

When to submit a proposed revision of an EP

Document No: N-04750-GL1705 A515816

Date: 28/02/2024

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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. This guidance incorporates the recent judgment in *Munkara v Santos NA Barossa Pty Ltd (No 3)* [2024] FCA 9.

2. Purpose

This document provides guidance on NOPSEMA's interpretation of the requirements to revise an EP under Part 4 Division 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the **Regulations**). This guideline should assist the reader to understand the EP revision requirements of the Regulations.

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 system and, like any plan, the EP is a live, dynamic document. As such, the EP must allow for appropriate change to reflect the current circumstances 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 38, 39, 40 and 41 specify these situations.

Core concepts

Regulation 39 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 40 (at the request of NOPSEMA) or regulation 41 (every five years).

4. Requirements for submission of a proposed revision

Some changes will require a proposed revision of the EP prior to any change to circumstances or operations.

Regulation 38 provides that a titleholder may submit a proposed revision of an EP, with NOPSEMA's approval, as an alternative to submitting a new EP for a new activity under the same title that is covered by the in force EP.

Regulation 39 requires a proposed revision of an EP to be submitted to NOPSEMA:

- before the commencement of any significant modification or new stage of the activity that is not provided for in the in force EP.
- as soon as practicable, after the occurrence of any significant new environmental impact or risk, or significant increase in an existing impact or risk, including a series of such impacts or risk.
- as soon as practicable, 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 40 provides NOPSEMA with broad discretion to require, in writing, that a titleholder submit a proposed revision of their EP.

Regulation 41 requires titleholders submit a proposed revision to NOPSEMA for assessment prior to the end of every five years in which the EP remains in force or is otherwise specified by NOPSEMA, 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. Regulation 38 – New activity

A new activity for the purposes of regulation 38 is interpreted by NOPSEMA to mean any change to the type of the activity being conducted under the in force EP. As a guide, this is likely to result in a change to the regulatory levy category applied to the activity. 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 regulation 38. Titleholders should contact NOPSEMA for advice on the implications of this choice for their specific circumstances.

4.2. Sub-regulation 39(1) – Significant modification or new stage of the activity

For the purposes of this sub-regulation, *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. *Significant*, in this context means “important, notable or of consequence having regard to its context or intensity”.

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 39(1) 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 to an activity 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 in force EP. A proposed revision is required when a titleholder intends to conduct operations or manage environmental impacts and risks of that activity in a manner different to that specified in the in force EP.

A modification is defined broadly to ensure all changes are captured by regulation 39 - modifications to an activity can, and periodically will, occur without the need for submission of a proposed revision of an EP to NOPSEMA. A titleholder commits an offence if they undertake activity in a way that is contrary to an in force EP or any limitations or conditions to which acceptance of that plan was made (Regulation 18).

Where the modifications are significant, the titleholder must submit a proposed revision of the EP under sub-regulation 39(1) before the commencement of the significantly modified activity.

When designing (or reviewing) the process or system where the sub-regulation 39(1) criteria are considered, the titleholder should have established 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
- 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 in force EP is considered the basis against which all change is to be assessed.

4.2.2. New stage of an activity

Before progressing past the stage of an activity provided for in the in force 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.¹

NOPSEMA is of the view that, among other scenarios, the following constitute a new stage of an activity that if not provided for in an in force EP must be included in a proposed revision of an 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.

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

Any new stage requires a proposed revision.

¹ See Regulation 18.

4.3. Sub regulation 39(2) - New or increased impact or risk

For the purposes of this sub-regulation, the word “occurrence” is about an objective event, not the state of mind of the titleholder.

- an environmental risk *occurs* when the objective circumstances first comes into existence
- an environmental impact is defined in Regulation 5 to mean any change to the environment that wholly or partially results from an activity.

For the purposes of sub-regulation 39(2), “new” means objective facts and circumstances *arising after the original approval of the EP* that either have a significant environmental impact arising from the activity in fact, or that together create the potential for environmental impact arising from the activity.

To be “significant”, the impact or risk must be “important, notable or of consequence having regard to its context or intensity.”

For clarity, an increased impact or risk is one with greater extent, severity, duration or uncertainty than is detailed within the in force 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)²
- 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
 - information provided by stakeholders
 - changes in legislation.

² 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.

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 not aware of such an impact or risk in advance of it occurring, 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 after the EP was accepted. 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 sub-regulation is to ensure multiple changes, which in isolation may be insignificant, do not 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 in force 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 sub-regulation 21(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 39(2) 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
- changes that may have occurred to the environment affected by the activity (including biological, social and cultural aspects of the environment).

Core concepts

Subregulations 39(1) and 39(2) 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.

4.4. Sub-regulation 39(3) - 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 proposed 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 40 - Revision at request of the regulator

NOPSEMA may, at its discretion, request the titleholder to submit a proposed revision of an EP (the **request**). The request must set out the matters to be addressed in the revision, the timeframe for making the revision and the grounds for the request. The 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 upon information provided by the titleholder as to why the specified period is unreasonable. NOPSEMA will consider any submissions made within that timeframe and make a decision on whether to require revision.

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 41 - 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. An environment plan accepted by NOPSEMA remains in-force irrespective of the due date of a 5 year proposed revision.

In certain circumstances, NOPSEMA may initiate a withdrawal of acceptance for an in-force EP under Regulation 43 should a revision of the EP not be submitted.

Titleholders are encouraged to engage with NOPSEMA early to discuss the proposed revision. This may include the timeframe for submission of the revised EP, where it needs to be agreed with NOPSEMA.

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 18 – 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 Regulation 36. NOPSEMA's interpretation of this definition is that the in-force EP is the accepted EP until either:

- a regulation 46 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 to commence any significant modification to an 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 under sub-regulation 18(2). NOPSEMA will only give its written consent under subregulation 18(2) if there are reasonable grounds for believing that the way in which the activity is to be undertaken will not result in any significant new environmental impact or risk, or a significant increase in existing environmental impact or risk.

5.2. Regulation 19 – 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 sub-regulation 39(2) and NOPSEMA has not refused to accept the proposed revision.

5.3. Form of a proposed revision

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

5.4. Regulation 42 – 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. 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 52(5) – Storage of records

Titleholders are reminded that it is an offence under sub-regulation 52(5) to fail to maintain records relating to reaching a decision as part of the implementation strategy, which includes consideration of significant or new changes under regulation 38 and 39.

6. Compliance monitoring of regulation 38 and 39

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 they are required to submit a proposed revision. NOPSEMA may also inspect to determine if the titleholder has properly considered regulation 38 and 39 in other changes relating to the activity.

NOPSEMA expects planned, reasonably foreseeable changes to have been assessed against the requirements of regulation 38 and 39 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 38 and 39 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 38 or 39, 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 38 and 39 requirements.

NOPSEMA may inspect the implementation of a titleholder's processes for specific changes to determine if regulation 38 or 39 has been complied with.

7. Relevant legislation

All regulatory references contained within this guideline are from *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the associated 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