

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 91

**Information to be submitted upon expiration or termination[†] of an
Exploitation Contract**

1. Upon expiration of an Exploitation Contract; or if an application for ~~[extension]~~~~renewal~~ is refused after the original expiration date, upon the date of the refusal; or if an Exploitation Contract is terminated before its expiration date, upon the date of the termination the Contractor shall transfer to the Authority, ~~[to the extent feasible]~~ within ~~[90]~~~~[180]~~ Days ~~[from the date of the expiration of the Exploitation Contract, the date of the refusal of an application for [extension][renewal], or date the termination of the contract]~~, all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this Regulation and the ~~[applicable]~~ ~~[Standard]~~~~[s]~~, and taking into consideration Guidelines. [This includes, but is not limited to, the provision of geological data, Environmental Impact Statements, the transmission of the samples kept in accordance with Regulation 39(3) to storage in accordance with the applicable Standard, and records of any Incidents or breaches of the Contractor's obligations that occurred during the Contract Period.]

~~†~~(1) bis Any Confidential Data transmitted pursuant to paragraph 1 shall continue to be dealt with in accordance with Regulations [89 (4)-(5) and 90.][†]

[(1) ter The information and data submitted by the Contractor in accordance with paragraph (1) shall be accompanied by a report providing a summary of the exploitation activities, including on the Contractor's compliance with its obligations and any Incidents].

~~†~~2. Upon termination or expiration of an Exploitation Contract, the Contractor and the Secretary-General shall consult together and, in accordance with the provisions of this Regulation and the ~~[applicable]~~ Standard~~[s]~~ and taking into consideration~~the~~ Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority.

Comment

Various textual proposals have been raised on the floor on this draft regulation during the twenty-ninth session, which the proposed text aims to accommodate. It bears noting that detailed technical rules on the data transfer and on the continued storage of samples may be tackled in the Standard to which the draft regulation refers.

As previously raised by Fiji and Germany, the various references to the end of a Contract in **paragraph (1)** of DR91 can be greatly simplified by cross-reference to DR18(ter).

In order to capture the **requirement for Contractors to retain records for 10 years**, per Regulation 74(4), we suggest that the time period in paragraph (1) read “*Upon termination of an Exploitation Contract as defined by Regulation 18(ter), and again upon termination of the document retention period specified in Regulation 74(4)...*”

In **paragraph (2)**, we welcome text that clarifies that this provision covers physical samples as well as incident and compliance documents. For samples, we suggest the addition of “transfer biological, chemical and geological samples collected under the Contract to the Authority or other location(s) specified by the Authority.” We wonder if the term ‘Environmental Impact Statement’ may be better replaced here by ‘*environmental data and analyses*’? We also support the addition of paragraph (1) (ter) requiring a summary report.

Paragraph (2) as drafted raises questions of legal competence about the functions and role of the Secretary-General, and concerns about uniformity of approach raised by the process. Paragraph (1) and the applicable Standards will better provide for a more uniform and systematic approach. Therefore, we propose deletion of paragraph (2).

We also recall Germany’s helpful submission about the need to establish a **sanction or process in the event that data is not transmitted** to the ISA according to the requirements, bearing in mind DR103 may not work in practice for an ex-Contractor.