

# Replacement of a registered operator for an operating facility

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## 1 Introduction

This guidance note is intended for to titleholders, owners and operators contemplating replacing an existing operator at an operating facility with a different operator (i.e. a separate legal entity). A replacement might arise from a transfer of ownership of the facility, or an owner or titleholder nominating another party to be the operator of the facility, and uses the concept of a 'proposed facility' as defined in Clause 3 of Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). This guidance does not apply to changes in operator or facility names that are purely administrative.

## 2 Scope of this guidance

The guidance note addresses the nomination and registration of a replacement operator and the removal of the existing operator from NOPSEMA's operator register. Note: the removal of the existing operator from the register does not necessarily coincide with the registration of the new operator. Instead, it coincides with day the new/incoming operator assumes day-to-day management and control of the facility and its operations. This guidance note also addresses the requirement for the new operator to submit a safety case for the 'proposed facility' as the safety case must reflect the specific arrangements and commitments of the new/incoming operator proposing to operate the facility.

The guidance note considers the requirements for *facilities* (including pipelines that are facilities) under the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (Safety Regulations) made under the Commonwealth OPGGS Act, and for similar regulations made under the relevant legislation applicable to the States and to the Northern Territory where powers have been conferred on NOPSEMA. References to regulations used in this guidance note are Commonwealth regulations unless otherwise specified.

## 3 Key principles

The following regulatory requirements form the key principals for this guidance note:

- **A new safety case for a facility is required if there is a replacement of operator.**

A number of contents requirements of the safety case are operator-specific, for example:

- "The safety case must describe... the means by which the operator will ensure that... the offices or positions mentioned in subregulation (1) are continuously occupied..." [regulation 2.8(2)].
- "The safety case for a facility must describe the means by which the operator will ensure that each member of the workforce at the facility has the necessary skills, training and ability..." [regulation 2.9].

- The safety case for a facility must provide for the operator of the facility to establish and maintain a documented system of coordinating and controlling the safe performance of all work activities of members of the workforce at the facility..." [regulation 2.10].
- The safety case for a facility must describe the means by which the operator will ensure the adequacy of the design, construction, installation, maintenance or modification of the facility..." [regulation 2.12].

Consequently, any change in operator for a facility requires the submission of a new safety case by the new operator of the facility under regulation 2.24. Although a change in facility operator will often result in a significant change to the SMS (which is a trigger for a safety case revision under regulation 2.30), the primary reason for a safety case submission is the change in operatorship, which requires a new safety case submission, and not a revision. This invokes a 90 day legislated assessment period in accordance with regulation 2.27.

- **There can be only one operator at any point in time for an operating facility.**

Both Schedule 3 to the OPGGS Act and the associated regulations place OHS-related legal obligations on 'the operator' of a facility. The obligations to which penalty provisions may apply do not come into effect until the operator of the 'proposed facility' becomes the operator of the 'facility' (i.e. the vessel or structure enters the regime). There is no contemplation of a situation where more than one operator can undertake activities in respect of a facility at any one time. However, in addition to the operator of a 'facility', the regulations also recognise the concept of the operator of a 'proposed facility'. The term 'proposed facility' can be interpreted to relate not only to a vessel or structure that has not yet entered the regime, but also to an existing facility which the new operator will operate at some future point in time. Consequently, there is potential for a 'facility' and a 'proposed facility', separately referring to the same physical vessel or structure, to exist at the same time, where these terms refer to one and the same physical entity but have a different operational and legal status in the context of each operator. This allows for operator nomination and registration of a 'proposed facility' to occur and for subsequent submission of a safety case by the operator of the 'proposed facility'. This can also allow for the safety case for a 'proposed facility' to come into force at the point in time that handover of operatorship of the 'facility' is to occur. At that point in time, the operator of the 'proposed facility' becomes the new operator of the 'facility' and the safety case, associated OHS-related duties and legal obligations come into force. Also, at that point in time the existing operator ceases to be the registered operator through removal from the operator register.

- **Only the current facility owner or titleholder may nominate a person to be the operator for a facility or proposed facility** [regulation 2.1].
- **Only the current operator of the facility, or proposed facility, may submit the safety case or revised safety case to NOPSEMA for that facility** [regulations 2.24, 2.30, 2.31 and 2.32].

## 4 Registration of a new operator and removal of an existing operator

Where a new operator is to replace an existing operator of a facility, the removal of the existing operator from the operator register requires an agreed time and date for the removal such that there is no period, while the vessel or structure is still operating as a 'facility', where there is not a registered operator for the facility. The recommended procedure is as follows:

- (i) The existing titleholder/vessel or structure owner nominates the new/incoming operator of the 'proposed facility'; and
- (ii) NOPSEMA will accept the nomination of the person as the operator of the 'proposed facility' if it is satisfied that the nominee will have day-to-day management and control of the facility and its activities, and will include the operator on the operator register accordingly (recognising that the 'proposed facility' may retain the same name as the existing facility operated by the outgoing operator). This means that both the 'Operator 1 – facility' and the 'Operator 2 – proposed facility' combinations will be in the operator register at the same time, and this situation will persist until handover.
- (iii) The existing operator/titleholder/vessel or structure owner requests that the existing operator be removed from the register at a specified date and time associated with the hand-over of day-to-day management and control of the facility and its activities i.e. operatorship (generally to coincide with acceptance of the incoming operator's safety case) [this step can be completed by the use of form N-01000-FM0617].

The intention to remove the existing/outgoing operator's name from the operator register can be facilitated by the involved parties utilising the 'Removal of existing facility operator from operator register' form (N-01000-FM0617). This form provides for the entry of a specified time and date for the removal of the existing operator from the register to occur.

Any such agreement would typically involve the outgoing operator, titleholders or vessel/structure owner and the incoming operator, and coincide with NOPSEMA's acceptance of the incoming operator's safety case for the facility.

## 5 Acceptance of the 'proposed facility' safety case

There is a requirement for any new operator to submit a safety case for the 'proposed facility' where it is intended that they will take over operation of an existing facility at a future date. The reason for this is that any acceptance of a safety case for a facility is intrinsically linked to the operator who submits the safety case.

NOPSEMA recommends the following process is followed to propose a change of operatorship for an existing facility:

- (i) The existing operator and the incoming operator should agree on any transitional arrangements to address changes in the operation that may affect the safe operation of the facility. For instance, these arrangements might include the change in the organisation arrangements and how the new operator's SMS will be introduced. These transitional arrangements might also provide for some additional safeguards to apply during the transition period. It is recommended that these transitional arrangements are addressed in the safety case to be submitted by the new/incoming operator of the 'proposed facility'.
- (ii) The new/incoming operator needs to seek agreement of NOPSEMA in relation to a scope of validation for the 'proposed facility' prior to submitting the safety case. Where there are no changes proposed to the physical nature of the facility (and in particular, technical controls for reducing risk associated with Major Accident Events) associated with the change of operatorship, the scope of validation may be agreed as a 'nil' scope.

- (iii) The new/incoming operator of the 'proposed facility' makes the submission of a safety case.
- (iv) The safety case would need to be submitted with sufficient time, at least 90 days prior to the date for the replacement of the operator so that the safety case can be in force (i.e. accepted by NOPSEMA) at the time that the replacement operator commences day-to-day management and control. This is to ensure that the new operator does not commit an offence under OPGGS(S) Regulation 2.45. This regulation requires that a person must not operate a facility 'in a manner that is contrary to the safety case in force for the relevant stage in the life of the facility'. Note: the outgoing operator ceases to have day-to-day management and control of the facility and its operations when removed from the operator register for that facility.
- (v) If the new safety case for the 'proposed facility', as submitted by the new/incoming operator, is acceptable, NOPSEMA will accept the safety case (in order of NOPSEMA's preference):
  - 1. on the date and time agreed between the parties (either as part of the nomination process or at some stage during the safety case assessment process). This is the same date and time at which the replacement/incoming operator assumes day-to-day management and control of the facility;
  - or
  - 2. with the condition that the safety case for the proposed facility will come into force when the existing/outgoing operator is removed from the operator register (noting that, in this case, the new/incoming operator will be copied in on the deregistration letter for outgoing operator of the facility).

## 6 Related documents

N-01000-FM0617 – Removal of existing facility operator from operator register

N-01000-FM0008 – Nomination form: Operator of a facility