

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON  
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,  
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

**Black font, red font, and grey text-boxes** are replicated from the Draft Regulations text.

**Blue font** represents commentary or edits proposed by The Pew Charitable Trusts.

**Regulation 27**

**Commencement of Commercial Production**

1. Where the requirements of Regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with Regulation 26, the Contractor, consistent with Good Industry Practice, shall make reasonable efforts to bring each Mining Area into Commercial Production in accordance with the Plan of Work.

~~2. bis Once the Contractor determines that it is engaging in Ssustained Llarge-scale Rrecovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards. The Secretary General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.~~

~~3. Promptly following approval or rejection by the Commission, the Secretary General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production under Regulation 27(2).~~

~~4. Upon confirmation, the Secretary General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the [Contract Area] [Mining Area], that Commercial Production has begun and the location of the Mining Area(s).~~

~~5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to Regulation 27(3).~~

**Alt. to paragraphs 2–5 above**

2. The commencement of Commercial Production shall be based on the maintenance of a certain level of production capacity for a specified number of days in accordance with the applicable Standard.

3. Any failure on the part of the Contractor to comply with this Regulation and the applicable Standard may be considered under the General anti-avoidance rule established pursuant to Regulation 77 and other applicable rules, regulations, and procedures of the Authority.

**Comment**

During the first part of the twenty-ninth session, the new paragraphs 2 and 3 were generally supported to substitute the previous wording. Elements of the previous wording will be retained within the draft Standard to which paragraph 2 refers

We support the streamlining of DR27 in this iteration of the text, which avoids overlap with DR26.

We suggest that **paragraph (2)** could be better phrased to distinguish its focus (the date from which Commercial Production has started in fact) from a predicted date of commencement of Commercial Production (as required in DR25 and the Mining Plan) e.g. “*The date at which commencement of Commercial Production has commenced in practice shall be established based on the maintenance of a certain level of production capacity for a specified number of days in accordance with the applicable Standard.*”

The proposal in paragraph (2) that the **details for calculating Commercial Production may be set out via a Standard** seems sensible. A subsidiary instrument is easier to amend over time than the Regulations, should that prove necessary. However the date of Commercial Production is such an essential component of the regime, triggering significant implications - including royalty payment, EPG payment, Closure Plan implementation - that we would like to seek assurance that the details of any such Standard would be agreed at the same time as the Regulations, and before any Exploitation Contract may be awarded.

We agree with other delegates who have previously called for the necessary parameters in determining ‘Commercial Production’ to be objective, easily auditable by the ISA and with no potential for manipulation or misinterpretation. One option would be for Commercial Production to be set at a percentage of the annual production rate committed to in the Mining Plan (averaged over a continuous and specified period). This allows a tailored approach for each Contract (and may also deter over-statements of production forecasts at the application stage). We are grateful for Canada’s work and submission on this point (which proposed a 30-day period).<sup>1</sup> Though we do not see **Canada’s proposal on DR27** in this Regulations text, nor in the Suspense Document.

Whilst we also support **paragraph (3)**, we note that avoidance of royalty is not the only consequence of failing to commence (or declare commencement of) Commercial Production. Such failure could also lead to lower-quantity mining takes place, without the necessary checkpoint and approval from the Council under DR25 that the Contractor has verified the predictions and commitments contained in its Contract application. For the avoidance of doubt, we suggest adding to the end of the paragraph “*...in addition to being considered for compliance action under regulation 103.*”

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<sup>1</sup> <https://www.isa.org/jm/wp-content/uploads/2024/10/Canada-DR27.pdf>