(2) to NOPSEMA (FM1519)
- submitting a financial assurance confirmation to NOPSEMA (FM1465) prior to acceptance of the EP.

In determining whether the financial assurance held by a titleholder is satisfactory, NOPSEMA considers whether the titleholder has adequately quantified the reasonably credible costs, expenses and liabilities that may arise from a significant oil pollution incident associated with the petroleum activity and the titleholder has access to financial assurance for these matters.

## 6. Estimation methods must be independently validated

NOPSEMA will request an independent validation of all methods for estimating financial assurance levels, including bottom up costing approaches for individual activities that exceed limits set in existing endorsed methods.

NOPSEMA requires this validation to:

- be undertaken in accordance with a scope of validation that has been agreed with NOPSEMA
- be conducted by an independent and competent third party
- produce a statement in writing by the validator in respect to the appropriateness of the method employed for estimating financial assurance for an activity, to the extent required by the scope of validation agreed between NOPSEMA and the titleholder.

Titleholders are required to prepare a scope of validation and agree this with NOPSEMA prior to undertaking the validation.

When a scope of validation is agreed, NOPSEMA shall confirm this in writing.

## 7. Estimation methods must be endorsed by NOPSEMA

Following independent validation, NOPSEMA will require a copy of the validation report and a concise validation statement from the independent validator.

NOPSEMA will consider the extent to which the validation report and statement match the agreed scope of validation and thereby provides reasonable assurance that the method employed for estimating financial assurance is sufficiently robust.

In making a decision to endorse a particular method NOPSEMA shall confirm in writing that the validated method, when used in conjunction with NOPSEMA's process for making financial assurance declarations and confirmations, is considered to be a suitable form for demonstrating financial assurance as a prior condition to acceptance of an environment plan

## 8. Titleholders must supply a declaration and a confirmation

For NOPSEMA to be satisfied that a titleholder is compliant with the financial assurance duty, a titleholder must:

- supply NOPSEMA with a financial assurance declaration for the title
- estimate financial assurance for activities under the environment plan in accordance with an endorsed method; and
- supply NOPSEMA with a financial assurance confirmation specific to each environment plan.

A financial assurance declaration assures NOPSEMA that the titleholder will maintain sufficient financial assurance for the life of the title.

A financial assurance confirmation is an attestation by the titleholder when submitting each EP that valid declarations have been provided to NOPSEMA for the activities under all the titles to which the EP relates.

Further information regarding this process is provided in NOPSEMA [Guideline 1381 - Financial assurance for petroleum titles](#).

These forms are to be completed by titleholders, and cannot be submitted by title applicants.

## **9. EP assessment may commence prior to demonstration of financial assurance**

NOPSEMA will commence EP assessments prior to receiving demonstrations of compliance with regulation 5G. However, NOPSEMA must not accept an EP, or a proposed revision of an EP, unless NOPSEMA is reasonably satisfied that the titleholder is compliant with section 571(2) of the OPGGS Act and that the compliance is in a form acceptable to NOPSEMA.

As the requirement for financial assurance under regulation 5G relates only to titleholders, NOPSEMA may accept an EP that has been submitted by a title applicant if the title has not been granted at the time of EP acceptance.

## **10. NOPSEMA will inspect compliance with financial assurance duty**

NOPSEMA will inspect compliance with a titleholder's duty to maintain sufficient financial assurance by checking that titleholders are implementing processes to maintain financial assurance throughout the life of the activity in accordance with the legislative requirements.

Failure to maintain compliance, in a form acceptable to NOPSEMA, is grounds for the withdrawal of acceptance of an environment plan for the activity (regulation 23(2)(e)).

## **11. Related documents**

N-04730-GL1381 – Guideline - Financial assurance for petroleum titles

N-04730-FM1519 – Form - Financial assurance declaration form

N-04730-FM1465 – Form - Financial assurance confirmation form

[Explanatory Memorandum to the Offshore Petroleum and Greenhouse Gas Storage Amendment \(Compliance Measures No.2\) Act 2013](#)

[Explanatory Statement to Offshore Petroleum and Greenhouse Gas Storage \(Environment\) Amendment \(Financial Assurance\) Regulation 2014](#)