

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

Draft regulation 28, [29 and 29bis](#)

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

Regulation 28

1. ~~Except for circumstances described in regulation 33, the~~ Contractor shall maintain Commercial Production in accordance with the Exploitation Contract and the Plan of Work annexed thereto and these Regulations, and market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates ~~contemplated-included~~ in the ~~Feasibility Study~~ [Mining Workplan](#).

2. The Contractor shall notify the Secretary-General and the Sponsoring State or States if it:
(a) Fails to ~~comply with the Plan of Work~~ [maintain Commercial Production](#); or
(b) Determines that it will not be able to ~~adhere to the Plan of Work~~ [maintain Commercial Production](#) in future.

~~2bis. In accordance with Regulation 29bis, the Secretary-General shall transmit the notification made under paragraph (2) and any supporting documentation to the [LTC/Compliance Committee] for review and to make a recommendation to the Council.~~

~~3. Notwithstanding paragraph 1 above, the Contractor shall immediately [reduce or] suspend production whenever such reduction or suspension is required to protect the Marine Environment [from Serious Harm or a threat of Serious Harm] or to protect human health and safety to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature. A Contractor shall notify the Secretary-General and the Sponsoring State or States of such a reduction or suspension of production as soon as is practicable and no later than [72] [24] hours after production is reduced or suspended.~~

~~4. A Contractor shall notify the Secretary-General [and Sponsoring State] as soon as it recommences any [Commercial Production] mining activities, and no later than 72 hours after such commencement, and, where necessary, shall provide to the Secretary-General [and Sponsoring State] such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.~~

Regulation 29 – propose deletion or incorporating relevant elements into 28/29bis.

Regulation 29 bis

(...)

10. The procedures under this regulation shall also apply mutatis mutandis to reductions [that result in failure to maintain Commercial Production]

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4. Please indicate the rationale for the proposal. [150-word limit]

As a general comment, we believe that there needs to be better coherence between regulations 28, 29 and 29bis. DR 28 is important to maintain as it sets the requirement for contractors to maintain CP (save in emergency/protective circumstances – DR). 29bis then sets out the process should suspension occur for any reason. 29 did provide for further exceptions (market conditions), but it seems to us that this is already accounted for in the procedure outlined in 29bis. As such, we wonder if 29 could be deleted or merged into 28/29bis.

For 28 specifically, the second sentence of DR28(1) refers to '*rates contemplated in the Feasibility Study*'. But the Feasibility Study is not a part of the Plan of Work nor the Exploitation Contract (according to Annex X), and nor is its content agreed or approved by the Council. So, we believe paragraph (1) should instead refer to the Mining Workplan, which *is* part of the Contract, and subject to Council approval. We also recommend replacing 'contemplated' with 'included' as contemplated seems unhelpfully vague.

The drafting of paragraph 2 is extremely broad and appears to refer to *any* failure to comply with the Plan of Work, which we do not believe is the intention of this DR28, entitled 'Maintaining Commercial Production'. Paragraph (2) also does not address what happens if or when a Contractor notifies the Secretary-General of non-compliance, or inability to adhere to the Plan of Work. These next steps should be added and a cross-reference should be included to 29bis. We have provided some wording to paragraph 2 (and 2bis) to this effect but are flexible on drafting.

While we support the intention behind paragraph (3) it seems to overlap entirely with DR33. DR33 concerns not proceeding with Exploitation due to an anticipated Incident, which would include harm or a threat of harm to the Marine Environment or to human health. Both of these different regulations 28 and 33 could be triggered by the same occurrence but prescribe different processes. This is confusing and could delay appropriate response. It seems to us that paragraph (3) could be deleted, with such circumstances described in paragraph (3) covered by DR33 instead. A cross-reference to Dr33 could also be made in (1) as we have done or in (2).

For 29bis, as mentioned by Germany, we believe reduction should also be addressed here. Germany mentioned at the end of 29bis including the phrase 'procedures under this regulation shall also apply mutatis mutandis to reductions' which we in principle agree with. It does seem to us that some reductions are fine so long as they are within the rates provided in the Mining Workplan. As such we wonder if it needs to be clear that only reductions which result in a failure to maintain Commercial Production need to be included here. We also find merit in Australia's proposal that 29bis may need to be divided into two separate regulations – where reduction/suspension are done at the direction of the Authority vs at the Contractor's own discretion.