

PART V, REGULATION 57

State/Organisation	Source(page or template)	Regulation	Subsection	Comment or proposal
General comments				
Modification of a Plan of Work by a Contractor				
MICRONESIA	8	57		On Draft Regulation 57, echoing certain comments above, it is the FSM's view that the determination of what constitutes a Material Change—in this case, for the purpose of modifying a Plan of Work—should be in accordance with legally binding Standards and involve the LTC in some significant manner, rather than give much discretion to the ISA Secretary-General to make this determination.
DOSI	12	57		DR 57: Suggest requiring consultation with environmental experts regarding modification of the Plan of Work.
DSCC	24	57		This gives the Secretary-General a significant power of to approve a change in the contract by considering that the change may not be material. It is one-sided to allow a contractor to introduce a material change but not the ISA.
ALEMANIA	7	57		This chapter touches upon draft regulations 25, 57, 58, 76, 89, 95 and 101. Germany welcomed the discussion initiated by the Secretariat's note before the first part of the 25th session of the Council titled "Delegation of functions by the Council and regulatory efficiency" (ISBA/25/C/6). As has been obvious from the lively and interesting debate, this process has not yet come to a close. Germany would therefore welcome a continuation of this discussion. At various instances throughout the Draft Regulations, the Secretary-General seems to be entitled to decide upon matters which are substantial and material in nature. For the sake of efficiency as well as out of urgency, this may be a prudent and reasonable procedure. However, and according to Art. 166 para. 3 UNCLOS, the responsibilities entrusted to the Secretary-General are primarily administrative in nature. It is Germany's view that far-reaching decisions such as the one determining whether or not there is a material change in a modification of a Plan of Work should not be solely within the competence of the Secretary-General. Accordingly, we propose an addition to Draft Regulation 57 in order to involve the Council in this process. In certain instances, the Council needs to provide abstract guidance to the Secretary-General on how to fulfill these tasks. Different requirements may apply in the case that a matter requires urgent action such as emergency orders. Presently, such guidance is missing, which, in our view, is incompatible with the balance of the roles and responsibilities established under UNCLOS.

Pew charitable trust	55	57			Several Member States in November 2018 submissions called for further clarity as to what constitutes a “Material Change”, and voiced concerns over the role of the Secretary-General in making that determination. To avoid granting unnecessarily wide discretion to the Secretary-General, it may be sensible to introduce Standards into this DR57 (which under DR94 are legally binding and approved by Council), or a requirement to report to Council any approval or proposal issued by the SecretaryGeneral under DR57. Member State submissions also recommended that the sponsoring State be informed of changes to a Plan of Work, that the Commission be involved in changes to a Plan of Work, and highlighted the need for increased transparency in the process. In addition, the ISA should be able to propose a change to the Plan of Work in the same way, not only a Contractor.
CHILE	18	57			Chile considera que:Chile considera que falta establecer un procedimiento cuando: El contratista propone un cambio al plan de trabajo y tal cambio es sustancial; El contratista propone un cambio al plan de trabajo y tal cambio no es sustancial; El Secretario General propone al contratista un cambio al plan de trabajo de carácter sustancial; El Secretario General propone al contratista un cambio al plan de trabajo de carácter no sustancial. Estos casos no están totalmente tratados en el proyecto de artículo 57 del Reglamento. La constitución de la Empresa, también podría ser un factor importante en esta materia, pero se requeriría una especificación clara acerca de su finalidad. El Secretario General debe ser apoyado por evaluadores externos independientes, en la tarea de determinar si una propuesta de cambio en el plan de trabajo es o no es sustancial.
Regulation 57. 1					
1. A Contractor shall not modify the Plan of Work annexed to an exploitation contract, except in accordance with this regulation.					
CANADA	42	57	1		1. A Contractor shall may not modify the Plan of Work annexed to an exploitation contract without prior consent of the Commission, except in accordance with this regulation.

NORI	10	57	1	<p>Regulation 57 appears too restrictive. A Contractor needs greater flexibility to make a change to its Plan of Work. The requirement to have to wait to obtain Commission and Council approval prior to making a change is simply too long and could result in unnecessary cost to the Contractor while it waits to implement a necessary change. It is important that a Contractor can change its Plan of Work to respond to changes for example in the external economic environment or as a response to technological changes. Provided such a change does not cause unlawful harm and remains within the parameters of the contract conditions, the Contractor should be free to make modifications to its Plan of Work as it deems necessary in order to achieve the required commercial and technical outcomes. Contractors must have this flexibility to respond to operating, technical and market forces which will come into play and impact operations from time to time.</p> <p>The mining industry, and in particular metal prices, change quickly, and it would not be appropriate for the Contractor to have to wait to seek approval from the Commission and Council prior to making such changes if it has genuine reasons to modify its Plan of Work. This is something the Secretary General should have power to authorize on a timely basis. We wholeheartedly agree with keeping the ISA informed of such changes, but we do not agree with the need to seek prior approval from the Commission and Council to make such a change, as the length of time required to obtain approval from those bodies is simply too long and as such costly.</p>
DOSI	12	57	2	<p>Dosi recomienda: Guidelines need to be developed that advise what constitutes / does not constitute a Material Change. In addition, the guidelines should outline how the Secretary-General documents their decision making. Whenever a change is made that is not considered a Material Change, the requested change and the justification for this decision should be documented and the document made publically available. See also the points made above concerning DR 25 and 26.</p>
Regulation 57. 2				
<p>2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.</p>				
ALEMANIA	21	57	2	<p>2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed 21 modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. If the Secretary-General considers that the proposed modification does not constitute a Material Change, the Secretary-General shall report the main reasons for this finding to the Commission. If the Commission disagrees with the determination of the Secretary-General, the Commission shall inform the Council and provide a recommendation to the Council to take the final decision. [...]</p>

CANADA	42	57	2		<p>2. Major variations will be brought to the attention of the Commission through the annual reporting cycle outlined in regulation 38.</p> <p>2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.</p>
CHINA	18	57	2	Contratista, SG	<p>This regulation implicates the issue whether modification of a Plan of Work by a Contractor constitutes a Material Change. Paragraph 2 provides “the Secretary-General shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines”, which is inappropriate. Two revisions are proposed. First, “Guidelines” should be replaced by the binding “Standards”. Second, Secretary-General shall not consider whether a proposed modification constitutes a Material Change. It is suggested to be modified as “if the Secretary-General considers that the proposed modification may constitute a Material Change, he or she shall submit such matter to the Commission for consideration. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, before such Material Change is implemented by the Contractor.”</p>
COSTA RICA	19	57	2		<p>2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary General will inform the Council, which shall consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Standards If the Council considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of said Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.</p> <p>RATIONALE: There shall be Standards that will define and specify what is considered a Material Change. The Council should be the one making the decision and there must be a record of all the changes proposed and approved, even those which are not considered Material Changes.</p>
RUSIA	16	57	2		<p>It is suggested to amend this provision with the following sentence: “...Upon the Council’s approval of a Material Change to the Plan of Work, the Secretary-General or duly authorized representative and the designated representative or the authority designated by the Contractor shall sign [the relevant changes to the Contract/written documents with the changes to the Contract]”, putting it as the last one.</p>
Regulation 57. 3					

3. Where the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.					
BELGICA	41	57	3		Propone siguiente redacción : 3. Where the proposed modification under paragraph 2 above may have a potential impact on the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.
CANADA	42	57	3		3. Where If the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, the such plans shall be dealt with in accordance Contractor shall notify the Secretary-General. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission, before such Material Change is implemented by the Contractor. with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.
Regulation 57. 4					
4. The Secretary-General may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary - General shall so inform the Commission at its next meeting.					
CANADA	42	57	4		4. The Secretary-General, based on the annual reporting process may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission at its next meeting.
Australia	44	57	4		Commented [AUS74]: Australia endorses the clarification in subparagraph 4 of what constitutes a non-material change that may be proposed by the Secretary-General, ie 'to correct minor omissions, errors, or other such defects' and note that further guidance on what constitutes a 'material change' will be provided in the Material Change Guidelines. We consider the disallowance mechanism provided for in draft regulation 95 is sufficient should the Council consider the Guidelines adopted are inconsistent with the intent or purpose of the rules of the Authority
NORI	11	57	4		This regulation gives the Secretary General the power to force the Contractor to make a change. This is understandable if the Contractor is breaching its obligations, however does not appear reasonable in most other circumstances, particularly if the Contractor is in compliance with its Plan of Work as contained in its approved application for Exploitation. Alternatively, if the Secretary-General requires the Contractor to make a change then the ISA should need to compensate the Contractor for any costs or losses that change imposes on the Contractor.

ALEMANIA	21	57	4	4. The Secretary-General may propose to the Contractor a change to the Plan of Work which is not a Material Change to correct minor omissions, errors, or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall inform the Commission and the Council of this at its their next meetings."
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PART V, REGULATION 58

State/organization	Source(page in doc or template)	Regulation	Subsection		Comment or proposal
General Comments					
Review of activities under a Plan of Work					
BELGICA	41	58			Where it says:Review of activities under a Plan of Work, comments the following: Commented [VS57]: What if activities remain the same, but Plan is getting reviewed?
Regulation 58. 1					
1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance:					
COSTA RICA	20	58	1		1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, the Secretary-General determines, according to the specific Standards , there have occurred any of the following events or changes of circumstance: RATIONALE: Such an important decision should not be based in the “opinion” of the Secretary General, but rather in a determination taken on the basis of specific Standards.
CANADA	42	58	1		1. At intervals not exceeding five years from the date of signature of the exploitation contract, or w Where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance:
ALEMANIA	21	58	1		“1. At intervals not exceeding five years from the date of signature of the exploitation contract, or where, in the opinion of the Secretary-General, there have occurred any of the following events or changes of circumstance have occurred : [...]
DSCC	9	58	1		The review should include independent reviews, as were provided for in earlier drafts (before the 2018 draft), including independent scientific assessment. The review should provide for publication of the review and comments from stakeholders: making public the results of the review does not suffice. The list of triggers in DR 58(1) should also include new information relevant to the marine environment. The review should be able to result in changes being made: in the current draft, under DR 58(3), the only result is “Where as a result of a review the Contractor wishes to make any changes to a Plan of Work.” This is grossly inadequate. The result needs to result in the Secretary-General recommending changes to the Plan of Work to the LTC and Council.

ACOPS	7	58	1	<p>DR 58(1): We reprise our comments on the previous version. See also comments made under DR 13(1)(f), DR 25, DR 57 and DR 76 re issues relating to ultra vires/substantive legal competence with regard to the role and functions assigned to the Secretary-General under these DRs in this context.</p> <p>Furthermore, it is not clear why the occurrence of the listed events/circumstances triggering a review are to be a matter of "opinion", and the opinion of only one individual at that. Why isn't the occurrence of these events/circumstances required to be a matter of demonstrable fact instead, to which any stakeholder is able to draw the attention of the Authority? Why is the initial avenue via "discussions" between the Secretary-General and the Contractor? Why is the decision on whether or not to conduct such a review to be taken at the sole discretion of the Secretary-General? How will this process ensure transparency and uniform and non-discriminatory treatment of Contractors? Why are any modifications limited to the Plan of Work? There may also be ramifications for "the exploitation contract or the activities under the exploitation contract" as set out in DR 58(5), and requiring modification as well. As currently drafted, DR 58(1) and DR 58(5) are inconsistent with each other in this respect.</p> <p>It would be much simpler and far less prone to legal complications to just require a review if one of the listed events/circumstances has occurred as a matter of demonstrable fact, and to enable the requisite modifications to be made to the Plan of Work, the exploitation contract or to the activities under the exploitation contract accordingly.</p>
Regulation 58. 1. a				
CANADA	42	58	1.a	(a) A proposed Material Change in the implementation of the Plan of Work;
Regulation 58. 1. b proposal aa (a bis?)				
Australia	44	58	1	(aa) Identification of a new environmental risk, or a significant change to existing risk calculations;
Regulation 58.1. b proposal b bis				
ALEMANIA	21	58	1	(b bis) An indication that the cumulative impacts of the Exploitation activities exceed any environmental objectives or thresholds as established under the applicable Regional Environmental Management Plan;
Regulation 58. 1. c				
(c) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;				
COSTA RICA	20	58	1	c) New information relevant to the effective protection of the marine environment
Regulation 58. 1. e				
(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;				

CANADA	42	58	1.e	(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;
Regulation 58. 1. f				
(f) Changes in Best Available Techniques;				
CANADA	42	58	1.f	(f) Changes in Best Available Techniques;
Regulation 58. 1. g				
(g) Changes in Best Available Scientific Evidence; or				
EEUU	42	58	1,g	(g) Changes in Best Available Scientific Evidence Best Available Scientific Information; or
Regulation 58. 1. h				
(h) Operational management changes, including changes to subcontractors, the Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.				
CANADA	42	58	1.h	(h) Operational management changes, including changes to subcontractors, the Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.
Regulation 58. 1 proposal i, j				
COSTA RICA	20	58	1	i) Operational management changes, including changes to subcontractors, the Secretary-General shall review with the Contractor the Contractor's activities under the Plan of Work, and shall decide whether any modifications to the Plan of Work are necessary or desirable. RATIONALE: New environmental information must be included as a trigger.
NEW ZEALAND	11	58	1	i) Information has come to light that was not available when the Plan fo Work was approved and shows that more appropriate conditions are necessary to deal with the effects of the activity; j) A adverse effects on the environment or other activities have ariosen that were not aticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved.
Regulation 58. 2				
2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States to participate in the review of activities.				
BELGICA	41	58	2	Estados Sponsors Commented [VS58]: Sponsoring State bears responsibility, so involving him ahead of the decision is needed.
Indonesia	27	58	2	2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States, and relevant adjacent coastal states to participate in the review of activities.

Regulation 58. 3

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).

COSTA RICA	21	58	3		3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, material changes need to be made to the Plan of Work, the Secretary General shall recommend said changes to the Commission and Council , and the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3). RATIONALE: The Secretary General should be the one recommending the material changes. It should not be something that depends on the "wish" of the Contractor
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CANADA	42	58	3		3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).
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DOSI		58	3 Y 5		DR 58(3-5): Again, there is no mention of input required from external environmental experts. Additionally, the timeline should be clarified.
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Regulation 58. 5

5. Nothing in this regulation shall preclude the Secretary-General or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph 1 above.

ACOPS	7	58	5		DR 58(5): We reprise our comments on the previous version. See comments made under DR 13(1)(f), DR 25, DR 58 and DR 76 re issues relating to ultra vires/substantive legal competence with regard to the role and functions assigned to the Secretary-General under these draft Regulations in this context. See also comments made above under DR 58(1) re the transparency and uniform/non-discriminatory issues raised by the process set out herein. It is recommended that the LTC and the Sponsoring State be included in the list of those permitted to make such a request. "Discussions" as a process will require careful definition.
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