

June 28, 2010

**ADMINISTRATIVE ORDER  
No. 2010-21**

**SUBJECT: PROVIDING FOR A CONSOLIDATED DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ADMINISTRATIVE ORDER FOR THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT OF 1995"**

Pursuant to Section 8 of Republic Act (R.A.) No. 7942, otherwise known as the "Philippine Mining Act of 1995," the following revised rules and regulations are hereby promulgated for the guidance and compliance of all concerned:

**CHAPTER I  
INTRODUCTORY PROVISIONS**

**Section 1. Title**

The title of this Administrative Order shall be "Revised Implementing Rules and Regulations of R.A. 7942, otherwise known as the Philippine Mining Act of 1995."

**Section 2. Declaration of Policy**

All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of the Government and private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities.

**Section 3. Governing Principles**

In implementing the policy stated in the preceding Section, the Department shall adhere to the principle of sustainable development which meets the needs of the present without compromising the ability of the future generations to meet their own needs, with the view of improving the total quality of life, both now and in the future. Consequently:

- a. Mineral resource exploration, development, utilization and conservation shall be governed by the principle of sustainable mining, which provides that the use of mineral wealth shall be pro-environment and pro-people in sustaining wealth creation and improved quality of life under the following terms:
  1. Mining is a temporary land use for the creation of wealth which leads to an optimum land use in the post-mining stage as a result of progressive and engineered mine rehabilitation work done in cycle with mining operations;
  2. Mining activities must always be guided by current best practices in environmental management committed to

- reducing the impacts of mining and effectively and efficiently protecting the environment;
3. The wealth accruing to the Government and communities as a result of mining should also lead to other wealth-generating opportunities for people and to other environment-responsible endeavors;
  4. Mining activities shall be undertaken with due and equal emphasis on economic and environmental considerations, as well as for health, safety, social and cultural concerns; and
  5. Conservation of minerals is effected not only through recycling of mineral-based products to effectively lengthen the usable life of mineral commodities but also through the technological efficiency of mining operations.
- b. Investments in commercial mining activities from both domestic and international sources shall be promoted in accordance with State policies and the principles and objectives herein stated.
  - c. The granting of mining rights shall harmonize existing activities, policies and programs of the Government that directly or indirectly promote self-reliance, development and resource management. Activities, policies and programs that promote community-based, community-oriented and processual development shall be encouraged, consistent with the principles of people empowerment and grassroots development.

These principles are implemented through the specific provisions of these implementing rules and regulations.

#### **Section 4. Objectives**

These rules and regulations are promulgated toward the attainment of the following objectives:

- a. To promote the rational exploration, development, utilization and conservation of mineral resources under the full control and supervision of the State;
- b. To enhance the contribution of mineral resources to economic recovery and national development, with due regard to the protection of the environment and the affected communities, as well as the development of local science and technical resources;
- c. To encourage investments in exploration and commercial mining activities to assure a steady supply of minerals and metals for material needs of both present and future society and to generate wealth in terms of taxes, employment generation, foreign exchange earnings and regional development;
- d. To promote equitable access to economically efficient development and fair sharing of benefits and costs derived from the exploration, development and utilization of mineral resources; and
- e. To enable the Government and the investor to recover their share in the production, utilization and processing of minerals to attain sustainable development with due regard to the environment, social equity and fair return of investment.

#### **Section 5. Definition of Terms**

As used in and for purposes of these rules and regulations, the following terms

shall mean:

- a. "Act" refers to R.A. No. 7942 otherwise known as the "Philippine Mining Act of 1995."
- b. "Ancestral Lands" refer to all lands exclusively and actually possessed, occupied or utilized by Indigenous Cultural Communities by themselves or through their ancestors in accordance with their customs and traditions since time immemorial, and as may be defined and delineated by law.
- c. "Annual Environmental Protection and Enhancement Program (AEPEP)" refers to a yearly environmental management work plan based on the approved environmental protection and enhancement strategy.
- d. "Annual Social Development and Management Program" refers to a yearly community development programs/projects/activities based on the approved five-year Social Development and Management Program.
- e. "Archipelagic Sea" refers to all waters within the baseline of an archipelago except internal waters such as roadsteads, lakes and rivers.
- f. "Block or Meridional Block" means an area, bounded by one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, containing approximately eighty-one (81) hectares.
- g. "Built-up Areas" refer to portions of land within the municipality or barangay actually occupied as residential, commercial or industrial areas as embodied in a duly approved land use plan by the appropriate *Sanggunian*.
- h. "Bureau" means the Central Office of the Mines and Geosciences Bureau under the Department.
- i. "City" refers to an independent component city as classified under the Local Government Code.
- j. "Commercial Production" refers to the production of sufficient quantity of minerals to sustain economic viability of mining operations reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, which ever comes first.
- k. "Community Relations Record" refers to the applicant's proof of its community relations which may consist, but is not limited to, sociocultural sensitivity, the character of its past relations with local communities, cultural appropriateness and social acceptability of its resource management strategies: *Provided*, That this shall not be required in cases where the applicant has no previous community-relations experience in resource use ventures, locally or internationally.
- l. "Conservation" means the wise use and optimum utilization of mineral resources.
- m. "Contiguous Zone" refers to water, sea bottom and substratum measured twenty-four (24) nautical miles seaward from the baseline of the Philippine Archipelago.
- n. "Contract Area" means the land or body of water delineated under a Mineral Agreement or FTAA subject to the relinquishment obligations of the Contractor and properly defined by longitude and latitude.
- o. "Contractor" means a Qualified Person acting alone or in consortium who is a party to a Mineral Agreement or FTAA.
- p. "Critical Watershed" refers to a drainage area of a river system,

- lake or water reservoir supporting existing and proposed hydroelectric power, domestic water supply, geothermal power and irrigation works, which needs immediate rehabilitation and protection to minimize soil erosion, improve water yield and prevent possible flooding.
- q. “DENR Project Area” refers to specific portions of land covered by an existing project of the Department such as, but not limited to, Industrial Forest Management Agreement (IFMA), Community Forest Management Agreement (CFMA), Community Forestry Program (CFP), Forest Land Management Agreement (FLMA) and Integrated Social Forestry Program (ISFP).
  - r. “Department” means the Department of Environment and Natural Resources of the Republic of the Philippines.
  - s. “Development” means the work undertaken to explore and prepare an ore body or a mineral deposit for mining, including the construction of necessary infrastructure and related facilities.
  - t. “Development Stage” as used exclusively for FTAAAs means the period to prepare an explored orebody or mineral deposit for mining including the construction of necessary infrastructure and related facilities.
  - u. “Direct Milling Costs” refer to expenditures and expenses directly incurred in the mechanical and physical processing and/or chemical separation of the ore from the waste to produce marketable mineral products: *Provided, That*, for cement plant operations, direct milling costs are limited to expenditures and expenses directly incurred from raw materials crushing and grinding up to ground raw meal homogenizing, prior to clinker manufacturing.
  - v. “Direct Mining Costs” refer to expenditures and expenses directly incurred in all activities preparatory to and in the actual extraction of the ore from the earth and transporting it to the mill plant for mineral processing.
  - w. “Director” means the Director of the Bureau.
  - x. “Ecological Profile or Eco-Profile” refers to geographic-based instruments for planners and decision-makers, which presents a description of the environmental setting including the state of environmental quality and evaluation of the assimilative capacity of an area.
  - y. “Effluent” means any wastewater, partially or completely treated, or any waste liquid flowing out of mining operations, wastewater treatment plants or tailings disposal system.
  - z. “Environment” refers to the physical factors of the total surroundings of human beings, including the land, water, atmosphere, climate, sound, odors, tastes, the biological factors of animals and plants and the social factors of aesthetics. In a broad sense, it shall include the total environment of human beings such as economic, social, cultural, political and historical factors.
  - aa. “Environmental Audit” refers to a systematic, documented verification process of objectively obtaining and evaluating audit evidence (verifiable information, records or statements of facts) to determine whether or not specified environmental activities, events, conditions, management systems or information about these matters conform with audit criteria (policies, practices, procedures or requirements against which the auditor compares collected audit evidence about the subject matter) and communicating the results of this process to the concerned stakeholders.
  - ab. “Environmental Compliance Certificate (ECC)” refers to the

document issued by the Secretary or the Regional Executive Director certifying that based on the representations of the proponent and the preparers (the proponent's technical staff or the competent professional group commissioned by the proponent to prepare the EIS and other related documents), as reviewed and validated by the Environmental Impact Assessment Review Committee (EIARC), the proposed project or undertaking will not cause a significant negative environmental impact; that the proponent has complied with all the requirements of the Environmental Impact Assessment System; and that the proponent is committed to implement its approved Environmental Management Plan in the Environmental Impact Statement or mitigation measures in the Initial Environmental Examination.

- ac. "Environmental Impacts" refer to the probable effects or consequences of proposed projects or undertakings on the physical, biological and socioeconomic environment that can be direct or indirect, cumulative and positive or negative.
- ad. "Environmental Impact Assessment (EIA)" refers to the process of predicting the likely environmental consequences of implementing projects or undertakings and designing appropriate preventive, mitigating and enhancement measures.
- ae. "Environmental Impact Statement (EIS)" refers to the document(s) of studies on the environmental impacts of a project including the discussions on direct and indirect consequences upon human welfare and ecological and environmental integrity. The EIS may vary from project to project but shall contain in every case all relevant information and details about the proposed project or undertaking, including the environmental impacts of the project and the appropriate mitigating and enhancement measures.
- af. "Environmental Management Record" refers to an applicant's high regard for the environment in its past resource use ventures and proof of its present technical and financial capability to undertake resource protection, restoration and/or rehabilitation of degraded areas and similar activities: *Provided*, That this shall not be required in cases where the applicant has no previous experience in resource use ventures, locally or internationally.
- ag. "Environmental Protection and Enhancement Program (EPEP)" refers to the comprehensive and strategic environmental management plan for the life of the mining project on which AEPEPs are based and implemented to achieve the environmental management objectives, criteria and commitments including protection and rehabilitation of the disturbed environment.
- ah. "Environmental Work Program (EWP)" refers to the comprehensive and strategic environmental management plan to achieve the environmental management objectives, criteria and commitments including protection and rehabilitation of the disturbed environment during the exploration period.
- ai. "Exclusive Economic Zone" refers to the water, sea bottom and subsurface measured from the baseline of the Philippine Archipelago up to two hundred (200) nautical miles offshore.
- aj. "Exploration" means searching or prospecting for mineral resources by geological, geochemical and/or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining their existence, extent, quality and quantity and the feasibility of mining them for profit.

- ak. “Financial or Technical Assistance Agreement (FTAA)” means a contract involving financial or technical assistance for large-scale exploration, development and utilization of mineral resources.
- al. “Force Majeure” means acts or circumstances beyond the reasonable control of Contractor/Permit Holder/Permittee/Lessee including, but not limited to, war, rebellion, insurrection, riots, civil disturbance, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, act of God or any public enemy and any cause as herein described over which the affected party has no reasonable control.
- am. “Foreign-owned Corporation” means any corporation, partnership, association or cooperative duly registered in accordance with law in which less than fifty percent (50%) of the capital is owned by Filipino citizens.
- an. “Forest Reservations” refer to forest lands which have been reserved by the President for any specific purpose or purposes pursuant to P.D. No. 705, or by an appropriate law.
- ao. “Forest Reserves or Permanent Forests” refer to those lands of the public domain which have been the subject of the present system of classification and determined to be needed for forest purposes pursuant to P.D. No. 705.
- ap. “Government” means the Government of the Republic of the Philippines.
- aq. “Government Reservations” refer to all proclaimed reserved lands for specific purposes other than Mineral Reservations.
- ar. “Gross Output” means the actual market value of minerals or mineral products from each mine or mineral land operated as a separate entity, without any deduction for mining, processing, refining, transporting, handling, marketing or any other expenses: *Provided*, That if the minerals or mineral products are sold or consigned abroad by the Contractor under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted: *Provided, further*, That in the case of mineral concentrates which are not traded in commodity exchanges in the Philippines or abroad, such as copper concentrates, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining, treatment, insurance, transportation and other charges incurred in the process of converting mineral concentrates into refined metal traded in those commodity exchanges.
- as. “Ground Expenditures” mean the field and laboratory expenditures incurred for searching and delineating new or extension of ore bodies in an approved FTAA area, including expenditures for social preparation, pre-feasibility studies and reasonable administrative expenses incurred for the FTAA project. Such expenses include those for geological, geophysical, geochemical and air-borne geophysical surveys, borehole drillings, tunneling, test pitting, trenching and shaft sinking. Contributions to the community and environment-related expenses during the exploration period shall form part of the ground expenditures.
- at. “Host and Neighboring Communities” Host community refers to the people living at the barangay(s) outside the mine camp, where the mining project is located, and neighboring communities refer to the people living at the barangay(s), which are adjacent to the host

- community; areas covered by the mining tenement of the project; areas where mining facilities are located; and, immediate areas which will be affected by the mining operations.
- au. “Indigenous Cultural Community (ICC)” means a group or tribe of indigenous Filipinos who have continuously lived as communities on communally-bounded and defined land since time immemorial and have succeeded in preserving, maintaining and sharing common bonds of languages, customs, traditions and other distinctive cultural traits, and as may be defined and delineated by law.
  - av. “Initial Environmental Examination (IEE)” refers to the document required of proponents describing the environmental impact of, and mitigation and enhancement measures for projects or undertakings located in an Environmentally Critical Area (ECA) as listed under Presidential Proclamation No. 2146, Series of 1981, as well as other areas which the President may proclaim as environmentally critical in accordance with Section 4 of P.D. No. 1586.
  - aw. “Lessee” means a person or entity with a valid and existing mining lease contract.
  - ax. “Metallic Mineral” means a mineral having a brilliant appearance, quite opaque to light, usually giving a black or very dark streak, and from which a metallic element/component can be extracted/utilized for profit.
  - ay. “Mill Tailings” means materials whether solid, liquid or both segregated from the ores during concentration/milling operations which have no present economic value to the generator of the same.
  - az. “Mine Camp” refers to the portion of the mining/permit/contract area where housing/residential, recreational and other support facilities are built solely for use by the Contractor/Permit Holder/Lessee, including its employees and dependents.
  - ba. “Minerals” refer to all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy.
  - bb. “Mineral Agreement” means a contract between the Government and a Contractor, involving Mineral Production Sharing Agreement, Co-Production Agreement or Joint Venture Agreement.
  - bc. “Mineral Land” means any area where mineral resources, as herein defined, are found.
  - bd. “Mineral Processing” means the milling, beneficiation, leaching, smelting, cyanidation, calcination or upgrading of ores, minerals, rocks, mill tailings, mine waste and/or other metallurgical by-products or by similar means to convert the same into marketable products.
  - be. “Mineral Processing Permit” refers to the permit granted to a Qualified Person for mineral processing.
  - bf. “Mineral Products” mean materials derived from ores, minerals and/or rocks and prepared into a marketable state by mineral processing.
  - bg. “Mineral Reservations” refer to areas established and proclaimed as such by the President upon the recommendation of the Director through the Secretary, including all submerged lands within the contiguous zone and Exclusive Economic Zone.
  - bh. “Mineral Resources” mean any concentration of ores, minerals and/or rocks with proven or potential economic value.
  - bi. “Mine Rehabilitation” refers to the process used to repair the

impacts of mining on the environment. The long-term objectives of rehabilitation can vary from simply converting an area to a safe and stable condition to restoring the pre-mining conditions as closely as possible with all the area's environmental values intact and establishing a land use capability that is functional and proximate to the land use prior to the disturbance of the mine area.

- bj. "Mine Waste" means soil and/or rock materials from surface or underground mining operations with no present economic value to the generator of the same.
- bk. "Mining Area" means a portion of the contract area identified by the Contractor as defined and delineated in a Survey Plan duly approved by the Director/Regional Director concerned for purposes of development and/or utilization, and sites for support facilities.
- bl. "Mining Operations" mean mining activities involving exploration, feasibility study, development and utilization.
- bm. "Mining Permits" include Exploration, Quarry, Sand and Gravel (Commercial, Industrial and Exclusive), Gratuitous (Government or Private), Guano, Gemstone Gathering and Small-Scale Mining Permits.
- bn. "Mining Right" means a right to explore, develop or utilize mineral resources.
- bo. "Mining Application" means any application for mining permit, Mineral Agreement or FTAA.
- bp. "Net Income" means gross income from operations less allowable deductions which are necessary or related to mining operations.
- bq. "Nonmetallic Mineral" refers to a mineral usually having a dull luster, generally light-colored, transmits light, usually giving either colorless or light colored streak from which a nonmetallic element/component can be extracted/utilized for a profit.
- br. "Nongovernmental Organization (NGO)" includes nonstock, nonprofit organizations with qualifications, expertise and objectivity in activities dealing with resource and environmental conservation, management and protection.
- bs. "Offshore" means the water, sea bottom and subsurface from the shore or coastline reckoned from the mean low tide level up to the two hundred (200) nautical miles of the Exclusive Economic Zone.
- bt. "Onshore" means the landward side from the mean low tide level, including submerged lands in lakes, rivers and creeks.
- bu. "Ore" means naturally occurring substance or material from which a mineral or an element can be mined and/or processed for profit.
- bv. "Ore Transport Permit" refers to the permit that may be granted to a Contractor, accredited dealer, retailer, processor and other Permit Holders to transport minerals/mineral products.
- bw. "People's Organization (PO)" refers to a group of people which may be an association, cooperative, federation or other legal entity established by the community to undertake collective action to address community concerns and need and mutually share the benefits from the endeavor.
- bx. "Permittee" means the holder of an Exploration Permit. The Permittee referred to in previous administrative orders shall mean holders of permits subject of such orders.
- by. "Permit Area" refers to area subject of mining permits.
- bz. "Permit Holder" means a holder of any mining permit or of Mineral Processing Permit issued under these implementing rules and regulations except permits that authorize exploration activities only.
- ca. "Pollution" refers to any alteration of the physical, chemical and/or biological properties of any water, air and/or land resources of the

- Philippines; or any discharge thereto of any liquid, gaseous or solid wastes; or any production of unnecessary noise or any emission of objectionable odor, as will or is likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare, or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.
- cb. "Pollution Control Devices and Facilities" refer to infrastructure, machinery, equipment and/or improvements used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailings, as well as eliminating or reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal.
  - cc. "Pre-Operating Expenses" refer to all exploration expenses, special allowance, administrative costs related to the project, feasibility and environmental studies and all costs of mine construction and development incurred prior to commercial production.
  - cd. "President" refers to the President of the Republic of the Philippines.
  - ce. "Private Land" refers to land belonging to any private person or entity which includes alienable and disposable land being claimed by a holder, claimant or occupant who has already acquired a vested right thereto under the law, including those whose corresponding certificate or evidence of title or patent has not been actually issued.
  - cf. "Public Land" refers to land of the public domain which has been classified as agricultural land, mineral land, forest or timber land subject to management and disposition or concession under existing laws.
  - cg. "Qualified Person" means any Filipino citizen of legal age and with capacity to contract; or a corporation, partnership, association or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law, at least sixty percent (60%) of the capital of which is owned by Filipino citizens: *Provided*, That a legally organized foreign-owned corporation shall be deemed a Qualified Person for purposes of granting an Exploration Permit, FTAA or Mineral Processing Permit only.
  - ch. "Quarrying" means the process of extracting, removing and disposing quarry resources found on or underneath the surface of public or private land.
  - ci. "Quarry Permit" refers to the permit granted to a Qualified Person for the extraction and utilization of quarry resources on public or private land.
  - cj. "Quarry Resources" refer to any common rock or other mineral substances as the Director may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clays for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders and volcanic glass: *Provided*, That such quarry resources do not contain metals or metallic constituents and/or other valuable minerals in economically workable quantities: *Provided, further*, That nonmetallic minerals such as kaolin, feldspar, bull quartz, quartz or silica, sand and pebbles, bentonite,

talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semiprecious stones and other nonmetallic minerals that may later be discovered and which the Director declares to be of economically workable quantities, shall not be classified under the category of "Quarry Resources".

- ck. "Regional Director" means the Regional Director of any Regional Office.
- cl. "Regional Office" refers to the Regional Office of the Bureau.
- cm. "Secretary" means the Secretary of the Department.
- cn. "Service Contractor" means a person or entity who enters into an agreement to undertake a specific work related to mining or quarrying operations of a Contractor/Permit Holder/Permittee/Lessee.
- co. "Social Development and Management Program (SDMP)" refers to the comprehensive five-year plan of the Contractor/Permit Holder/Lessee authorized to conduct actual mining and milling operations towards the sustained improvement in the living standards of the host and neighboring communities by creating responsible, self-reliant and resource-based communities capable of developing, implementing and managing community development programs, projects, and activities in a manner consistent with the principle of people empowerment.
- cp. "Special Allowance" refers to payment to the claimowner or surface right owners particularly during the transition period from P.D. No. 463 and Executive Order No. 279, Series of 1987.
- cq. "Stakeholders" refer to person(s)/entity(ies) who may be significantly affected by the project or undertaking, such as but not limited to, Contractor/Permit Holder/Permittee/Lessee, members of the local community industry, LGUs, Nongovernmental Organizations (NGOs) and People's Organizations (POs).
- cr. "State" means the Republic of the Philippines.
- cs. "Tailings Disposal System" refers to a combination of methods, equipment and manpower used in handling, transporting, disposing and/or impounding mill tailings.
- ct. "Waste Dump" refers to a designated place where the mine waste are accumulated or collected.
- cu. "Utilization" means the extraction, mineral processing and/or disposition of minerals.

## **CHAPTER II GOVERNMENT MANAGEMENT**

### **Section 6. Authority of the Department**

The Department is the primary Government agency responsible for the conservation, management, development and proper use of the State's mineral resources including those in reservations, watershed areas and lands of the public domain. The Department shall have the following authority, among others:

- a. To promulgate rules and regulations as may be necessary to implement the intent and provisions of the Act;
- b. To enter into Mineral Agreements on behalf of the Government or

- recommend FTAA to the President upon endorsement of the Director;
- c. To enforce applicable related laws such as Administrative Code, Civil Code, etc.; and
- d. To exercise such other authority vested by the Act and as provided for in these implementing rules and regulations.

The Secretary may delegate such authority and other powers and functions to the Director.

## **Section 7. Organization and Authority of the Bureau**

The Mines and Geosciences Bureau shall be a line bureau primarily responsible for the implementation of the Act pursuant to Section 100 thereof. It shall be comprised of a Central Office and the necessary regional, district and such other offices as may be established in pertinent administrative orders issued by the Secretary. The staff Bureau created under Department Administrative Order No. 1, Series of 1988, shall become the Central Office of the Mines and Geosciences Bureau while the Mines and Geosciences Development Services created pursuant to Department Administrative Order No. 41, Series of 1990, shall become the Regional Offices.

The Bureau shall have the following authority, among others:

- a. To have direct charge in the administration and disposition of mineral lands and mineral resources;
- b. To undertake geological, mining, metallurgical, chemical and other researches, as well as mineral exploration surveys: *Provided*, That for areas closed to mining applications as provided for in Section 15 hereof, the Bureau can undertake studies for purposes of research and development;
- c. To confiscate, after due process, surety, performance and guaranty bonds after notice of violation;
- d. To recommend to the Secretary the granting of Mineral Agreements or to endorse to the Secretary for action by the President the grant of FTAA's, in favor of Qualified Persons and to monitor compliance by the Contractor with the terms and conditions of the Mineral Agreements and FTAA's. For this purpose, an efficient and effective monitoring system shall be established to ascertain periodically whether or not these objectives are realized;
- e. To cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations;
- f. To deputize, when necessary, any member or unit of the Philippine National Police (PNP) and barangay, duly registered and Department-accredited Nongovernmental Organization (NGO) or any Qualified Person to police all mining activities;
- g. To assist the Environmental Management Bureau (EMB) under the Department and/or the Department Regional Office in the processing or conduct of Environmental Impact Assessment in mining projects; and
- h. To exercise such other authority vested by the Act and as provided for in these implementing rules and regulations.

The Director may delegate such authority and other powers and functions to the Regional Director.

## **Section 8. Role of Local Government**

Subject to Section 8 of the Act and pursuant to the Local Government Code and other pertinent laws, the LGUs shall have the following roles in mining projects within their respective jurisdictions:

- a. To ensure that relevant laws on public notice, public consultation and public participation are complied with;
- b. In coordination with the Bureau/Regional Office(s) and subject to valid and existing mining rights, to approve applications for small-scale mining, sand and gravel, quarry, guano, gemstone gathering and gratuitous permits and for industrial sand and gravel permits not exceeding five (5) hectares;
- c. To receive their share as provided for by law in the wealth generated from the utilization of mineral resources and thus enhance economic progress and national development;
- d. To facilitate the process by which the community shall reach an informed decision on the social acceptability of a mining project as a requirement for securing an ECC;
- e. To participate in the monitoring of any mining activity as a member of the Multipartite Monitoring Team referred to in Section 185 hereof;
- f. To participate as a member of the Mine Rehabilitation Fund (MRF) Committee as provided for in Sections 182 to 187 hereof;
- g. To be the recipient of social infrastructure and community development projects for the utilization of the host and neighboring communities in accordance with Chapter XIV hereof;
- h. To act as mediator between the ICCs and the Contractor(s) as may be requested;
- i. To coordinate with the Department and Bureau in the implementation of the Act and these implementing rules and regulations in their respective jurisdictions. In areas covered by the Southern Philippines Council for Peace and Development, Autonomous Region of Muslim Mindanao and future similar units, the appropriate offices of said units shall coordinate with the Department and Bureau in the implementation of the Act and these implementing rules and regulations; and
- j. To perform such other powers and functions as may be provided for by applicable laws, rules and regulations.

## **CHAPTER III MINERAL RESERVATIONS AND GOVERNMENT RESERVATIONS**

### **Section 9. Establishment, Disestablishment or Modification of Boundary of a Mineral Reservation**

In all cases, the Director shall conduct public hearings allowing all concerned sectors and communities, interested Nongovernmental and People's Organizations, as well as LGUs, to air their views regarding the establishment, disestablishment or modification of any Mineral Reservation. The public shall be notified by publication in a newspaper of general circulation in the province, as well as by posting in all affected municipalities and barangays, at least thirty (30) days before said hearings are conducted.

The recommendation of the Director shall be in writing stating therein the grounds

for the establishment, disestablishment or modification of any specific Mineral Reservation and shall likewise be published after submission to the Secretary.

No recommendation of the Director shall be acted upon by the Secretary unless the preceding paragraph has been strictly complied with.

Upon the recommendation of the Director through the Secretary, the President may, subject to valid and existing rights, set aside and establish an area as a Mineral Reservation when the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development or certain minerals for scientific, cultural or ecological value. The Secretary shall cause the periodic review of existing Mineral Reservations by detailed geological, mineral and ecological evaluation for the purpose of determining whether or not their continued existence is consistent with the national interest and upon his/her recommendation, the President may, by proclamation, alter or modify the boundaries thereof or revert the same to the public domain without prejudice to prior existing rights.

In the proclamation of such Mineral Reservations, all valid and existing mining rights shall be respected.

#### **Section 10. Government Reservations**

For Government Reservations, the Department may directly undertake exploration, development and utilization of mineral resources. In the event that the Department can not undertake such activities, these may be undertaken by a Qualified Person: *Provided*, That the right to explore, develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: *Provided, further*, That such right shall be granted only after exploration reveals the presence of economically potential deposits: *Provided, finally*, That the Permittee who undertook the exploration of said Reservation shall be given priority.

#### **Section 11. Mining Operations within Mineral and Government Reservations**

Mining operations in Mineral Reservations shall be undertaken by the Department or through a Qualified Person under any of the following modes:

- a. Exploration Permit;
- b. Mineral Agreement;
- c. FTAA;
- d. Small-Scale Mining Permit; and
- e. Quarry Permit.

In cases where the mining operations shall be directly undertaken by the Department, a Memorandum of Agreement may be entered into by and between the Department and a qualified government corporation/ entity authorizing the latter to explore, develop and/or utilize the mineral resources found therein.

Mining operations in Government Reservations shall be first undertaken through an Exploration Permit, subject to limitations prescribed therein, before the same is opened for Mineral Agreement/FTAA application or other mining applications.

Applications for Exploration Permit/Mineral Agreement/FTAA within Mineral Reservations shall be filed in the Regional Office concerned for its initial evaluation and endorsement to the Bureau for final evaluation. In the event that the applied area covers both a Mineral Reservation and a non-Mineral Reservation, the mining applicant may file separate applications covering the Mineral Reservation area and the non-Mineral

Reservation area, or file a single application covering the whole area, in the Regional Office concerned.

Application for Exploration Permit/Mineral Agreement/FTAA/Quarry Permit within Mineral and Government Reservations shall be governed by other applicable provisions of Chapters V, VI, VII and VIII of these implementing rules and regulations.

#### **Section 12. Small-Scale Mining Operations within Mineral Reservations**

Small-scale mining operations within Mineral Reservations shall be governed by the pertinent rules and regulations provided for in the Mineral Reservations Development Board (MRDB) Administrative Order No. 3, Series of 1984, and MRDB Administrative Order No. 3-A, Series of 1987, as amended, and as may be applicable. Small-scale mining cooperatives covered by R.A. No. 7076 shall be given preferential right to apply for a small-scale mining contract for a maximum aggregate area of twenty-five percent (25%) of a Mineral Reservation subject to valid and existing mining rights.

#### **Section 13. Payment of Royalty of Minerals/Mineral Products Extracted from Mineral Reservations**

The Contractors/Permit Holders/Lesseees shall pay to the Bureau a royalty which shall not be less than five percent (5%) of the market value of the gross output of the minerals/mineral products extracted or produced from the Mineral Reservations exclusive of all other taxes. A ten percent (10%) share of said royalty and ten percent (10%) of other revenues such as administrative, clearance, exploration and other related fees to be derived by the Government from the exploration, development and utilization of the mineral resources within Mineral Reservations shall accrue to the Bureau as a Trust Fund and shall be deposited in a Government depository bank to be allotted for special projects and other administrative expenses related to the exploration, development and environmental management of minerals in Government Reservations.

### **CHAPTER IV SCOPE OF APPLICATION**

#### **Section 14. Areas Open to Mining Applications**

The following areas are open to mining applications:

- a. Public or private lands not covered by valid and existing mining rights and mining applications;
- b. Lands covered by expired/abandoned/canceled mining/quarrying rights;
- c. Mineral Reservations; and
- d. Timber or forest lands as defined in existing laws.

#### **Section 15. Areas Closed to Mining Applications**

Pursuant to the Act and in consonance with State policies and existing laws, areas may be either closed to mining applications or conditionally opened therefor.

- a. The following areas are closed to mining applications:
  1. Areas covered by valid and existing mining rights and mining applications subject to Subsection b(3) herein;
  2. Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forests, tree

- parks, greenbelts, game refuge, bird sanctuaries and areas proclaimed as marine reserves/marine parks and tourist zones as defined by law and identified initial components of the National Integrated Protected Areas System (NIPAS) pursuant to R.A. No. 7586 and such areas expressly prohibited thereunder, as well as under Department Administrative Order No. 25, Series of 1992, and other laws;
3. Areas which the Secretary may exclude based, inter alia, on proper assessment of their environmental impacts and implications on sustainable land uses, such as built-up areas and critical watersheds with appropriate barangay/municipal/city/ provincial *Sanggunian* ordinance specifying therein the location and specific boundary of the concerned area;
  4. Offshore areas within five hundred (500) meters from the mean low tide level and onshore areas within two hundred (200) meters from the mean low tide level along the coast;
  5. In case of seabed/marine aggregate quarrying, offshore areas less than 1,500 meters from the mean low tide level of land or island(s) and where the seabed depth is less than 30 meters measured at mean sea level; and
  6. Areas expressly prohibited by law.

Mining applications which have been made over the foregoing areas shall be reviewed and, after due process, such areas may be excluded from said applications.

- b. The following areas may be opened for mining applications the approval of which are subject to the following conditions:
  1. Military and other Government Reservations, upon prior written clearance by the Government agency having jurisdiction over such Reservations;
  2. Areas near or under public or private buildings, cemeteries, archaeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works, including plantations or valuable crops, upon written consent of the concerned Government agency or private entity subject to technical evaluation and validation by the Bureau;
  3. Areas covered by FTAA applications which shall be opened for quarry resources mining applications pursuant to Section 53 hereof upon the written consent of the FTAA applicants: *Provided*, That sand and gravel permit applications shall not require consent from the FTAA, Exploration Permit or Mineral Agreement applicant, except for Mineral Agreement or Exploration Permit applications covering sand, gravel and/or alluvial gold: *Provided, further*, That the Director shall formulate the necessary guidelines to govern this provision;
  4. Areas covered by small-scale mining under R.A. No. 7076/P.D. No. 1899 upon prior consent of the small-scale miners, in which case a royalty payment, upon the utilization of minerals, shall be agreed upon by the concerned parties and shall form a Trust Fund for the socioeconomic development of the concerned community; and
  5. DENR Project Areas upon prior consent from the concerned agency.

The Bureau shall cause the periodic review of areas closed to mining applications for the purpose of determining whether or not their continued closure is consistent with the national interest and render its recommendations, if any, to the Secretary for appropriate action.

## **Section 16. Ancestral Lands**

In no case shall Mineral Agreements, FTAA's or mining permits be granted in areas subject of Certificates of Ancestral Domains/Ancestral Land Claims (CADC/CALC) or in areas verified by the Department Regional Office and/or other office or agency of the Government authorized by law for such purpose as actually occupied by ICCs under a claim of time immemorial possession except with their prior consent.

Prior consent refers to prior informed consent obtained, as far as practicable, in accordance with the customary laws of the ICC concerned. Prior informed consent should meet the minimum requirements of public notice through various media such as, but not limited to, newspaper, radio or television advertisements, fully disclosing the activity to be undertaken and/or sector consultation wherein the Contractor/Permit Holder/Permittee should arrange for a community assembly, notice of which should be announced or posted in a conspicuous place in the area for at least a month before the assembly: *Provided*, That the process of arriving at an informed consent should be free from fraud, external influence and manipulations.

In the event that prior informed consent is secured in accordance with the preceding paragraph, the concerned parties shall agree on the royalty payment for the concerned ICC which may not be less than one percent (1%) of the gross output. Expenses for community development may be credited to or charged against said royalty. Representatives from the Bureau/Regional Office(s) concerned, Department offices concerned, LGUs concerned, relevant NGOs/POs and the Office of the Northern/Southern Cultural Communities may be requested to act as mediators between the ICCs concerned and the Contractor/Permit Holder/Permittee in the negotiation for the royalty payment.

In case of disagreement concerning the royalty due the ICCs concerned, the Department shall resolve the same within three (3) months. Said royalty shall form part of a Trust Fund for the socioeconomic well-being of the ICCs in accordance with the management plan formulated by the same in the ancestral land or domain area: *Provided*, That the royalty payment shall be managed and utilized by the ICCs concerned.

Pending the enactment by Congress of a law on ancestral lands or domains, the implementation of this Section shall be in accordance with Department Administrative Order No. 2, Series of 1993, and other pertinent laws.

The implementation of this Section shall be in accordance with Republic Act No. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997" and other pertinent laws.

## **CHAPTER V EXPLORATION PERMIT**

### **Section 17. Exploration Permit as the Initial Mode of Entry in Mineral Exploration**

Exploration activities may be directly undertaken by the Department or, in the event that the Department can not undertake such exploration activities, by a Qualified Person in specified areas as determined by the Secretary: *Provided*, That the conduct of

mineral exploration by a Qualified Person in all areas open to mining shall be initially undertaken through an Exploration Permit, subject to the provisions of Chapter VII on the FTAA.

In case an immediate technical study of an area is necessary, the Department or any of its authorized agencies/instrumentalities and the Exploration Permit applicant may enter into a Memorandum of Agreement to jointly undertake such study.

### **Section 18. Term/Maximum Areas Allowed under an Exploration Permit**

The term of an Exploration Permit shall be for a period of two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of four (4) years for nonmetallic mineral exploration or six (6) years for metallic mineral exploration: *Provided*, That no renewal of Permit shall be allowed unless the Permittee has complied with all the terms and conditions thereof, and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations: *Provided, further*, That the conduct of a feasibility study and filing of the declaration of mining project feasibility shall be undertaken during the term of the Exploration Permit, subject to the provisions of Section 30 hereof.

The maximum area that a Qualified Person may apply for or hold at any one time under an Exploration Permit shall be as follows:

- a. Onshore, in any one province -
  1. For individuals - twenty (20) blocks or approximately one thousand six hundred twenty (1,620) hectares and
  2. For corporations, partnerships, associations or cooperatives - two hundred (200) blocks or approximately sixteen thousand two hundred (16,200) hectares.
  
- b. Onshore, in the entire Philippines -
  1. For individuals - forty (40) blocks or approximately three thousand two hundred forty (3,240) hectares and
  2. For corporations, partnerships, associations or cooperatives - four hundred (400) blocks or approximately thirty-two thousand four hundred (32,400) hectares.
  
- c. Offshore, in the entire Philippines, beyond five hundred meters (500 m) from the mean low tide level -
  1. For individuals - one hundred (100) blocks or approximately eight thousand one hundred (8,100) hectares and
  2. For corporations, partnerships, associations or cooperatives - one thousand (1,000) blocks or approximately eighty-one thousand (81,000) hectares.

The permit area is subject to relinquishment as provided for in Section 22(f) hereof.

### **Section 19. Application for Exploration Permit/Mandatory Requirements**

Any Qualified Person may apply for an Exploration Permit (MGB Form No. 5-1)

with the Regional Office concerned, through payment of the required fees and submission of five (5) sets of the following mandatory requirements:

- a. Location map/sketch plan of the proposed permit area showing its geographic coordinates/ meridional block(s) and boundaries in relation to major environmental features and other projects using a National Mapping and Resource Information Authority (NAMRIA) topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- b. Two-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
- c. Proof of technical competence, including, among others, curricula vitae and track records in exploration and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Exploration Work Program;
- d. Proof of financial capability to undertake the Exploration Work Program, such as the following:
  1. For an individual – Copy of income tax return for the preceding year and proof of bank deposit or credit line in the amount of at least Two Million Five Hundred Thousand Pesos (PhP 2,500,000.00) and
  2. For a corporation, partnership, association or cooperative - Latest audited financial statement and, where applicable, Annual Report for the preceding year, credit line(s), bank guarantee(s) and/or similar negotiable instruments;
- e. Photocopy of Articles of Incorporation/Partnership/Association, By-Laws and Certificate of Registration, duly certified by the Securities and Exchange Commission (SEC) or authorized Government agency(ies) concerned, for a corporation, partnership, association or cooperative, or Certification from the Bureau/Regional Office concerned that said documents are duly registered in that Office; and
- f. Affidavit of Undertaking pursuant to DENR Memorandum Order (DMO) No. 99-10, as amended, for a corporation, partnership, association or cooperative.

The Certificate of Environmental Management and Community Relations Record (CEMCRR)/Certificate of Exemption, Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A) as provided for in Section 168 hereof, shall be required from the Exploration Permit applicant after acceptance of the application but prior to the issuance of the pertinent Notice of Application.

The Certificate of Non-Overlap for areas without ICC(s)/Indigenous Peoples (IPs) or Certification Precondition from the National Commission on Indigenous Peoples (NCIP) for areas with ICCs/IPs shall be secured by the Exploration Permit applicant in accordance with the NCIP rules and regulations: *Provided*, That in case the aforesaid requirements are not issued within the NCIP's prescribed periods, the Exploration Permit applicant shall submit the NCIP's Report on the Field-Based Investigation for the applied area that does not overlap ancestral domain, or the Memorandum of Agreement (MoA) executed by and among the Exploration Permit applicant, ICC/IP concerned and the NCIP for the applied area that affects the ICCs/IPs: *Provided, further*, That the said Certificate of Non-Overlap or Certification Precondition shall be submitted by the Exploration Permit applicant within ninety (90)

days from issuance of the Exploration Permit.

For offshore Exploration Permit applications, the following additional requirements shall be submitted:

- a. The name, port of registry, tonnage, type and class of survey vessel(s)/platform(s): *Provided*, That if a foreign vessel is to be used, the expected date of first entry or appearance and final departure of the survey vessel shall be provided and all the necessary clearances obtained;
- b. A certification from the Coast and Geodetic Survey Department of the NAMRIA that the proposed Exploration Work Program was duly registered to provide update in the publication of "Notice to Mariners" together with a list of safety measures to be regularly undertaken to ensure the safety of navigation at sea and prevent accident;
- c. An agreement to:
  1. Properly identify all installations, vessels and other crafts involved in exploration recognizable to all vessels within reasonable distance;
  2. Notify the Bureau thirty (30) calendar days prior to the intention to remove all scientific installations or equipment and apparatus; and
  3. Allow the Bureau's authorized personnel, Philippine Coast Guard and other authorized persons during reasonable hours to board the vessel(s) while within the Exclusive Economic Zone.

Where the area applied for falls within the administration of two (2) or more Regional Offices, the application shall be filed with the Regional Office where the comparatively larger portion of the area is located, copy furnished the other Regional Office(s) concerned by the applicant within three (3) working days from the date of filing.

The Regional Office shall regularly provide the Bureau with a list, consolidated map and status report of the Exploration Permit applications filed in its jurisdiction.

#### **Section 19-A. Transfer or Assignment of Exploration Permit Application**

Transfer or assignment of Exploration Permit applications shall be allowed subject to the approval of the Regional Director concerned taking into account the national interest and public welfare: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation.

#### **Section 20. Area Status and Clearance**

Within fifteen (15) working days from receipt of the Exploration Permit application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications. The Regional Office concerned shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the Exploration Permit application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office as to the transmittal of said document to the Department sector(s) concerned and/or Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Department

sector(s) and/or Government agency(ies). The Department sector(s) concerned must submit the area status/consent/clearance on the proposed permit area within thirty (30) working days from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the Regional Office(s) concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed permit area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of Exploration Permit application: *Provided, further*, That in cases of overlapping of claims/conflicts/ complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director shall exert all efforts to resolve the same.

## **Section 21. Publication/Posting/Radio Announcement of an Exploration Permit Application**

Within five (5) working days from receipt of the necessary area clearances, the Regional Office(s) concerned shall issue the Notice of Application for Exploration Permit to the applicant for publication and radio announcement, and to the Offices concerned for posting. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied for, extent of exploration activities to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

Within five (5) working days from receipt of the Notice, the Exploration Permit applicant shall cause the publication thereof once in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed permit area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province. The pertinent affidavits of publication shall be submitted by the Exploration Permit applicant to the Regional Office concerned within five (5) days from the date of publication of the Notice.

The Regional Office concerned shall cause the posting of the Notice on its bulletin board, and those of the province(s) and municipality(ies) concerned, or city(ies) concerned, for one (1) week, copy furnished the Bureau and the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for one (1) week in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the permit applied for and instructions that information regarding such application may be obtained at the Regional Office(s) concerned. The publication and radio announcements shall be at the expense of the applicant.

Within five (5) working days from the last date of posting and radio announcement, the authorized officer(s) of the office(s) concerned shall issue a

certification(s) that the posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any concerned party.

However, previously published valid and existing mining claims are exempted from the publication/posting/radio announcement required under this Section.

No Exploration Permit shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is resolved with finality.

## **Section 22. Terms and Conditions of an Exploration Permit**

An Exploration Permit shall contain the following terms and conditions:

- a. The right to explore shall be subject to valid, prior and existing rights of any party(ies) within the subject area;
- b. The Permit shall be for the exclusive use and benefit of the Permittee or its duly authorized representative and, shall under no circumstances, be used by the Permittee for purposes other than exploration;
- c. The term of the Permit shall be for a period of two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of four (4) years for nonmetallic mineral exploration or six (6) years for metallic mineral exploration: *Provided*, That no renewal of Permit shall be allowed unless the Permittee has complied with the terms and conditions of the Permit and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations: *Provided, further*, That in case of failure to file the declaration of mining project feasibility during the total term of four (4) years of the Exploration Permit for non-metallic minerals or six (6) years of the same Exploration Permit for metallic minerals, the Permittee may apply for further renewal of the Exploration Permit, which may be granted by the Secretary for another term of two (2) years for the very purpose of preparing or completing the feasibility studies, and filing of the declaration of mining project feasibility and the pertinent Mineral Agreement or FTAA application. The complete and final exploration report shall be required in this renewal of the Exploration Permit: *Provided, furthermore*, That in case the Exploration Permit expires prior to the approval of the declaration of mining project feasibility and/or filing of the Mineral Agreement or FTAA application, the said Exploration Permit shall be deemed automatically extended until such time that the Mineral Agreement or FTAA application is approved;
- d. The Permittee shall submit to the Bureau/Regional Office concerned within thirty (30) calendar days after the end of each semester a report under oath of the Exploration Work Program

- implementation and expenditures showing discrepancies/deviations including the results of the survey, laboratory reports, geological reports/maps subject to semiannual inspection and verification by the Bureau/Regional Office concerned at the expense of the Permittee: *Provided*, That any expenditure in excess of the yearly budget of the approved Exploration Work Program may be carried forward and credited to the succeeding years covering the duration of the Permit;
- e. The Permittee shall submit to the Bureau/Regional Office concerned within thirty (30) calendar days from the end of six (6) months after the approval of the Environmental Work Program (EWP) and every six (6) months thereafter a status report on its compliance with the said EWP;
  - f. The Permittee shall annually relinquish at least 20% of the permit area during the first two (2) years of exploration and at least 10% of the remaining permit area annually during the extended exploration period. However, if the permit area is less than five thousand (5,000) hectares, the Permittee need not relinquish any part thereof. A separate report of relinquishment shall be submitted to the Bureau/Regional Office concerned with a detailed geologic report of the relinquished area accompanied by maps at a scale of 1:50,000 and results of analyses and corresponding expenditures, among others. The minimum exploration expenditures for the remaining area after relinquishment shall be based on the approved Exploration Work Program;
  - g. The Secretary or his/her duly authorized representative shall annually review the performance of the Permittee;
  - h. The Permittee shall submit to the Bureau/Regional Office concerned a final report upon the expiration or relinquishment of the Permit or its conversion into Mineral Agreement or FTAA in a form and substance comparable to published reports of respected international organizations and shall incorporate all the findings in the permit area, including locations of samples, assays, chemical analyses and assessment of the mineral potential. Such report shall include complete detailed expenditures incurred during the exploration;
  - i. In case of diamond drilling, the Permittee shall, upon request of the Director/Regional Director concerned, submit to the Bureau/Regional Office concerned a quarter of the core samples which shall be deposited in the Bureau/Regional Office Core Library concerned for reference and safekeeping;
  - j. Offshore exploration activities shall be carried out in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) and in a manner that will not adversely affect the safety of navigation at sea and will ensure accommodation with other marine activities such as fishing, aquaculture, transportation, etc.;
  - k. Onshore exploration activities shall be carried out in a manner that will, at all times, safeguard the environment;
  - l. If the Permittee applies for a Mineral Agreement or FTAA over the permit area, the exploration period covered by the Exploration Permit shall be considered as the exploration period of the Mineral Agreement or FTAA;
  - m. The Permittee shall comply with pertinent provisions of the Act and these implementing rules and regulations; and
  - n. The Permittee may surrender the Permit or exercise the priority right to apply for a Mineral Agreement or FTAA over the permit area, which application shall be granted if the Permittee meets

- the necessary qualifications and the terms and conditions of any such agreement;
- o. The Permit excludes commercial extraction and/or construction of infrastructures designed for mining development or mining production;
  - p. The Permit does not grant beneficial ownership of the minerals to the Permittee;
  - q. The Director/Regional Director concerned shall cause the cancellation of the Exploration Permit for failure of the Permittee to comply with the terms and conditions under which the Permit is issued;
  - r. The Permittee shall assume all the exploration risks and shall not be entitled to reimbursement of its expenses;
  - s. The Permittee shall comply with the minimum ground expenditures during the term of the Permit, as follows:

<u>Year</u>	<u>Pesos/Hectare</u>
1	100
2	100
3	400
4	400
5	900
6	1,150
7 and onwards	1,150

In case the minimum ground expenditure for a given year is not met for justifiable reasons as determined by the Bureau/Regional Office concerned, the unexpended amount may be spent on the following year of the Permit. However, if the minimum ground expenditures for the entire term of the Permit are not met, the unexpended amount shall be paid by the Permittee and shall accrue to the Bureau to be used for mining operations in Mineral Reservations or to other purposes as may be determined by the Bureau. The failure of the Permittee to pay the said amount within the prescribed period shall be a ground for the denial of its mining application for renewal of the Permit or other related application(s).

- t. The Permittee in the case of a juridical entity shall annually submit a copy of its SEC-received General Information Sheet; and
- u. Other terms and conditions which the Bureau/Regional Office concerned may deem appropriate.

### **Section 23. Registration of Exploration Permit**

Upon evaluation that all the terms and conditions and all pertinent requirements are in order and that the subject area has been cleared from any conflict, the Regional Director upon clearance by the Director shall approve and issue the Exploration Permit. The Permittee shall cause the registration of the same in the Regional Office concerned within fifteen (15) working days from receipt of the written notice and upon payment of the required fees: *Provided*, That the Permittee shall comply with the required consultation with the *Sanggunian* concerned pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, prior to the implementation of the Exploration Work Program.

### **Section 23-A. Conversion of Exploration Permit to Mineral Agreement or Financial or Technical Assistance Agreement**

A Permittee may, at its option, convert totally or partially its Exploration Permit to a Mineral Agreement or FTAA for the purpose of undertaking detailed exploration, if the exploration activities indicate a resource discovery. The Letter of Intent shall be filed in the Regional Office concerned prior to the expiration of the Exploration Permit, copy furnished the Bureau. Said Letter shall also provide therein its intention over the area that may not be covered by the conversion to a Mineral Agreement or FTAA: *Provided*, That the MA or FTAA application shall be filed in the Regional Office concerned within thirty (30) days upon filing of the Letter of Intent: *Provided, further*, That the failure of the Permittee to file the MA or FTAA application within the prescribed period shall be construed that the Permittee elects to continue operation until the expiration of the Exploration Permit.

Upon compliance by the Permittee with all the pertinent requirements, including a field verification report by the Regional Office confirming the resource discovery and upon payment of the required conversion fee, the application for conversion shall be evaluated and approved subject to Chapter VI and Chapter VII of these implementing rules and regulations and all other applicable provisions of the Act and these implementing rules and regulations: *Provided*, That the term of the Exploration Permit shall be deducted from the terms of the Exploration/Pre-Feasibility Study/Feasibility Study Period of the Mineral Agreement or FTAA.

#### **Section 24. Rights and Obligations of the Permittee**

The Permittee, its heirs or successors-in-interest shall have the right to enter, occupy and explore the permit area, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the Exploration Permit.

#### **Section 25. Transfer or Assignment of Exploration Permit**

An Exploration Permit may be transferred or assigned to another Qualified Person(s) subject to the approval of the Director.

#### **Section 26. Relinquishment of Areas Covered by Exploration Permit**

The Permittee may, at any time, relinquish the whole or any portion of the total permit area by filing a notice of relinquishment with the Bureau/Regional Office concerned.

#### **Section 27. Renewal of Exploration Permit**

Prior to the expiration of an Exploration Permit, the Permittee may submit to the Bureau, copy furnished the Regional Office concerned, an application to renew the said Exploration Permit accompanied by five (5) sets of the following mandatory requirements:

- a. Audited financial statements covering the term of the Exploration Permit; and
- b. Two (2)-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist.

The Secretary, through the Director, may grant the renewal after field verification by the Bureau, which shall be undertaken at the expense of the Permittee, and compliance with all pertinent requirements, including payment of all required fees

and reporting requirements: *Provided*, That if all the requirements have been complied with and the Exploration Permit application for renewal is still awaiting approval one (1) month after its date of filing, the said Exploration Permit application for renewal, upon submission of an affidavit by the applicant attesting to the full compliance with all the pertinent requirements, shall be deemed approved and the Director shall issue the renewed Exploration Permit within five (5) working days from receipt of said affidavit, for registration and release. This is without prejudice to the Department undertaking the necessary investigation to determine any liability as to the non-issuance of the renewed Exploration Permit within the prescribed period: *Provided, further*, That the renewal of the Exploration Permit for the purpose of filing of the declaration of mining project feasibility shall require approval of the Secretary.

The Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A) as provided for in Section 168 hereof and the Certification by the Regional Office concerned as to the compliance with the terms and conditions of the Exploration Permit, particularly the level of implementation of the Work Programs and compliance with the fiscal and reporting obligations, shall be required from the Permittee after the acceptance of the application but prior to the issuance of the renewed Exploration Permit.

### **Section 28. Cancellation of an Exploration Permit**

The Secretary/Director/Regional Director concerned may cancel the Exploration Permit for violation(s) by the Permittee of the terms and conditions thereof, including the failure to secure the required proof of consultation with/project presentation to the *Sanggunian* concerned pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, within one (1) year from issuance of the Exploration Permit.

Upon issuance of the Order declaring with finality the cancellation of the Permit covering areas within Government Reservations, the said areas shall automatically be reverted back to its original status.

### **Section 29. Effect of Relinquishment or Cancellation of Exploration Permit**

The foregoing provisions notwithstanding, relinquishment or cancellation shall not release the Permittee from any and all obligations it may have, particularly with regard to ecological management, at the time of relinquishment or cancellation.

### **Section 30. Declaration of Mining Project Feasibility**

If results of exploration reveal the presence of mineral deposits economically and technically feasible for mining operations, the Permittee shall, within the term of the Exploration Permit, file a declaration of mining project feasibility. The approval of the declaration of mining project feasibility by the Director shall grant the Permittee the exclusive right to a Mineral Agreement or FTAA over the permit area: *Provided*, That the Order approving the declaration of mining project feasibility shall be posted on the bulletin boards of the Bureau and the Regional Office concerned for at least one (1) week: *Provided, further*, That failure of the Permittee to apply for Mineral Agreement or FTAA within a period of one (1) year from the date of approval of the declaration of mining project feasibility shall mean automatic cancellation of the said declaration.

In case of failure to file the declaration of mining project feasibility during the total term of four (4) years of the Exploration Permit for non-metallic minerals or six (6) years of the same Exploration Permit for metallic minerals, the Permittee may apply for further renewal of the Exploration Permit, which may be granted by the Secretary for another term of 2 years for the very purpose of preparing or completing the feasibility studies,

and filing of the declaration of mining project feasibility and the pertinent Mineral Agreement or FTAA application. The complete and final exploration report shall be required in this renewal of the Exploration Permit. The Bureau shall issue the prescribed form for the Exploration Permit: *Provided*, That in case the Exploration Permit expires prior to the approval of the declaration of mining project feasibility and/or filing of the Mineral Agreement or FTAA application, the said Exploration Permit shall be deemed automatically extended until such time that the Mineral Agreement or FTAA application is approved.

The application for Mineral Agreement or FTAA by a Permittee shall be accompanied by five (5) sets of the mandatory requirements as provided for in Sections 35 and 53, respectively, hereof.

The processing of the application for a Mineral Agreement or FTAA shall be in accordance with Chapters VI and VII, respectively, of these implementing rules and regulations.

## **CHAPTER VI MINERAL AGREEMENTS**

### **Section 31. Kinds of Mineral Agreements and Nature Thereof**

There are three (3) kinds of Mineral Agreements, namely:

- a. Mineral Production Sharing Agreement (MPSA) - an agreement wherein the Government grants to the Contractor the exclusive right to conduct mining operations within, but not title over, the contract area and shares in the production whether in kind or in value as owner of the minerals therein. The Contractor shall provide the necessary financing, technology, management and personnel;
- b. Co-Production Agreement (CA) - an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral resources; and
- c. Joint Venture Agreement (JVA) - an agreement where a joint venture company is organized by the Government and the Contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

### **Section 32. Eligibility of Applicant for Mineral**

The following Qualified Person is eligible for a Mineral Agreement:

- a. In case of an individual - must be a Filipino citizen of legal age and with capacity to contract; or
- b. In case of a corporation, partnership, association or cooperative - must be organized or authorized for the purpose of engaging in mining, duly registered in accordance with law, at least sixty percent (60%) of the capital of which is owned by Filipino citizens.

### **Section 33. Maximum Areas Allowed under a Mineral Agreement**

The maximum area that a Qualified Person may apply for or hold at any one time under a Mineral Agreement shall be as follows:

- a. Onshore, in any one province -
  1. For individuals - ten (10) blocks or approximately eight hundred ten (810) hectares and
  2. For corporations, partnerships, associations or cooperatives – five thousand (5,000) hectares for metallic minerals and two thousand (2,000) hectares for non-metallic minerals per final mining area subject to the pertinent provisions of Section 69 hereof.
  
- b. Onshore, in the entire Philippines –
  1. For individuals - twenty (20) blocks or approximately one thousand six hundred twenty (1,620) hectares and
  2. For corporations, partnerships, associations or cooperatives – five thousand (5,000) hectares per final mining area subject to the pertinent provisions of Section 69 hereof.
  
- c. Offshore, in the entire Philippines, beyond five hundred meters (500 m) from the mean low tide level -
  1. For individuals - fifty (50) blocks or approximately four thousand fifty (4,050) hectares,
  2. For corporations, partnerships, associations or cooperatives - five hundred (500) blocks or approximately forty thousand five hundred (40,500) hectares, and
  3. For the Exclusive Economic Zone - a larger area to be determined by the Secretary upon the recommendation of the Director.

The above-mentioned maximum areas that a Contractor may apply for or hold under a Mineral Agreement shall not include mining/quarry areas under operating agreements between the Contractor and a claimowner/Lessee/Permittee/licensee entered into under P.D. No. 463.

#### **Section 34. Term of a Mineral Agreement**

A Mineral Agreement shall have a term not exceeding twenty-five (25) years from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the Government and the Contractor.

After the renewal period, the operation of the mine may be undertaken by the Government or through a Contractor. The contract for the operation of a mine shall be awarded to the highest bidder in a public bidding after due publication of the notice thereof: *Provided*, That the original Contractor shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

#### **Section 35. Mandatory Requirements for Mineral Agreement Application**

The applicant shall submit at least five (5) sets of the following mandatory requirements for Mineral Agreement, for development/construction/utilization of mineral resources, including the continuance of exploration works during the conduct of development/construction/utilization activities:

- a. For an individual –

1. Location map/sketch plan of the proposed contract area showing its geographic coordinates/meridional block(s) and boundaries in relation to major environmental features and other projects using a NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
2. Three-year Development/Utilization Work Program (MGB Form No. 6-2) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
3. Proof of technical competence, including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Development/Utilization Work Program;
4. Proof of financial capability to undertake the activities pursuant to the Development/Utilization Work Program, such as a copy of the income tax return for the preceding year and proof of bank deposit or credit line in the amount of at least Two Million Five Hundred Thousand Pesos (PhP2,500,000.00);
5. Mining Project Feasibility Study (MGB Form No. 5-3); and
6. Complete and final exploration report pertaining to the area.

b. For a corporation, partnership, association or cooperative -

1. Duly certified Certificate of Registration, Articles of Incorporation/Partnership/Association and By-Laws issued by the SEC or authorized Government agency concerned, or Certification from the Bureau/Regional Office concerned that the said documents are duly registered in that Office;
2. Location map/sketch plan of the proposed contract area showing its geographic coordinates/meridional block(s) and boundaries in relation to major environmental features and other projects using a NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
3. Three-year Development/Utilization Work Program (MGB Form No. 6-2) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
4. Proof of technical competence, including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Development/Utilization Work Program;
5. Proof of financial capability to undertake the activities pursuant to the Development/Utilization Work Program, such as latest audited financial statement and, where applicable, Annual Report for the preceding year, credit line(s), bank guarantee(s) and/or similar negotiable instruments;
6. Affidavit of Undertaking pursuant to DMO No. 99-10, as amended;
7. Mining Project Feasibility Study (MGB Form No. 5-3); and
8. Complete and final exploration report pertaining to the area.

- c. For holders of valid and existing mining lease contracts, operating agreements, Quarry Permits/licenses or unperfected mining/quarry claims, the following shall be submitted in addition to the aforesaid requirements, whenever applicable:
  1. Certification from the Regional Office concerned that the mining/quarry claims are valid and subsisting;
  2. Appropriate environmental report on the rehabilitation of mined-out and/or mine waste/tailings-covered areas and anti-pollution measures undertaken during the mining operations;
  3. ECC for any new phase outside of the originally approved operation under the mining project;
  4. Mining Project Feasibility Study (MGB Form No. 5-3): *Provided*, That a Mineral Agreement applicant with existing mining operation may submit, in lieu of the Mining Project Feasibility Study, a Project Description and a detailed financial statement of its operations incorporating therein the social and environmental expenditures, taxes and fees paid (MGB Form No. 5-3A); and
  5. Approved survey plan of the mining area.

The ECC, EPEP (MGB Form No. 16-2) as provided for in Section 169 hereof, CEMCRR and approved survey plan shall be required from the Mineral Agreement applicant after acceptance of the application but prior to the issuance of the pertinent Notice of Application.

The Certificate of Non-Overlap for areas without ICCs/IPs or Certification Precondition from the NCIP for areas with ICCs/IPs shall be secured by the Mineral Agreement applicants whose applications are not originating from Exploration Permits in accordance with the NCIP rules and regulations: *Provided*, That in case the aforesaid requirements are not issued within the NCIP's prescribed periods, the Mineral Agreement applicant shall submit the NCIP's Report on the Field-Based Investigation for the applied area that does not overlap ancestral domain, or the MoA executed by and among the Mineral Agreement applicant, ICC/IP concerned and the NCIP for the applied area that affects the ICCs/IPs: *Provided, further*, That the said Certificate of Non-Overlap or Certification Precondition shall be submitted by the Mineral Agreement applicant within ninety (90) days from issuance of the Mineral Agreement.

Mineral Agreement applicants whose applications originated from Exploration Permits and have complied with the above requirements in the process are no longer covered by the same NCIP requirements.

### **Section 36. Filing of Mineral Agreement Applications**

The Mineral Agreement application (MGB Form No. 6-1) shall be filed by the applicant either personally or through its duly authorized representative with the Regional Office concerned: *Provided*, That any application that transcends into two (2) or more regions shall be filed with the Regional Office which has the largest area covered by the application, copy furnished the other Regional Office(s) concerned by the applicant: *Provided, further*, That a Mineral Agreement application shall be accepted only upon payment of the required fees (Annex 5-A): *Provided, finally*, That any application with incomplete mandatory requirements shall not be accepted.

The Regional Office shall regularly provide the Bureau with a list, consolidated map and status report of Mineral Agreement applications filed in its jurisdiction.

### **Section 37. Area Status and Clearance**

Within fifteen (15) working days from receipt of the Mineral Agreement application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications. The Regional Office shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the Mineral Agreement application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office as to the transmittal of said document to the Department sector(s) concerned and/or Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Department sector(s) and/or Government agency(ies). The Department sector(s) concerned must submit the area status/consent/clearance on the proposed contract area within thirty (30) working days from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/ consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the Regional Office(s) concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed contract area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding Bureau/Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of Mineral Agreement application: *Provided, further*, That in cases of overlapping of claims/conflicts/ complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director shall exert all efforts to resolve the same.

### **Section 38. Publication/Posting/Radio Announcement of a Mineral Agreement Application**

Within five (5) working days from receipt of the necessary area clearances, the Regional Office(s) concerned shall issue the Notice of Application for Mineral Agreement to the applicant for publication and radio announcement, and to the Offices concerned for posting. The Notice must contain, among others, the name and complete address of the applicant, duration of the agreement applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed contract area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

Within five (5) working days from receipt of the Notice, the Mineral Agreement applicant shall cause the publication thereof once, in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed contract area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province. The pertinent affidavits of publication shall be submitted by the Mineral Agreement applicant to the Regional Office concerned within five (5) days from the date of publication of the Notice.

The Regional Office concerned shall cause the posting of the Notice on its bulletin

board, and those of the province(s) and municipality(ies) concerned, or city(ies) concerned, for one (1) week, copy furnished the Bureau and the barangay(s) where the proposed contract area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for one (1) week in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the agreement applied for and instructions that information regarding such application may be obtained at the Regional Office(s) concerned. The publication and radio announcements shall be at the expense of the applicant.

Within five (5) working days from the last date of posting and radio announcement, the authorized officer(s) of the office(s) concerned shall issue a certification(s) that the posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any interested party.

However, previously published valid and existing mining claims or Mineral Agreement applications originating from Exploration Permits that have undergone the publication/posting/radio announcement requirement are exempted from the publication/posting/radio announcement requirement under this Section.

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/ opposition thereto is finally resolved by the Panel of Arbitrators.

### **Section 39. Terms and Conditions of a Mineral Agreement**

The following terms and conditions shall be incorporated in the Mineral Agreement:

- a. A stipulation that the Contractor shall not, by virtue of the Mineral Agreement, acquire any title over the contract/mining area without prejudice to the acquisition by the Contractor of the land/surface rights through any mode of acquisition provided for by law;
- b. Representations and warranties that the Contractor has, or has access to, all the financing and technical capability and technology required to promptly and effectively carry out the objectives of the Agreement with the understanding to timely utilize these resources under its supervision pursuant to the periodic work programs and related budgets, and when proper, providing an exploration period up to two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of six (6) years for nonmetallic minerals exploration or eight (8) years for metallic minerals exploration, subject to annual review and approval by the Director in accordance with these implementing rules and regulations. In cases where further exploration is warranted beyond the six (6)- or eight (8)-year period

and on condition that the Contractor has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau, the Director may further grant renewal of the Exploration Period: *Provided*, That the Contractor shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs. The conduct of feasibility studies shall be included during the term of the Exploration Period. The Contractor shall file in the Regional Office concerned the Declaration of Mining Project Feasibility within the term of the Exploration Period.

In case the Contractor opts for a renewal of its Exploration Period, it shall file, prior to the expiration, a renewal application in the Bureau, copy furnished the Regional Office concerned, accompanied by the following mandatory requirements:

- i. Justification of renewal;
  - ii. Comprehensive technical reports on the outcome of the two (2)-year Exploration and Environmental Work Programs, signed by a licensed Mining Engineer or Geologist and an Environmental Officer, respectively;
  - iii. Audited financial statements covering the term of the Exploration Period;
  - iv. Two (2)-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
  - v. Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A);
  - vi. Certification by the Regional Office concerned as to the compliance of the Contractor with the terms and conditions of the Mineral Agreement during the Exploration Period; and
  - vii. Other supporting papers as the Bureau may require.
- c. Representations and warranties that the applicant has all the qualifications and none of the disqualifications for entering into the Agreement;
- d. A stipulation that the Contractor may relinquish totally or partially the original contract area during the exploration period. After the exploration period and prior to or upon approval of Declaration of Mining Project Feasibility by the Director, the Contractor shall finally relinquish to the Government any portion of the contract area which shall not be necessary for mining operations and not covered by any declaration of mining feasibility with the corresponding submission to the Bureau/Regional Office concerned of geologic report and pertinent maps in the scale of 1:50,000. In the evaluation of the pertinent Mining Project Feasibility Study, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the project to pay the Government Share and absorb the environmental and social costs shall be strictly taken into consideration. There shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other Government agency(ies). The number of operating years without tax holidays should be more than the number of operating years with tax holidays. The minimum exploration expenditures for the remaining area after relinquishment shall be based on the approved Exploration Work

- Program;
- e. A stipulation that each mining area after final relinquishment shall not be more than five thousand (5,000) hectares for metallic minerals and two thousand (2,000) hectares for nonmetallic minerals: *Provided*, That the Director, with the approval of the Secretary, may allow a Contractor to hold a larger mining area depending upon the nature of the deposit subject to technical verification and evaluation by the Bureau as to the technical/financial capability of the Contractor;
  - f. A stipulation that the mining operations shall be conducted in accordance with the provisions of the Act and these implementing rules and regulations;
  - g. A stipulation that the Contractor shall give preference to goods and services produced and offered in the Philippines of comparative quality and cost. In particular, the Contractor shall give preference to qualified Filipino construction enterprises, construction materials and skills available in the Philippines, Filipino sub-contractors for road construction and transportation, and Philippine household equipment, furniture and food;
  - h. A stipulation that the Contractor is obliged to give preference to Filipinos in all types of mining employment for which they are qualified and that the technology shall be transferred to the same;
  - i. A stipulation that the Contractor shall not discriminate on the basis of gender and that the Contractor shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;
  - j. A stipulation requiring the Contractor to effectively use the best available appropriate anti-pollution technology and facilities to protect the environment and to restore or rehabilitate mined-out areas and other areas affected by mine waste/mill tailings and other forms of pollution or destruction in compliance with the requirements of the ECC and P.D. No. 984. This should be undertaken in coordination with the EMB/Department Regional Office;
  - k. A stipulation that the Contractor shall furnish the Government an annual report of its mining operations and records of geologic, accounting and other relevant data, and that book of accounts and records shall be open for inspection by the Government;
  - l. A stipulation requiring the Contractor to dispose of the minerals and by-products produced at the highest market price and to negotiate for more advantageous terms and conditions subject to the right to enter into long-term sales or marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable notwithstanding that the sale price of the minerals may from time to time be lower, or the terms and conditions of sales are less favorable, than that available elsewhere: *Provided*, That the Bureau is furnished a copy of the said Sales Agreement subject to confidentiality between the Bureau and the Contractor;
  - m. A stipulation providing for consultation and arbitration with respect to the interpretation and implementation of the terms and conditions of the Agreement;
  - n. A stipulation that the Contractor shall pay fees, taxes, royalties and other obligations in accordance with existing laws, rules and regulations;
  - o. A stipulation that alien employment shall be limited to technologies requiring highly specialized training and experience subject to the

- required approval under existing laws, rules and regulations;
- p. A stipulation that in every case where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken;
  - q. A stipulation that the Contractor shall conform with laws, rules and regulations regarding, among others, labor, safety and health standards;
  - r. A stipulation that the Contractor shall confine its mining operations to its contract/mining area and that it shall not interfere with the rights of other Contractors/Lessees/operators/Permittees/Permit Holders;
  - s. A stipulation that the Contractor shall recognize and respect the rights, customs and traditions of local communities, particularly ICCs;
  - t. A stipulation that the Contractor shall contribute to the development of the host and neighboring communities of the mining area, local geoscience and mining technology in accordance with Chapter XIV hereof;
  - u. A stipulation that the Contractor shall comply with its obligations under its EPEP and its AEPEP, including the allocation of the prescribed annual environmental expense pursuant to Section 171 hereof;
  - v. A stipulation that the Contractor shall utilize the best available appropriate and efficient mining and processing technologies;
  - w. A stipulation that the Contractor shall undertake exploration work on the area as specified in its Agreement based on an approved Work Program: *Provided*, That a negative variance of at least twenty percent (20%) in the Work Program and corresponding expenditures shall be subject to approval of the Director;
  - x. A stipulation that the Contractor shall submit annually starting from the date of approval of the Agreement, progress reports of the exploration activities in the prescribed form. This shall be accompanied by raw geologic, geophysical and geochemical data plotted in a 1:50,000 scale map, at a minimum. A quarterly report containing activities and accomplishments for each quarter shall also be submitted. At the end of the exploration term, the Contractor shall submit the final report with the detailed list of activities with the corresponding expenditures. The final report shall be accompanied by a 1:50,000 geologic map of the contract area acceptable by international standards. All reports referred to herein shall be submitted to the Bureau/Regional Office concerned;
  - y. A stipulation that the Mineral Agreement shall be canceled, revoked or terminated for failure of the Contractor to comply with the terms and conditions thereof or for other grounds as provided for in Section 230 hereof;
  - z. A stipulation that the withdrawal by the Contractor from the Mineral Agreement shall not release it from any and all financial, environmental, legal and fiscal obligations under the Agreement;
  - aa. A stipulation that a financing institution that has granted a loan to the Contractor for the mining project shall have the authority to designate its assignee of the Mineral Agreement in case of the Contractor's default from such loan: *Provided*, That the assignee is a Qualified Person and the assignment shall be subject to approval by the Secretary;
  - ab. A stipulation that the Contractor in the case of a juridical entity shall annually submit a copy of its SEC-received General

- Information Sheet;
- ac. A stipulation that the Contractor shall commence development, construction and/or utilization activities after the required endorsement of the project by the *Sanggunian* concerned is secured pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991;
  - ad. A stipulation that the Contractor shall assume all the risks which are inherent and incidental to the mining operations such that it will not be entitled for reimbursement of expenses even if no minerals in commercial quantity are developed and produced;
  - ae. A stipulation that the financial records of the Contractor related to the mining operations shall be open to Government inspection of all reasonable times upon prior written notice, and that the Government or its representative shall be part of the committee or group that shall audit the financial records of the Contractor;
  - af. A stipulation that the Mineral Agreement does not grant beneficial ownership of the minerals to the Contractor;
  - ag. A stipulation that the Contractor shall execute a firm commitment, in the form of a sworn statement during the existence of the Agreement, that it shall comply with the minimum ground expenditures during the exploration and pre-feasibility periods, as follows:

<u>Year</u>	<u>Pesos/Hectare</u>
1	100
2	100
3	400
4	400
5	900
6	1,150
7 and onwards	1,150

In case the minimum ground expenditure for a given year is not met for justifiable reasons as determined by the Bureau/Regional Office concerned, the unexpended amount may be spent on the following year of the given exploration period of the Agreement. However, if the minimum ground expenditures for the given exploration period of the Agreement are not met, the unexpended amount shall be paid by the Contractor and shall accrue to the Bureau to be used for mining operations in Mineral Reservations or to other purposes as may be determined by the Bureau. The failure of the Contractor to pay the said amount within the prescribed period shall be a ground for the cancellation of its Agreement; and

- ah. Such other terms and conditions not inconsistent with the Constitution, the Act and these implementing rules and regulations, as well as those which the Secretary may deem to be for the national interest and public welfare.

The Department shall formulate and promulgate such other rules, regulations and guidelines necessary to ensure compliance with the terms and conditions herein.

#### **Section 40. Transfer or Assignment of Mineral Agreement Application**

Transfer or assignment of Mineral Agreement applications shall be allowed subject to the approval of the Regional Director concerned taking into account the

national interest and public welfare: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation.

#### **Section 41. Conversion of a Mineral Agreement Application into Exploration Permit Application.**

An applicant for a Mineral Agreement may, at its option, convert totally or partially its Mineral Agreement application into an Exploration Permit application by filing a Letter of Intent with the Regional Director concerned without losing its priority rights over the area. Said Letter shall also provide therein its intention over the area that may not be covered by the conversion to an EP application.

Upon compliance by the applicant with all the mandatory requirements and upon payment of the required conversion fee, the application for conversion shall be evaluated and approved subject to Chapter V hereof and all other applicable provisions of the Act and these implementing rules and regulations: *Provided*, That the date of filing of the Exploration Permit application shall be reckoned from the date when the Mineral Agreement application was filed.

#### **Section 42. Evaluation of Mineral Agreement Application**

Within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 38 hereof, the Regional Director concerned shall initially evaluate the Mineral Agreement. He/She shall thereafter endorse his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the Secretary for consideration/approval within fifteen (15) working days from receipt of such endorsement: *Provided*, That any application for Mineral Agreement shall be deemed approved if not acted upon by the Secretary within thirty (30) calendar days from official receipt thereof: *Provided, further*, That the Secretary shall, within five (5) days thereafter, sign all the pertinent documents for the approval of the said application.

#### **Section 43. Registration of Mineral Agreement**

Upon approval of the Mineral Agreement by the Secretary, the same shall be forwarded to the Bureau for numbering. The Director shall notify the Contractor to cause the registration of its Mineral Agreement with the Bureau for areas inside Mineral Reservations or with the Regional Office concerned for areas outside Mineral Reservations within fifteen (15) working days from receipt of the written notice and upon payment of the required fees. The Bureau/Regional Office concerned shall officially release the Mineral Agreement to the Contractor after registration of the same: *Provided*, That the Contractor shall comply with the required endorsement of the project by at least the majority of the *Sanggunian* concerned pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, prior to the commencement of the development and/or utilization activities.

Failure of the Contractor to cause the registration of its Mineral Agreement within the prescribed period shall be a sufficient ground for cancellation of the same.

#### **Section 44. Rights and Obligations of the Contractor**

The Contractor, its heirs or successors-in-interest shall have the right to exclusively conduct mining operations within the contract area with full rights of ingress and egress, the right to occupy the same, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the

terms and conditions of the Mineral Agreement.

#### **Section 45. Conversion of a Mineral Agreement into Any Other Mode of Mineral Agreement or FTAA**

A Contractor may at its option convert totally or partially its Mineral Agreement into another mode of Mineral Agreement or FTAA by filing a Letter of Intent with the Bureau, copy furnished the Regional Office concerned. All revisions to the Mineral Agreement required by its conversion into any other mode of Mineral Agreement or FTAA shall be submitted to the Director within sixty (60) calendar days from the date of filing the Letter of Intent.

Upon compliance by the Contractor with all the requirements and payment of conversion fee (Annex 5-A), the application for conversion shall be evaluated and approved subject to Chapters VI and VII hereof and all other applicable provisions of the Act and these implementing rules and regulations: *Provided*, That the term of the new Mineral Agreement or FTAA shall be equivalent to the remaining period of the original Agreement.

#### **Section 46. Transfer or Assignment of Mineral Agreement**

A Contractor may file an application for the total or partial transfer or assignment of its Mineral Agreement to a Qualified Person(s) upon payment of an application fee (Annex 5-A) with the Regional Office concerned for evaluation. No application shall be accepted for filing unless accompanied by the pertinent Deed of Assignment that shall contain, among others, a stipulation that the transferee/assignee assumes all obligations of the transferor/assignor under the Agreement. Any transfer or assignment of rights and obligations under any Mineral Agreement shall be subject to the approval of the Secretary upon the recommendation of the Director: *Provided*, That any transfer or assignment of a Mineral Agreement shall not be approved unless the transferor/assignor or Contractor has complied with all the terms and conditions of the Agreement and the provisions of the Act and these implementing rules and regulations at the time of transfer/assignment: *Provided, further*, That any transfer or assignment shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) calendar days from official receipt thereof, unless patently unconstitutional, illegal or where such transfer or assignment is violative of pertinent rules and regulations: *Provided, finally*, That the transferee assumes all the obligations and responsibilities of the transferor/assignor under the Mineral Agreement.

If circumstances warrant and upon the recommendation of the Director, the Secretary may impose additional conditions for the approval of transfer/assignment of the Mineral Agreement.

#### **Section 47. Withdrawal from a Mineral Agreement**

The Contractor shall manifest in writing its request to the Director, copy furnished the Regional Director concerned, for withdrawal from the Mineral Agreement, if in its judgment the mining project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause(s) or situation(s).

After verification and validation by the Bureau and upon compliance or satisfaction of all the Contractor's financial, fiscal, environmental and legal obligations at the time of withdrawal, the Director within a period of thirty (30) calendar days shall send an acceptance notice of withdrawal to the Contractor, cause the opening of the subject area to mining applications and release the Contractor's financial guaranty/performance bond.

## **Section 48. Issuance of Special Mines Permit**

An applicant for Mineral Agreement whose application is valid and existing, has been granted an Area Status and Clearance, NCIP Precondition Certification and endorsement from the *Sanggunian* concerned, and has no pending mining dispute/conflict as certified by the Panel of Arbitrators concerned /Mines Adjudication Board, may file an application for Special Mines Permit with the Regional Office concerned. A Special Mines Permit (SMP) may be issued by the Director upon clearance by the Secretary. The SMP shall be for a period of one (1) year renewable once: *Provided*, That the SMP may be further renewed depending upon the nature of the deposit, the propriety of the mining operation, the environmental and community relations track record of the applicant, faithful compliance with the terms and conditions of the SMP and diligence of the applicant in pursuing the Mineral Agreement application, subject to the approval of the Secretary.

In cases where public welfare so requires, the Secretary may, after verification and evaluation of the Bureau, grant other form/s of Special Mines Permit so as to address the specific conditions in the area concerned.

The SMP shall be granted, subject to the following conditions and requirements:

- a. That the applicant is already operating or has completed the development/ construction stage and is ready to begin operations or has a readily available ore for mining subject to verification by the Bureau;
- b. That the applicant has already submitted a proposed Mineral Agreement;
- c. That the applicant has submitted a one-year Work Program duly prepared, signed and sealed by a licensed Mining Engineer, Geologist or Metallurgical Engineer;
- d. Submission of ECC, including proof of compliance therewith, if applicable;
- e. Submission of EPEP (MGB Form No. 16-2) as provided for in Section 169 hereof;
- f. Submission of proof of satisfactory Environmental Management Record and Community Relations Record, if applicable;
- g. Posting of Surety Bond prior to registration of the SMP; and
- h. Such other conditions and requirements not inconsistent with the Act and these implementing rules and regulations, as well as those which the Secretary may deem to be for the national interest and public welfare.

*Provided*, That quarterly progress production reports shall be submitted by the holders of Special Mines Permits covering the subject areas for the purpose of computing the share of the Government from production as provided for in Chapter XXI hereof. Such share of the Government shall be the excise tax as provided for in R.A. No. 7729.

## **CHAPTER VII FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT**

### **Section 49. Eligibility of Applicant for Financial or Technical Assistance Agreement**

Any Qualified Person may apply for an FTAA for large-scale exploration,

development and utilization of mineral resources as enumerated in Section 50 hereof.

#### **Section 50. Minerals Subject of FTAA**

An FTAA may be entered into for the exploration, development and utilization of gold, copper, nickel, chromite, lead, zinc and other minerals: *Provided*, That no FTAA's may be granted with respect to cement raw materials, marble, granite, sand and gravel and construction aggregates.

#### **Section 51. Maximum Areas Allowed under an FTAA**

The maximum FTAA contract area that may be applied for or granted per Qualified Person in the entire Philippines shall be as follows:

- a. One thousand (1,000) meridional blocks or approximately eighty-one thousand (81,000) hectares onshore,
- b. Four thousand (4,000) meridional blocks or approximately three hundred twenty-four thousand (324,000) hectares offshore, or
- c. Combination of one thousand (1,000) meridional blocks onshore and four thousand (4,000) meridional blocks offshore.

#### **Section 52. Term of an FTAA**

An FTAA shall have a term not exceeding twenty-five (25) years from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under such terms and conditions as may be provided for by law and mutually agreed upon by the parties. The activities of each phase of mining operations must be completed within the following periods:

- a. Exploration - up to two (2) years from date of FTAA execution, extendible for another two (2) years subject to the following requirements:
  1. Justification of renewal;
  2. Comprehensive technical reports on the outcome of the two (2)-year Exploration and Environmental Work Programs, signed by a licensed Mining Engineer or Geologist and an Environmental Officer, respectively;
  3. Audited financial statements covering the term of the Exploration Period;
  4. Two (2)-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
  5. Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A);
  6. Relinquishment report; and
  7. Certification by the Regional Office concerned as to the compliance with the terms and conditions of the FTAA, particularly the level of implementation of the Work Programs and compliance with the fiscal and reporting obligations.

In case the Contractor opts for a renewal of its Exploration Period, it shall file prior to the expiration of the Exploration Period a renewal application in the Bureau, copy furnished the Regional Office concerned, accompanied by the above requirements.

- b. Pre-feasibility study, if warranted - up to two (2) years from expiration of the exploration period;
- c. Feasibility study - up to two (2) years from the expiration of the exploration/pre-feasibility study period; and
- d. Development, construction and utilization – upon approval of the declaration of mining project feasibility up to the remaining years of the FTAA.

Any two (2) or more of the above periods may be simultaneously undertaken in one approved contract area, as the need of the Contractor may arise, subject to the pertinent provisions of Section 56 hereof.

In the evaluation of the pertinent Mining Project Feasibility Study, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the project to pay the Government Share and absorb the environmental and social costs shall be strictly taken into consideration. There shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other Government agency(ies). The mine should have a profitable operating life of more than ten (10) years, to ensure the collection of the Government Share, given the cost recovery period.

### **Section 53. Filing of FTAA Applications/Mandatory Requirements**

The FTAA application (MGB Form No. 7-1) shall be filed with the Regional Office concerned. The proposed contract area shall be closed to other mining applications for minerals mentioned in Section 50 hereof, but shall be open for quarry resources mining applications upon the written consent of the FTAA applicant and verification by the Regional Office concerned, except for sand and gravel applications which shall require no consent thereof: *Provided*, That if consent is unreasonably withheld, the case shall be resolved by the Panel of Arbitrators.

Any application that transcends into two (2) or more regions shall be filed with the Regional Office concerned which has the largest area covered by the application, copy furnished the other Regional Office(s) concerned by the applicant.

The FTAA application shall be accepted only upon payment of the required fees to be accompanied by eight (8) sets of the FTAA proposal and five (5) sets of the following mandatory requirements:

- a. Upon filing of the application –
  - 1. Duly certified Certificate of Registration, Articles of Incorporation and By-Laws issued by the SEC or authorized Government agency(ies) concerned, or Certification from the Bureau/Regional Office concerned that the said documents are duly registered in that Office;
  - 2. Location map/sketch plan of the proposed contract area showing its geographic coordinates/meridional block(s) and boundaries in relation to major environmental features and other projects using a NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
  - 3. Two-year Exploration Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
  - 4. Proof of technical competence, including, among others, curricula vitae and track records in mining operations and

- environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Exploration Work Program;
5. Proof of financial capability to undertake the activities pursuant to the Exploration Work Program, such as latest audited financial statement and, where applicable, Annual Report for the preceding year, credit line(s), bank guarantee(s) and/or similar negotiable instruments; and
  6. Affidavit of Undertaking pursuant to DMO No. 99-10, as amended, for a corporation, partnership, association or cooperative.

Any application with incomplete mandatory requirements shall not be accepted. The CEMCRR and Environmental Work Program (MGB Form No. 16-1 or MGB Form No. 16-1A) as provided for in Section 168 hereof shall be required from the FTAA applicant after acceptance of the application but prior to the issuance of the pertinent Notice of Application.

The Certificate of Non-Overlap for areas without ICCs/IPs or Certification Precondition from the NCIP for areas with ICCs/IPs shall be secured by the FTAA applicant in accordance with the NCIP rules and regulations: *Provided*, That in case the aforesaid requirements are not issued within the NCIP's prescribed periods, the FTAA applicant shall submit the NCIP's Report on the Field-Based Investigation for the applied area that does not overlap ancestral domain, or the MoA executed by and among the FTAA applicant, ICC/IP concerned and the NCIP for the applied area that affects the ICCs/IPs: *Provided, further*, That the said Certificate of Non-Overlap or Certification Precondition shall be submitted by the FTAA applicant within ninety (90) days from issuance of the FTAA.

- b. Before the approval of the FTAA - Posting of financial guarantee/performance bond and letter of credit or other forms of negotiable instruments from any Government-accredited bonding company or financial institution, in favor of the Government upon notification by the Secretary, which shall be in any foreign currency negotiable with the Bangko Sentral ng Pilipinas or in Philippine Peso in such amount equivalent to the expenditure obligations of the applicant for any year;
- c. After the approval of the FTAA but prior to registration of the same - An authorized capital of at least Four Million U.S. Dollars (US\$4,000,000.00) or its Philippine Peso equivalent; and
- d. In support of the application for approval of the declaration of mining project feasibility –
  1. Mining Project Feasibility Study;
  2. Three (3)-Year Development/Utilization Work Program;
  3. Proof of technical competence, including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Development/Utilization Work Program; and
  4. Proof of financial capability to undertake the activities pursuant to the Development/Utilization Work Program, such as latest audited financial statement and where

applicable, Annual Report for the preceding year, credit line(s), bank guarantee(s) and/or similar negotiable instruments.

The approved survey plan, ECC, EPEP and SDMP shall be required from the FTAA Contractor after acceptance of the application but prior to its approval.

The Regional Office shall regularly provide the Bureau with a list, consolidated map and status report of FTAA applications filed in its jurisdiction.

#### **Section 54. Area Status and Clearance**

Within fifteen (15) working days from receipt of the FTAA application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications. The Regional Office concerned shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the FTAA application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office concerned as to transmittal of said document to the Department sector(s) concerned and/or Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Department sector(s) and/or Government agency(ies). The Department sector(s) concerned must submit the area status/consent/clearance on the proposed contract area within thirty (30) working days from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the Regional Office(s) concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed contract area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of FTAA application: *Provided, further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director concerned shall exert all efforts to resolve the same.

#### **Section 55. Publication/Posting/Radio Announcement of an FTAA Application**

Within five (5) working days from receipt of the necessary area clearances, the Regional Office(s) concerned shall issue the Notice of Application for FTAA to the applicant for publication and radio announcement, and to the Offices concerned for posting. The Notice must contain, among others, the name and complete address of the applicant, duration of the agreement applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed contract area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

Within five (5) working days from receipt of the Notice, the FTAA applicant shall

cause the publication thereof once, in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed contract area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province. The pertinent affidavits of publication shall be submitted by the FTAA applicant to the Regional Office concerned within five (5) days from the date of publication of the Notice.

The Regional Office concerned shall cause the posting of the Notice on its bulletin board, and those of the province(s) and municipality(ies) concerned, or city(ies) concerned, for one (1) week, copy furnished the Bureau and the barangay(s) where the proposed contract area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for one (1) week in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the agreement applied for and instructions that information regarding such application may be obtained at the Regional Office(s) concerned. The publication and radio announcements shall be at the expense of the applicant.

Within five (5) working days from the last date of posting and radio announcement, the authorized officer(s) of the office(s) concerned shall issue a certification(s) that the posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within ten (10) days from the date of publication or from the last date of posting/radio announcement, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days from receipt of the request of any interested party.

However, previously published valid and existing mining claims or FTAA applications originating from Exploration Permits that have undergone the publication/posting/radio announcement requirement are exempted from the publication/posting/radio announcement requirement under this Section.

No FTAA shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

**Section 56. Terms and Conditions of an FTAA**

The following terms, conditions and warranties shall be incorporated in the FTAA, namely:

- a. A firm commitment, in the form of a sworn statement during the existence of the Agreement, that the Contractor shall comply with minimum ground expenditures during the exploration and pre-feasibility periods as follows:

<u>Year</u>	<u>US \$/Hectare</u>
1	2
2	2
3	8

4	8
5	18
6	23

and a minimum investment of Fifty Million US Dollars (\$50,000,000.00) or its Philippine Peso equivalent in the case of Filipino Contractor for infrastructure and development in the contract area. If a Temporary/Special Exploration Permit has been issued prior to the approval of an FTAA, the exploration expenditures incurred shall form part of the expenditures during the first year of the exploration period of the FTAA.

In the event that the Contractor exceeds the minimum expenditure requirement in any one (1) year, the amount in excess may be carried forward and deducted from the minimum expenditure required in the subsequent year. In case the minimum ground expenditure commitment for a given year is not met for justifiable reasons as determined by the Bureau/Regional Office concerned, the unexpended amount may be spent on the subsequent year(s) of the exploration period.

- b. A stipulation that the Contractor shall not, by virtue of the FTAA, acquire any title over the contract/mining area without prejudice to the acquisition by the Contractor of the land/surface rights through any mode of acquisition provided for by law;
- c. Representations and warranties that the Contractor has, or has access to, all the financing, managerial and technical capability and technology required to promptly and effectively carry out the objectives of the Agreement with the understanding to timely utilize these resources under its supervision pursuant to the periodic work programs and related budgets, and when proper, providing an exploration period up to two (2) years, extendible for another two (2) years, subject to annual review by the Secretary in accordance with these implementing rules and regulations;
- d. Representations and warranties that the applicant has all the qualifications and none of the disqualifications for entering into the Agreement;
- e. A stipulation that the Contractor shall relinquish its contract area pursuant to Section 60 hereof;
- f. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the Contractor shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mining operations for and in the contract/mining area;
- g. A stipulation that the mining operations shall be conducted in accordance with the provisions of the Act and these implementing rules and regulations;
- h. A stipulation that the Contractor shall perform its activities within the periods expressed in the FTAA plans and work programs, save as may be excused by force majeure;
- i. A stipulation that the Contractor shall give preference to goods and services produced and offered in the Philippines of comparative quality and cost. In particular, the Contractor shall give preference to qualified Filipino construction enterprises, construction materials and skills available in the Philippines, Filipino sub-contractors for

- road construction and transportation and Philippine household equipment, furniture and food;
- j. A stipulation that the Contractor is obliged to give preference to Filipinos in all types of mining employment for which they are qualified and that the technology shall be transferred to the same;
  - k. A stipulation that the Contractor shall not discriminate on the basis of gender and that the Contractor shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;
  - l. A stipulation requiring the Contractor to effectively use the best available appropriate anti-pollution technology and facilities to protect the environment and to restore or rehabilitate mined-out areas and other areas affected by mine waste/mill tailings and other forms of pollution or destruction in compliance with the requirements of the ECC and P.D. No. 984. This should be undertaken in coordination with the EMB/Department Regional Office;
  - m. A stipulation that the Contractor shall furnish the Government an annual report of its mining operations and records of geologic, accounting and other relevant data, and that book of accounts and records shall be open for inspection by the Government;
  - n. A stipulation requiring the Contractor to dispose of the minerals and by-products produced at the highest market price and to negotiate for more advantageous terms and conditions subject to the right to enter into long-term sales or marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable notwithstanding that the sale price of the minerals may from time to time be lower, or the terms and conditions of sales are less favorable, than that available elsewhere: *Provided*, That the Bureau is furnished a copy of the said Sale Agreement subject to confidentiality between the Bureau and the Contractor;
  - o. A stipulation providing for consultation and arbitration with respect to the interpretation and implementation of the terms and conditions of the Agreement;
  - p. A stipulation that the Contractor shall pay fees, taxes, royalties, shares and other obligations in accordance with existing laws, rules and regulations;
  - q. A stipulation that alien employment shall be limited to technologies requiring highly specialized training and experience subject to the required approval under existing laws, rules and regulations;
  - r. A stipulation that in every case where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken;
  - s. A stipulation that the Contractor shall conform with laws, rules to designate its assignee of the FTAA in case of the Contractor's default from such loan: *Provided*, That the assignee is a Qualified Person and the assignment shall be subject to prior approval by the President;
  - t. A stipulation that the Contractor shall confine its mining operations to its contract/mining area and that it shall not interfere with the rights of other Contractors/Lessees/operators/Permittees/Permit Holders;
  - u. A stipulation that the Contractor shall recognize and respect the rights, customs and traditions of local communities, particularly ICCs;
  - v. A stipulation that the Contractor shall contribute to the development

- of the host and neighboring communities of the mining area, local geoscience and mining technology in accordance with Chapter XIV hereof;
- w. A stipulation that the Contractor shall comply with its obligations under its EPEP and its AEPEP, including the allocation of the prescribed annual environmental expense pursuant to Section 171 hereof;
  - x. A stipulation that the Contractor shall utilize the best available appropriate and efficient mining and processing technologies;
  - y. A stipulation that the Contractor shall undertake exploration work on the area as specified in its Agreement based on an approved Work Program: *Provided*, That a negative variance of at least twenty percent (20%) in the Work Program and corresponding expenditures shall be subject to approval of the Director;
  - z. A stipulation that the Contractor shall submit annually starting from the date of approval of the Agreement, progress reports of the exploration activities in the prescribed form. This shall be accompanied by raw geologic, geophysical and geochemical data plotted in a 1:50,000 scale map, at a minimum. A quarterly report containing activities and accomplishments for each quarter shall also be submitted. At the end of the exploration term, the Contractor shall submit the final report with the detailed list of activities with the corresponding expenditures. The final report shall be accompanied by a 1:50,000 geologic map of the contract area acceptable by international standards. All reports referred to herein shall be submitted to the Bureau/Regional Office concerned;
  - aa. A stipulation that the FTAA shall be canceled, revoked or terminated for failure of the Contractor to comply with the terms and conditions thereof or for other grounds as provided for in Section 230 hereof. Should an FTAA be canceled, revoked or terminated, it shall no longer be required to meet the minimum expenditure requirement for the remaining period: *Provided*, That such cancellation, revocation or termination is in accordance with Section 68 hereof.
  - ab. A stipulation that withdrawal by the Contractor from the FTAA shall not release it from any and all financial, environmental, legal and/or fiscal obligations including settlement of all obligations that should have accrued to the Government during the term of the FTAA;
  - ac. A stipulation that a financing institution that has granted a loan to the Contractor for the mining project shall have the authority to designate its assignee of the FTAA in case of the Contractor's default from such loan: *Provided*, That the assignee is a Qualified Person and the assignment shall be subject to prior approval by the President;
  - ad. A stipulation that the Contractor shall comply with all other applicable provisions of the Act and these implementing rules and regulations;
  - ae. A stipulation that the Contractor in the case of a juridical entity shall annually submit a copy of its SEC-received General Information Sheet;
  - af. A stipulation that the Contractor shall comply with the required consultation/with project presentation to the *Sanggunian* concerned prior to the implementation of the Exploration Work Program and endorsement of the project by the same *Sanggunian* prior to the commencement of the development and/or utilization activities pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991; and

- ag. Such other terms and conditions not inconsistent with the Constitution, the Act and these implementing rules and regulations, as well as those which the Secretary may deem to be for the national interest and public welfare.

The Department shall formulate and promulgate such other rules, regulations and guidelines necessary to ensure compliance with the terms and conditions herein stated and to establish a fixed and stable fiscal regime with respect to FTAA's.

#### **Section 57. Transfer or Assignment of FTAA Application**

Transfer or assignment of FTAA applications shall be allowed subject to the approval of the Regional Director concerned taking into account the national interest and public welfare: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation.

#### **Section 57-A. Conversion of a FTAA Application into Exploration Permit Application**

An applicant for a FTAA may, at its option, convert totally or partially its FTAA Application into an Exploration Permit Application by filing a Letter of Intent with the Regional Director concerned without losing its priority rights over the applied area. Said Letter shall also provide therein its intention over the area that may not be covered by the conversion to an EP application.

Upon compliance by the applicant with all the mandatory requirements and upon payment of the required conversion fee, the application for conversion shall be evaluated and approved subject to Chapter V hereof and all other applicable provisions of the Act and these implementing rules and regulations: *Provided*, That the date of filing of the Exploration Permit application shall be reckoned from the date when the FTAA application was filed.

#### **Section 58. The Negotiating Panel**

An FTAA shall be negotiated by the Department through a Negotiating Panel composed of the following:

- a. The Secretary - Chair
- b. The Director - Vice-Chair
- c. Representative from the Board of Investments or Department of Trade and Industry (DTI) - Member
- d. Representative from the National Economic and Development Authority - Member
- e. Representative from the Department of Finance - Member
- f. Representative from the Department's Field Operations Office - Member
- g. Representative from the Department's Legal and Legislative Affairs Office Member
- h. Representative(s) from the Regional Office(s) concerned - Member(s)

#### **Section 59. Evaluation of FTAA Application**

Within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 55 hereof, the Regional Director concerned shall initially evaluate the FTAA applications He/She shall thereafter endorse

his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the Negotiating Panel for final evaluation.

The Negotiating Panel shall evaluate the FTAA applications within thirty (30) calendar days from receipt thereof.

In evaluating the FTAA proposal, the Negotiating Panel shall take into consideration the real contributions to the economic growth and general welfare of the country that will be realized, the development of local scientific and technical resources, as well as contribution to community and Local Government development programs.

#### **Section 60. Relinquishment of Areas Covered by FTAA**

The contract area shall be subject to relinquishment as follows:

- a. At least twenty-five percent (25%) of the original contract area during the first two (2) years of exploration period and at least ten percent (10%) of the remaining contract area annually during the extended exploration period and pre-feasibility study period.
- b. During the exploration or pre-feasibility study period, the Contractor shall finally relinquish to the Government any portion of the contract area which shall not be necessary for mining operations and not covered by any declaration of mining feasibility with corresponding submission to the Bureau/Regional Office concerned of geologic report and pertinent maps in the scale 1:50,000: *Provided*, That each mining area after final relinquishment shall not be more than five thousand (5,000) hectares: *Provided, further*, That the Director, with the approval of the Secretary, may allow a Contractor to hold a larger mining area depending upon the nature of the deposit and subject to Section 50 hereof and technical verification by the Bureau.
- c. The Contractor may, at its option, submit to the Regional Office concerned a declaration of mining project feasibility over any portion of its contract area prior to the lapse of exploration or pre-feasibility period. In such an event, the Contractor shall have the right to continue its mineral exploration or feasibility studies during the exploration and feasibility periods, respectively, in respect to the remaining contract area. Any mining area declared out of such remaining contract area may be covered by the original Agreement or as a separate FTAA subject to Subsection (b) herein.

A separate report of relinquishment shall be submitted to the Regional Office concerned with a detailed geologic report of the relinquished area accompanied by maps at a scale of 1:50,000 and results of analyses and corresponding expenditures, among others. The minimum exploration expenditures for the remaining area after relinquishment shall be based on the approved Exploration Work Program.

Where the Contractor originally derived its rights to the contract area from then claimowners or mining right owners, such part of the contract area relinquished pursuant to the provisions of Subsections (a), (b) and (c) herein shall be reverted back to the Government. Said claimowners or mining right owners shall have preferential rights over the area: *Provided*, That within thirty (30) calendar days from notification of relinquishment by the Contractor, the former shall signify its intention to enter into a Mineral Agreement with the Secretary: *Provided, further*, That all documents necessary for Mineral Agreement application shall be submitted within sixty (60) calendar days from receipt of such intention.

## **Section 61. Negotiation of FTAA**

The Negotiating Panel, upon being satisfied of the terms and conditions of the proposed FTAA and with the applicant's compliance with all the requirements, shall recommend its execution and approval to the President. Should the Negotiating Panel, however, find some of the terms and conditions unacceptable, it shall calendar the proposed FTAA for negotiation and shall make the corresponding notification to the applicant. If after the negotiation, the terms and conditions acceptable to the Negotiating Panel have been incorporated in the proposed FTAA, a Resolution to that effect shall be made within fifteen (15) working days and signed, at least, by the majority of the Negotiating Panel. Based on the Resolution, the Secretary shall forthwith recommend the negotiated FTAA application to the President for consideration/approval. The President shall notify Congress of the approved FTAA within thirty (30) calendar days from the date of its approval.

## **Section 62. Temporary Exploration Permit**

While awaiting for the approval of the FTAA application by the President, the Secretary may, upon the request of the FTAA applicant, issue a one-time non-renewable Temporary Exploration Permit (TEP) with a term not exceeding one (1) year to undertake exploration subject to the applicable provisions of Chapter V of these implementing rules and regulations: *Provided*, That the term of the TEP shall be deducted from the exploration period of the FTAA: *Provided, further*, That in the event that the FTAA application is disapproved by the President, the TEP is deemed automatically canceled.

## **Section 63. Registration of FTAA**

Upon approval of the FTAA by the President, the same shall be forwarded to the Bureau for numbering. The Regional Office concerned shall notify the Contractor to cause the registration of its FTAA within fifteen (15) working days from receipt of the written notice and upon payment of the required fees. The Regional Office concerned shall officially release the FTAA to the Contractor after registration of the same: *Provided*, That the Contractor shall comply with the required consultation with the *Sanggunian* concerned prior to the implementation of the Exploration Work Program and/or endorsement of the project by at least the majority of the same *Sanggunian* pursuant to the pertinent provisions of RA No. 7160, The Local Government Code of 1991, prior to the commencement of the development and/or utilization activities.

Failure of the Contractor to cause the registration of its FTAA within the prescribed period shall be sufficient ground for cancellation of the same.

## **Section 64. Rights and Obligations of the Contractor**

The Contractor, its heirs or successors-in-interest shall have the right to exclusively conduct mining operations within the contract area with full rights of ingress and egress, the right to occupy the same, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the FTAA.

## **Section 65. Conversion of an FTAA into a Mineral Agreement**

Subject to verification and validation by the Bureau and to the final approval of the Secretary, where the economic viability of the ores in the contract area is found to be inadequate to justify large-scale mining operations, the Contractor may, at its option,

convert totally or partially its FTAA into a Mineral Agreement. In such cases, the Contractor shall manifest its request for conversion by filing a Letter of Intent with the Department, copy furnished the Bureau/Regional Office concerned. All revisions to the FTAA required by its conversion into a Mineral Agreement shall be submitted to the Secretary within six (6) months from the date of filing the Letter of Intent.

In the case of a foreign Contractor, it shall be given a period of one (1) year from the date of filing the Letter of Intent to satisfy the sixty percent (60%) Filipino equity requirement, subject to an extension of another one (1) year as may be approved by the Secretary taking into consideration the economic and other relevant factors. Upon compliance by the Contractor with all the requirements and payment of conversion fee (Annex 5-A), the application for conversion shall be evaluated and approved subject to Chapter VI hereof and all other applicable provisions of the Act and these implementing rules and regulations: *Provided*, That the term of the new Mineral Agreement shall be equivalent to the remaining period of the FTAA. A copy of the Mineral Agreement shall be submitted to the President.

Failure of the Contractor to meet the sixty percent (60%) equity requirement within the prescribed period shall cause the forfeiture of the Contractor's right to such conversion.

#### **Section 66. Transfer or Assignment of FTAA**

A Contractor may file an application for the total or partial transfer or assignment of its FTAA to a Qualified Person(s) upon payment of an application fee (Annex 5-A) with the Regional Office concerned for evaluation. No application shall be accepted for filing unless accompanied by the pertinent Deed of Assignment that shall contain, among others, a stipulation that the transferee/assignee assumes all obligations of the transferor/ assignor under the FTAA. Upon endorsement by the Director, the Secretary may recommend to the President the transfer or assignment of rights and obligations under any FTAA for approval: *Provided*, That any transfer or assignment of an FTAA shall not be approved unless the transferor/assignor or Contractor has complied with all the relevant terms and conditions of the FTAA and the provisions of the Act and these implementing rules and regulations at the time of transfer/assignment: *Provided, further*, That any transfer or assignment shall be deemed automatically approved if not acted upon by the President within thirty (30) calendar days from official receipt thereof, unless patently unconstitutional, illegal or where such transfer or assignment is violative of pertinent rules and regulations: *Provided, finally*, That the transferee assumes all the obligations and responsibilities of the transferor/assignor under the FTAA.

If circumstances warrant and upon the recommendation of the Director, the Secretary may impose additional conditions for the approval of the transfer/assignment of the FTAA.

#### **Section 67. Withdrawal from an FTAA**

The Contractor shall manifest in writing its request to the Secretary, copy furnished the Director, for withdrawal from the Agreement, if in its judgment the mining project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause(s) or situation(s).

After verification and validation by the Bureau and upon compliance or satisfaction of all the Contractor's financial, fiscal, environmental and legal obligations at the time of withdrawal, the Secretary within a period of thirty (30) calendar days shall send an acceptance notice of withdrawal to the Contractor, cause the opening of the subject area to mining applications and release the Contractor's financial guaranty/performance bond.

**Section 68. Cancellation/Revocation/ Termination of an FTAA**

An FTAA may be canceled/revoked/ terminated, after due process, under any of the grounds provided for in Chapter XXIV of these implementing rules and regulations: *Provided*, That such cancellation/revocation/termination shall not release the Contractor from any and all obligations it may have, particularly with regard to ecological management, at the time of cancellation/ revocation/termination.

**CHAPTER VIII  
QUARRY OPERATIONS**

**Section 69. General Provisions**

Quarry sand and gravel, guano and gemstone resources in private and/or public lands may be extracted, removed, disposed and/or utilized: *Provided*, That in large-scale quarry operations involving cement raw materials, marble, granite and sand and gravel and construction aggregates, any Qualified Person may apply for a Mineral Agreement subject to the provisions of Chapter VI of these implementing rules and regulations: *Provided, further*, That a large-scale quarry operation, including a sand and gravel operation, during the Development/Construction/ Operating Period under a Mineral Agreement, shall involve a mechanized operation and a final mining area not exceeding the following:

For sand and gravel including lahar	Individual	-	40 hectares
	Corporation/ Partnership/ Association/ Cooperative	-	100 hectares
For marble, granite and/or construction aggregates	Individual	-	200 hectares
	Corporation/ Partnership/ Association/ Cooperative	-	500 hectares
For cement raw materials such as limestone, shale and silica	Individual	-	1,000 hectares
	Corporation/ Partnership/ Association/ Cooperative	-	2,000 hectares

subject to the following conditions:

1. That the mining applicant/Contractor may file/declare more than one (1) final mining area in its applied area/contract area: *Provided*, That for sand and gravel, each additional final mining area shall further require the approval by any two (2) of the *Sanggunian* concerned in the form of a formal Resolution;
2. That each final mining area shall be covered by a Declaration of Mining Project Feasibility supported by a Mining Project Feasibility Study, Development/ Utilization Work Program and application for survey;

3. That the aggregate of the final mining areas for all Mineral Agreements held by the Contractor and areas covered by Mineral Agreement applications, if any, shall not exceed the maximum limits set under Section 33 hereof; and
4. That for sand and gravel/lahar deposits, the Mineral Agreement shall exclude the Exploration Period and immediately proceed to the Development and/or Operation Periods, subject to compliance with the applicable requirements: *Provided*, That Mineral Agreement applicants concerned shall, within six (6) months, amend their applications to conform with this Section.

For this purpose, a final mining area means the contract area or portion(s) thereof properly delineated and surveyed by the mining applicant/Contractor for development and actual quarrying/mining operation, including sites for support/ancillary facilities.

### **Section 70. Provincial/City Mining Regulatory Board**

The Provincial/City Mining Regulatory Board shall, among others, accept, process and evaluate applications and determine administrative charges and fees for Quarry, Sand and Gravel, Guano, Gemstone Gathering and Small-Scale Mining Permits duly filed with the same. It shall be chaired by the Regional Director concerned or his/her duly authorized representative with the following members:

- a. Provincial Governor/City Mayor or his/her representative as Vice-Chair,
- b. Small-scale mining representative,
- c. Large-scale mining representative, and
- d. Department-duly accredited environmental Nongovernmental Organization representative.

The Regional Office concerned shall provide the technical secretariat to the Provincial/City Mining Regulatory Board.

### **Section 71. Quarry Permit**

Any Qualified Person may apply for a Quarry Permit with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal and disposition of quarry resources covering an area of not more than five (5) hectares, and a production rate of not more than fifty thousand (50,000) tons annually and/or whose project cost is not more than Ten Million Pesos (PhP10,000,000.00), for a term of five (5) years from the date of issuance thereof, renewable for like period but not to exceed a total term of twenty-five (25) years: *Provided*, That application for renewal shall be filed before the expiry date of the Permit: *Provided, further*, That the Permit Holder has complied with all the terms and conditions of the Permit as provided herein and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations: *Provided, furthermore*, That no Quarry Permit shall be issued or granted on any area covered by a Mineral Agreement or FTAA, except on areas where a written consent is granted by the Mineral Agreement or FTAA Contractor: *Provided, finally*, That existing Quarry Permits at the effectivity of Department Administrative Order No. 99-57 under which the production rate is more than fifty thousand (50,000) tons annually and/or whose project cost is more than Ten Million Pesos(PhP10,000,000.00) shall not be renewed but shall be given preferential right to a Mineral Agreement application which shall be evaluated and approved in accordance with Chapter VI hereof and all other applicable provisions of the Act and these implementing rules and regulations.

## **Section 72. Sand and Gravel Permits**

### **a. Commercial Sand and Gravel Permit**

Any Qualified Person may apply for a Commercial Sand and Gravel Permit with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal and disposition of sand and gravel and other loose or unconsolidated materials which are used in their natural state without undergoing processing covering an area of not more than five (5) hectares for a term of one (1) year from date of issuance thereof, renewable for like period and in such quantities as may be specified in the Permit: *Provided*, That only one (1) Permit shall be granted to a Qualified Person in a municipality at any one time under such terms and conditions as provided herein.

### **b. Industrial Sand and Gravel Permit**

Any Qualified Person may apply for an Industrial Sand and Gravel Permit (MGB Form Nos. 8-1 or 8-1A and 8-2 or 8-2A) with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal and disposition of sand and gravel and other loose or unconsolidated materials that necessitate the use of mechanical processing covering an area of not more than five (5) hectares at any one time for a term of five (5) years from date of issuance thereof, renewable for like periods but not to exceed a total term of twenty-five (25) years: *Provided*, That any Qualified Person may apply for an Industrial Sand and Gravel Permit with the Regional Director through the Regional Office for areas covering more than five (5) hectares but not to exceed twenty (20) hectares at any one time for a term of five (5) years from date of issuance thereof, renewable for like periods but not to exceed a total term of twenty-five (25) years: *Provided, further*, That only one (1) Permit shall be granted to a Qualified Person in a municipality at any one time under such terms and conditions as provided herein.

### **c. Exclusive Sand and Gravel Permit**

Any Qualified Person may apply for an Exclusive Sand and Gravel Permit (MGB Form No. 8-4B) with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for extraction, removal and utilization of sand and gravel and other loose or unconsolidated materials from public land for its own use covering an area of not more than one (1) hectare for a non-renewable period not exceeding sixty (60) calendar days and a maximum volume of fifty (50) cubic meters: *Provided*, That there will be no commercial disposition thereof.

## **Section 73. Gratuitous Permits**

### **a. Government Gratuitous Permit**

Any Government entity/instrumentality in need of quarry, sand and gravel or loose/unconsolidated materials in the construction of building(s) and/or infrastructure for public use or other purposes may apply for a Government Gratuitous Permit (MGB Form No. 8-3B) with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for a period coterminous with the construction stage of the project but not to exceed one (1) year in public/private land(s) covering an area of not more than two (2) hectares. The applicant shall submit a project proposal stating where the materials to be taken shall be used and the estimated volume needed.

b. Private Gratuitous Permit

Any landowner may apply for a Private Gratuitous Permit with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal and utilization of quarry, sand and gravel or loose/unconsolidated materials from his/her land for a non-renewable period of sixty (60) calendar days: *Provided*, That there is adequate proof of ownership and that the materials shall be for personal use.

**Section 74. Mandatory Requirements for Quarry or Commercial/ Industrial Sand and Gravel Permit Application**

The application for Quarry or Sand and Gravel Permit (MGB Form No. 8-3, 8-3A, 8-4 or 8-4A) shall be filed by the applicant either personally or through its duly authorized representative with the Regional Office/Provincial/City Mining Regulatory Board concerned: *Provided*, That any application that transcends into two (2) or more regions/provinces/cities shall be filed with the Regional Office/Provincial/City Mining Regulatory Board which has the largest area covered by the application, copy furnished the other Regional Office(s)/Provincial/City Mining Regulatory Board concerned by the applicant: *Provided, further*, That a permit application shall be accepted only upon payment of the required fees (Annex 5-A) to the Regional Office/Provincial/City Mining Regulatory Board concerned: *Provided, finally*, That any application with incomplete mandatory requirements shall not be accepted.

Upon payment of the filing and processing fees (Annex 5-A), the applicant shall submit at least two (2) sets of the following mandatory requirements applicable to the type of permit applied for:

- a. Location map/sketch plan of the proposed permit area showing its geographic coordinates/ meridional block(s) and boundaries in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- b. Area clearance from the Government agencies/LGUs concerned that may be affected by the permit application or written permission from the landowner(s) and surface owner(s) of the area applied for;
- c. Work Program (MGB Form No. 5-4 or MGB Form No. 6-2) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
- d. An application (MGB Form No. 16-04) for or a CEMCRR.
- e. ECC prior to extraction, removal and/or disposition and EPEP (MGB Form No. 16-2) as provided for in Section 169 hereof;
- f. Proof of technical competence including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Work Program and EPEP;
- g. Proof of financial capability to undertake the activities pursuant to Work Program and EPEP, such as the following:
  1. For individuals - Statement of assets and liabilities duly sworn in accordance with existing laws, credit lines and income tax return for the preceding three (3) years and
  2. For corporations, partnerships, associations or cooperatives - Latest Audited Financial Statement and where applicable, Annual Report for the preceding year, credit lines, bank guarantees and/or similar negotiable instruments.

- h. Photocopy of Articles of Incorporation/ Partnership/Association, By-Laws and Certificate of Registration, duly certified by the SEC or authorized Government agency(ies) concerned, for corporations, partnerships, associations or cooperatives; and
- i. Other supporting papers as the Regional Office/Provincial/City Mining Regulatory Board concerned may require or the applicant may submit.

#### **Section 75. Area Status and Clearance for a Quarry or Sand and Gravel Permit Application**

Within fifteen (15) working days from receipt of the permit application, the Regional Office/Provincial/City Mining Regulatory Board concerned shall transmit a copy of the location map/sketch plan of the applied area to the Regional Office concerned/pertinent Department sector(s) affected by the permit application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office/Provincial/City Mining Regulatory Board concerned as to transmittal of said document to the Regional Office(s)/Department sector(s)/Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Regional Office(s)/ Department sector(s)/Government agency(ies). The Regional Office(s)/Department sector(s) concerned must submit the area status/consent/clearance on the proposed permit area within thirty (30) working days from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices/Provincial/City Mining Regulatory Boards, the Regional Office(s)/ Provincial/City Mining Regulatory Board concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

Within fifteen (15) working days from receipt of the permit application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications.

If the proposed permit area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of permit application: *Provided, further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director/ Provincial Governor/City Mayor concerned shall exert all efforts to resolve the same.

#### **Section 76. Posting of a Quarry or Sand and Gravel Permit Application**

Within fifteen (15) working days from receipt of the necessary area clearances, the Regional Office(s)/Provincial/City Mining Regulatory Board concerned shall issue to the applicant the Notice of Application for permit for posting which shall be done within fifteen (15) working days from receipt of the Notice. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied

for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Regional Office/Provincial/ City Mining Regulatory Board concerned shall cause the posting for two (2) consecutive weeks of the Notice on the bulletin boards of the Regional Office(s), PENRO(s), CENRO(s) concerned and in the province(s) and municipality(ies) concerned, copy furnished the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

Within thirty (30) calendar days from the last date of posting, the authorized officer(s) of the office(s) concerned shall issue a certification(s) that the posting have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of posting, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days therefrom.

No permit shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

#### **Section 77. Processing/Registration/Issuance of a Quarry or Sand and Gravel Permit**

Upon evaluation that all the terms and conditions are in order and that the subject area has been cleared from any conflict, the Regional Director/Provincial Governor/City Mayor concerned shall approve and issue the Permit within thirty (30) calendar days from such evaluation and shall notify the Permit Holder to cause the registration of the same within fifteen (15) working days from receipt of the written notice. Registration is effected only upon payment of the required fees (Annex 5-A). The Regional Office/Provincial/City Mining Regulatory Board concerned shall officially release the Permit to the Permit Holder after registration.

Failure of the Permit Holder to cause the registration of its Permit within the prescribed period shall be a sufficient ground for cancellation of the same.

#### **Section 78. Rights and Obligations of the Quarry or Commercial/Industrial Sand and Gravel Permit Holder**

The Quarry or Sand and Gravel Permit Holder, its heirs or successors-in-interest shall have the right to exclusively extract, remove, dispose and/or utilize quarry or sand and gravel resources within the permit area with full rights of ingress and egress, the right to occupy the same, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the Permit.

**Section 79. General Terms and Conditions of a Quarry/Commercial or Industrial Sand and Gravel/ Government Gratuitous/Guano/ Gemstone Gathering Permit**

The following terms and conditions shall be incorporated in the Quarry/Commercial or Industrial Sand and Gravel/Government Gratuitous/Guano/ Gemstone Gathering Permit:

- a. No extraction, removal and/or disposition of materials shall be allowed within a distance of one (1) kilometer from the boundaries of reservoirs established for public water supply, archaeological and historical sites or of any public or private works or structures, unless the prior clearance of the Government agency(ies) concerned or owner is obtained. No extraction, removal and/or disposition of materials shall likewise be allowed in offshore areas within five hundred (500) meters distance from the coast and two hundred (200) meters from the mean low tide
- b. The extraction, removal and/or disposition of materials under the Permit shall be confined within the area specified therein, the boundaries of which, according to the application, are established on the ground with prominent marks;
- c. The Permit Holder shall assume full responsibility and be liable for damages to private and/or public property(ies) that may be occasioned by its operations under the Permit;
- d. The Permit Holder shall manage its operations in a technically and environmentally responsible manner to achieve a safe, non-polluting and self-sustaining post disturbance landform;
- e. The Permit Holder shall conduct its operations in accordance with the provisions of the Act and these implementing rules and regulations;
- f. The Permit Holder shall not discriminate on the basis of gender and that the Permit Holder shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;
- g. The Permit Holder shall conform to laws, rules and regulations regarding, among others, labor, safety and health standards; level along the beach;
- h. The Permit Holder shall not interfere with the rights of other Permit Holders/operators/Contractors;
- i. The Permit Holder shall recognize and respect the rights, customs and traditions of local communities, particularly ICCs;
- j. The Permit Holder shall immediately stop digging and extracting materials the moment man-made articles or artifacts are found. It shall notify the Director of the National Museum of such findings, in which case, the digging shall be under the supervision of the National Museum until said artifacts are recovered; and
- k. The Permit shall be subject to cancellation, revocation and termination as provided for in Section 100 hereof.

**Section 80. Specific Terms and Conditions of a Quarry or Commercial/ Industrial Sand and Gravel or Government Gratuitous Permit**

In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Quarry or Commercial/Industrial Sand and Gravel or Government Gratuitous Permit:

- a. For Quarry or Commercial/Industrial Sand and Gravel Permit:
1. The Permit shall be for the exclusive use and benefit of the Permit Holder and shall not be transferred or assigned without prior written approval by the Regional Director/Provincial Governor/City Mayor concerned;
  2. Unless otherwise renewed or amended, the Permit shall ipso facto terminate after the whole quantity and kind of materials specified therein have been removed or taken;
  3. The Permit Holder shall file quarterly with the Regional Office/Provincial/ City Mining Regulatory Board concerned a sworn statement of the quantity of materials extracted, removed and/or disposed under the Permit and the amounts of fees paid therefor. At the end of the term, the Permit Holder shall submit to the Regional Office/Provincial/City Mining Regulatory Board concerned a final report with the detailed list of activities and the corresponding expenditures;
  4. The Permit Holder shall furnish the Government records of accounting and other relevant data from its operations and that book of accounts and records shall be open for inspection by the Government;
  5. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned;
  6. The Permit Holder shall not, by virtue of the Permit, acquire any title over the permit area, without prejudice to its acquisition of the land/surface rights through any mode of acquisition provided by law;
  7. The Permit Holder shall pay fees, taxes and other obligations in accordance with existing laws, rules and regulations;
  8. The Permit Holder shall comply with its obligations under its ECC, EPEP and AEPEP, including the allocation of the prescribed annual environmental expense pursuant to Section 171 hereof;
  9. The term of the Permit shall be for a period as specified therein from date of issuance thereof: *Provided*, That no renewal of Permit shall be allowed unless the Permit Holder has complied with the terms and conditions of the Permit and shall not have been found guilty of violation of any provision of the Act and these implementing rules and regulations; and
  10. The Permit Holder shall comply with pertinent provisions of the Act, these implementing rules and regulations and such other terms and conditions not inconsistent with the Constitution, the Act and these rules and regulations, as well as those which the Regional Director/Provincial Governor/City Mayor concerned may deem to be for the national interest and public welfare.
- b. For Government Gratuitous Permit:
1. The period of the Permit shall be coterminous with the term of the construction stage of the project but not to exceed one (1) year;

2. The Government office concerned shall, whenever practicable, use and utilize its own vehicle(s) and equipment in extracting, hauling and transporting the materials: *Provided*, That the Permit Holder may enter into a contract with a private person/entity for the purpose of hauling and transporting such materials;
3. The materials authorized to be removed shall be strictly for infrastructure project and in no case shall the same be disposed of commercially, otherwise, persons responsible thereof shall be liable for prosecution under appropriate laws;
4. Unless otherwise amended, the Permit shall ipso facto terminate after the whole quantity and kind of materials specified therein have been removed or taken;
5. The Permit Holder shall file quarterly with the Regional Office/Provincial/ City Mining Regulatory Board concerned a sworn statement of the quantity of materials extracted, removed and/or disposed under the Permit and the amounts of fees paid therefor. At the end of the term, the Permit Holder shall submit to the Regional Office/Provincial/City Mining Regulatory Board concerned a final report with the detailed list of activities and the corresponding expenditures;
6. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned;
7. The Permit Holder shall comply with its obligations under its ECC and EPEP, including the allocation of the prescribed environmental expense pursuant to Section 171 hereof; and
8. The Permit Holder shall comply with pertinent provisions of the Act, these implementing rules and regulations and such other terms and conditions not inconsistent with the Constitution, the Act and these rules and regulations, as well as those which the Regional Director/Provincial Governor/City Mayor concerned may deem to be for the national interest and public welfare.

### **Section 81. Guano Permit**

Any Qualified Person, whose domicile is within the municipality where the area applied for is located, may apply for a Guano Permit with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal, disposition, and/or utilization of loose unconsolidated guano and other organic fertilizer deposits in specific caves and/or confined sites for a term of one (1) year or upon the extraction of the quantity as specified in the Permit: *Provided*, That only one (1) Guano Permit shall be issued for the same cave or area: *Provided, further*, That the maximum area for the Guano Permit that a Qualified Person may hold at any one (1) time shall not be more than five (5) hectares.

#### **a. Gratuitous Guano Permit**

A Gratuitous Guano Permit (MGB Form No. 8-6) may be granted to an individual for his/her personal use or to any Government agency in need of the material within a specified period and in such quantity not more than two thousand kilograms (2,000 kg).

b. Commercial Guano Permit

A Commercial Permit may be granted to a Qualified Person for sale or commercial disposition thereof within a specified period and in such quantity as may be specified thereof.

**Section 82. Mandatory Requirements for Guano Permit Application**

The permit application (MGB Form No. 8-5) shall be filed by the applicant either personally or through its duly authorized representative with the Provincial/City Mining Regulatory Board: *Provided*, That any application that transcends into two (2) or more regions shall be filed with the Provincial/City Mining Regulatory Board which has the largest area covered by the application, copy furnished the other Provincial/City Mining Regulatory Board concerned by the applicant: *Provided, further*, That a permit application shall be accepted only upon payment of the required fees (Annex 5-A) to the Provincial/City Mining Regulatory Board: *Provided, finally*, That any application with incomplete mandatory requirements shall not be accepted.

Upon payment of the filing and processing fees (Annex 5-A), the applicant shall submit at least two (2) sets of the following mandatory requirements applicable to the type of permit applied for:

- a. Location map/sketch plan of the proposed permit area showing its geographic coordinates/ meridional block(s) and boundaries in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- b. Certification from the Barangay Captain that the applicant has established domicile in the area applied for;
- c. Area clearance from the Government agencies/LGUs concerned that may be affected by the permit application or written permission from the landowner(s) and surface owner(s) of the area applied for;
- d. ECC prior to extraction, removal, disposition and/or utilization and EPEP (MGB Form No. 16-2) as provided for in Section 169 hereof;
- e. Declaration of the approximate quantity of guano resources available in the permit area applied for; and
- f. Other supporting papers as the Provincial/City Mining Regulatory Board concerned may require or the applicant may submit.

**Section 83. Area Status and Clearance for a Guano Permit Application**

Within fifteen (15) working days from receipt of the permit application, the Provincial/City Mining Regulatory Board concerned shall transmit a copy of the location map/sketch plan of the applied area to the Regional Office concerned/pertinent Department sector(s) affected by the permit application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Provincial/City Mining Regulatory Board concerned as to transmittal of said document to the Regional Office(s)/Department sector(s)/Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Regional Office(s)/ Department sector(s)/Government agency(ies). The Regional Office(s)/Department sector(s) concerned must submit the area status/consent/clearance on the proposed permit area within thirty (30) working days from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Provincial/City Mining Regulatory Boards, the

Provincial/City Mining Regulatory Board(s) concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

Within fifteen (15) working days from receipt of the permit application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications.

If the proposed permit area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office(s) concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of permit application: *Provided, further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director/ Provincial Governor/City Mayor concerned shall exert all efforts to resolve the same.

#### **Section 84. Posting of a Guano Permit Application**

Within fifteen (15) working days from receipt of the necessary area clearances, the Provincial/City Mining Regulatory Board shall issue to the applicant the Notice of Application for permit for posting which shall be done within fifteen (15) working days from receipt of the Notice. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Provincial/City Mining Regulatory Board shall cause the posting for two (2) consecutive weeks of the Notice on the bulletin boards of the Regional Office(s), PENRO(s), CENRO(s) concerned and in the province(s) and municipality(ies) concerned, copy furnished the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

Within thirty (30) calendar days from the last date of posting, the authorized officer(s) of the office(s) concerned shall issue a certification(s) that the posting have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of posting, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days therefrom.

No permit shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

#### **Section 85. Processing/Registration/Issuance of a Guano Permit**

Upon evaluation that all the terms and conditions are in order and that the subject area has been cleared from any conflict, the Provincial Governor/City Mayor concerned shall approve and issue the Permit within thirty (30) calendar days from such evaluation and shall notify the Permit Holder to cause the registration of the same within fifteen (15) working days from receipt of the written notice. Registration is effected only upon payment of the required fees (Annex 5-A). The Provincial/City Mining Regulatory Board concerned shall officially release the Permit to the Permit Holder after registration.

Failure of the Permit Holder to cause the registration of its Permit within the prescribed period shall be a sufficient ground for cancellation of the same.

#### **Section 86. Rights and Obligations of the Guano Permit Holder**

The Guano Permit Holder, its heirs or successors-in-interest shall have the right to exclusively conduct extract, remove, dispose and/or utilize guano resources within the permit area with full rights of ingress and egress, the right to occupy the same, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the Permit.

#### **Section 87. Specific Terms and Conditions of a Guano Permit**

In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Commercial/Industrial Guano Permit:

- a. The Permit shall be for the exclusive use and benefit of the Permit Holder and shall not be transferred or assigned without prior written approval by the Provincial Governor/City Mayor;
- b. No explosives shall be used in extracting and/or removal of guano;
- c. The Permit Holder shall file quarterly with the Provincial/City Mining Regulatory Board a sworn statement of the quantity of guano extracted, removed and/or disposed under the Permit and the amounts of fees paid therefor. At the end of the term, the Permit Holder shall submit to the Provincial/City Mining Regulatory Board a final report with the detailed list of activities and the corresponding expenditures;
- d. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned;
- e. The Permit Holder shall not, by virtue of the Permit, acquire any title over the permit area, without prejudice to its acquisition of the land/surface rights through any mode of acquisition provided by law;
- f. The Permit Holder shall pay fees, taxes and other obligations in accordance with existing laws, rules and regulations;
- g. The Permit Holder shall comply with its obligations under its ECC, EPEP and AEPEP, including the allocation of the prescribed annual environmental expense pursuant to Section 171 hereof;
- h. The term of the Permit shall be for a period of one (1) year from date of issuance thereof or upon the extraction of the quantity as specified in the Permit; and
- i. The Permit Holder shall comply with pertinent provisions of the Act, these implementing rules and regulations and such other terms and conditions not inconsistent with the Constitution, the Act and these rules and regulations, as well as those which the Provincial Governor/City Mayor may deem to be for the national interest and public welfare.

## **Section 88. Gemstone Gathering Permit**

Any Qualified Person may apply for a Gemstone Gathering Permit with the Provincial Governor/City Mayor through the Provincial/City Mining Regulatory Board for the extraction, removal and utilization of loose stones useful as gemstones for a term not exceeding one (1) year from the date of issuance thereof, renewable for like periods: *Provided*, That the application for renewal shall be filed before the expiry date of the Permit: *Provided, further*, That the Permit Holder has complied with all the terms and conditions of the original Permit as provided herein and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations.

## **Section 89. Mandatory Requirements for Gemstone Gathering Permit Application**

The permit application (MGB Form No. 8-7) shall be filed by the applicant either personally or through its duly authorized representative with the Provincial/City Mining Regulatory Board: *Provided*, That any application that transcends into two (2) or more regions shall be filed with the Provincial/City Mining Regulatory Board which has the largest area covered by the application, copy furnished the other Provincial/City Mining Regulatory Board concerned by the applicant: *Provided, further*, That a permit application shall be accepted only upon payment of the required fees (Annex 5-A) to the Provincial/City Mining Regulatory Board: *Provided, finally*, That any application with incomplete mandatory requirements shall not be accepted.

Upon payment of the filing and processing fees (Annex 5-A), the applicant shall submit at least five (5) sets of the following mandatory requirements:

- a. Location map/sketch plan of the proposed permit area showing its geographic coordinates/ meridional block(s) and boundaries in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- b. Area clearance from the Government agencies/LGUs concerned that may be affected by the permit application or written permission from the landowner(s) and surface owner(s) of the area applied for;
- c. Declaration of the approximate quantity of gemstone available in the permit area applied for; and
- d. Other supporting papers as the Provincial/City Mining Regulatory Board concerned may require or the applicant may submit.

## **Section 90. Area Status and Clearance for a Gemstone Gathering Permit Application**

Within fifteen (15) working days from receipt of the permit application, the Provincial/City Mining Regulatory Board concerned shall transmit a copy of the location map/sketch plan of the applied area to the Regional Office concerned/pertinent Department sector(s) affected by the permit application for area status, copy furnished the municipality(ies)/city(ies) concerned and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Provincial/City Mining Regulatory Board as to transmittal of said document to the Regional Office(s)/Department sector(s)/Government agency(ies) concerned, it shall be the responsibility of the same applicant to secure the necessary area status/consent/clearance from said Regional Office(s)/Department sector(s)/Government agency(ies). The Regional Office(s)/Department sector(s) concerned must submit the area status/consent/clearance on the proposed permit area within thirty (30) working days

from receipt of the notice: *Provided*, That the Department sector(s) concerned can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Provincial/City Mining Regulatory Boards, the Provincial/City Mining Regulatory Board concerned which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

Within fifteen (15) working days from receipt of the permit application, the Regional Office(s) concerned shall check in the control maps if the area is free/open for mining applications.

If the proposed permit area is open for mining applications, the Regional Office(s) concerned shall give written notice to the applicant to pay the corresponding Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the Regional Office concerned shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of permit application: *Provided, further*, That in cases of overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director/Provincial Governor/City Mayor concerned shall exert all efforts to resolve the same.

#### **Section 91. Posting of a Gemstone Gathering Permit Application**

Within fifteen (15) working days from receipt of the necessary area clearances, the Provincial/City Mining Regulatory Board shall issue to the applicant the Notice of Application for permit for posting which shall be done within fifteen (15) working days from receipt of the Notice. The Notice must contain, among others, the name and complete address of the applicant, duration of the permit applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed permit area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Provincial/City Mining Regulatory Board shall cause the posting for two (2) consecutive weeks of the Notice on the bulletin boards of the Regional Office(s), PENRO(s), CENRO(s) concerned and in the province(s) and municipality(ies) concerned, copy furnished the barangay(s) where the proposed permit area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

Within thirty (30) calendar days from the last date of posting, the authorized officer(s) of the office(s) concerned shall issue a certification(s) that the posting have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of posting, with the Regional Office concerned or through any PENRO or CENRO concerned for filing in the Regional Office concerned for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days therefrom.

No permit shall be approved unless the requirements under this Section are fully

complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

### **Section 92. Processing/Registration/Issuance of a Gemstone Gathering Permit**

Upon evaluation that all the terms and conditions are in order and that the subject area has been cleared from any conflict, the Provincial Governor/City Mayor concerned shall approve and issue the Permit (MGB Form No. 8-8) within thirty (30) calendar days from such evaluation and shall notify the Permit Holder to cause the registration of the same within fifteen (15) working days from receipt of the written notice. Registration is effected only upon payment of the required fees (Annex 5-A). The Provincial/City Mining Regulatory Board concerned shall officially release the Permit to the Permit Holder after registration.

Failure of the Permit Holder to cause the registration of its Permit within the prescribed period shall be a sufficient ground for cancellation of the same.

### **Section 93. Rights and Obligations of the Gemstone Gathering Permit Holder**

The Gemstone Gathering Permit Holder, its heirs or successors-in-interest shall have the right to exclusively conduct extract, remove and dispose loose stones useful as gemstones within the permit area with full rights of ingress and egress, the right to occupy the same, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the Permit.

### **Section 94. Specific Terms and Conditions of a Gemstone Gathering Permit**

In addition to those mentioned in Section 79 hereof, the following specific terms and conditions shall be incorporated in the Gemstone Gathering Permit:

- a. The Permit shall be for the exclusive use and benefit of the Permit Holder and shall not be transferred or assigned without prior written approval by the Provincial Governor/City Mayor;
- b. Gemstone gathering shall be allowed in rivers and other locations except in areas which are expressly prohibited by law;
- c. The removal/gathering of gemstones shall be conducted manually without the aid of any tools or mechanized equipment;
- d. No explosives shall be used in extracting and/or removal of gemstone;
- e. Unless otherwise renewed or amended, the Permit shall ipso facto terminate after the whole quantity of gemstones specified therein have been removed or taken;
- f. The Permit Holder shall file quarterly with the Provincial/City Mining Regulatory Board a sworn report of the quantity of gemstones extracted, removed and/or disposed under the Permit, the amounts of fees paid therefor, the quantity/volume of gemstones sold or disposed of during the period covered by the report, their selling prices, the names and addresses of the persons to whom the same were sold, and the quantity/volume of materials left in stock. At the end of the term, the Permit Holder shall submit to the Provincial/City Mining Regulatory Board a final report with the detailed list of activities and the corresponding expenditures;
- g. The Permit/permit area can be inspected and examined at all times by the Regional Director/Provincial Governor/City Mayor concerned;
- h. The Permit Holder shall not, by virtue of the Permit, acquire any

title over the permit area, without prejudice to its acquisition of the land/surface rights through any mode of acquisition provided by law;

- i. The Permit Holder shall pay fees, taxes and other obligations in accordance with existing laws, rules and regulations;
- j. The term of the Permit shall be for a period as specified therein from date of issuance thereof: *Provided*, That no renewal of Permit shall be allowed unless the Permit Holder has complied with the terms and conditions of the Permit and shall not have been found guilty of violation of any provision of the Act and these implementing rules and regulations;
- k. The Permit Holder shall comply with pertinent provisions of the Act, these implementing rules and regulations and such other terms and conditions not inconsistent with the Constitution, the Act and these rules and regulations, as well as those which the Provincial Governor/City Mayor may deem to be for the national interest and public welfare.

#### **Section 95. Records of Extracted/Removed/Disposed Quarry/Sand and Gravel/Guano/Gemstone Resources**

The Permit Holder shall keep books of accounts wherein there shall be entered everyday the quantity of quarry/sand and gravel/guano/gemstone resources removed or extracted from the area as well as the quantity disposed of or sold during the day, their selling prices, the names and addresses of the persons or parties to whom the same were sold or disposed of.

All books of accounts and records required to be kept in the preceding paragraph shall be open at all times for the inspection of the representatives of the Regional Director/Provincial Governor/City Mayor concerned. The refusal of the Permit Holder to allow the concerned authorities to inspect the same without justifiable reason shall be sufficient ground for the cancellation of the Permit.

#### **Section 96. Surety Bond**

To answer for and guarantee payment for whatever actual damages that may be incurred by the quarry or sand and gravel operations, a surety bond of Twenty Thousand Pesos (PhP20,000.00) shall be posted by the applicants, except for those applying for Gratuitous and Exclusive Sand and Gravel Permits.

#### **Section 97. Quarry Fee and Taxes to be Paid**

All Permit Holders except those for Gratuitous Permits under this Chapter shall pay the required quarry fees (Annex 5-A) to the Provincial/City Treasurer concerned in accordance with pertinent provisions of the Local Government Code: *Provided*, That the Provincial Government and the municipality may enter into a Memorandum of Agreement providing for direct remittance of the share due the municipality or barangay. Likewise, an excise tax on Mineral Products as provided for in R.A. No. 7729 shall be paid upon removal thereof to the Government through the concerned agent or representative of the Bureau of Internal Revenue (BIR).

#### **Section 98. Renewal of Quarry/Commercial or Industrial Sand and Gravel/Guano/Gemstone Gathering Permit**

Within sixty (60) calendar days before the expiration of the Permit, the Quarry/Commercial or Industrial Sand and Gravel/Guano/Gemstone Gathering Permit

Holder may submit to the Regional Office/Provincial/City Mining Regulatory Board concerned, an application to renew the Permit accompanied by two (2) sets of the following applicable mandatory requirements:

- a. Justification of renewal;
- b. Comprehensive and validated technical report on the outcome of the operations, including their environmental effects duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
- c. Audited report of expenditures incurred during the operations period;
- d. Work Program duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
- e. EPEP (MGB Form No. 16-2) as provided for in Section 169 hereof; and
- f. Other supporting papers as the Regional Office/Provincial/City Mining Regulatory Board concerned may require or the applicant may submit.

After field verification by the Regional Office/Provincial/City Mining Regulatory Board concerned of the foregoing requirements at the expense of the Permit Holder, the Regional Director/Provincial Governor/City Mayor concerned may grant the renewal.

**Section 99. Transfer or Assignment of Quarry/Commercial or Industrial Sand and Gravel/ Guano/Gemstone Gathering Permit**

A Quarry/Commercial or Industrial Sand and Gravel/Guano/Gemstone Gathering Permit may be transferred or assigned to another Qualified Person(s) subject to the approval of the Regional Director/Provincial Governor/City Mayor concerned.

**Section 100. Cancellation/Revocation/Termination of a Quarry/Sand and Gravel/Gratuitous/Guano/ Gemstone Gathering Permit**

The Quarry/Sand and Gravel/Gratuitous/ Guano/Gemstone Gathering Permit may be canceled/revoked/terminated, after due process, by the Regional Director/Provincial Governor/City Mayor concerned based on the following grounds:

- a. Failure to comply with the terms and conditions of the Permit and ECC, if applicable;
- b. Violation of any provision of the Act and these implementing rules and regulations;
- c. Failure to pay the excise tax for two (2) consecutive years;
- d. Any misrepresentation in any statement made in the application or those made later in support thereof;
- e. If the commodity stipulated in the Permit has been exhausted before the expiry date thereof; and
- f. When national interest and public welfare so require or for environmental protection or ecological reasons.

Upon cancellation of the Permit, the said areas shall automatically be reverted back to its original status.

**Section 101. Effect of Cancellation/ Revocation/Termination of a Quarry/Sand and Gravel/ Gratuitous/Guano/Gemstone Gathering Permit**

The foregoing provisions notwithstanding, cancellation/revocation/termination of a

Quarry/Sand and Gravel/Gratuitous/Guano/Gemstone Gathering Permit shall not release the Permit Holder from any and all obligations it may have, particularly regarding ecological management, to the public or private party(ies) at the time of cancellation/revocation/ termination.

**Section 102. Withdrawal from a Quarry/Sand and Gravel/Gratuitous/Guano/Gemstone Gathering Permit**

The Permit Holder may, by giving due notice at any time during the term of the Permit, apply with the Regional Office/ Provincial/City Mining Regulatory Board concerned for the withdrawal of the Permit due to causes which, in the opinion of the Permit Holder, make continued mining operations no longer feasible or viable. The Regional Director/Provincial/City Mining Regulatory Board concerned shall consider the notice and issue his/her decision within a period of thirty (30) calendar days: *Provided*, That the Permit Holder has met all its financial, fiscal, environmental and legal obligations at the time of withdrawal.

**CHAPTER IX  
SMALL-SCALE MINING**

**Section 103. General Provisions**

Applications (MGB Form No. 9-01) for Small-Scale Mining Permit (SSMP) shall be filed in the Office of the Provincial Governor/City Mayor through the Provincial/City Regulatory Board concerned for areas outside the Mineral Reservations and in the Regional Office concerned for areas within Mineral Reservations.

Applications for SSMP within Mineral Reservations shall be accepted only upon payment of the required fees and accompanied by five (5) sets of the following mandatory requirements:

- a. Location map/sketch plan of the proposed permit area showing its geographic coordinates/meridional block(s) and boundaries in relation to major environmental features and other projects using a NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
- b. Two (2)-Year Utilization Work Program duly prepared, signed and sealed by a licensed Mining Engineer or Geologist;
- c. Proof of technical competence, including, among others, curricula vitae and track records in mining operations and environmental management of the technical personnel who shall undertake the activities in accordance with the submitted Utilization Work Program;
- d. Proof of financial capability to undertake the activities pursuant to the Utilization Work Program, such as the following:
  1. For an individual – Copy of income tax return for the preceding year and proof of bank deposit or credit line in the amount that shall not be less than the proposed budget of the Utilization Work Program; and
  2. For a corporation, partnership, association or cooperative - Latest audited financial statement and, where applicable, Annual Report for the preceding year, credit line(s), bank guarantee(s) and/or similar negotiable instruments; and
- e. Duly certified Certificate of Registration, Articles of Incorporation

and By-Laws issued by the SEC or authorized Government agency concerned, for a corporation, partnership, association or cooperative.

The ECC, EPEP and approved survey plan shall be required from the SSMP applicant after acceptance of the application but prior to its approval.

Upon evaluation that all the terms and conditions and all pertinent requirements are in order and that the subject area has been cleared from any conflict, the Director, for areas within Mineral Reservations, shall approve and issue the SSMP, and the Permit Holder shall cause the registration of the same in the Bureau within fifteen (15) working days from receipt of the written notice and payment of the required fees: *Provided*, That if all the mandatory and other requirements have been complied with and the SSMP application is still awaiting approval two (2) months after its date of filing, the said SSMP application, upon submission of an affidavit by the applicant attesting to the full compliance with all the pertinent requirements, shall be deemed approved and the Director shall issue the SSMP within five (5) working days from receipt of said affidavit, for registration and release.

In case the Permit Holder opts to renew his/her/its SSMP, he/she/it may file, prior to the expiration of the SSMP, an application to renew the said SSMP in the Bureau, copy furnished the Regional Office concerned, accompanied by five (5) sets of the following mandatory requirements:

- a. Proofs of payment of occupation fee, excise tax and royalty;
- b. Latest income tax return for individuals or audited financial statements covering the term of the SSMP for a corporation, partnership, association or cooperative; and
- c. Two (2)-year Utilization Work Program (MGB Form No. 5-4) duly prepared, signed and sealed by a licensed Mining Engineer or Geologist.

The Director may grant the renewal after compliance by the Permit Holder with all pertinent requirements, including payment of all required fees and reporting requirements: *Provided*, That if all the requirements have been complied with and the SSMP application for renewal is still awaiting approval one (1) month after its date of filing, the said SSMP application for renewal, upon submission of an affidavit by the applicant attesting to the full compliance with all the pertinent requirements, shall be deemed approved and the Director shall issue the renewed SSMP within five (5) working days from receipt of said affidavit, for registration and release.

The EPEP, and the Certification by the Regional Office concerned as to the compliance with the terms and conditions of the SSMP shall be required from the Permit Holder after the acceptance of the renewal application but prior to the issuance of the renewed SSMP.

The guidelines and provisions specified in Mines Administrative Order No. MRD-41, Series of 1984, Department Administrative Order No. 28 and MRDB Administrative Order Nos. 3 and 3A, which are the implementing rules and regulations of P.D. No. 1899 and the guidelines and provisions of Department Administrative Order No. 34, Series of 1992, which are the implementing rules and regulations of R.A. No. 7076, in so far as they are not inconsistent with the provisions of these implementing rules and regulations, shall continue to govern small-scale mining operations.

## **CHAPTER X SURFACE RIGHTS**

#### **Section 104. Easement Rights**

When mining areas are so situated that for purposes of more convenient operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructures as roads, railroads, mills, waste dump sites, tailings ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for waterwells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels or mills, the Permittee/Permit Holder/Contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

As to the payment of just compensation mentioned in the preceding paragraph, the amount thereof shall be first agreed upon by the parties and in accordance with P.D. No. 512, where appropriate. In case of disagreement, the matter shall be brought before the Panel of Arbitrators for proper disposition.

#### **Section 105. Entry Into Lands**

The holder(s) of mining right(s) shall not be prevented from entry into its/their contract/mining area(s) for the purpose(s) of exploration, development and/or utilization: *Provided*, That written notice(s) at its/their registered address(es) was/were sent to and duly received by the surface owner(s) of the land(s), occupant(s) and concessionaire(s) thereof and that a bond is posted in accordance with Section 108 hereof.

If the surface owner(s) of the land, occupant(s) or concessionaire(s) thereof can not be found, the Permittee/Permit Holder/Contractor or concessionaire shall notify the Regional Director concerned, copy furnished the concerned local officials in case of private land or the Government agency concerned in case of concessionaires, attaching thereto a copy of the written notice and a sworn declaration by the holder(s) of mining right(s) that it/they had exerted all efforts to locate such surface owner(s)/occupant(s)/concessionaire(s). Such notice(s) to the Regional Director concerned shall be deemed notice(s) to the surface owner(s) and concessionaire(s).

In cases where the surface owner(s) of the land(s), occupant(s) or concessionaire(s) thereof refuse(s) to allow the Permittee/Permit Holder/Contractor entry into the land(s) despite its/their receipt(s) of the written notice(s) or refuse(s) to receive said written notice(s) or in case of disagreement over such entry, the Permittee/Permit Holder/Contractor shall bring the matter before the Panel of Arbitrators for proper disposition.

#### **Section 106. Voluntary Agreement**

A voluntary agreement between a surface owner, occupant or concessionaire thereof permitting holders of mining rights to enter into and use its land for mining purposes shall be registered with the Regional Office concerned. The said agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns.

#### **Section 107. Compensation of the Surface Owner and Occupant**

Any damage done to the property of the surface owner, occupant, or concessionaire thereof as a consequence of the mining operations or as a result of the construction or installation of the infrastructure mentioned in Section 104 above shall be properly and justly compensated.

Such compensation shall be based on the agreement entered into between the

holder of mining rights and the surface owner, occupant or concessionaire thereof or, where appropriate, in accordance with P.D. No. 512.

In case of disagreement or in the absence of an agreement, the matter shall be brought before the Panel of Arbitrators for proper disposition.

#### **Section 108. Posting of a Bond**

In all cases mentioned in the preceding Section, the Permittee/Permit Holder/Contractor shall post a cash or surety bond from an accredited surety with the Regional Office concerned. The amount of the bond shall be agreed upon by the parties. In case of disagreement, it shall be determined by the Director for areas inside Mineral Reservations and the Regional Director for areas outside Mineral Reservations based on the type of the land and the value of the trees, plants and other existing improvements thereto.

### **CHAPTER XI MINERAL PROCESSING PERMIT**

#### **Section 109. General Provisions**

No person shall engage in the processing of minerals without a Mineral Processing Permit (MGB Form No. 11-1).

In the case of the small-scale miners, the processing of the mineral ores and minerals they produced, as well as the licensing of their custom mills or processing plants, notwithstanding the provisions of Section 103 hereof, shall continue to be governed by the provisions of R.A. No. 7076 and P.D. No. 1899 and their implementing rules and regulations.

In the case of the Contractors, holders of Quarry and Industrial Sand and Gravel Permits, the approved Work Program for the production period is sufficient requirement for them to process their minerals in lieu of the Mineral Processing Permits (MPPs).

Those who are presently engaged in the said activity shall secure an MPP within six (6) months from the effectivity of Department Administrative Order No. 96-40.

The term of an MPP shall be for a period of five (5) years from date of issuance thereof, renewable for like periods but not to exceed a total term of twenty-five (25) years: *Provided*, That no renewal of Permit shall be allowed unless the Permit Holder has complied with all the terms and conditions of the Permit and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations.

#### **Section 110. Application for Mineral Processing Permit/Mandatory Requirements**

An application (MGB Form No. 11-2) for an MPP shall be filed by a Qualified Person either personally or through its duly authorized representative with the Regional Office concerned: *Provided*, That a permit application shall be accepted only upon payment of the required fees (Annex 5-A) to the Regional Office concerned: *Provided, further*, That any application with incomplete mandatory requirements shall not be accepted.

Upon payment of the filing and processing fees (Annex 5-A), the applicant shall submit at least five (5) sets of the following mandatory requirements:

- a. Duly certified Certificate of Registration issued by the SEC or authorized Government agency concerned;
- b. Duly certified Articles of Incorporation/ Partnership/Association and By-Laws;
- c. Location map/sketch plan of the area of the proposed processing plant using NAMRIA topographic map in a scale of 1:50,000;
- d. Feasibility Study including work programs, plant site, mill and plant layout/design, details of technology to be employed in the proposed operation, anti-pollution devices/measures as well as the plant capacity: *Provided*, That an MPP applicant with existing mineral processing operation may submit, in lieu of the Feasibility Study, a Project Description and a detailed financial statement for its operations incorporating therein the social and environmental expenditures, taxes and fees paid (MGB Form No. 5-3A);
- e. An application (MGB Form No. 16-04) for or a CEMCRR;
- f. ECC;
- g. Proof of technical competence including, among others, curricula vitae and track records in mineral processing and environmental management of the technical personnel who shall undertake the operation;
- h. Proof of financial capability to undertake the activities pursuant to the Feasibility Study and EPEP, such as latest Audited Financial Statement and where applicable, Annual Report for the preceding year, credit lines, bank guarantees and/or similar negotiable instruments;
- i. Interim Importation Permit/certification from EMB on the use of chemicals (e.g. cyanide, mercury) in compliance with R.A. No. 6969;
- j. Brief history of applicant's activities for the last five (5) years, if any;
- k. Supply Contract/Agreement with mining rights holders, if applicable; and
- l. Other supporting papers as the Secretary/ Director/Regional Office concerned may require or the applicant may submit.

#### **Section 111. Processing/Registration/Issuance of a Mineral Processing Permit**

The Secretary may approve an application for MPP with a project cost of more than Five Hundred Million Pesos: *Provided*, That the Secretary, through the Director, may approve an application for MPP whose project cost ranges from more than Two Hundred Million Pesos to Five Hundred Million Pesos: *Provided, further*, That for an application for MPP whose project cost is Two Hundred Million Pesos or less, the Secretary, through the Regional Director concerned, may approve said application. In the case of the latter, the MPP application need not be forwarded to the Bureau and, instead, a copy of the issued MPP shall be submitted to the Bureau together with a copy of each of all the requirements.

In the Feasibility Study, there shall be a provision guaranteeing the payment of the Government Share, notwithstanding the grant of any incentives by other Government agency(ies).

Upon approval of the application, the Secretary through the Regional Director concerned shall notify the Permit Holder to cause the registration of the same within fifteen (15) working days from receipt of the written notice. Registration is effected only upon payment of the required fees (Annex 5-A). The Regional Director concerned shall officially release the Permit to the Permit Holder after registration.

Failure of the Permit Holder to cause the registration of its Permit within the prescribed period shall be a sufficient ground for cancellation of the same.

### **Section 112. Rights and Obligations of the Mineral Processing Permit Holder**

The Permit Holder, its heirs or successors-in-interest shall have the right to conduct mineral processing, all other rights provided for in the Act and these implementing rules and regulations; and the obligation to fully comply with the terms and conditions of the Permit.

### **Section 113. Terms and Conditions of a Mineral Processing Permit**

- a. The Permit shall be for the exclusive use and benefit of the Permit Holder;
- b. The Permit Holder shall assume full responsibility and be liable for damages to private and/or public property(ies) that may be occasioned by its operations under the Permit;
- c. The Permit Holder shall submit to the Bureau/Regional Office concerned production and activity reports prescribed in Chapter XXIX of these implementing rules and regulations. The Director/Regional Director concerned may conduct an on-site validation of the submitted reports: *Provided*, That the Permit Holder shall be charged verification and inspection fees thereof;
- d. The Permit Holder shall effectively use the best available appropriate anti-pollution technology and facilities to protect the environment in compliance with the requirements of the ECC and P.D. No. 984. This should be undertaken in coordination with the EMB/Department Regional Office;
- e. The Permit Holder shall conduct its operations in accordance with the provisions of the Act and these implementing rules and regulations;
- f. The Permit Holder shall not discriminate on the basis of gender and that the Permit Holder shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits;
- g. The Permit Holder shall pay fees, taxes and other obligations in accordance with existing laws, rules and regulations;
- h. The Permit Holder shall conform to laws, rules and regulations regarding, among others, labor, safety and health standards;
- i. The Permit Holder shall comply with its obligations under its ECC;
- j. The term of the Permit shall be for a period of five (5) years from date of issuance thereof, renewable for like periods but not to exceed a total term of twenty-five (25) years: *Provided*, That no renewal of Permit shall be allowed unless the Permit Holder has complied with all the terms and conditions of the Permit and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations.
- k. The Permit Holder shall give preference to goods and services produced and offered in the Philippines of comparative quality and cost. In particular, the Contractor shall give preference to qualified Filipino construction enterprises, construction materials and skills available in the Philippines, Filipino sub-contractors for road construction and transportation and Philippine household equipment, furniture and food;
- l. The Permit Holder shall give preference to Filipinos in all types of employment for which they are qualified and that the technology shall be transferred to the same;

- m. In case of foreign-owned/controlled corporation, representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the Permit Holder shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mineral processing;
- n. Alien employment shall be limited to technologies requiring highly specialized training and experience subject to the required approval under existing laws, rules and regulations;
- o. In every case where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken;
- p. The Permit Holder shall utilize the best available appropriate and efficient mineral processing technology;
- q. The Permit shall be subject to cancellation, revocation and termination as provided for in Section 115 hereof;
- r. Withdrawal by the Permit Holder from the Permit shall not release it from any and all financial, environmental, legal and/or fiscal obligations;
- s. The Permit Holder shall comply with all other applicable provisions of the Act and these implementing rules and regulations; and
- t. Such other terms and conditions not inconsistent with the Constitution, the Act and these implementing rules and regulations, as well as those which the Secretary may deem to be for the national interest and public welfare.

#### **Section 114. Renewal of Mineral Processing Permit**

Prior to the expiration of the Permit, the Permit Holder may submit to the Regional Office concerned an application to renew the Permit accompanied by two (2) sets of the following mandatory requirements:

- a. Justification of renewal;
- b. Comprehensive technical reports on the outcome of the operations and the level of ECC compliance, signed by a licensed Mining Engineer or Metallurgical Engineer and an Environmental Officer, respectively;
- c. Audited financial statements covering the term of the MPP;
- d. Work Program duly prepared, signed and sealed by a licensed Metallurgical Engineer; and
- e. Other supporting papers as the Regional Office concerned may require.

Any renewal application may be approved by the Secretary/Director/Regional Director concerned, as the case may be: *Provided*, That no renewal of Permit shall be allowed unless the Permit Holder has complied with all the terms and conditions of the Permit and has not been found guilty of violation of any provision of the Act and its implementing rules and regulations.

#### **Section 115. Cancellation/Revocation/ Termination of a Mineral Processing Permit**

The MPP may be canceled/revoked/terminated, after due process, by the Secretary upon the recommendation of the Director/Regional Director concerned based on the following grounds:

- a. Failure to comply with the terms and conditions of the Permit and ECC, if applicable;
- b. Violation of any provision of the Act and these implementing rules and regulations;
- c. Failure to pay the taxes and fees due the Government for two (2) consecutive years;
- d. Any misrepresentation in any statement made in the application or those made later in support thereof; and
- e. When national interest and public welfare so require or for environmental protection or ecological reasons.

The foregoing provisions notwithstanding, cancellation/revocation/termination of an MPP shall not release the Permit Holder from any and all obligations it may have, particularly regarding ecological management, to the public or private party(ies) at the time of cancellation/ revocation/termination.

## **CHAPTER XII TRANSPORT OF MINERALS/MINERAL PRODUCTS AND CONFISCATION, SEIZURE AND DISPOSITION OF ILLEGALLY-SOURCED MINERALS/MINERAL PRODUCTS**

### **Section 116. Scope**

Illegally-sourced minerals/mineral products are those which are mined, extracted, removed and/or disposed of without authority or permit under existing mining laws, rules and regulations.

### **Section 117. Ore Transport Permit**

The transport of all minerals/mineral products and by-products, including gold bullions, by Permit Holders, Contractors, accredited traders, retailers, processors and other mining rights holders must be accompanied by an Ore Transport Permit (MGB Form No. 12-1) issued by the Regional Director concerned or his/her duly authorized representative: *Provided*, That the transport of sand and gravel shall be covered by a Delivery Receipt.

In case of mineral ores/minerals/mineral products and by-products, including gold bullions, being transported from the small-scale mining areas to the custom mills or processing plants, the Provincial/City Mining Regulatory Board concerned shall formulate its own policies to govern such transport of ores produced by small-scale miners.

For MPSA and FTAA Contractors, Ore Transport Permits (OTP) shall be issued under the Agreements: *Provided*, That a written notice prior to shipment or transport of ores shall be furnished to the Regional Office concerned for the purpose of monitoring mining activities in the contract area: *Provided*, further, That such activity is in accordance with the terms and conditions of the Agreement.

An OTP is not necessary for ore samples not exceeding two (2) metric tons to be used exclusively for assay and pilot test purposes. Instead, a certification regarding the same shall be issued by the Regional Director concerned. For ore samples exceeding two (2) metric tons to be transported exclusively for assay and pilot tests purposes, an OTP shall be issued by the Regional Director concerned for a limited amount based on the type of ore, metallurgical tests to be undertaken and other justifiable reasons as determined by the Regional Office concerned.

### **Section 118. Basis of Arrests and Confiscations/Seizures**

The absence of any of the foregoing documents shall be considered prima facie evidence of illegal mining and shall cause the confiscation/seizure of the minerals/mineral products and the tools and equipment including conveyance used in the commission of the offense in favor of the Government pursuant to P.D. No. 1281, subject to further investigation. If it is found that the minerals/mineral products seized have been mined, extracted or removed without any permit or authority under existing mining laws, rules and regulations, final confiscation can be effected to be followed by the filing of the complaint for theft of minerals. The Bureau officers which include the Regional Director and other Bureau personnel, duly authorized by the Director, DENR personnel duly authorized by the Secretary, Permittee, Contractor, Permit Holder and other duly deputized personnel shall have authority to arrest offenders, and confiscate/seize illegally-sourced minerals/mineral products and the tools, equipment and conveyance used in the commission of offense.

It shall be the primary responsibility of the Permittee, Contractor, or Permit Holder to police the permit/contract area from any illegal mining operations.

### **Section 119. Execution of Sworn Statements**

Immediately after seizure of the minerals/mineral products together with the tools, equipment and conveyance used in the commission of the offense, the apprehending Bureau officer shall execute his/her sworn statement or affidavit surrounding the facts of the case in the form hereto attached as MGB Form No. 12-2. He/She shall also take sworn statements or affidavits of witnesses, if any, in the form hereto attached as MGB Form No. 12-3.

### **Section 120. Assessment and Issuance of Confiscation/Seizure Receipt**

The kind, volume or quantity of the seized minerals/mineral products shall be determined immediately and the assessment thereof shall be based on the gross volume or weight without benefit of deduction for natural defects, after which the corresponding seizure receipt shall be issued by the signing Bureau officer, duly acknowledged by the apprehended person(s) or party(ies). In case the apprehended person(s) or party(ies) refuse(s) to acknowledge the seizure receipt, the Local Government authority may attest as to the veracity of said seizure receipt.

### **Section 121. Custody of the Confiscated/ Seized Minerals/Mineral Products, Tools, Equipment and Conveyance**

This shall be made in accordance with the following procedures:

- a. In case of apprehension by the Bureau field officer, the mineral products, tools, equipment and conveyance used shall be deposited with the Regional Office concerned or wherever it is most convenient, for safekeeping. If the transfer of the seized products to the aforementioned offices is not immediately feasible, the same shall be placed under the custody of any licensed mine operator or the nearest local public official such as the Barangay Captain, Municipal/City Mayor, Provincial Governor or the Philippine National Police (PNP), at the discretion of the confiscating officer taking into account the safety of the confiscated items. The apprehending officer is authorized to seek assistance

from licensed mine operators to provide transportation facilities for the transfer of the confiscated items from the place of apprehension to the place of custody. In any event, the custody shall be duly acknowledged and received by the official taking custody thereof: *Provided*, That in the case of seizure/confiscation by the Bureau the case shall be referred to the Regional Office concerned for further investigation and disposition;

- b. In case of apprehension by the PNP, Economic Intelligence and Investigation Bureau (EIIB), Coast Guard and other Government law enforcement agencies, the apprehending agency shall notify the Regional Office concerned and turn over the seized items thereto for proper investigation and disposition; and
- c. For confiscated gold and/or other precious metal(s), the Regional Office concerned shall first determine if they conform with the Bangko Sentral ng Pilipinas (BSP) specifications or requirements for acceptance. If the confiscated gold and/or other precious metal(s) satisfy(ies) the minimum weight requirements but it does not conform with the physical requirements, the said metal(s) shall be delivered by the accountable officer escorted by security officers to the Bureau/Regional Office Metallurgy Laboratory concerned for processing. In cases where the weight requirement is not satisfied, the Chief Cashier/Accountant of the Regional Office concerned shall store the confiscated metal(s) in a safety deposit box of the nearest reputable banking institution duly accredited by the Department Regional Office. Once the inventory of metal(s) reaches the minimum BSP weight specifications, the Chief Cashier/ Accountant shall turn over the confiscated metal(s) to the Metallurgy Office. The latter shall turn over immediately after processing into saleable form the metal(s) to the Chief Cashier/Accountant. In each turnover, accountability is transferred through a Memorandum Receipt.

#### **Section 122. Filing of Complaint**

The Regional Office concerned, Permittee, Contractor, Permit Holder and/or other duly deputized personnel shall file the complaint with the proper court for violation of Section 103 of the Act (Theft of Minerals).

The following documents should be attached to the complaint:

- a. Sworn statement of the apprehending/arresting officer (MGB Form No. 12-2);
- b. Affidavits of witnesses, if any (MGB Form No. 12-3);
- c. Copy of the seizure receipt;
- d. Photographs showing the minerals/mineral products seized including the tools, equipment and conveyance used in the commission of the offense; and
- e. Other supporting papers/evidences as the court may require.

#### **Section 123. Referral of Complaint**

Immediately after the complaint is filed, the Regional Office shall transmit a copy of the complaint and all supporting documents to the Bureau for proper handling and disposition, copy furnished the Department.

#### **Section 124. Disposition of Confiscated/Seized Minerals/Mineral Products,**

## **Tools, Equipment and Conveyance**

The disposition of confiscated/seized minerals/mineral products, tools, equipment and conveyance shall be handled in accordance with the following procedures:

- a. The Regional Director concerned or his/her duly authorized representative shall expeditiously sell at public auction and/or dispose in accordance with existing laws, rules and regulations all confiscated/seized minerals/mineral products except the following:
  1. Those subject of judicial proceedings where ownership of the minerals is at issue until proper authority is obtained for their disposition from the court where the case is pending;
  2. Those earmarked for donation to other Government agencies; and
  3. Those identified and determined by the Department for its own needs.
- b. For confiscated gold and precious metals, there shall be no bidding as the same shall be sold directly to the BSP. The sale shall be made as follows:
  1. If confiscated metals conform with existing BSP specifications, the Regional Office concerned shall prepare a letter of intent or advice to sell confiscated precious metals addressed to the nearest BSP Buying Station Director/Administrator; and
  2. The Accountable Officer escorted by Security officers shall finally deliver said metals together with the letter/advice to the BSP Buying Station and receive payment therefor.
- c. Confiscated minerals/mineral products except gold and other precious metals shall be disposed of through a Committee on Bids and Awards on Confiscated Mineral Products (CBACMP) which, in all cases, shall be composed of the Regional Director responsible for or having custody over the confiscated minerals or his/her duly authorized representative as Chairman and LGU, accredited Nongovernmental Organization (NGO) and COA representatives as members.
- d. Confiscated tools and equipment including conveyance used shall be subject to forfeiture in favor of the Government and shall be disposed of, after due process, in accordance with pertinent laws, rules and regulations or policies on the matter.

In cases of confiscated minerals/mineral products that are the subject of court cases, especially those that easily deteriorate like pumice and clay, representations with the proper court shall be made for the immediate disposition thereof through public auction. The proceeds of the sale shall be deposited as the court directs and the same shall be awarded by the latter based on the final court decision. The procedures in handling the sale of confiscated minerals/mineral products through public auction are indicated in Annex 12-A.

### **Section 125. Remittance of Proceeds of Sale**

The proceeds of the sale of confiscated minerals/mineral products, after deducting all administrative costs related to the confiscation of the minerals/mineral products and their disposition, shall be remitted by the Chairman of the CBACMP to the

Department either in the form of Cashier's or Manager's check immediately upon receipt of the full payment of the bidded mineral products.

#### **Section 126. Reporting**

- a. Individual cases/report of confiscation/seizure shall be reported/sent immediately by the apprehending officer to the Regional Director concerned within twenty-four (24) hours who in turn shall send a report to the next higher officer. A detailed report by the apprehending officer must be submitted within three (3) working days from the date of seizure indicating actions taken thereon. If the confiscation/seizure is made with personnel from the Regional Office, the same procedure shall be followed by a report of the Regional Director concerned to the Director.
- b. Monthly Report
  1. A Monthly Confiscation Report shall be submitted by the Regional Director concerned together with the status of the confiscated minerals/mineral products; and
  2. The Director shall consolidate the Monthly Confiscation Reports of all the Regional Directors and in turn forward the same to the Secretary.
- c. Quarterly Report

The Director shall submit to the Secretary a quarterly report of confiscated minerals/mineral products.

### **CHAPTER XIII ACCREDITATION OF PROCESSORS, TRADERS, DEALERS AND RETAILERS IN THE TRADING OF MINERALS/MINERAL PRODUCTS AND BY-PRODUCTS**

#### **Section 127. Scope**

This Chapter covers all minerals and ores including construction materials such as raw sand, gravel, wash out pebbles and filling materials, semi-processed mineral products such as, but not limited to rock, concrete aggregates, unpolished decorative stone (such as marble, granite or limestone), tiles and slabs, metallic ore concentrates/tailings, smelter slags, cathodes, ingots, billets, blooms, unrefined precious metals/bars/ bullion and agricultural/industrial lime. Exempted are finished/manufactured minerals and metal products such as cement, transit mixed concrete, ceramics, polished decorative stone tiles, refined or alloyed metal sheets, wires, bars, beams, plates, refined precious metal bars, jewelry or ornaments and other mineral products in their final form or stage ready for consumption by end-users.

#### **Section 128. General Provisions**

No person shall engage in the trading of minerals/mineral products and by-products either locally or internationally, unless registered with the DTI and accredited by the Department, with a copy of said registration and accreditation submitted to the Bureau.

The traders, dealers and retailers of minerals/mineral products/by-products who are not Contractors/Permit Holders/mining right holders are henceforth required to be accredited by the Department.

Contractors/Permit Holders are considered to be registered and accredited for the purpose of trading minerals/mineral products and by-products during the effectivity of their Permits or mining rights.

### **Section 129. Mandatory Requirements for Accreditation**

The application for Accreditation shall be filed by the applicant with the Regional Office concerned: *Provided*, That an application shall be accepted only upon payment of the required fees (Annex 5-A) to the Regional Office concerned.

Upon payment of the filing and processing fees (Annex 5-A), the applicant shall submit at least five (5) sets of the following mandatory requirements:

- a. Duly accomplished application form as prescribed in MGB Form No. 13-1;
- b. Copy of the Permit/Contract of the Suppliers/sources of minerals/mineral products/by-products or copy of Certificate of Accreditation in case the source of materials is a trader, dealer or retailer;
- c. DTI Registration;
- d. Proof of legal source or supply as supported by any of the following documents:
  1. Supply Contract/Agreement with a Permit Holder/Contractor/accredited dealer producing the specified minerals/mineral products/by-products;
  2. Affidavit executed by a Permit Holder/ Contractor/accredited dealer to the effect that it is willing or currently selling and will continue to sell or supply the applicant with the minerals/mineral products/by-products specified in the application;
  3. Delivery or Purchase Receipts issued by a Permit Holder, Contractor or previously accredited dealer/trader; and
  4. Ore Transport Permit (OTP) or Bill of Lading which clearly indicates that the applicant is the consignee of a Permittee or a duly accredited dealer/trader/shipper.
- e. Other supporting papers as the Regional Office concerned may require or the applicant may submit.

*Provided*, That any application with incomplete mandatory requirements shall not be accepted.

### **Section 130. Procedure for Accreditation**

The Regional Director who exercises territorial jurisdiction over applicant's business operation shall issue the Certificate.

The following procedures shall be observed on processing of application and issuance of the Certificate of Accreditation:

- a. Upon receipt of the application and its supporting documents, the Regional Director concerned shall evaluate and validate them; and
- b. Within fifteen (15) working days upon receipt thereof, he/she shall issue the Certificate or reject the application based on merits or demerits, respectively.

The Regional Director shall regularly provide the Director with a list of accredited processors, traders, dealers and retailers of minerals/mineral products and by-products filed in its jurisdiction.

**Section 131. Fees**

Each applicant shall pay an application and filing fee (Annex 5-A) to the Regional Office concerned.

**Section 132. Term of the Certificate of Accreditation**

The Certificate of Accreditation (MGB Form No. 13-2) shall have a term of two (2) years from its issuance, renewable for like periods.

**Section 133. Confiscation, Apprehension and Disposition of Seized Mineral Products**

Shipments of minerals/mineral products and by-products by non-accredited traders and other illegal sources shall be apprehended, confiscated and disposed of in accordance with the provisions of Chapter XII of these implementing rules and regulations.

**CHAPTER XIV  
DEVELOPMENT OF MINING COMMUNITIES, SCIENCES AND  
MINING TECHNOLOGY**

**Section 134. Development of Mining Community, Mining Technology and Geosciences, and Institutionalization of Public Awareness and Education on Mining and Geosciences**

- a. The Contractor/Permit Holder/Lessee shall assist in the development of the host and neighboring communities in accordance with its SDMP to promote the general welfare of the inhabitants living therein. Host community refers to the barangay(s) where the mining area is located, and neighboring community refers to the barangay(s) adjacent to the host community;
- b. The Contractor/Permit Holder/Lessee shall develop a program for the advancement of mining technology and geosciences to build up resources and mineral discoveries, improve operational efficiency and resource recovery, and enhance environmental protection and mine safety;
- c. The Contractor/Permit Holder/Lessee shall develop and institutionalize an Information, Education and Communication (IEC) Program for greater public awareness and understanding of responsible mining and geosciences; and
- d. The Contractor/Permit Holder/Lessee shall allot annually a minimum of one and a half percent (1.50%) of the operating costs necessary to implement Subsections (a), (b) and (c) of this Section: *Provided*, That of this amount, 1.125% (75% of 1.50%) shall be apportioned to implement the SDMP in Subsection (a) hereof, 0.150% (10% of 1.50%) for the implementation of Program for the Development of Mining Technology and Geosciences in Subsection (b) hereof and 0.225% (15% of 1.50%) for the implementation of IEC Program in Subsection (c) hereof: *Provided, further*, That any unspent amount and/or

savings, for any given year, allotted for the implementation of the various programs shall be added to the succeeding year's allotment and may be re-programmed after consultations with host and neighboring communities.

For the purpose of these implementing rules and regulations, the term Operating Cost shall mean the specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the Bureau/Regional Office. This shall include all costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.

The Contractor/Permit Holder/Lessee shall submit to the Regional Office concerned a sworn statement of its previous year's operating costs within sixty (60) days after the end of each calendar year as basis for the implementation of Subsections (a), (b), and (c) hereof in the case of an operating mine: *Provided*, That in the case of new mining operations, the basis for the initial SDMP implementation shall be the operating costs estimates contained in the approved Mining Project Feasibility Study: *Provided, further*, That the expenditures for the implementation of Subsections (a), (b), and (c) hereof shall not be credited to the royalty payment for IPs/ICCs per Section 16 hereof.

### **Section 135. Credited Activities or Expenditures**

Programs/Projects/Activities (P/P/As) under the following areas of concern shall be considered as creditable activities or expenditures:

- a. For the development of the host and neighboring communities:
  1. Human Resource Development and Institutional Building – P/P/As geared towards strengthening existing local institutions, fostering the creation of new community organizations, and providing marginalized/disadvantaged groups the opportunity to participate fully in the development of their communities. These shall include, but not limited to, capacity- and capability-building on project management, organizational development, entrepreneurship, and skills development/training;
  2. Enterprise Development and Networking – P/P/As geared towards the development and promotion of economically viable community enterprises by providing members of the community access to capital and thereby enhance and stimulate existing livelihood industries and other income generating activities, help create new ones, and develop market diversification. These shall include income generating activities, such as animal husbandry, provision of farm implements, establishment of small/micro-businesses, such as household-based food processing, horticulture and agronomy, traditional handicrafts, support to small local businesses through preferential procurement of goods and services from local sources, as well as cooperative development, market linkaging and networking, among others;
  3. Assistance to Infrastructure Development and Support Services – P/P/As geared towards stimulating and

- facilitating other forms of economic activity, such as the development, construction, improvement, and/or maintenance of farm-to-market roads, water systems, post-harvest facilities, bridges, and electric power, among others;
4. Access to Education and Educational Support Programs – P/P/As geared towards providing educational opportunities to members of the community, including scholarships from primary to tertiary education, technical/vocational education, provision of apprenticeship programs, construction/repair/improvement of school buildings and related facilities, provision of school furniture and fixtures, and subsidy to teachers, among others;
  5. Access to Health Services, Health Facilities and Health Professionals – P/P/As geared towards achieving overall improvement in the living conditions and health of the host and neighboring communities, such as the provision of health facilities, access to health services, medicines and professionals, health education and preventive measures, training of health paraprofessionals, maternal-child health care and family planning, provision of health insurance, establishment of nutrition and immunization programs, access to clean and potable water, and provision of waste and sewage disposal facilities, among others;
  6. Protection and Respect of Socio-Cultural Values – P/P/As geared towards safeguarding the existing socio-cultural values of the host and neighboring communities to promote social cohesion and cultural awareness, and to instill community pride; and
  7. Use of facilities/services within the mine camp or plant site, such as hospitals, schools, among others, by members of the host and neighboring communities, the expenditures of which shall be apportioned pro-rata according to the number of people from said communities accommodated in such facilities.

*Provided*, That expenditures for P/P/As for the mine camp accruing to the Contractors'/Permit Holders'/Lessees' employees and their families shall not be included in the computation of the cost of the SDMP.

- b. For the development of mining technology and geosciences:
  1. Basic and applied research on mining technology, geosciences, and related subjects such as, but not limited to, the socioeconomics related to mining operations, environmental protection, mineral economics, among others;
  2. Advanced studies, related to mining which are conducted by qualified researchers who are not employees of the mine, following current guidelines by the Department of Science and Technology, including the cost of publication thereof in refereed technical journals or monographs accessible to the local scientific community;
  3. Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geosciences and related subjects; and

4. Expenditures on equipment and capital outlay as assistance for research and/or educational institutions which serve as a venue for developing mining technology and geosciences.

*Provided, further,* That the Provincial and Municipal Governments concerned shall be consulted in the determination of beneficiaries of scholarships and trainings, as well as the subject of researches and training programs.

- c. For the promotion of public awareness and education on mining technology and geosciences:
  1. Establishment/enhancement/maintenance of information and publicity centers where stakeholders can access information on the performance of a mining project;
  2. Publication of IEC materials on social, environmental and other issues/concerns relative to mineral resources development and responsible mining operations;
  3. Expenditures for continuing public awareness and education campaigns such as radio and web-based broadcasts, publications, and other forms of mass communication, on mining-related information, issues and concerns; and

Expenditures on equipment and capital outlay as assistance to the institutionalization of public awareness and education on mining technology and geosciences.

**Section 136. Duties and Responsibilities of the Contractor/Permit Holder/Lessee on the Development of the Host and Neighboring Communities**

- a. Coordinate with proper authorities in the provision and implementation of development plans for the host and neighboring communities;
- b. Promote community service and volunteerism by encouraging members of the host and neighboring communities to impart time, knowledge, skills and talents in the development and implementation of community P/P/As as a way of instilling community ownership and achieving a more cohesive and stronger community;
- c. Help create self-sustaining income generating activities such as, but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income generating activities are identified to be present within the host and/or neighboring communities, the Contractor/Permit Holder/Lessee shall work with such communities towards the preservation and/or enhancement of such activities; and,

- d. Give preference to qualified Filipino citizens in the hiring of personnel for its mining operations, the majority of which shall originate according to priority from the host and neighboring communities, the host municipality and province where mine is located: *Provided*, That the Contractor/Permit Holder/Lessee shall organize, at its own expense, skills enhancement programs in the absence of the needed skills: *Provided, further*, That it shall give its firm commitment to skills re-formation and entrepreneurship development for people in the mining communities as an integral part of the mine closure process.

#### **Section 136-A. Social Development and Management Program and Community Development Program**

All Contractors/Permit Holders/Lessees shall prepare an SDMP, in consultation and in partnership with the host and neighboring communities. The SDMP shall be actively promoted and shall cover and include all P/P/As towards enhancing the development of the host and neighboring communities in accordance with Sections 135 and 136 hereof. To meet the changing needs and demands of the communities, the Contractor/Permit Holder/Lessee engaged in mining operations shall submit every five (5) years an SDMP to the Regional Office for approval as provided for in Section 136-B hereof.

In the case of a holder of an Exploration Permit or a Mineral Agreement or FTAA in the Exploration Stage, the Permittee/Contractor shall develop and implement a Community Development Program (CDP) which implementation shall be supported by a fund equivalent to a minimum of ten percent (10.0%) of the budget of the approved two (2)-year Exploration Work Program: *Provided*, That the CDP shall be developed in consultation and in partnership with the host communities within the area subject of active exploration activities and may include P/P/As identified in, but not limited to, Subsection (a) of Section 135 hereof: *Provided, further*, That the CDP shall be submitted to the Regional Office concerned, for approval, within six (6) months upon registration of the approved Exploration Permit, Mineral Agreement or FTAA.

The second (2<sup>nd</sup>) or succeeding CDP shall be submitted to the Regional Office concerned not later than 30 days from the completion of the preceding CDP.

#### **Section 136-B. Processing and Approval of the SDMP, and the Programs on Development of Mining Technology and Geosciences, IEC and CDP**

The Contractor/Permit Holder/Lessee shall submit at least three (3) legible copies and a complete electronic file of the five (5)-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC to the Regional Office concerned.

Within five (5) days upon receipt thereof, the Regional Office concerned shall conduct an evaluation of the submitted programs as to its form, substance, and completeness. Additional documents or information which are deemed necessary to supplement the programs may be required by the Regional Office concerned.

A technical conference shall be held among the Contractor/Permit Holder/Lessee, Regional Office concerned and appropriate experts for the final evaluation of the programs. During the technical conference, the Contractor/Permit Holder/Lessee shall present the highlights of its programs, while the Regional Office

concerned and the concerned experts shall present their comments on the submitted programs. If the proposed programs conform to the standards, these shall be duly approved by the Regional Office concerned through the issuance of a Certificate of Approval. The Regional Office shall provide the Bureau with a copy each of the approved SDMP and Programs on the Development of Mining Technology and Geosciences and on IEC, and the Certificates of Approval, within seven (7) days upon approval.

If the Programs require some revisions/additional information, the Contractor/Permit Holder/Lessee shall be required to address the deficiencies within ten (10) days from the date of the technical conference. Should the Contractor/Permit Holder/Lessee fail to address the deficiencies within the prescribed period, the Programs shall be returned to the proponent for revision/rectification and resubmission.

Within thirty (30) days from the approval of the SDMP, the Contractor/ Permit Holder/Lessee shall enter into a Memorandum of Agreement (MOA) with the host and neighboring communities as represented by the Barangay(s)/Municipality(ies) concerned and shall register the same in the Regional Office concerned, to ensure the implementation of the various P/P/As.

The Contractor/Permit Holder/Lessee shall provide each of the LGUs concerned and the host and neighboring communities with a copy each of the approved programs within five (5) days after the registration of the approved Contract/Permit or five (5) days after receipt of the order approving the Declaration of Mining Project Feasibility, as the case may be.

The succeeding 5-year SDMP and the Programs on Development of Mining Technology and Geosciences and on IEC shall be submitted to the Regional Office concerned not later than thirty (30) days from the completion of the preceding five (5)-year Programs.

A copy each of the succeeding approved Programs shall be provided to the LGUs concerned and the host and neighboring communities within five (5) days from its approval.

Based on the approved Programs and for effective implementation of the same, Annual Programs shall be submitted, at least thirty (30) days prior to the beginning of every calendar year, to the Regional Office concerned, for approval and implementation the following year. The Regional Office concerned shall furnish the Bureau with the approved annual Programs within seven (7) days from its approval.

A copy of the CDP is a mandatory requirement for the acceptance of the following applications:

1. Exploration Permit renewal
2. Mineral Agreement – renewal of Exploration Period
3. FTAA - renewal of the Exploration Period or application for Pre-Feasibility/Feasibility Period

Provided, That an approved CDP is required prior to commencement of the implementation of the approved Exploration Work Program under the renewed Exploration Permit/ Exploration Period or approved Pre-Feasibility/Feasibility Period.

The Bureau shall retain oversight function over the evaluation, approval and implementation of the Programs.

Detailed guidelines in the preparation of and on compliance with the different Programs shall be prescribed by the Secretary through the Director.

### **Section 136-C. Organization of Community Relations Office**

The Contractor/Permit Holder/Lessee shall incorporate in its organizational structure a Community Relations Office (CRO) that is primarily tasked to marshal the resources needed and serves as facilitator/coordinator for the successful implementation of the SDMP, and the Programs on Development of Mining Technology and Geosciences and on IEC. A Community Relations Officer (ComRel) shall head the CRO and shall be reporting directly to the highest company on-site official. The ComRel must be a graduate of any social science course, or any person with experience and training on community development work and, preferably, with strong knowledge of the local culture.

During the Exploration Stage, the Permittee/Contractor may hire and/or designate community development professional(s) and/or community liaison officer(s) to ensure the effective implementation of the CDP.

### **Section 136-D. Monitoring and Auditing of Annual SDMP and Annual Programs on Development of Mining Technology and Geosciences and on IEC and CDP**

Monthly internal monitoring of the Annual SDMP (ASDMP) shall be done jointly by the CRO and representatives of the host and neighboring communities to determine the level of implementation of the P/P/As in accordance with the ASDMP.

The CRO shall provide the Regional Office concerned with the quarterly reports of accomplishments on the implementation of ASDMP, Annual Program on the Development of Mining Technology and Geosciences and Annual Program on IEC. It shall likewise prepare and submit annual report to the Regional Office concerned, copy furnished the Bureau.

The Regional Office concerned shall conduct semi-annual monitoring of the implementation of the approved programs and submit its monitoring report(s) to the Bureau as basis for periodic audits.

An annual status report on the implementation of the CDP shall be submitted to the Regional Office concerned, subject to periodic monitoring/audit.

### **Section 136-E. Review and Evaluation of the Approved Programs**

On the initiative of the Bureau, Regional Office concerned, Contractor/Permit Holder/Lessee and/or the host and neighboring communities, the approved SDMP and Programs on Development of Mining and Mineral Processing Technologies and Geosciences and on IEC can be reviewed and/or revised during their period of coverage to account for changes in the nature and cost of activities: *Provided*, That prior to the end of the five-year term of the approved Programs, they shall be subject to performance review by the Bureau to determine and measure the impact of the various Programs, the results of which shall serve as an integral guide in the preparation of the new Programs.

### **Section 136-F. Penalties**

Contractor/Permit Holder/Lessee found not implementing its approved SDMP

and Programs on Development of Mining Technology and Geosciences and on IEC, or operating without such approved Programs shall, on the first offense, be liable to a fine not exceeding Five Thousand Pesos (PhP5,000.00). A succeeding offense shall be sufficient ground to suspend its mining/milling operations in the mining areas, in addition to a fine not exceeding Five Thousand Pesos (PhP5,000.00).

*Provided*, That approved Programs shall be deemed revoked if the mining operation of the Contractor/Permit Holder/Lessee is suspended or stopped for a period of at least two (2) consecutive years.

### **Section 137. Contribution to the Advancement of Mining Technology and Geosciences**

As part of its obligations under the mining contract/permit, the Contractor/Permit Holder/Lessee shall have the following responsibilities as contribution to the advancement of mining technology and geosciences:

- a. In the course of its operations, produce geological, geophysical, geochemical and other types of maps and reports that are appropriate in scale and which in format and substance are consistent with the internationally accepted standards and practices. Such maps shall be made available to the scientific community in the most convenient and cost effective forms, subject to the condition that the Contractor/ Permit Holder/Lessee may delay release of the said information for a reasonable period of time which shall not exceed three (3) years;
- b. Systematically keep the data generated from the Contract/Mining Area such as cores, assays and other related information, including economic and financial, and may make them accessible to students, researchers and other persons responsible for developing mining technology and geosciences subject to the condition that the Contractor/Permit Holder/Lessee may delay release of data to the science and technology community within a reasonable period of time which shall not exceed three (3) years; and
- c. Replicate the data, maps and reports cited in Paragraphs (a) and (b) and furnish the Bureau for archiving and systematic safekeeping which shall be made available to the science and technology community for conducting research and for undertaking other activities which contribute to the development of mining technology and geosciences and the corresponding manpower training and development: *Provided*, That the release of such data, maps and the like to the science and technology community shall be similarly constrained in accordance with Paragraphs (a) and (b) above.

### **Section 138. Use of Indigenous Goods, Services and Technologies**

To the maximum extent compatible with efficient mining operations, the Contractor/Permit Holder/Lessee shall give preference to products, services and technologies produced and offered in the Philippines of comparable quality. In particular, the Contractor/Permit Holder/Lessee shall give preference to Filipino construction enterprises, construct buildings utilizing materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation, and purchase Philippine household equipment, furniture and food.

### **Section 139. Transfer of Social Assets and Services**

The Contractor/Permit Holder/Lessee shall, within one (1) year from the

abandonment, cancellation or termination of the Agreement/Permit/Lease and consistent with the social aspect of the Final Mine Rehabilitation and/or Decommissioning Plan, remove all improvements deemed no longer socially usable after consultation with LGU(s)/community(ies) concerned, on the mining premises found on public land(s). Otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper Government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring communities.

#### **Section 140. Hiring of Foreigners for Technical and Specialized Work During Mining Operations**

All holders or applicants for Mineral Agreement/FTAA/Exploration Permit/MPP shall give preference to Filipino citizens in all types of mining employment within the country in so far as such citizens are qualified to perform the corresponding work with reasonable efficiency and without hazard to the safety of the operations. They, however, shall not be hindered from hiring employees of their own selection, subject to the provisions of Commonwealth Act No. 613, as amended, for technical and specialized work which, in their judgment and with the approval of the Director, requires highly-specialized training or experience in exploration, development or utilization of mineral resources: *Provided*, That in no case shall each employment exceed five (5) years or the payback period of the project as stated in the approved original feasibility study, whichever is longer: *Provided, further*, That each foreigner employed as mine manager, vice president for operations or in an equivalent managerial position in charge of mining, milling, quarrying or drilling operations shall be subject to the provision of Section 141 hereof: *Provided, finally*, That each foreigner employed in a position lower than the managerial level shall be hired on a consultancy basis.

#### **Section 141. Requirements for the Employment of Foreigners in Mining Operations**

Foreigners that may be employed in mining operations shall:

- a. Present evidence of his/her qualifications and work experience related to his/her position; or
- b. Pass the appropriate Government licensure examination; or
- c. In special cases, may be permitted to work by the Director for a period not exceeding one (1) year: *Provided*, That if reciprocal privileges are extended to Filipino nationals in the country of domicile, the Director may grant waivers or exemptions;
- d. Secure working permits/visa from other Government agency(ies) concerned; and
- e. Submit other supporting papers deemed necessary by the Secretary/Director/Regional Director concerned.

### **CHAPTER XV MINE SAFETY AND HEALTH**

#### **Section 142. Responsibilities of a Contractor/Permittee/Lessee/Permit Holder and Service Contractor**

All Contractors, Permittees, Lessees, Permit Holders and Service Contractors shall strictly comply with all the rules and regulations embodied under Department Administrative Order No. 2000-98, otherwise known as the "Mine Safety and Health Standards."

For new technologies/equipment in mining and milling operations that are not covered under the provisions of Department Administrative Order No. 2000-98, the Bureau shall formulate the appropriate rules and regulations to govern the same after due consultation with all concerned parties.

#### **Section 143. Accreditation of Service Contractors**

All Certificates of Accreditation issued to Service Contractors by the Bureau and its Regional Offices are hereby revoked: *Provided*, That all Service Contractors may provide services in mining operations without undergoing the accreditation process, subject to compliance with applicable laws, rules and regulations.

#### **Section 144. Submission of Safety and Health Program**

The Regional Director shall require a Contractor/Permittee/Lessee/Permit Holder to submit a Safety and Health Program covering its area of operations within fifteen (15) working days before the start of every calendar year with the following terms and conditions:

- a. The safety and health program shall include, but shall not be limited to, the following:
  1. Leadership and Administration;
  2. Organizational Rules;
  3. Management and Employee Training;
  4. Good Housekeeping;
  5. Health Control and Services;
  6. Provision for Personal Protective Equipment;
  7. Monitoring and Reporting;
  8. Environmental Risk Management including an Emergency Response Program; and
  9. Occupational Health and Safety Management
  
- b. For the entire duration of the mining contract or permit, the Contractor/Permittee/Lessee/Permit Holder shall require its Service Contractor to submit to the former a Safety and Health Program: *Provided*, That the former shall be responsible in the strict monitoring of the Safety and Health Program and ensuring the compliance with existing rules and regulations of the latter: *Provided, further*, That the former shall likewise be held liable for violations of existing safety and health rules and regulations committed by the latter: *Provided, finally*, That the safety records of the Service Contractor shall be included in a separate form in the safety record of the Contractor/Permittee/Lessee/Permit Holder.

#### **Section 145. Mine/Quarry Safety Inspection and Audit**

The Regional Director or his/her duly authorized representative shall have exclusive jurisdiction over the conduct of safety inspection of all installations, surface or underground, in mining/quarrying operations and monitoring of the safety and health program in a manner that will not impede or obstruct work in progress of a Contractor/Permittee/Lessee/Permit Holder and shall submit to the Director a quarterly report on their inspection and/or monitoring activities: *Provided*, That the Director shall undertake safety audit annually or as may be necessary to assess the effectiveness of the safety and health program.

## **Section 146. Registration of Safety Engineer and Safety Inspector**

All Safety Engineers and Safety Inspectors of mining/quarrying operations shall be duly registered with the Regional Office and the corresponding permit shall be issued for this purpose (MGB Form Nos. 15-1, 15-2 and 15-3).

## **Section 147. Qualifications for Registration as Safety Engineer or Safety Inspector**

- a. For Registration as Safety Engineer:
  1. For Permanent Registration –
    - i. A duly registered and currently licensed Mining Engineer with at least one (1) year supervisory experience in mining/quarrying operations and/or mine safety work; or
    - ii. A duly registered and currently licensed Engineer, Geologist or Chemist with at least five (5) years experience in mining/quarrying operations and/or mine safety work.
  2. For Temporary Registration -

Any duly registered and currently licensed Engineer, Geologist or Chemist with at least two (2) years experience as Safety Inspector preferably in the employ of the company.
- b. For Registration as Safety Inspector:
  1. For Permanent Registration -
    - i. A graduate in any Engineering, Geology or Chemistry course with at least one (1) year experience in safety work or two (2) years experience in mining operations; or
    - ii. A college undergraduate in any Engineering, Geology or Chemistry course with at least two (2) years experience in safety work or three (3) years experience in mining operations; or
    - iii. At least high school graduate with four (4) years experience in safety work or five (5) years experience in mining operations.
  2. For Temporary Registration as Safety Inspector -
    - i. A graduate in any Engineering, Geology or Chemistry course with one (1) year experience in mining operation; or
    - ii. A college graduate in any Engineering, Geology or Chemistry course with at least one (1) year experience in safety work or two (2) years experience in mining operation; or

- iii. At least high school graduate with two (2) years experience in safety work or three (3) years experience in mining operation.

**Section 148. Mandatory Requirements for the Issuance of Safety Engineer/Inspector Permit**

Three (3) copies of the following requirements shall be submitted before the issuance of Safety Engineer/Inspector Permit:

- a. Duly filled-up application form;
- b. Certified photocopy of college diploma or high school diploma, or pertinent credentials, as the case may be;
- c. Certificate of employment (present and previous), signed under oath;
- d. Latest photograph, 2 in. x 2 in.; and
- e. Registration fees in the amount specified under Annex 5-A.

**Section 149. Term of Temporary Safety Engineer/Inspector Permit**

A Temporary Safety Engineer/Inspector Permit shall have a term of one (1) year from the date of issuance thereof, renewable every year.

**Section 150. Permit for Electrical/Mechanical Installations**

No electrical and/or mechanical installation shall be undertaken inside a mining/quarrying operation compound without a permit issued for the purpose by the Regional Director concerned.

**Section 151. Applications and Plans for Electrical/Mechanical Installations**

- a. Application for such installation shall be filed by the Contractor/Permit Holder or his/her authorized representative with the Regional Office concerned accompanied by plans and specifications;
- b. Plans shall be prepared in accordance with the provisions of Electrical Engineering Law with respect to electrical installation and Mechanical Engineering Law with respect to mechanical installation, and such plans must conform to the rules and regulations which have been or may be formulated in pursuance of the above-mentioned laws;
- c. Application for alteration and/or addition of any electrical or mechanical installations shall be filed in the same manner as for a new installation; and
- d. Authority to install shall be issued only after the plans have been cleared and certified to conform with the rules and regulations of the above-mentioned laws.

**Section 152. Conditions of an Electrical/ Mechanical Installations Permit**

- a. Upon completion of installation but prior to regular operation, an inspection shall be conducted by the Regional Director concerned or his/her duly authorized representative;

- b. If upon inspection by the engineers of the Regional Office concerned, the installation is found to be in accordance with the plans and specifications, a written permit good for a period of one (1) year shall be issued; and
- c. Application for renewal of an Electrical/Mechanical Permit shall be filed by the Contractor/Permit Holder or his/her authorized representative with the Regional Office concerned at least thirty (30) calendar days before the expiration date of said Permit.

### **Section 153. Charges**

The applicant shall bear all expenses in the field inspection including the cost of transportation of the field inspectors from their official station to the mine/quarry and back. In addition, an inspection fee as provided for by applicable laws, rules and regulations shall be charged to the applicant.

### **Section 154. Power to Issue Orders**

- a. As the need arises, the Regional Director concerned shall require the Contractor/Permittee/ Lessee/Permit Holder and Service Contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with the provisions of Department Administrative Order No. 2000-98; and
- b. The same may summarily suspend, wholly or partially, any activity related to mining/quarrying operations, in case of imminent danger to life or property, until the danger is removed, or until appropriate measures are taken by the Contractor/Permittee/Lessee/Permit Holder/Service Contractor.

### **Section 155. Report of Accidents**

- a. In case of any incident or accident, causing or creating the danger of loss of life or serious physical injuries, the person in charge of the operations shall report the same to the Regional Office concerned where the operations are situated within twenty-four (24) hours, copy furnished the Bureau. Failure to report the same without justifiable reason shall be cause for the imposition of administrative sanctions prescribed under Department Administrative Order No. 2000-98; and
- b. The Contractor/Permittee/Lessee/Permit Holder/ Service Contractor shall furnish the Bureau/Regional Office concerned with the following:
  - 1. Monthly Contractor's/Permittee's/Lessee's/ Permit Holder's/Service Contractor's Report of Accident or Sickness (MGB Form No. 15-4);
  - 2. Monthly General Accident Report (MGB Form No. 15-5); and
  - 3. Minutes of the Central Safety Committee meetings.

### **Section 156. Right to Possess and Use Explosives**

A Contractor/Permittee/Lessee/Permit Holder/Service Contractor shall have the right to possess and use explosives within its contract/ permit/lease area as may

be necessary for its mining/quarrying operations upon approval of an application by the Philippine National Police through the recommendation by the Regional Office concerned.

**Section 157. Requirements in the Application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for Mining/Quarrying Purposes**

No application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for mining/quarrying purposes (MGB Form No. 15-6) shall be accepted for filing with the Regional Office concerned unless accompanied by a processing/application fee in accordance with the schedule in Annex 5-A and accompanied by four (4) copies of supporting documents prescribed in Annex 15-A.

**Section 158. Field Inspection of Proposed Storage Facilities (Magazines) and Verification of Blasting Scheme**

Immediately after the filing of application for Purchaser's License, the Regional Director concerned shall authorize the conduct of field inspection of storage facilities to determine whether or not the location and specifications of magazines are in accordance with those prescribed under Department Administrative Order No. 2000-98 and to verify the proposed blasting scheme(s). The applicant shall bear all expenses in the field verification and the cost of transportation of the field investigators from their Official Station to the mine/quarry site and return.

**Section 159. Approval of the Applications for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for Mining/Quarrying Purposes**

Upon satisfaction of all the requirements stated in Section 157 hereof, the application for Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License for mining/quarrying purposes shall be endorsed by the Regional Office concerned to the Philippine National Police for consideration/approval.

**Section 160. Filing of Application for Amendment and Renewal of Purchaser's License**

Application for amendment of Purchaser's License shall be filed and acted upon in the same manner as for a new Purchaser's License.

Application for renewal of Purchaser's License shall be filed by the holder with the Regional Office concerned at least thirty (30) calendar days before the expiration date of such License.

**Section 161. Right of Inspection**

The Director reserves the right to inspect the mine/quarry explosives magazines and audit records of explosive transactions at the expense of the Purchaser's License holder and at specified rates as may be deemed necessary: *Provided*, That failure to immediately implement, without justifiable reasons, the

recommendation(s) to ensure the proper safekeeping and maintenance of explosives and its magazines shall cause for the imposition of administrative sanctions as provided for in Department Administrative Order No. 2000-98.

#### **Section 162. Submission of Reports by Purchaser's License Holders**

Holders of Purchaser's Licenses shall be required to keep records of daily explosive transactions and submit to the Director reports of their explosive transactions (MGB Form No. 15-7) and explosives and accessories consumption reports (MGB Form No. 15-8) within fifteen (15) working days after every calendar month.

#### **Section 163. Mine Labor**

No person under sixteen (16) years of age shall be employed in any phase of mining operations and no person under eighteen (18) years of age shall be employed in an underground mine.

The Bureau shall coordinate with the Department of Labor and Employment in the determination of hazardous operations, processes and/or activities in mining industry in relation to the employment of minors.

#### **Section 164. Mine Supervision**

All mining and quarrying operations that employ more than fifty (50) workers shall have at least one (1) licensed Mining Engineer with at least five (5) years of experience in mining operations and one (1) registered foreman.

#### **Section 165. Coverage of the Magna Carta for Public Health Workers**

All personnel of the Bureau, its Regional Offices and other Department Bureaus/Offices, particularly the EMB, involved in the actual implementation of mines safety, health and environmental laws, rules and regulations shall be covered and entitled to the allowances and other benefits under R.A. No. 7305, otherwise known as the "Magna Carta of the Public Health Workers." As such, funding for this purpose shall be automatically included in the regular budget of the Bureau/Department.

### **CHAPTER XVI ENVIRONMENTAL PROTECTION**

#### **Section 166. General Provision**

Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Department adopts the policy that mining activities attendant to permits, agreements and leases shall be managed in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country and the sustainable development objectives and responsibilities as provided for in these implementing rules and regulations.

#### **Section 167. Environmental Protection Objectives**

The environmental protection objectives include the following:

- a. Maintenance of sustainable environmental conditions at every stage of the mining operation;

During every stage of the mining operation, as well as after the termination stage thereof, all open pit work areas, underground workplaces, mine waste and tailings impoundment systems, quarry sites and other mining-disturbed landforms, including those disturbed during exploration, shall be progressively rehabilitated to a condition prescribed in the ECC and/or EPEP.

- b. Establishment of a functional post-disturbance land use capability;

Minesite decommissioning and rehabilitation shall aim to establish a land use capability that is functional and proximate to the land use prior to the disturbance of the mine area, unless other more beneficial land uses are predetermined and agreed in partnership with local communities and LGUs.

- c. Preservation of downstream freshwater quality;

The quality of surface and ground water emanating from the exploration or contract/lease areas shall be maintained at acceptable levels, as determined from the actual and/or potential downstream water uses.

- d. Preservation of sea water quality and natural habitats for marine life;
- e. Prevention of air and noise pollution; and
- f. Respect for the traditional and/or sustainable management strategies concerning natural resources of ICCs and other communities.

#### **Section 167-A. Certificate of Environmental Management and Community Relations Record (CEMCRR)**

A CEMCRR is one of the requirements in the approval of Mineral Agreements, FTAA, Quarry or Commercial/ Industrial Sand and Gravel Permit and MPP. A CEMCRR is the applicant's proof of satisfactory environmental management and community relations in its past mineral resource use ventures.

The CEMCRR shall be issued by the Regional Office concerned upon compliance with the following:

1. Payment of the processing fee; and
2. Satisfactory environmental management and community relations record from Regional Office(s) concerned of the Bureau and the EMB.

Failure on the part of office/s concerned to act on the request for environmental management and community relations record within fifteen (15) working days from the date of receipt of a request, without justifiable reasons, will not prevent the issuance of a CEMCRR by the Regional Office concerned.

A Certificate of Exemption (COE) will be issued by the Regional Director concerned, in lieu of the CEMCRR, to an applicant with no past mineral resource use or mining related ventures.

#### **Section 168. Environmental Work Program (EWP)**

Applicants for Exploration Permits, as well as those for Mineral Agreements and FTAA's which shall undertake exploration activities, shall submit to the Regional Office(s) concerned an EWP (MGB Form No. 16-1 or MGB Form No. 16-1A) detailing the environmental impact control and rehabilitation activities proposed during the exploration period including the costs to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments.

The EWP shall provide a description of the expected and considered acceptable impacts and shall set out the environmental protection and enhancement strategies based on best practice in environmental management in mineral exploration. It shall include a statement on post-exploration land use potential for various types of disturbed land and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on acceptable, practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

The applicants shall furnish the *Sangguniang Panlalawigan* concerned with the EWP. A status report as to compliance with the EWP shall be submitted to the Bureau/Regional Office concerned within thirty (30) days from the end of six (6) months after the approval of the EWP and every six (6) months thereafter.

Detailed guidelines in the preparation of and on compliance with the EWP shall be prescribed by the Secretary through the Director and shall be intended to assist the development of project specific environmental management practices.

#### **Section 169. Environmental Protection and Enhancement Program**

An EPEP (MGB Form No. 16-2) shall be required to provide the operational link between the environmental protection and enhancement commitments under these implementing rules and regulations, as well as those stipulated in the ECC under P.D. 1586 and the Contractor's plan of mining operation: *Provided*, That submission of the EPEP shall complement and not substitute for the requirement for an ECC.

EPEPs are required in the following cases:

- a. Mineral Agreement or FTAA Contractors and other Permit Holders shall submit, within thirty (30) calendar days upon receipt of the ECC, an EPEP covering all areas to be affected by mining development, utilization and processing under their contracts. Environmental impact control and rehabilitation activities proposed during the life-of-mine shall include costings to enable sufficient financial resources to be allocated to meet the life-of-mine commitments. Such financial requirements of the EPEP shall be the basis for the lodging of the MRF; and
- b. Existing MPSA or FTAA Contractors with ECCs and operating mines and quarries may submit, within sixty (60) calendar days from the effectivity of these implementing rules and regulations, an EPEP covering all areas to be affected by development, utilization and processing under their contract and/or lease. Environmental impact control and rehabilitation activities proposed during the remaining life-of-mine period shall include costings to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments. Such financial requirements of the EPEP shall be the basis for the lodging of the MRF.

The EPEP shall provide a description of the expected and considered acceptable impacts and shall set out the life-of-mine environmental protection and enhancement strategies based on best practice in environmental management in mining. It shall include a statement on post-mining land use potential for various types of disturbed land (inter alia, pits, waste dumps, tailings-impounding structures and infrastructure sites) and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

The Contractor shall allocate for its initial environment-related capital expenditures an amount that shall approximate ten percent (10%) of the total capital/project cost or such other amount depending on the environmental/ geological condition, nature and scale of operations and technology employed. Initial environment-related capital expenditures may include environmental studies and design cost, waste area preparation, tailings/slime containment/disposal system, mine waste disposal system, wastewater/acid mine drainage treatment plants, dust control equipment, air pollution control facilities, drainage system and other environment-related mitigating measures and capital expenditures.

Detailed guidelines in the preparation of and on compliance with the EPEP shall be prescribed by the Secretary through the Director and shall be intended to assist the development of project specific environmental management practices.

#### **Section 170. Processing and Approval of the EPEP**

The Contractor/Permit Holder shall submit at least ten (10) legible copies of the EPEP and a complete electronic file in computer diskettes to the MRF Committee (described in Sections 182 and 183 hereof) through the Regional Office concerned for review.

The MRF Committee shall conduct a preliminary evaluation on the submitted document as to its form and substance and may impose additional requirements and documentation which are deemed necessary. The MRF Committee shall endeavor to complete the evaluation and processing of the EPEP within thirty (30) calendar days from receipt thereof: *Provided*, That the EPEP of Industrial Sand and Gravel Permit and Quarry Permit holders/applicants shall be evaluated and approved/disapproved by the MRF Committee in the Region concerned.

All preliminary evaluations shall be consolidated and forwarded to the Contingent Liability and Rehabilitation Fund (CLRF) Steering Committee (described in Sections 193 and 194 hereof) through the Bureau for final evaluation and approval. The EPEP shall be acted upon by the CLRF Steering Committee within thirty (30) calendar days from receipt thereof from the MRF Committee. The Contractor/Permit Holder shall provide each of the LGUs concerned with a copy of the approved EPEP not later than thirty (30) calendar days prior to the intended date of commencement of mining operation.

Any change in the approved environmental protection, enhancement and rehabilitation strategies, which entails a variance of minus twenty percent (-20%) of the financial requirements, shall require a submission of a revised EPEP by the Contractor/Permit Holder to the MRF Committee for preliminary evaluation and to the CLRF Steering Committee for final evaluation and approval. The MRF and CLRF Steering Committees shall act on the revised EPEP within the period of assessment as

set forth in the preceding paragraphs. The Contractor/Permit Holder shall provide each of the LGUs concerned with a copy of the approved revised EPEP not later than thirty (30) calendar days prior to the intended date of effecting the revised EPEP.

#### **Section 171. Annual Environmental Protection and Enhancement Program**

To effectively implement the approved EPEP, an AEPEP (MGB Form No. 16-3) shall be submitted to the Bureau/Regional Office concerned at least thirty (30) calendar days prior to the beginning of every calendar year. Such program shall be based on the approved EPEP and shall be implemented during the year for which it shall be submitted. It shall include, but shall not be limited to, exploration, development, utilization, rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out areas, waste dumps (acid mine drainage control), tailings-covered areas, aquaculture, watershed development and water conservation and socioeconomic development.

A Contractor/Permit Holder shall allocate for its annual environment-related expense a percentage based on the AEPEP which may approximate a minimum of three to five percent (3-5%) of its direct mining and milling costs depending on the environment/geologic condition, nature and scale of operations and technology employed.

#### **Section 172. Penalties**

Contractors/Permit Holders found operating a mining project without an approved EPEP/revised EPEP shall suffer the penalty prescribed in the Penal Provisions of the Act.

#### **Section 173. Organization of a Mine Environmental Protection and Enhancement Office (MEPEO)**

All Contractors/Permit Holders shall incorporate in their mine organization structures a "Mine Environmental Protection and Enhancement Office (MEPEO), which shall set the level of priorities and marshal the resources needed to implement environmental management programs. The MEPEO shall be headed preferably by either a licensed Mining Engineer, Geologist or Metallurgical Engineer or by an Environmental Engineer with at least five (5) years experience in actual mining environment work and shall be responsible for addressing the environmental concerns of the Contractor/Permit Holder through adequate and sustainable programs.

#### **Section 174. Environmental Monitoring and Audit**

To ensure and check performance of and compliance with the approved EPEP/AEPEP by the Contractors/Permit Holders, an MMT, as described in Section 185 hereof, shall monitor every quarter, or more frequently as may be deemed necessary, the activities stipulated in the EPEP/AEPEP. The expenses for such monitoring shall be chargeable against the Monitoring Trust Fund of the MRF as provided for in Section 181 hereof. The environmental monitoring reports shall be submitted by the MMT to the MRF Committee and shall serve as part of the agenda during its meetings as mentioned in Section 184 hereof. Said reports shall also be submitted to the CLRF Steering Committee to serve as one of the bases for the annual environmental audit it shall conduct.

An independent environmental audit shall be undertaken regularly by the Contractor to identify environmental risks affecting mining operations to serve as a basis for the development of an effective environmental management system. The MMT,

MRF Committee and CLRF Steering Committee shall be furnished with the results of the said audit.

#### **Section 175. Power to Issue Order**

The Regional Director in consultation with the EMB and/or Environmental Management and Protected Areas Services (EMPAS) of the Department Regional Office shall require the Contractor/Permittee/ Lessee/Permit Holder to remedy any practice connected with mining or quarrying operations which is not in accordance with anti-pollution laws and regulations. The Regional Director may summarily suspend mining or quarrying operations in case of imminent danger to the environment, until the danger is removed or appropriate measures are taken by the Contractor/Permittee/ Lessee/Permit Holder.

In situations where mining or quarrying operations are actually endangering the environment or pose imminent danger thereto, the EMB, Pollution Adjudication Board (PAB) or EMPAS may take the remedial measures it may deem imperative to avert such danger and immediately submit a report thereon to the Director/Regional Director concerned for appropriate action.

#### **Section 176. Presidential Mineral Industry Environmental Awards**

A Presidential Mineral Industry Environmental Awards may be given to exploration or operating mining companies based on their yearly environmental performance and accomplishments. Detailed guidelines in the determination of the recipients of the Presidential Mineral Industry Environmental Awards shall be formulated by the Secretary through the Director.

### **CHAPTER XVII ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

#### **Section 177. Processing of the Environmental Impact Statement (EIS) and the Initial Environmental Examination (IEE)**

The EMB/Department Regional Office, in coordination with the Bureau, shall take primary responsibility for the acceptance, processing, evaluation and monitoring of the EISs and IEEs. The EMB/EMPAS shall have the authority to recommend to the Secretary/Regional Executive Director (RED) any appropriate action on applications for an ECC.

#### **Section 178. EPEP in Relation to ECC**

The preparation, submission and approval of EPEP shall be incorporated as a mandatory conditionality in the ECC being issued by the Secretary/RED or their duly authorized representatives to a Contractor/Permit Holder. The ECC shall be the basis in the preparation of EPEP.

The Bureau and the EMB shall enter into a Memorandum of Understanding to harmonize the promulgation of these implementing rules and regulations and the EIS system.

#### **Section 179. Penalties**

Contractors/Permit Holders found operating a mining project without an ECC or wilfully violating and grossly neglecting to abide by the terms and conditions of the ECC shall suffer the penalty prescribed in the Penal Provisions of the Act and other pertinent

environmental laws.

## **CHAPTER XVIII CONTINGENT LIABILITY AND REHABILITATION FUND**

### **Section 180. Contingent Liability and Rehabilitation Fund**

Cognizant of the need to ensure just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effect a mining operation or activity may cause, the Department through the Bureau shall institutionalize an environmental guarantee fund mechanism to be known collectively as the CLRF.

The CLRF shall be in the form of the MRF, the MWT Fees and the Final Mine Rehabilitation and Decommissioning Fund and shall be administered by the CLRF Steering Committee as provided for in Section 193 hereof.

### **Section 181. Mine Rehabilitation Fund**

An MRF shall be established and maintained by each operating Contractor/Permit Holder as a reasonable environmental deposit to ensure availability of funds for the satisfactory compliance with the commitments and performance of the activities stipulated in the EPEP/AEPEP during specific project phase. The MRF shall be deposited as a Trust Fund in a Government depository bank and shall be used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation.

The MRF shall be in two forms, namely:

- a. Monitoring Trust Fund (MTF). This Fund shall be initiated by the Contractor/Permit Holder and shall be deposited in a mutually acceptable Government depository bank for the exclusive use in the monitoring program approved by the MRF Committee.

The MTF shall be in cash and in an amount to be determined by the MRF Committee which shall not be less than the amount of One Hundred Fifty Thousand Pesos (PhP150,000.00) to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the monitoring team: *Provided*, That the Secretary shall be authorized to increase the said amount when national interest and public welfare so require, upon the recommendation of the Director. The Contractor/Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

Authorization for the disbursement from the MTF shall only be given by the designated Representatives of both the MRF Committee and the Contractor/Permit Holder. Replenishment of this amount shall be done quarterly to correspond to the expenses incurred by the monitoring team.

- b. Rehabilitation Cash Fund. The Contractor/ Permit Holder shall set up a Rehabilitation Cash Fund (RCF) for a designated amount to ensure compliance with the approved rehabilitation activities and schedules, including research programs, as defined in the EPEP/AEPEP. The RCF shall be equivalent to ten percent (10%) of the total amount needed to implement the EPEP or Five Million Pesos (PhP5,000,000.00), whichever is lower. The RCF shall be deposited as a Trust Fund in a mutually agreed Government depository bank: *Provided*, That said amount shall be deposited in four (4) equal quarterly deposits within fifteen (15) calendar days from the beginning of each quarter of the first year following the approval of the EPEP.

A request for withdrawal and disbursement from said amount(s) by the Contractor/Permit Holder shall be based on its EPEP/AEPEP and shall be submitted to the MRF Committee for consideration and approval, copy furnished the CLRF Steering Committee.

In the event of withdrawals from the RCF, the Contractor shall annually replenish the RCF so as to maintain the minimum required amount thereof.

Upon written notification by the Contractor/Permit Holder to the Chair of the MRF Committee that the mine has reached the end of its operating life, the RCF shall, after payment of all outstanding obligations, be terminated and the remaining amount therein, including interests, shall be returned to the Contractor/Permit Holder. In lieu thereof, the Final Mine Rehabilitation and Decommissioning Fund (FMRDF), as stipulated in Section 187-B of these rules and regulations, shall be utilized to fund all decommissioning and/or rehabilitation activities contained in the approved Final Mine Rehabilitation and/or Decommissioning Plan (FMR/DP) for the succeeding years until the objectives of mine closure have been achieved.

## **Section 182. The Mine Rehabilitation Fund Committee**

An MRF Committee shall be created in each Region where active mining operations exist and shall have the following duties and responsibilities:

- a. Conducts preliminary evaluation on the submitted EPEP and consults with credible experts, as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures: *Provided*, That the MRF Committee shall evaluate and approve/disapprove the submitted EPEP for Industrial Sand and Gravel Permit and Quarry Permit.
- b. Manages, operates, monitors and looks after the safety of the MRFs and FMRDFs and that shall be established and deposited in a Government depository bank in accordance with the provisions of these implementing rules and regulations;
- c. Resolves issues involving the progressive mine rehabilitation programs that shall be implemented;
- d. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- e. Ensures that the approved EPEPs/AEPEPs shall be strictly implemented by the Contractors/Permit Holders;
- f. Deputizes an MMT to serve as its monitoring arm with the Regional Office concerned taking the lead role;

- g. Monitors and evaluates the performance of the MMTs and reports its assessments to the CLRF Steering Committee;
- h. Ensures that the MTFs, RCFs and FMRDFs shall be kept separate and distinct from one another and maintains independent and specific books of records for all transactions of the said funds of each Contractor/Permit Holder;
- i. In the absence of fraud, bad faith or gross negligence on the part of the MRF Committee or any person acting on its behalf, the said Committee shall not be liable for any loss or impairment of the MRFs arising out or in connection with any act done or performed or caused to be done or performed by the said Committee pursuant to the provisions of these implementing rules and regulations;
- j. Prepares and submits to the Secretary/Director, within thirty (30) calendar days after the end of each year, an annual report of accomplishments, including audited financial statements and such periodic reports of activities as may be required; and
- k. Performs other functions as may be assigned by the Secretary/Director.

### **Section 183. Composition of the MRF Committee**

The MRF Committee shall be composed of the following:

- a. Regional Director as Chair;
- b. RED of the Department as Co-Chair;
- c. Regional Director of the EMB as Member;
- d. Representative of the Autonomous Regional Government, where this is applicable, as Member;
- e. Representative from the LGU as Member;
- f. Representative from the local NGOs and community organizations, including People's Organizations, church or civic organizations, as Member; and
- g. Representative of the Contractor/Permit Holder as Member.

In case the Regional Director and/or the RED could not personally attend a meeting or function of the MRF Committee, he/she shall designate or appoint a representative who shall be duly authorized in writing to have full power and authority to act in his/her behalf.

The Regional Office shall provide the technical, secretariat and administrative supports, as may be deemed necessary, to the Committee.

### **Section 184. Meetings of the MRF Committee**

The Committee shall hold quarterly meetings: *Provided*, That any member of the Committee may call a special meeting as he/she may deem necessary: *Provided, further*, That notices of the meetings stating the date, time, place and agenda therefore shall be sent by the Committee Chair or Co-Chair to all members at least ten (10) working days before the intended date of the meetings.

In all meetings, the presence of at least four (4) members shall constitute a quorum to conduct business. The meetings shall be presided by the Chair or, in his/her absence, by the Co-Chair. In the absence of the Chair and the Co-Chair, the meetings shall be presided by either of their representatives. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The presiding

officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

The Committee shall provide the CLRF Steering Committee with a copy of the minutes of its meetings within seven (7) working days after.

#### **Section 185. The Multipartite Monitoring Team (MMT)**

An MMT shall be deputized by the MRF Committee, as provided for in Section 182 hereof, to serve as the monitoring arm of said Committee and shall be composed of the following:

- a. Representative from Regional Office as Head;
- b. Representative from Department Regional Office as Member;
- c. Representative from the EMB Regional Office as Member;
- d. Representative of the Contractor/Permit Holder as Member.
- e. Representative from the affected community(ies) as Member;
- f. Representative from the affected ICCs, if any, as Member; and
- g. Representative from an environmental NGO.

The MMT may request the MRF Committee for technical assistance when deemed necessary. The Head of the MMT shall submit to the MRF Committee, at least five (5) working days before the scheduled regular meetings of the latter, a report on the status and/or result of its monitoring activities as provided for in Section 174 hereof, copy furnished the CLRF Steering Committee.

#### **Section 186. Disbursements from the MRF**

Withdrawal from the MRF shall be made by the Contractor/Permit Holder only with the written instruction to the bank issued by the MRF Committee authorizing the Contractor/Permit Holder to withdraw the amount from the MRF. The amount to be withdrawn shall be in accordance with the AEPEP and shall be approved by the MRF Committee, copy furnished the CLRF Steering Committee.

Any one of the following shall be authorized to issue the instruction to the bank on behalf of the MRF Committee:

- a. The Chair,
- b. The Co-Chair or
- c. The designated representative of either (a) or (b).

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of thirty (30) calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

#### **Section 187. Final Mine Rehabilitation/ Decommissioning Plan**

The FMR/DP or Mine Closure Plan shall be integrated in the EPEP submitted by Contractors/Permit Holders to the MRF Committee through the Regional Office and to the CLRF Steering Committee through the Bureau. Using risk-based methodologies/approaches, the FMR/DP shall consider all mine closure scenarios and shall contain cost estimates for the implementation of the FMR/DP, taking in consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others: *Provided*, That such estimates shall be based on the cost of having the decommissioning and/or rehabilitation works done by

third party contractors: *Provided, further,* That the estimates, on a per year basis, shall cover the full extent of work necessary to achieve the objectives of mine closure such as, but shall not be limited to, decommissioning, rehabilitation, maintenance and monitoring and employee and other social costs, including residual care, if necessary, over a ten-year period. The FMR/DP shall be subject to pre-evaluation by the MRF Committee and to final approval by the CLRF Steering Committee.

Detailed guidelines regarding the implementation of this Section shall be formulated by the Secretary through the Director.

#### **Section 187-A. FMR/DP in relation to ECC**

The submission and approval of a FMR/DP, in lieu of the Abandonment/Decommissioning Plan under Section 9.4 of Department Administrative Order No. 2003-30, shall be incorporated as a mandatory requirement in the ECC being issued by the DENR Secretary, EMB Director, or EMB Regional Director to Contractors/Permit Holders.

#### **Section 187-B. The Final Mine Rehabilitation and Decommissioning Fund**

In accordance with Section 71 of RA No. 7942 and Item f, Section 1 of Executive Order No. 270-A, a Final Mine Rehabilitation and Decommissioning Fund (FMRDF) shall be established by each operating Contractor/Permit Holder to ensure that the full cost of the approved FMR/DP is accrued before the end of the operating life of the mine. The FMRDF shall be deposited as a trust fund in a Government depository bank and shall be used solely for the implementation of the approved FMR/DP.

Annual cash provisions shall be made by Contractors/Permit Holders to a FMRDF based on the formula:

Annual Provision = Cost of Implementing the Approved FMR/DP x Percentage Required Per Table 1

Based on the expected mine life, the initial annual cash provision shall be made to the MRF Committee within sixty (60) days from the date of the FMR/DP's approval and every anniversary date thereafter: *Provided,* That, on application by the Contractor/Permit Holder, the MRF Committee may allow a later date for the payment of the first annual provision.

#### **Section 187-C. Disbursements from the FMRDF**

Withdrawal from the FMRDF shall be approved by the CLRF Committee upon recommendation by the MRFC based on the approved work and financial plan: *Provided,* That amounts incurred by the Contractor/Permit Holder for progressive rehabilitation/annual environmental and enhancement programs pursuant to its EPEP/AEPEP cannot be reimbursed or credited to the FMRDF and shall continue to be governed by relevant provisions of these implementing rules and regulations.

#### **Section 187-D. Progress Reporting**

The Contractor/Permit Holder shall submit a progress report, if applicable, containing details of fully, partially, and on-going rehabilitation activities relative to the implementation of the FMR/DP.

The report shall be submitted to the MRF Committee for review and evaluation within thirty (30) days from the end of the term of the preceding work and financial plan, if applicable. The results of the Committee's review and evaluation shall be integrated in the succeeding year's work and financial plan.

#### **Section 187-E. Review of the FMR/DP**

The FMR/DP shall be reviewed and/or revised at a date not exceeding two (2) years after its approval and every two (2) years thereafter. The FMR/DP may also be reviewed and/or revised whenever amendments are justified by changes in mining activities; the review and/or revision may be made on the Contractor's/Permit Holder's initiative or at the request of the Director/Regional Director concerned.

In conjunction with the review and/or revision of the FMR/DP, annual provisions to the FMRDF may be increased or decreased based on such factors as:

To credit progressive rehabilitation works undertaken by the Contractor/Permit Holder; and

To account for changes in the nature or cost of work to be done pursuant to the approved FMR/DP.

#### **Section 187-F. Final Relinquishment of Rehabilitated Areas**

The Contractor/Permit Holder shall prepare and submit a Final Rehabilitation Report with third party Environmental Audit (FRR with EA) for preevaluation by the MRF Committee and final approval by the CLRF Steering Committee, if, based on the assessment of the Contractor/Permit Holder, that the objectives of mine closure, as contained in the approved FMR/DP, have been achieved.

The MRF Committee and/or CLRF Steering Committee may, after due review and evaluation of the FRR with EA, conduct field validation of the reported accomplishments, recommend revision/s to the submitted report, and/or require additional rehabilitation works to be undertaken: *Provided*, That if residual care is still needed, the Contractor/Permit Holder shall submit a Site Management Plan detailing how the identified residual rehabilitation commitments are to be managed: *Provided, further*, That the CLRF Steering Committee shall issue a Certificate of Final Relinquishment to the Contractor/Permit Holder signifying approval of the FRR with EA and freeing the Contractor/Permit Holder from any further obligations insofar as the rehabilitated area/s are concerned.

Any remaining amount, based on the Contractor's/Permit Holder's total FMRDF annual provisions as well as MWTF payments, shall be released back to the Contractor/Permit Holder: *Provided*, That any shortfall in the amount needed to achieve the objectives of mine closure pursuant to the approved FMR/DP and to implement the Site Management Plan, shall be shouldered by the Contractor/Permit Holder.

#### **Section 188. Penalties**

Failure of the Contractor/Permit Holder to establish an MRF and an FMRDF shall be sufficient ground to suspend or cancel the mining operations in the areas under contracts.

## **Section 189. Mine Waste and Tailings Fees Reserve Fund**

Mine Waste and Tailings (MWT) fees shall be collected semiannually from each operating Contractor/Lessee/Permit Holder based on the amounts of mine waste and mill tailings it generated for the said period. The amount of fees collected shall accrue to a MWT Reserve Fund and shall be deposited in a Government depository bank to be used for payment of compensation for damages caused by any mining operations. The MWT Reserve Fund shall also be utilized for research projects duly approved by the CLRF Steering Committee which are deemed necessary for the promotion and furtherance of its objectives.

## **Section 190. Mine Waste and Tailings Fees**

The basic fees that shall accrue to the MWT Reserve Fund shall be PhP0.05/MT of mine waste produced and PhP0.10/MT of mill tailings generated from the mining operations except where such mine waste and mill tailings were utilized in the following manner:

- a. Filling materials for underground mine openings;
- b. Filling materials for surface mine openings: *Provided*, That such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- c. Filling materials for engineered tailings dams, roads and housing areas: *Provided*, That such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative: *Provided, further*, That those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay PhP50.00/MT without prejudice to other penalties and liabilities the Contractor/Lessee/Permit Holder shall be subject to under other existing laws, rules and regulations: *Provided, finally*, That said amount shall accrue to the MWT Reserve Fund;
- d. Concreting and manufacture of concrete products; and
- e. Mine waste impounded for future use: *Provided*, That a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: *Provided, further*, That said materials shall be utilized for its beneficial use within a period of two (2) years. Mine waste materials, which are not utilized within the two-year period, shall be charged the corresponding fee of PhP0.05/MT. Non-submission of the work program shall mean disqualification from exemption from payment of fees.

Mining companies utilizing engineered and well-maintained mine waste and tailings disposal systems with zero-discharge of materials/effluent and/or with wastewater treatment plants which consistently meet Department standards shall also be exempted from payment of MWT fees.

The Secretary, upon the recommendation of the Director, is authorized to increase the said fees when national interest and public welfare so require.

## **Section 191. Payment of Mine Waste and Tailings Fees Due**

MWT fees shall be payable to the Bureau within forty-five (45) calendar days after the end of each semester. They shall be based on the sworn semi-annual report

(MGB Form No. 18-1) that shall be submitted to the Bureau, copy furnished the Regional Office concerned, by each operating Contractor/Lessee/Permit Holder stating, among others, the following:

- a. The amounts of mine waste and/or mill tailings produced, contained/stored/impounded and/or utilized; and
- b. The manner by which the mine waste and/or mill tailings produced was utilized.

Contractors/Lessee/Permit Holders with no mine waste nor mill tailings generated shall likewise submit sworn semi-annual reports stating that for the said period no such materials were generated from their operations.

### **Section 192. Penalties**

Non-submission of semi-annual reports shall mean non-availment of the exemption from payment of MWT fees and a penalty of PhP5,000.00.

Failure to comply with payments of the MWT fees provided under Sections 190 and 191 hereof shall mean a ten percent (10%) surcharge on the principal amount for every month of delay.

The Contractor/Lessee/Permit Holder shall be duty bound to pay for damages incurred due to previously exempted mine waste and tailings as described in Section 190 hereof.

Payments for the mine waste and tailings generated, which were previously requested for exemption from payment of fees but were denied based on the verification report, shall be remitted to the Bureau within sixty (60) calendar days upon receipt of notice. Failure to comply with the said provision shall mean a ten percent (10%) surcharge on the principal amount for every month of delay.

### **Section 193. The Contingent Liability and Rehabilitation Fund Steering Committee**

An Interagency CLRF Steering Committee shall be created and shall have the following duties and responsibilities:

- a. Evaluates and approves/disapproves the submitted EPEP, FMR/DP, and consults with credible experts and advisory body(ies), as may be required, to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- b. Monitors the MRFs that shall be established and deposited in a Government depository bank in accordance with the provisions of these implementing rules and regulations;
- c. Monitor the FMRDFs that shall be established pursuant to these rules and regulations;
- d. Resolves issues involving the final mine rehabilitation and decommissioning that shall be implemented;
- e. Hires credible experts to do independent studies and researches on the environmental, engineering and sociocultural impacts of the projects in order to assist it in making judicious decisions;
- f. Monitors and evaluates the performance of the MRF Committees;
- g. Administers the Mine Waste and Tailings Fees Reserve Fund;
- h. Evaluates and decides on all applications for compensation for damages and awards compensations therefore;

- i. Prescribes documentary requirements for applications for compensation for damages;
- j. Appoints and/or designates members of the Technical Working Group to serve as the technical staff of the Committee and Regional Investigation and Assessment Teams (RIATs), as provided for in Sections 196 and 198 hereof, to assist the Committee in the investigation and assessment of the claims for compensation for damages: *Provided*, That the Committee shall exercise general supervision over them;
- k. Provides appropriate funds from the MRFs and MWT Reserve Fund for the development and implementation of research and other special projects, which are deemed necessary in promoting the environmental objectives of these implementing rules and regulations;
- l. Implements duly approved guidelines, rules and regulations;
- m. Formulates policy recommendations to strengthen the environmental provisions of these implementing rules and regulations for consideration of the Secretary;
- n. Recommends to the Secretary the granting of allowances to officials and personnel performing functions and duties relative to the effective implementation of these implementing rules and regulations;
- o. Prepares and submits to the Secretary, within thirty (30) calendar days after the end of each year, an annual report of accomplishments and such periodic reports of activities, as may be required; and
- p. Performs other functions as may be assigned by the Secretary.

#### **Section 194. Composition of the CLRF Steering Committee**

The CLRF Steering Committee shall be composed of the following officials or their duly authorized representatives:

- a. Director as Chair;
- b. Director of EMB as Vice-Chair;
- c. Director of Lands Management Bureau as Member;
- d. Director of Forest Management Bureau as Member;
- e. Director of Bureau of Soils and Water Management as Member;
- f. Director of Bureau of Plant Industry as Member;
- g. Director of Bureau of Fisheries and Aquatic Resources as Member;
- h. Administrator of the National Irrigation Administration as Member; and
- i. Assistant Director of the Bureau as Committee Coordinator.

In case the Chair and/or the Vice-Chair can not personally attend a meeting or function of the CLRF Steering Committee, he/she shall designate or appoint a representative, who shall be duly authorized in writing to have full power and authority to act in his/her behalf.

The Bureau shall provide the secretariat and administrative supports, as may be deemed necessary, to the CLRF Steering Committee.

#### **Section 195. Meetings of the CLRF Steering Committee**

The Committee shall hold quarterly meetings: *Provided*, That any member of the Committee may call a special meeting as he/she may deem necessary: *Provided*,

*further*, That notices of the meetings stating the date, time, place and agenda therefore shall be sent by the Committee Chair or Vice-Chair to all members at least ten (10) working days before the intended date of the meetings.

In all meetings, the presence of at least five (5) members shall constitute a quorum to conduct business. The meetings shall be presided by the Chair or, in his/her absence, by the Vice-Chair. In the absence of the Chair and the Vice-Chair, the meetings shall be presided by either of their representatives. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The presiding officer of the meeting shall not vote in any matter brought before the Committee except in case of a tie.

### **Section 196. The Technical Working Group**

To assist the CLRF Steering Committee, a Technical Working Group (TWG) shall be created in the Bureau and shall have the following functions:

- a. Acts as technical staff to the CLRF Steering Committee;
- b. Receives, processes and evaluates the submitted EPEP and FMR/DP as to its form and substance, imposes additional requirements and documentation deemed necessary and consults with credible experts, including the Director of the Philippine Social Science Council, Director of the National Museum, Offices of the Northern and Southern Cultural Communities, as well as other advisory body(ies) that may be required to clarify proposals and to discuss the adequacy of control and rehabilitation measures;
- c. Conducts annual environmental audit to ensure that the approved EPEPs/AEPEPs and FMR/DPs shall be strictly implemented by the Contractors/Permit Holders;
- d. Conducts continuing studies and research on policy options, strategies and approaches to effective implementation of environmental protection and enhancement programs and recommends such measures as may be required to address therefore to the Committee;
- e. Verifies the amounts of mine waste and mill tailings generated by Contractors/Lessees/ Permit Holders;
- f. Computes and collects the MWT fees to be paid by Contractors/ Lessees/Permit Holders;
- g. Receives, processes, evaluates and conducts preliminary investigations, if necessary, of claims for damages and submits appropriate recommendations to the CLRF Committee;
- h. Assists in the investigation and assessment of claims for damages and submits appropriate recommendations to the CLRF Steering Committee;
- i. Develops, packages and recommends research and other special projects concerning mining and the environment;
- j. Determines/estimates/prepares the cost of rehabilitating damaged industrial, commercial, residential, agricultural and forest lands, marine and aquatic resources and placer and lode small-scale mining areas caused primarily by mining operations;
- k. Coordinates and monitors the activities of the RIATs as provided for in Section 193 hereof;
- l. Drafts guidelines, rules, regulations, resolutions and other documents in connection with the environmental provisions of these implementing rules and regulations; and

- m. Performs other functions as may be assigned by the CLRF Steering Committee.

### **Section 197. Contingent Liability and Rehabilitation Steering Committee Administrative Fund**

The Director shall ensure that adequate budget shall be allocated every year from its regular appropriation for the CLRF Steering Committee and shall include sufficient maintenance and operating budgets for actual field and travel expenses needed during mine site inspections, cost of in-house and external training, monthly honoraria for members of said Committee, cost of supplies and materials, cost of communication services and adequate capital outlay for the purchase of required photocopying machines, computers, microfiche machines and other support equipment.

The Director shall likewise allocate adequate financial support from the MRFs and for the cost of consultancy and other expenses that are deemed necessary in carrying out the functions of the Committee related to EPEP and FMR/DP evaluation and monitoring.

### **Section 198. The Regional Investigation and Assessment Teams**

To assist the CLRF Steering Committee in the investigation and assessment of the claims for compensation for damages, there shall be a RIAT, which shall be composed of representatives from the Regional Offices and other member agencies whose services are deemed needed. The RIAT shall be headed by the Regional Director and shall have the following functions:

- a. Provides advice to interested parties on matters related to claims for compensation for damages under these implementing rules and regulations;
- b. Provides applications and other related forms to prospective claimants for damages;
- c. Receives applications for compensation for damages under these implementing rules and regulations;
- d. Conducts field investigations and assessments of claims for damages (MGB Form No.18-3) and submits reports to the CLRF Steering Committee through the TWG;
- e. Creates, whenever and wherever deemed necessary, Local Task Forces to assist the RIATs in carrying out its functions; and
- f. Performs other functions that may be assigned by the Director.

### **Section 199. Application for Compensation for Damages**

Compensable damages are those damages caused by any mining operations on lives and personal safety; lands, agricultural crops and forest products, marine life and aquatic resources, cultural and human resources; and infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing.

The following are qualified to apply for compensation for damages:

- a. Any individual, in the event of loss or damage to his/her life, personal safety or property;
- b. Any private owners of damaged infrastructures, forest products, marine, aquatic and inland resources;

- c. Any applicant or successor-in-interest for damage to private lands who holds title or any evidence of ownership;
- d. Any applicant or successor-in-interest for damage to alienable and disposable lands;
- e. Any agricultural lessors, lessees and share tenants for damage to crops; and
- f. Any ICC in case of damage to burial grounds and cultural resources.

*Provided*, That any damage caused to the property of a surface owner, occupant or concessionaire, as provided for in Chapter X on Surface Rights, shall be governed by the pertinent provisions of said chapter.

Application for compensation for damages under these implementing rules and regulations shall be filed in a prescribed application forms (MGB Form No. 18-2) with the RIAT within thirty (30) calendar days from the occurrence of the damage.

Applications should be supported by the following documents:

- a. Proof of ownership, such as tax declaration, perfected land titles, homestead and free patent. It should be understood, however, that tax declarations shall be honored as proof of ownership only for the purposes of compensation under these implementing rules and regulations;
- b. Receipt of expenditures for improvements made in the affected property(ies); and
- c. Other requirements that may be required by the CLRF Committee.

## **Section 200. Evaluation of and Compensation for Claims for Damages**

The following guidelines shall apply in the evaluation of claims for damages under these implementing rules and regulations:

- a. Amounts paid as compensation for claims for damages shall be drawn from the MWT fees collected from Contractor(s)/ Lessee(s)/Permit Holder(s), as may be determined by the CLRF Steering Committee: *Provided*, That in case the assessed amount of damage exceeds the MWT fees paid for, the Contractor(s)/Lessee(s)/ Permit Holder(s) concerned shall be duty bound to pay for the remaining balance;
- b. Damages to lives and personal safety shall be compensated at an amount as provided for in other pertinent laws;
- c. Damages caused to agricultural lands, which render such lands useless for the traditional purpose for which they were intended for, may be compensated at an amount equivalent to either one of the following, whichever is lower:
  - 1. The fair market value of the lands as per tax declaration;
  - or
  - 2. The cost of rehabilitation of the land;

- d. Damages to agricultural lands resulting in partial loss of productivity may be compensated at an amount equivalent to the costs of rehabilitation;
- e. Damages to industrial and residential lands may be compensated at an amount equivalent to the costs of rehabilitation;
- f. Damages resulting in total or partial loss of agricultural crops, forest products and/or inland aquatic resources may be compensated at an amount equivalent to the loss of projected net income therefrom;
- g. Damages to infrastructures may be compensated at an amount equivalent to the costs of rehabilitation to be determined by the CLRF Steering Committee;
- h. The amount of compensation for damages shall be based on the amount claimed or the amount assessed, whichever is lower;
- i. In case of private leased lands, compensation under these implementing rules and regulations shall be paid in accordance with the sharing agreement between the private landowner(s) and the lessee(s). In the absence of such an agreement, seventy-five percent (75%) of the compensation shall be paid to the lessee and twenty five percent (25%) shall be paid to the landowner;
- j. Damages compensated by the operating mining company(ies) shall no longer be considered compensable under these implementing rules and regulations: *Provided*, That written approval has been secured from the CLRF Steering Committee. Such payment shall be credited to the Contractor/Lessee/Permit Holder concerned for the next paying period. A waiver signed as a condition for payment of such compensation by the Contractor/Lessee/Permit Holder shall also be considered as a waiver under these implementing rules and regulations;
- k. Any damage to burial grounds and cultural resources of an ICC shall be compensated in an amount to be determined by said Community, the LGU concerned and/or the National Museum; and
- l. The decision of the CLRF Committee shall be final and executory unless appealed to the Secretary within thirty (30) calendar days from receipt of the decision.

## **CHAPTER XIX CONFLICTS/ADVERSE CLAIMS/OPPOSITIONS**

### **Section 201. Creation of Panel of Arbitrators**

There shall be a Panel of Arbitrators in the Legal Staff of the Regional Office composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one (1) a licensed Mining Engineer, Geologist or a professional in a related field all duly designated by the Secretary as recommended by the Director. Those designated as members of the Panel shall serve as such in addition to their work in the Department without additional compensation. The Regional Office shall provide administrative support and structure to the Panel of Arbitrators.

As much as practicable, the members of the Panel shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His/her tenure as presiding officer shall be on a yearly basis. The members of the Panel shall perform their duties and obligations in hearing and

deciding cases until their designation is withdrawn or revoked by the Secretary.

### **Section 202. Jurisdiction of Panel of Arbitrators**

The Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide on the following:

- a. Disputes involving rights to mining areas;
- b. Disputes involving Mineral Agreements, FTAA's or Permits;
- c. Disputes involving surface owners, occupants and claimholders/concessionaires; and
- d. Disputes pending before the Regional Office and the Department at the date of the effectivity of the Act: *Provided*, That appealed cases before the Department shall be under the jurisdiction of the Mines Adjudication Board.

The rules and regulations governing the litigation and disposition of cases before the Panel of Arbitrators shall be promulgated by the Mines Adjudication Board as provided for in Section 207 hereof: *Provided*, That cases presently pending before the different Panels may proceed in accordance with the rules promulgated thereby.

### **Section 203. Filing of Adverse Claims/ Conflicts/Oppositions**

Notwithstanding the provisions of Sections 21, 38 and 55 hereof, any adverse claims, protest or opposition specified in said Sections may also be filed directly with the Panel of Arbitrators within the prescribed periods for filing such claim, protest or opposition as specified in said Sections.

### **Section 204. Substantial Requirements for Adverse Claims, Protests and Oppositions**

No adverse claim, protest or opposition involving mining rights shall be accepted for filing unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail: *Provided*, That the requirement for the payment of docket fees shall not be imposed on pauper litigants.

Likewise, no adverse claims, protest or opposition shall be entertained unless it contains the names and addresses of the adverse party, protestant, oppositor and the respondent and their respective counsels, if any; a detailed statement of the facts relied upon; the grounds for adverse claim, protest or opposition; and an exhaustive discussion of the issues and arguments raised; together with all supporting plans, documents, data and other documentary evidences and affidavits of all witnesses.

### **Section 205. Period to Decide the Case**

The Panel shall render its decision within thirty (30) days, after the submission of the case by the parties for decision.

### **Section 206. Execution and Finality of Decision**

The decision of the Panel of Arbitrators shall become final and executory after the lapse of fifteen (15) days from receipt of the notice of decision by the aggrieved party, unless the latter appeals to the Mines Adjudication Board within the same period. Where an appeal is filed, the Panel of Arbitrators concerned shall transmit the notice thereof together with the records of the case within five (5) days to the Mines Adjudication Board.

Upon the finality of the decision of the Panel of Arbitrators, no appeal having taken therefrom, the Chairman of the Panel of Arbitrators shall issue a writ of execution directing the Sheriff of the Regional Trial Courts, with jurisdiction over the area, to implement and execute the writ.

## **CHAPTER XX MINES ADJUDICATION BOARD/APPEALS**

### **Section 207. Mines Adjudication Board**

There shall be a Mines Adjudication Board composed of three (3) members. The Secretary shall be the Chairman with the Director and Undersecretary for Field Operations of the Department as members thereof. The Board shall promulgate its own internal rules and regulations governing its administration and disposition of appealed cases.

The Board shall promulgate the rules and regulations governing the following:

- a. Litigation and disposition of mining cases before the Panel; and
- b. Administration and disposition of appealed cases before the Board.

### **Section 208. Secretariat**

The Bureau shall act as the Secretariat of the Board and shall be provided with permanent and full time administrative support with sufficient funding in its annual budget appropriation.

### **Section 209. Period to Resolve Appeal**

The Board shall resolve the appeal within thirty (30) days from submission of the case by the parties for decision.

### **Section 210. Powers and Functions of the Board**

The Board shall have the following powers and functions:

- a. To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;
- b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of account, Agreements and other document as may be material to a just determination of the matter under investigation and to testify in any investigation or hearing conducted in pursuance of this Act;
- c. To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearing at any time and place, refer technical matters or accounts to an expert and to accept his/her report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend or waive any error, defect or irregularity, whether in substance or in

form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable;

- d. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
- e. To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceedings before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceedings before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

#### **Section 211. Petition for Review by Certiorari**

The decision of the Board may be reviewed by filing a petition for review with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

### **CHAPTER XXI GOVERNMENT SHARE IN MINERAL AGREEMENTS/FTAAs**

#### **Section 212. Government Share in Mineral Production Sharing Agreement**

The total Government share in a MPSA shall be the excise tax on mineral products as provided for in R. A. No. 7729.

#### **Section 213. Government Share in Other Mineral Agreements**

The share of the Government in Co-Production and Joint Venture Agreements shall be negotiated by the Government and the Contractor taking into consideration: (a) capital investment in the project, (b) risks involved, (c) contribution of the project to the economy and (d) other factors that will provide for a fair and equitable sharing between the parties.

The Government shall also be entitled to compensation for its other contributions which shall be agreed upon by the parties and shall consist, among other things, the Contractor's income tax, excise tax, Special Allowance, withholding tax due from the Contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for in existing laws.

#### **Section 214. Government Share in FTAA**

The Government share in an FTAA shall consist of, among other things, the Contractor's corporate income tax, excise tax, Special Allowance, withholding tax due from the Contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign-owned corporation and all such other taxes, duties and fees as provided for in existing laws.

The Government share in an FTAA shall be negotiated by the Government and the Contractor taking into consideration:

- a. Capital investment of the project;
- b. Risks involved;
- c. Contribution of the project to the economy;
- d. Technical complexity of the project;
- e. Contribution to community and Local Government; and
- f. Other factors that will provide for a fair and equitable sharing between the parties.

The collection of Government share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. The period of recovery which is reckoned from the date of commencement of commercial operation shall be for a period not exceeding five (5) years or at a date when the aggregate of the net cash flows from the mining operations is equal to the aggregate of its pre-operating expenses, whichever comes earlier: *Provided*, That in case of projects incurring very large investments with high production rate and extensive mine life, as determined by the Bureau, the recovery period may be extended upon negotiation with the FTAA Negotiating Panel and subject to approval by the Secretary.

The Contractor shall also pay an additional Government share after the recovery period as provided for in separate guidelines.

#### **Section 215. Government Share in Mineral Agreements and FTAA's Within Mineral Reservations**

For MPSAs, other Mineral Agreements or FTAA within the Mineral Reservations, the Government share shall be in addition to the royalties payable to the Government.

#### **Section 216. Place and Manner of Payment and Allocation of Government Share**

The Government share in a Mineral Agreement and FTAA as provided for in Sections 212 to 215 hereof, shall be paid to the nearest BIR office where the mining/contract area is located and in accordance with existing BIR rules and regulations.

The Government share in mining operations within Mineral Reservations shall be paid directly to the Bureau in addition to the royalty provided for in Section 13 hereof. The share of the Bureau from this royalty shall be paid separately and directly to the Bureau.

The Government share shall be allocated in accordance with Sections 290 and 292 of R.A. No. 7160, otherwise known as the "Local Government Code of 1991." In case the development and utilization of mineral resources are undertaken by a Government-owned or controlled corporation, the sharing and allocation shall be in accordance with Sections 291 and 292 of the said Code.

The additional Government share shall be paid to the Bureau within thirty (30) days after the filing and payment of the final income tax return to the BIR.

## **CHAPTER XXII TAXES AND FEES**

#### **Section 217. Taxes**

- a. Income Tax - After the lapse of the income tax holiday, as provided for in the Omnibus Investment Code of 1987, as amended, the Contractor shall pay income tax provided for in the National Internal Revenue Code, as amended.
- b. Excise Tax on Mineral Products - The Contractor shall pay the excise tax on mineral products as provided for in Section 151 of the National Internal Revenue Code, as amended, in accordance with the following:
  1. On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax in the case of importation in accordance with the following schedule:
    - i. For copper and other metallic minerals except gold and chromite -
 

<u>Period of Production</u>	<u>Excise Tax Rate</u>
June 24, 1994 - June 23, 1997	1.0%
June 24, 1997 - June 23, 1999	1.5%
June 24, 1999 and onwards	2.0%
    - ii. Gold and chromite a tax of two percent (2%).
  2. On all non-metallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the annual gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax in the case of importation.

**Section 218. Occupation Fees**

There shall be collected from any Contractor or Permittee on public or private lands, an annual occupation fee in accordance with the following schedule:

- a. For areas outside Mineral Reservations –
  1. Exploration Permit - Ten Pesos (PhP10.00) per hectare or fraction thereof per annum;
  2. Mineral Agreements and FTAA's - Fifty Pesos (PhP50.00) per hectare or fraction thereof per annum; and
- b. For areas inside Mineral Reservations –
  1. Exploration Permits, Mineral Agreements and FTAA's - One Hundred Pesos (PhP100.00) per hectare or fraction thereof per annum.

The Secretary is authorized to increase the occupation fees provided herein when the national interest and public welfare so require, upon the recommendation of the Director.

**Section 219. Manner and Place of Payment of Occupation Fees**

The occupation fees shall be paid on the date the Exploration Permit/Mineral Agreement/FTAA is registered with the appropriate office and on the same date every year thereafter. It shall be paid to the Treasurer of the Municipality/City where the

onshore mining areas are located, or to the Bureau in case of offshore mining areas. For this purpose, the appropriate officer, (the Director for FTAA's or the Regional Director for Exploration Permits and Mineral Agreements) shall submit to the Treasurer of the Municipality/City where the onshore mining area is located, a complete list of all onshore mining rights registered with his/her office, indicating therewith the names of the holders, area covered in hectares, name of Municipality/City and its provincial location and date of registration. If the fee is not paid on the date specified, the Contractor shall pay a surcharge of twenty-five percent (25%) of the amount due in addition to the occupation fees: *Provided*, That if the municipal/city treasurer refuses to accept payment of the occupation fee and the case for consignment is filed in the appropriate court, the Exploration Permit/Mineral Agreement/FTAA may already be registered.

If the applied area lies in several municipalities, the Director in the case of Mineral Reservations or the Regional Director in the case of areas outside Mineral Reservations shall determine the amount to be paid by the Contractor based on official maps available in the respective offices and endorses the same to the Municipal/City Treasurer concerned. If disagreements arise from this payment later, the Provincial Governor shall decide on the proportionate amount to be paid to the municipalities.

#### **Section 220. Allocation of Occupation Fees**

Thirty percent (30%) of all occupation fees collected from Permittee/Contractor in onshore mining areas shall accrue to the province and seventy percent (70%) to the municipality where the onshore mining areas are located. In a chartered City, the full amount shall accrue to the City concerned.

#### **Section 221. Other Fees and Charges**

Filing fees and other charges for services rendered by the Bureau and/or its Regional Office shall be payable in accordance with the fees and charges in Annex 5-A.

### **CHAPTER XXIII INCENTIVES**

#### **Section 222. Incentives Available to Contractors and Permittees**

Investment incentives granted under Executive Order No. 226 (EO 226), as amended, and otherwise known as the "Omnibus Investment Code of 1987," the Act and other laws shall be made available to Contractors/Permittees subject to their compliance with the provisions and implementing rules and regulations of the said laws. However, fiscal and non-fiscal incentives sought to be availed of shall require prior approval from the agency administering the incentives.

The incentives granted under Sections 91, 92 and 93 in Chapter XVI of the Act are additional incentives aside from those available under the Omnibus Investment Code of 1987, as amended. They are available to all Contractors in Mineral Agreements or FTAA's only to the extent in which they are engaged in activities covered by their respective Agreements.

#### **Section 223. Availment of Incentives under EO 226, as Amended**

Contractors can avail of fiscal and non-fiscal incentives granted under EO 226, as amended, subject to their registration with the Board of Investments (BOI) and compliance with requirements provided for in the order and its rules and regulations. Exploration Permittees registered with BOI can also avail of fiscal incentives under EO 226, as amended, but only for the duration of the Permits or effectivity of EO 226 as

amended, whichever comes first. BOI registration and enjoyment of incentives under said registration shall be governed by the Investment Priorities Plan subject to the provisions of EO 226, as amended, applicable rules and regulations and future amendments thereof. The incentives availed of under EO 226 shall be administered by BOI.

No entitlement to any incentive under EO 226 shall accrue to any Contractor prior to the date of approval of its Mineral Agreement or FTAA and/or date of BOI registration, as the case may warrant in the latter.

All mining activities shall always be included in BOI's listing of Investment Priorities Plan.

#### **Section 224. Availment of Incentives for Pollution Control Devices**

Pollution control devices and facilities as herein defined which were acquired, constructed or installed by Contractors shall not be considered as improvements on the land or building where they are placed, and as such, shall not be subject to real property and other taxes or assessments.

The Contractor shall avail of this incentive in writing to the Director supported by a sworn report containing a detailed list of such devices and infrastructure together with relevant maps or diagrams indicating their location and use in the operations. Such report shall include the acquisition and installation cost of the devices or infrastructure, the corresponding amount of tax exemption availed of by the Contractor. If such devices and infrastructure, after evaluation by the Bureau, were found necessary and appropriate for the operations, the Director shall issue a Certificate of Tax-Exemption covering the declared devices and infrastructure for the purpose of availing of exemption from Local Government taxes and assessment. The Director or his/her representative shall monitor the utilization of these devices and infrastructure in relation to the Contractor's operation to ascertain that such are used for pollution control purposes.

Separate guidelines to further implement this Section shall be prepared by the Bureau.

#### **Section 225. Availment of Incentive for Income Tax-Carry Forward of Losses**

A net operating loss without the benefit of income tax-accelerated depreciation incurred in any year during the first ten (10) years of the Contractor's operation may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss: *Provided*, That the net operating loss shall be deducted from the taxable income derived from the activity covered by the Mineral Agreement or FTAA.

Losses incurred in activities other than those pertinent to mining operations can not be carried over. Only such losses attributable to mining operations covered by the Mineral Agreement or FTAA, incurred after the approval of the Mineral Agreement or FTAA and within the ten-year period from date of commercial operation of activity covered by such Agreement shall be considered for purposes of availment of incentives on income tax-carry forward of losses.

Applications for availment of the incentive on income tax-carry forward of losses shall be filed with the Bureau within one (1) month from date of filing with the BIR of the Income Tax Return where net operating loss was deducted.

The following documentary requirements relative to the application for the availment of this incentive should be submitted to the Director:

- a. Two (2) copies of Audited Financial Statement (AFS) and Income Tax Return (ITR) for the year the net operating loss was incurred;
- b. Two copies of the AFS and ITR for the year the net operating loss was partially deducted or statement of projected income for the current year (duly certified by an external auditor) from which the net operating loss may be deducted;
- c. If the Contractor is engaged in an activity other than that covered by the Mineral Agreement or FTAA, the income statement must be aggregated per activity and duly certified by an external auditor; and
- d. Sworn statement issued by the Contractor as to the start of commercial operation of the activity applied for the incentive on income tax-carry forward of losses.

Late filing of application for availment of the incentive on income tax-carry forward of losses shall incur a basic fine of one-half percent (1/2%) of the amount of the net operating loss to be carried over to applicable taxable year as provided for in Section 92 of the Act plus a daily fine of Five Pesos (PhP5.00) but not to exceed One Hundred Thousand Pesos (PhP100,000) which shall be paid to the Bureau.

The net operating loss referred to in this Section shall be computed in accordance with the provisions of the National Internal Revenue Code. The ten-year period prescribed herein shall be counted from the first year of commercial operation in the activity covered by the Mineral Agreement or FTAA. The computation of net operating loss shall be subject to post audit by the BIR.

#### **Section 226. Availment of Incentive for Income Tax-Accelerated Depreciation**

At the option of the Contractor and in accordance with procedure established by the BIR, fixed assets may be depreciated at the rates authorized under Section 93 of the Act. Fixed assets refer to assets subject to depreciation under the National Internal Revenue Code.

Contractors shall avail of this incentive in writing to the Director accompanied by a sworn report containing detailed list of the fixed assets relevant to the Contractor's operation together with relevant maps and diagrams indicating the location and names of the assets. Such report shall include the applicable book value, expected life in years, depreciation schedule and the fixed asset's use in the Contractor's operation.

This incentive may also be availed of for fixed assets acquired before the date of the approval/conclusion of the Mineral Agreement or FTAA, but only to the undepreciated portion of the fixed assets.

As provided for in Section 93 of the Act, fixed assets may be depreciated as follows:

- a. To the extent of not more that twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is ten (10) years or less; or
- b. Depreciated over any number of years between five (5) years and the expected life if the latter is more that ten (10) years and the depreciation thereon allowed as a deduction from taxable income: *Provided*, That the Contractor notifies the BIR at the beginning of the depreciation period which depreciation rate allowed by this Section will be used.

In computing taxable income, the Contractor may at his/her option, deduct exploration and development expenditures accumulated at cost as of the date of the Exploration Permit as well as exploration and development expenditures paid or incurred during the taxable year: *Provided*, That the total amount deductible for exploration and development expenditures shall not exceed twenty-five percent (25%) of the Net Income from mining operations. The actual operation shall be carried forward to the succeeding years until fully deducted.

Net Income from mining operations is defined as gross income from operations less allowable deduction which are necessary or related to mining operations. Allowable deductions shall include mining, milling and marketing expenses, depreciation of properties directly used in the mining operations: *Provided*, That such other deductions allowed by the BIR can also be deducted to arrive at the Net Income. This paragraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowances for depreciation.

Either of the following methods shall apply in the treatment of income tax-accelerated depreciation in the income statement:

- a. Accelerated depreciation charges may be shown as among the expense items to be deducted from the Net Income; or
- b. Depreciation expenses at normal life of the assets may be shown as among the expense item to be deducted from the Net Income. The accelerated depreciation would be made only in the adjustment of the taxable income for income computation as an additional expenses.

#### **Section 227. Simultaneous Availment of Incentives under EO 226 and Additional Incentives under the Act**

The Contractor may avail of either the incentive on Income Tax-Carry Forward of Losses under Section 92 of the Act or the Income Tax Holiday provided under EO 226, as amended. If the Contractor opts to avail of the Income Tax Holiday incentive under its BOI registration, if and when applicable, then the incentive on Income Tax Carry Forward of Losses under the Act should not be granted to it and vice versa. It should then be a choice between Income Tax Holiday or Income Tax-Carry Forward of Losses, with the choice of the first availment governing the succeeding availments. There shall be no switching of these two incentives within the entire prescribed period within which the Contractor is entitled to such incentives.

In availing of the Income Tax Holiday incentive under EO 226, as amended, the Contractor shall submit to the BOI a certification from the Director that the Contractor has never availed of the incentives on Income Tax-Carry Forward of Losses under the Act during the term of the Mineral Agreement or FTAA. In the same light, Contractors availing of the incentive on Income Tax-Carry Forward of Losses shall submit a certification from the BOI that the Contractor has never availed of the Income Tax Holiday incentive under EO 226, as amended, during the term of the Mineral Agreement or FTAA.

Incentives on Income Tax-Accelerated Depreciation provided under Section 93 of the Act may be availed of simultaneously with the Income Tax Holiday provided under the BOI registration.

#### **Section 228. Conditions for Availment of Incentives**

The Contractor's right to avail of incentives under Sections 222 to 227, shall be subject to the following conditions:

- a. Compliance with obligations - The Contractor shall observe and abide by the provisions of the Act and its implementing rules and regulations and take adequate measures to ensure that its obligations thereunder are faithfully discharged;
- b. Compliance with directives - The Contractor shall comply with the directives and instructions which the Bureau may issue from time to time in pursuance of its authority under the law;
- c. Visitorial powers - The Contractor shall allow the duly authorized representatives of the Bureau to inspect and examine its books of accounts and other pertinent records and documents to ascertain compliance with the Act and its implementing rules and regulations and the terms and conditions of the Mineral Agreement or FTAA;
- d. Delinquent Contractors - No availment of incentives may be allowed to a Contractor delinquent in compliance with any of the terms and conditions of the Mineral Agreement or FTAA and/or with the terms and conditions of registration with BOI as the case may warrant, including submission of reports and statistical data which may be required by the Bureau and/or BOI; and
- e. Activities not covered by the Mineral Agreement or FTAA - The Contractor proposing to engage in activities not covered by its Mineral Agreement or FTAA shall install an adequate accounting system segregating the investments, revenues, sales, receipts, purchases, payrolls, costs, expenses and profits and losses of its operations covered by Mineral Agreement or FTAA from those which are not covered; or the Bureau may, in appropriate cases, require the establishment of a separate entity for the activity covered by the Agreement in order to facilitate the proper implementation of the Act.

## **Section 229. Investment Guarantees**

In addition to the above, the Contractor especially foreign investors shall be entitled to the basic rights and guarantees provided in the Constitution and such other rights recognized by the Government as enumerated hereunder:

- a. Repatriation of investments - In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation;
- b. Remittance of earnings - In the case of foreign investments, the right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance;
- c. Foreign loans and contracts - The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technical assistance contracts;
- d. Freedom from expropriation - There shall be no expropriation by the Government of the property represented by investments or loans or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the

expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance;

- e. Requisition of investment - There shall be no requisition of the property represented by the investment or of the property of the enterprises except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investments were originally made and at the exchange rate prevailing at the time of remittance; and
- f. Confidentiality - Any information supplied by the Contractor which have been agreed upon by the parties in the negotiation as confidential pursuant to the Act and these implementing rules and regulations shall be treated as such during the term of the project to which it relates. However, the following information shall not be classified as confidential:
  - 1. Production and sales of minerals;
  - 2. Employment;
  - 3. Royalty and tax payments;
  - 4. Metallic and non-metallic reserves;
  - 5. Operational parameters such as mining and milling capacities and rates, mine and mill recoveries, dilution factors, etc.; and
  - 6. Other data as may be agreed upon by the parties.

The term confidentiality refers only to the act of divulging publicly any information classified as such. It does not prevent the Director or his/her representative(s) from using the data internally within the Bureau for monitoring and for policy, planning and research studies. Documents not otherwise covered by a valid confidentiality Agreement between the concerned parties shall be made available to the public upon the filing of an appropriate request duly approved by the authorized officer. Reproduction of such documents shall be allowed upon presentation of an approved written request in sufficient form and payment of reasonable fees.

## **CHAPTER XXIV CANCELLATION, REVOCATION AND TERMINATION OF A PERMIT/MINERAL AGREEMENT/FTAA**

### **Section 230. Grounds**

The following are the grounds for cancellation, revocation and termination of a Mining Permit/Mineral Agreement/FTAA:

- a. Falsehood or omission of facts in the application for Exploration Permit, Mineral Agreement, FTAA or other permits which may alter, change or affect substantially the facts set forth in said statements
- b. Non-payment of taxes and fees due the Government for two (2) consecutive years; and
- c. Failure to perform all other obligations, including abandonment, under the permits or agreements;

- d. Violation of any of the terms and conditions of the Permits or Agreements; and/or
- e. Violation of existing laws, policies, and rules and regulations.

**Section 231. Suspension or Cancellation of Tax Incentives and Credits**

- a. Grounds for cancellation/suspension - The Bureau may suspend or cancel wholly or partially any incentive granted under the rules and regulations for any cause including the following:
  - 1. Any violation of the Act, rules and regulations implementing the same or of the terms and conditions in the Mineral Agreement or FTAA;
  - 2. Any material misrepresentation or false statements made to the Bureau at any time before or after the approval/conclusion of its Mineral Agreement or FTAA;
  - 3. Whenever the project ceases to be viable and its continued operation would require additional costs to the economy. In this case, the Bureau shall evaluate the status of the project and shall decide if suspension/cancellation shall be imposed;
- b. Withdrawal from the Mineral Agreement or FTAA - Whenever a Contractor decides to withdraw from business or suspend its operations covered by the Agreement, written notice thereof shall be sent to the Director before decision is implemented. Withdrawal from business operations shall automatically cancel the Mineral Agreement or FTAA. Upon such withdrawal, the Contractor shall cease to be entitled to the incentives. The effect of withdrawal from business or suspension of operations covered by the Agreement shall, in each particular instance, be determined by the Bureau, taking into account the reasons therefor; or
- c. Refund and penalties - In case of cancellation of the Mineral Agreement or FTAA, the Bureau may in appropriate cases, recommend to other incentive-dispensing agencies the cancellation of registration without prejudice to the imposition of the corresponding penalties and refund of incentives availed of, pursuant to the Act and these implementing rules and regulations and under EO 226, laws creating export processing zones and other laws.

**Section 232. Effect of Expiration and Cancellation, Revocation And/or Termination of a Permit and Mineral Agreement/FTAA**

Upon the expiration of a Mining Permit/Mineral Agreement/FTAA, the mining operations may be undertaken by the Government through one of its agencies or through a qualified independent Contractor. In the latter case, the contract shall be awarded to the highest bidder in a public bidding held after due publication of the notice thereof. The Contractor/Permit Holder shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

Upon cancellation/revocation/termination of a Mining Permit/ Mineral Agreement/FTAA, the Director shall cause the same to be entered in the registration book and a notice thereof shall be posted on the bulletin board of the Bureau and Regional Office concerned and the mining area covered thereby shall thereupon be open to mining applications. The mining operations may be undertaken by the Government through one of its agencies or through a qualified independent Contractor. In the latter case, the contract shall be awarded to the highest bidder in a public bidding held after due publication of the notice thereof. If the cancellation/revocation/ termination of the contract is due to violation of the terms and conditions thereof, the Contractor/Permit Holder shall not have the right to equal the highest bid.

Non-payment of taxes and fees causing the cancellation/revocation/termination of a Mining Permit/Mineral Agreement/FTAA shall have also the effect of re-opening the mining area to new applicants.

## **CHAPTER XXV SURVEY OF PERMIT/CONTRACT/MINING AREAS**

### **Section 233. Identification of Meridional Blocks**

A system for identifying meridional blocks other than geographic coordinates shall be established by the Bureau. The boundaries of a permit/contract/mining area shall coincide with the full one minute or one-half minute of latitude and longitude based on the NAMRIA map. In cases where such boundaries are not attainable due to geographic features, environmental considerations, existence of adjoining valid mining rights or concessions, other areas closed to mining locations, settlement of conflicts and other justifiable considerations that render it impractical to conform with such requirements, the boundaries shall be defined by specific technical description.

### **Section 234. Filing of Application for Survey**

A Permittee/Contractor shall file an application for Order of Survey of the perimeter boundary of the permit/contract/mining area simultaneous with the submission of the Declaration of the Mining Project Feasibility and to be accompanied by the following:

- a. One (1) set of certified true copy of approved Exploration Permit/FTAA/Mineral Agreement;
- b. Pertinent documents such as Deed of Assignment and Power of Attorney duly registered with the Bureau/Regional Office concerned;
- c. A notarized Survey Service Contract executed by and between the Permittee/Contractor and the deputized Geodetic Engineer, except when the deputized Geodetic Engineer is employed by the applicant and/or company interested in the survey: *Provided*, That proof of employment of the deputized Geodetic Engineer is submitted;
- d. Affidavit of the deputized Geodetic Engineer representing that he/she can execute the survey of the area and to submit the complete survey returns thereof within the period prescribed by these implementing rules and regulations;
- e. A surety bond (Annex 5-A) for Order of Survey, which shall be forfeited for failure of the deputized Geodetic Engineer to execute and/or comply with his/her obligations; and
- f. Proof of payment of the required fees (Annex 5-A).

However, any Contractor or applicant whose MPSA/FTAA Agreement/application was granted/filed in accordance with the implementing rules and regulations of E.O. No. 279, may avail of the provision of this Section.

### **Section 235. Issuance of Order of Survey**

Upon verification of the application for Order of Survey (MGB Form No. 25-1) and compliance with the requirements in the preceding section, the Director/Regional Director concerned shall issue the Order of Survey in the prescribed form (MGB Form No. 25-2).

## **Section 236. Mineral Land Surveys**

Mineral land surveys shall be executed by Geodetic Engineers of the Bureau/Regional Offices, deputized Geodetic Engineers in private practice and company-employed deputized Geodetic Engineers deputized by the Director/Regional Director.

## **Section 237. Execution of Mineral Land Surveys**

Corners of the permit/contract/mining area shall be defined by monuments placed at intervals of about four hundred fifty (450) meters apart. When the boundary lines of the permit/contract/mining area traverses mountain or rolling terrain, the intermediate monuments between corners shall be established on ridges, whenever practicable, in which cases, all consecutive corners shall be intervisible.

The corner monuments of a permit/contract/mining area shall be as follows:

- a. 20 cm x 20 cm x 50 cm concrete rectangular monuments set 40 cm in the ground for principal corners which fall on points with exact minutes or half minute of latitude and longitude; and
- b. 15 cm in diameter x 50 cm long set 40 cm in the ground for other corners of the permit/contract or mining area.

Such corners of the permit/contract/mining area shall be identified by concrete monuments or cement patches on boulders, centered with a hole, spike, pipe or nail and marked with the corresponding corner numbers and survey numbers. The latitude and longitude of the principal corners shall also be indicated on the sides of the concrete monuments when they coincide with the full one (1) minute and/or one-half (1/2) minute of latitude and longitude.

When the permit/contract/mining area adjoins submerged land, a witness corner monument along the boundary leading to the shoreline shall be set on the ground to witness the boundary point-corner of the mining rights at the mean low tide level of the sea or lake. Concrete monuments, galvanized iron pipes, fixed rocks, boulders or stakes and other monuments shall be set to define the corners of the mining rights along the shoreline at mean low tide level.

All area computations, plans and maps of permit/contract/mining areas to be submitted to the Bureau/Regional Office for verification and approval shall be prepared using the Philippine Plane Coordinate System (Annex 25-A).

Should any discrepancy of datum plane between or among tie points arise, proper investigation shall be conducted by the Bureau/Regional Office concerned and a report thereon shall be submitted to form part of the survey returns for further investigation and record purposes.

Survey plans of permit/contract/mining areas recorded under these implementing rules and regulations shall be drawn to scale in drawing ink on the prescribed form (MGB Form No. 25-3).

The execution of mineral lands surveys shall be in accordance with these implementing rules and regulations, as supplemented by the applicable provisions of the Revised Manual of Lands Surveys of the Philippines pursuant to Lands Administrative Order No. 4 dated July 3, 1980: *Provided*, That PRS-92 may be used in the execution of mineral land surveys during the transition period (1993-2000) pursuant to the provisions of Department Administrative Order No. 22, Series of 1994: *Provided, further*, That

reference points enumerated in Annex 25-B can still be used if standardized and converted into PRS-92 subject to implementing guidelines that may hereinafter be issued.

### **Section 238. Submission of Survey Returns**

Survey returns shall be submitted to the Director/Regional Director concerned within one (1) year from receipt of the Order of Survey and shall consist of the following:

- a. Duly notarized field notes with cover (MGB Form No. 25-4) accomplished, signed and sealed by a deputized Geodetic Engineer;
- b. Azimuth computations from astronomical observations (MGB Form No. 25-5), topographic survey computations (MGB Form No. 25-6), traverse computations (MGB Form No. 25-7), area computations (MGB Form No. 25-8), coordinate conversion - geographic to grid (MGB Form No. 25-9) and coordinate conversion - grid to geographic (MGB Form No. 25-10) and other reference computations, all in sets of original and duplicate, properly accomplished, signed and sealed by a deputized Geodetic Engineer;
- c. Microfilm plan(s) in appropriate scale duly accomplished with the corresponding working sheet thereof;
- d. Descriptive and field investigation report on the permit/contract/mining area in quintuplicate, duly signed by the deputized Geodetic Engineer and authorized assistant, if any, and duly notarized; and
- e. A certification under oath by the Barangay Captain that the survey was actually undertaken in the locality.

Incomplete survey returns shall not be accepted for verification and approval purposes.

Except for reasons of force majeure, failure to submit the survey returns within the prescribed period shall cause the cancellation of the Mining Permit/Mineral Agreement/FTAA. If the survey returns are filed through the mail, the date appearing on the postmark shall be considered as the date of filing. However, the Permittee/Contractor/deputized Geodetic Engineer concerned shall notify the Director/Regional Director concerned by telegram/fax message not later than the deadline for the filing of the survey returns that he/she has filed the same through the mail.

Corners and/or location monuments of verified survey returns of mining right areas, in spite of the nullity, cancellation, rejection or abandonment of the mining rights over the surveyed area, shall be preserved as reference marks and the geographic position thereof shall be kept for use in future mineral land surveys, unless otherwise said survey is found to be erroneous by later approved mineral land surveys.

### **Section 239. Withdrawal of Order of Survey**

If the Director/Regional Director concerned finds that the deputized Geodetic Engineer has violated any of the terms and conditions of the Order of Survey or the survey service contract, or has failed to execute the survey and submit the Survey Returns within the prescribed period, the Director/Regional Director concerned shall withdraw the existing authority over the subject area, forfeit the corresponding bond and shall not issue any new Order of Survey in favor of the said deputized Geodetic Engineer without prejudice to any criminal, professional or other liabilities arising out

from such failure, violation or misrepresentation.

**Section 240. Withdrawal of Defective Survey Returns**

The deputized Geodetic Engineer or his/her duly authorized representative may withdraw documents within thirty (30) calendar days upon receipt of notice from the Bureau/Regional Office concerned for correction of errors, discrepancies and/or deficiencies of the submitted survey returns. A period of ninety (90) calendar days from the date of withdrawal of the said survey returns is given to the deputized Geodetic Engineer or his/her duly authorized representative to re-submit the same without any extension save for reason of force majeure. Failure of the deputized Geodetic Engineer to re-submit the withdrawn survey returns within the prescribed period shall cause the revocation of the survey order and confiscation of his/her surety bond and non-issuance of new survey order over the subject area.

**Section 241. Field Verification and Approval of Survey Plan**

Upon submission of the corrected survey returns, the Director/Regional Director concerned shall cause the immediate field verification of the subject area. Thereafter, the survey plan shall be submitted to the Director/Regional Director concerned for approval of the same within fifteen (15) working days from receipt thereof.

**Section 242. Non-Transferability of Order of Survey**

Order of Survey is non-transferable except in cases of death, physical incapacity of the deputized Geodetic Engineer, or any other causes which render it impracticable to execute the survey, subject to the approval of the Director/Regional Director concerned: *Provided*, That the execution of the survey shall be completed within the remaining period covered by the original Order of Survey.

**CHAPTER XXVI  
DRILLING OF AREAS BY THE BUREAU**

**Section 243. General Provisions**

In line with the policy of the Government to hasten the exploration, development and utilization of the mineral resources of the country and to address the water crisis and other priority concerns of the Government, the Bureau may conduct exploration in any areas other than Mineral Reservations upon its own initiative or upon request by claimant/Contractor/Permittee in areas covered by existing and valid mining claims/contracts/permits: *Provided*, That whatever expenses that may be incurred thereof shall be taken from the appropriation of the Bureau or from the requesting party, as the case may be.

**Section 244. Priority Areas**

The Director shall determine whether the area is included in the priority list of areas and contains critical minerals included in the mineral and water development programs of the Government.

If it is ascertained that the area should be explored, a contract between the Contractor/claimant/Permittee and the Director shall be executed to include, among others, a statement that the Bureau shall conduct the necessary geological studies on the area and, if warranted, undertake diamond drilling, test pitting, trenching or auger drilling operations thereon.

In case the drilling reveals substantial ore reserves to warrant commercial mining operations, the Contractor/claimant/Permittee as well as his/her successor(s) or assignee(s) shall then take all steps required to secure any mode of Mineral Agreement.

#### **Section 245. Reimbursement**

Upon completion of exploration activities by the Bureau in open areas other than Mineral Reservations, it shall render a certified report on the total expenses incurred thereon. Any interested party who wish to apply for a mining right shall reimburse to the Bureau the certified amount plus an interest of twelve percent (12%) of the expenses.

#### **Section 246. Lease of Drilling Equipment**

The Director may lease the drilling equipment of the Bureau to Permittees, Lessees, Contractors and Permit Holders desiring to conduct exploration and development work on the area applied for.

Drilling equipment may be leased upon application by any Qualified Person with the Director.

#### **Section 247. Preferential Right to Lease**

In case there are two or more applications, the Director shall grant the Lease Agreement to the first applicant who has satisfactorily complied with all the requirements.

#### **Section 248. Terms and Conditions of the Drilling Lease Agreement**

The terms and conditions of the Drilling Lease Agreement are the following:

- a. The lessee shall have an approved Exploration Permit;
- b. The drilling equipment shall be used exclusively for exploration purposes in the areas specified in the Agreement;
- c. The drilling equipment shall not be subleased to any person, partnership or corporation;
- d. The lessee shall satisfactorily comply with all the requirements imposed by the Director;
- e. The lease shall be for a minimum period of three (3) months from the date specified in the Lease Agreement;
- f. The Lease Agreement may be renewed by the Director when the evaluation of the drilling results justifies the continuation of the drilling program: *Provided*, That the lessee has not violated any terms and conditions of the original Lease Agreement;
- g. The Director or his/her duly authorized representative shall see to it that the drill machine pump and accessories are properly used and maintained;
- h. The Director or his/her duly authorized representative may conduct an inspection of the drilling operation at any time during the term of the lease at the expense of the lessee;
- i. The lessee shall pay the daily rental plus a surcharge of 100% per day for failure to return the leased equipment as stipulated in the Agreement;
- j. The lessee has not violated any terms and conditions of previous Lease Agreement; and
- k. The violation of any terms and conditions of the Lease Agreement shall be a ground for cancellation of the same.

## **Section 249. Rights and Obligations of the Lessee**

The following are the rights and obligations of the lessee:

- a. The lessee shall maintain and keep the equipment in good working condition during the term of the lease until it is returned to the Bureau;
- b. The lessee shall replace and/or repair all parts rendered unusable through breakage, loss or abnormal wear during the term of the lease. All parts missing at the time the equipment is returned shall be replaced within one (1) month from the time such equipment are returned. For this purpose, the lessee shall make the required cash deposit. If the lessee returns the equipment in bad condition and fails to restore them into running condition or fails to replace the missing parts or accessories within the allowable time, the lessor shall use the cash deposit and/or forfeit the bond without prior notice to the lessee to put the equipment back into running condition or replace any missing accessories. The lessee shall be required to deposit additional cash to defray the above-mentioned expenses if the original cash deposit for the purpose is insufficient;
- c. Transportation of the drilling equipment and all its accessories from the Bureau and return shall be for the lessee's account;
- d. The lessee shall submit monthly to the Director all the information, data and footage obtained through drilling which shall be treated as confidential. Such information, however, shall be made available to the public after a period of two (2) years;
- e. The lessee shall pay the required monthly rental fee (Annex 26-A);
- f. To guarantee the faithful compliance with the terms and conditions of the Lease Agreement and to answer for any loss and/or damage of the equipment during the term of the lease, the lessee shall file with the Bureau the required surety bond issued by a company accredited by the Insurance Commission, which may either be in cash or with a surety satisfactory to the Director;
- g. The lessee shall pay in advance an amount corresponding to two (2) months rentals and per diems including transportation expenses of one (1) driller upon the signing of the contract of Lease Agreement. The rentals and per diems for succeeding months shall be due and payable at the beginning or the first day of every month;
- h. Rentals not paid within thirty (30) calendar days after they become due and payable shall bear a surcharge of five percent (5%) per month until fully paid. Rentals shall continue to be charged for returned equipment not in running condition and for accessories lost or missing until repaired and replaced respectively; and
- i. Balance of rentals and per diems paid and/or deposits made after termination of the lease shall be applied to pending obligations of the lessee with the lessor. Excess rentals or deposits shall be refunded to the lessee.

## **Section 250. Receipts from Rentals**

All rentals fees of drilling equipment shall accrue to the Drilling Fund which shall be used for the purchase of supplies, materials and spare parts needed in the repair of said drilling equipment subject to the provisions of Commonwealth Act No. 246, as amended.

**CHAPTER XXVII  
FISCAL PROVISIONS AND SCHEDULE OF PAYMENTS  
AND CHARGES FOR WORK WHICH THE BUREAU MAY PERFORM**

**Section 251. Occupation Fees, Rentals, Royalties, Taxes**

Proof of payment of the occupation fees shall be submitted to the Regional Office concerned. Holders of mining leases, Quarry Permits and contracts shall submit to the Regional Director concerned evidence that the rentals and taxes on the occupied premises and the royalties due the Government arising out of the operation thereof had been paid when applicable.

**Section 252. Work Authorized**

Consistent with the provisions of Section 7 hereof, the Bureau may perform or accomplish work or service for Government offices, agencies, instrumentalities or private parties and collect payment or charge therefor in accordance with the schedule hereinafter prescribed, which work or service shall include, but shall not be limited to, the following:

- a. To execute surveys of mining claims and other mineral lands for location, patent, permit, contracts, lease or development purposes;
- b. To docket and conduct office and field investigations of conflicting mining locations;
- c. To perform geological, geophysical and geochemical surveys in onshore and offshore areas and make mineralographic, petrologic, petrographic and paleontologic examinations;
- d. To verify and investigate mineral discoveries and locations, exploration and development work;
- e. To perform fire and wet assays and smelting and metallurgical tests of ores and to sample ore piles for shipment;
- f. To check and evaluate ore reserves for the SEC, for other Government entities and/or private parties who may request or order for such work;
- g. To perform drafting or projection work;
- h. To issue blue or white prints of survey plan or sketch plan; and
- i. To do such other work and/or service to interested parties as may be requested and which is within the scope of the functions of the Bureau.

**Section 253. Mines Survey and Investigation and Monitoring Fund**

All payments and charges for work performed or to be performed by the Bureau/Regional Office shall accrue to the Mines Survey, Investigation and Monitoring Fund of the Bureau/Regional Office to be deposited as Trust Fund against which shall be charged expenses in connection with any of the work mentioned in Section 252 hereof, which expenses shall include salaries and wages, travel expenses, supplies and materials, sundry expenses and purchase of furniture and equipment: *Provided*, That any balance in the payment or charge left after the completion of the work requested may be used by the Bureau/Regional Office in the maintenance of the work force and equipment necessary to render the work or services authorized in this order: *Provided, further*, That if the work is discontinued due to some reasonable cause, whatever balance remaining after deducting the expenses already incurred by the Bureau/Regional Office in connection with the work, shall be refunded by the Director/Regional Director concerned to the applicant upon the latter's request.

#### **Section 254. Request for Work**

Request for survey, investigation, analysis or examination of mineral or rock sample or any other work performed by the Bureau shall be submitted in the form prescribed for the purposes: *Provided*, That if the prescribed form is not available, the request may be made in letter form. The request shall contain, among others, the name and address of the person or entity requesting the work and a full and complete information of the work desired.

#### **Section 255. Time of Making Payment**

Payment, based on schedule of payments and charges herein prescribed (Annex 5-A), unless otherwise stated, shall first be made by the applicant before any work requested shall be performed or executed.

#### **Section 256. Services to Local Government Offices, Instrumentalities or Agencies**

For services or work requested by National or Local Government offices, instrumentalities or agencies, the schedule of payments and charges herein prescribed shall apply.

#### **Section 257. Reservation to Reject Any Job Request**

The Bureau may reject any job request when the nature of the work is considered impractical or when the work at hand is of such volume as to prevent the request from being complied with and which will seriously impair the other work of the Bureau or endanger the lives or health of the personnel of the Bureau.

#### **Section 258. Use of Reports on Work Done**

Reports of said investigation, examination, or analysis shall be treated as confidential. However, copies thereof may be furnished other persons upon written request and approval of the person for whom the report was made: *Provided*, That any information and/or data contained in said reports shall be available for official use of the Bureau in connection with its studies of minerals, mines and mineral industry of the Philippines: *Provided, further*, That such reports may be released to the public after the lapse of two (2) years from their submission unless the Secretary and/or the Director directs otherwise.

#### **Section 259. Work Not Covered by the Schedule**

For work or service not covered by this schedule, the payment or charges therefor shall be determined and approved by the Director.

#### **Section 260. Charges for Fieldwork, In General**

Charges for the following fieldwork shall be by man days:

- a. For field verification of approved surveys for contract/mining area, investigation of conflicts, renewal or extension of mining contract and permit, verification of tax-exempt equipment, verification of ore stockpile and umpiring of ore shipments, inspection of mechanical and electrical installation, verification of mining operations done by Permittees/Contractors, verification of explosive magazines and blasting schemes and conducting ventilation, dust and gas surveys, PhP1,000.00 per man per day, provided that the minimum charge

- is PhP3,000.00.
- b. For evaluation of mining claims or geological investigation and geological verification of mining properties, PhP1,000.00 per man per day, provided the minimum charge is PhP3,000.00.
- c. Counting of the number of working days shall start from the day the fieldman leaves his/her official station and ends upon his/her return.
- d. In addition to the charges under Paragraphs (a) and (b) above, the applicant or interested party shall pay for the transportation of Bureau personnel from the official station to the area and return, as well as expenses for freight, labor, materials and analyses of samples.

## **CHAPTER XXVIII RECORDING SYSTEM AND MINERAL GAZETTE**

### **Section 261. Mining Recorder Unit**

The Bureau and its Regional and other offices shall have a Mining Recorder Unit in their respective offices to receive, record and manage all mining documents submitted by concerned individuals or companies relating to mining rights. However, same unit may be established in Provincial Governor's/City Mayor's Office.

Documents relating to applications for Mineral Agreements, FTAA's, Exploration Permits and Small-Scale Mining Permits in Mineral Reservations shall be registered at the Bureau.

Documents relating to applications for Mineral Agreements, FTAA's and Exploration Permits outside Mineral Reservations and Industrial Sand and Gravel Permits covering more than five (5) hectares shall be registered at the Regional Offices.

Documents relating to applications for Quarry Permits, Sand and Gravel Permits, including Industrial Sand and Gravel Permits covering five (5) hectares or less, Guano Permits, Gemstone Gathering Permits and Small-Scale Mining Permits outside Mineral Reservations shall be registered at the Provincial Governor's or City Mayor's Office where the area applied for is located.

The functions of the Mining Recorder Unit shall include the following:

- a. Pre-processing of applications particularly the documentary provisions of these implementing rules and regulations;
- b. Computation of fees to be paid by the applicant;
- c. Recording of mining documents;
- d. Providing information and advice on the status of applications;
- e. Inputting data relating to applications, contracts and permits into the Mining Rights Management System;
- f. Organizing and maintaining record holdings on mining rights applications in accordance with standard records management practices;
- g. Issuing certifications and copies of mining documents;
- h. Follow-up compliance of requirements needed in the processing of mining rights applications; and
- i. Projection/verification of area applied for either through the mining rights management system or control maps of the unit if free from mining conflict.

### **Section 262. Mining Register**

A mining register is a hardbound logbook, arranged in rows and columns, for chronologically recording a set of documents received by the Mining Recorder.

The following shall have their own mining register:

- a. Applications for mining rights:
  1. Exploration Permits;
  2. Mineral Agreements;
  3. FTAAAs;
  4. Quarry, Sand and Gravel, Guano, Gemstone Gathering Permits; and
  5. Small-Scale Mining Permits
- b. Mining rights involving:
  1. Exploration Permits;
  2. Mineral Agreements;
  3. FTAAAs;
  4. Quarry, Sand and Gravel, Guano, Gemstone Gathering Permits; and
  5. Small-Scale Mining Permits
- c. Miscellaneous Documents:
  1. Powers of Attorney;
  2. Deeds of Assignment/Transfer/Conversion;
  3. Operating Agreements;
  4. Protests or Adverse Claims; and
  5. All other instruments concerning or affecting mining rights.

All applications for mining rights shall be recorded in their corresponding mining register with the following information, among others:

- a. Application number;
- b. Date and time of filing;
- c. Applicant's/Proponent's name;
- d. Location;
- e. Area applied for in blocks/hectares;
- f. Official receipt number; and
- g. Amount paid.

For approved mining rights, the contract or permit number and the Contractor's or Permit Holder's name should be recorded in lieu of application number and applicant's/proponent's name, respectively.

All miscellaneous documents shall be recorded in their respective mining registers containing the following information:

- a. Date and time of filing;
- b. Document or application number;
- c. Entity involved;
- d. Document title;
- e. Page number;
- f. Book number;
- g. Year series;

- h. Amount paid; and
- i. Official receipt number.

### **Section 263. Administrative Fees relating to Mining Registration**

Before any of the documents enumerated in Section 261 can be registered, payment of the required fees in accordance with the rates specified in Annex 5-A shall be made. The amount, receipt number and time of payment shall be recorded in the appropriate mining register.

### **Section 264. Registration and Filing Procedures**

Upon compliance with the documentary requirements and payment of required fees, all documents subject for registration shall be recorded immediately in the appropriate mining register in black ink by the Mining Recorder.

Copies of applications for mining rights and their supporting documents shall be compiled with and bound in durable folders/boxes arranged chronologically and each page of the document consecutively numbered starting from the bottom page of the earliest document, herein referred to as a marked page. A document inventory report indicating the contents of the folder/box beginning from the marked page number 1 shall be maintained at all times. The document inventory report shall contain the following:

- a. Document control number;
- b. Marked page number(s) of the document; and
- c. Brief description of the document.

The document control number is a unique number recorded in the general receiving and releasing logbook of the Bureau or Regional Office. The Regional Office shall submit to the Bureau an annual document inventory report which shall serve as a guide for easy retrieval and reconstruction of file in case of loss.

For miscellaneous documents, their physical files shall be compiled according to type (that is, Special Power of Attorney, Deed of Transfer, etc.); numbered consecutively in the order of time and date of receipt; and bound in a book form beginning with Book 1 and where practicable, each book to contain two hundred fifty (250) documents. An inventory report of each book shall also be maintained and provided to the Bureau annually. Original copies should be kept as restricted files inaccessible to unauthorized persons. Photocopies or extra duplicate copies, bound in book form, will be kept in shelves as working copies for public use.

Duplicate copies of miscellaneous documents shall be sent to the Bureau within thirty (30) calendar days from date of registration for archiving purposes: *Provided*, That a certified photocopy issued and signed by the Mining Recorder could serve the purpose in the absence of a duplicate copy.

### **Section 265. Mining Document Archive**

A national mining document archive shall be established at the Bureau and maintained by its Mining Recorder. Original or duplicate copies of applications/contracts/permits and relevant documents sent by Regional Offices shall be filed in this archive to produce a replica of the regional records. Copies of these documents sent by Regional Offices shall contain the control numbers and the marked page numbers written on the original document to guide the filing of the records.

A microfilm or digital copy of each relevant record, if available, may replace the

paper records in the archive. The Bureau shall plan and acquire an efficient and appropriate technology for archiving these documents.

#### **Section 266. Mineral Rights Management System**

In order to facilitate the mechanical processing and recording of applications/contracts/permits and provide a systematic basis for the management of data relating to applications/contracts/permits, a computer-based Mining Rights Management System shall be established and maintained by the Bureau and its Regional Offices which may be updated and improved as the need arises. This system should not only guide and expedite the mechanical processing of applications but should also be capable of building up a national database and producing reports and maps that may be required by the Bureau and its Regional Offices or requested by its clients and linking or interfacing with other mining industry-related systems which the Bureau may later acquire or develop.

A set of standards covering procedures, programming, data codes, data definitions, training, operating system/platform and related matters shall be established by the Bureau to guide the operation and development of the system. A system documentation and a user's manual shall be produced and maintained for each new version.

A guideline on the operation and establishment of the responsibility of the Bureau and its Regional Offices on the implementation of the system is given in Annex 28-A, which may also be updated as the need arises.

#### **Section 267. Mineral Resources Database System**

A mineral resources database shall also be established at the Bureau and Regional Office(s) concerned to record all exploration and related data from its own projects and those submitted by mining rights holders to serve as repository of such information for national and regional policy and planning studies, monitoring and research purposes. This database should be designed to be accessed by the mining rights management system provided for in the previous Section and other mining industry-related systems to be established or acquired by the Bureau.

#### **Section 268. Mineral Gazette Publication**

To provide an official medium for releasing information on mining policy issuances of the Government, mining rules and regulations, current listing of mining rights and their locations on the map, other official acts affecting mining and other information relevant to mineral resources development, a Mineral Gazette of nationwide circulation shall be organized and established by the Bureau. This Gazette shall be published at least annually and be made available to libraries of the Department, the Bureau, its Regional Offices, U.P. Law Center, the National Library, appropriate information offices or Provincial Governments and Municipal Offices and such other places as may be determined by the Director: *Provided*, That such Gazette shall also be made available for subscription to the public at a reasonable price.

#### **Section 269. Recording System and Publication Fund**

The Director and Regional Directors shall ensure that adequate budget shall be allocated every year from their regular appropriations to effect and sustain the physical filing and recording setup, the publication of the Mineral Gazette and the development, operation and maintenance of Mining Rights Management System, the mineral

resources database system and other mining industry-related system which the Bureau may establish or acquire.

Funds to be allocated for the Mining Rights Management System shall include adequate capital outlay for the purchase of the required softwares, hardwares and support equipment and their subsequent upgrades. Funds shall also be provided for transportation and travel expenses needed in troubleshooting, in-house training, repairs and upgrading of hardwares and related equipment, cost of supplies and materials, cost of external training, subscription services and cost of communication services for data exchange and system coordination.

## **CHAPTER XXIX REPORTING REQUIREMENTS AND FINES**

### **Section 270. Reporting Requirements**

Every Contractor/Permittee/Permit Holder or holder of an MPP or its operator is required to submit the following reports:

- a. Monthly Report On Production, Sales and Inventory of Metallic Minerals and Employment

A Contractor or its operator or holder of MPP shall submit to the Director a sworn Monthly Report on Production, Sales and Inventory of Metallic Minerals and Employment as prescribed in MGB Forms Nos. 29-1 to 29-9, whichever mineral is applicable, within fifteen (15) working days after the end of each calendar month.

- b. Monthly Report On Production, Sales and Inventory of Non-Metallic Minerals and Employment

In the case of Mineral Agreements, FTAA's or MPPs involving non-metallic minerals, a Contractor or its operator or Permit Holder shall submit to the Regional Director concerned, copy furnished the Director, a sworn Monthly Report on Production, Sales and Inventory of Non-Metallic Minerals and Employment as prescribed in MGB Form No. 29-10 within fifteen (15) working days after the end of each calendar month.

- c. Quarterly Report on Production, Sales and Inventory of Quarry Resources (Except Sand and Gravel) and Employment

A holder of a Quarry Permit or its operator shall submit to the Provincial Governor/City Mayor, copy furnished the Director and Regional Director concerned, a sworn Quarterly Report on Production, Sales and Inventory of Quarry Resources and Employment as prescribed in MGB Form No. 29-11 within fifteen (15) working days after the end of each calendar quarter.

- d. Monthly Report on Production, Sales and Inventory of Industrial Sand and Gravel and Employment

A holder of an Industrial Sand and Gravel Permit or its Operator shall submit to the Director, copy furnished the Regional Director concerned, a sworn Monthly Report on Production, Inventory and

Sales of Industrial Sand and Gravel and Employment as prescribed in MGB Form No. 29-12 within fifteen (15) working days after the end of each calendar month.

- e. Monthly Report on Production and Sales of Commercial Sand and Gravel and Employment

A holder of a Commercial Sand and Gravel Permit or its Operator shall submit to the Provincial Governor/City Mayor concerned, copy furnished the Director and Regional Director concerned, a sworn Monthly Report on Production, Sales and Inventory of Commercial Sand and Gravel and Employment as prescribed in MGB Form No. 29-13 within fifteen (15) working days after the end of each calendar month.

- f. Quarterly Report on Production and Sales of Small-Scale Metallic Mines and Employment

The holder of a Small-Scale Metallic Mines Permit shall submit to the Provincial Governor/City Mayor, copy furnished the Director and Regional Director concerned, a sworn Quarterly Report on Production and Sales of Small-Scale Metallic Mines and Employment as prescribed in MGB Form No. 29-14 for metallic minerals other than gold or MGB Form No. 29-15 for gold mineral only, within fifteen (15) working days after the end of each calendar quarter.

- g. Integrated Annual Report

A Contractor or MPP Holder or its operator shall submit to the Director a sworn Integrated Annual Report using prescribed MGB Form No. 29-16 within two (2) months after the end of each calendar year.

A holder of a Quarry Permit or its Operator shall likewise submit same report (MGB Form No. 29-16) to the Provincial Governor/City Mayor concerned, copy furnished the Director and the Regional Director concerned, within two (2) months after the end of each calendar year.

All books of accounts, reports and correspondences shall be filed and kept by the Contractor/Quarry Resources Permit Holder or its Operators and shall be open at all times for verification by the Director or its duly authorized representative.

A Small-Scale Mining Permit Holder shall submit to the Provincial Governor/City Mayor, copy furnished the Director and the Regional Director concerned, a sworn Integrated Annual Report for Small-Scale Mines as prescribed in MGB Form No. 29-17 within two (2) months after the end of each calendar year.

- h. Quarterly Energy Consumption Report

A Contractor or MPP Holder or its Operator shall submit to the Director, copy furnished the Regional Director concerned, a Quarterly Energy Consumption Report using prescribed MGB Form No. 29-18 within fifteen (15) working days after the end of each

calendar quarter.

A holder of a Quarry Permit or its Operator shall submit to the Provincial Governor/City Mayor concerned, copy furnished the Director and the Regional Director concerned, a Quarterly Energy Consumption Report using prescribed MGB Form No. 29-18 within fifteen (15) working days after the end of each calendar quarter.

i. Quarterly Drilling Report

A Contractor or Permittee conducting any drilling project or a lessee of a Bureau drill machine shall submit to the Director, a sworn Quarterly Drilling Report in its contract area/Permit Holder/project area within thirty (30) calendar days at the end of each calendar quarter. This drilling report shall include, among others, a description of the geology, a topographic-drill collar location map in 1:50,000 scale and corresponding drill section showing geology, structures and orebody, if applicable; and the core log which shall contain the coordinates of the collar elevation, drill inclination, direction and length and the physical/chemical analysis of the cores.

j. Annual Mineral Reserve Inventory Report

A Contractor or its operator shall submit to the Director, copy furnished the Regional Director concerned, an Annual Mineral Reserve/Resources Inventory Report using the prescribed MGB Form No. 29-19, on or before the end of the first quarter of each calendar year.

For areas outside Mineral Reservations, a holder of Quarry, Sand and Gravel and Small-Scale Mining Permit or its operator shall likewise submit the same report (MGB Form No. 29-20) to the Provincial Governor/City Mayor concerned, copy furnished the Director and the Regional Director concerned, on or before the end of the first quarter of each calendar year. For areas within Mineral Reservations, the Permit Holder or its operator shall submit the same report to the Director.

The Contractor/Permittee/operator may submit other types of mineral reserve report: *Provided*, That the required information data contained in the said form must be included in their report.

k. Monthly General Accident Report

A Contractor, Permit Holder or its operator shall submit to the Regional Office and Bureau within fifteen (15) working days after each calendar month a Monthly General Accident Report using MGB Form 15-5.

l. Monthly Explosive Consumption Report

Holders of Purchaser's License for Explosives shall submit to the Regional Director, copy furnished the Director, a Monthly Explosive Consumption Report within fifteen (15) working days after each calendar month using the prescribed MGB Form 15-8.

- m. Semiannual Report on Mine Waste and Tailings Generated  
  
Refer to relevant section in these implementing rules and regulations.
- n. Semiannual Status Report on the Environmental Work Program  
  
Refer to relevant section in these implementing rules and regulations.
- o. Quarterly Report on Production, Sales and Inventory of Small-Scale Mines Within Mineral Reservation  
  
The holder of a Small-Scale Mining Permit within Mineral Reservation shall submit to the Director, a sworn and verified Quarterly Report on Production, Sales and Inventory of Small-Scale Mines Within Mineral Reservations as prescribed in MGB Form No. 29-20 within thirty (30) calendar days after the end of each calendar quarter.
- p. Annual and Quarterly Status Report based on Work Program of MPSA/FTAA Contractor  
  
Refer to relevant Sections of these implementing rules and regulations.
- q. Annual Land Use Report  
  
A Contractor or its operator shall submit to the Director a sworn annual land use report within sixty (60) calendar days after each calendar year.
- r. Marketing Contract(s)/Sales Agreement/s  
  
The Contractor/Permit Holder shall submit to the Director, a copy of its existing and future marketing contract(s)/sales agreement(s) for registration, copy furnished the Regional Director concerned, before any sale and/or shipment of mineral product is made, subject to the confidentiality clause. At the same time, the Contractor/ Permit Holder shall regularly inform the Director in writing of any revisions, changes or additions in said contract(s)/agreement(s). The Contractor/Permit Holder shall reflect in its Monthly/Quarterly Report on Production, Sales and Inventory of Minerals, as well as in the Integrated Annual Report, the corresponding registration number(s) of the marketing contract(s)/sales agreements(s) governing the export or sale of minerals.
- s. Semiannual Status Report on the Exploration Work Program  
  
Refer to relevant section in these implementing rules and regulations.
- t. Other reports as may be required by the Director.  
  
The Contractor of a Mineral Agreement or the holder of a Quarry

Permit, any of the Sand and Gravel Permits, Guano Permit, Gemstone Gathering Permit or Small-Scale Mining Permit is also required to submit reports (a) to (h) mentioned in this Section, whichever is applicable to its operation, even when there is no production for a given period. The report, however, should indicate the causes or reasons why there was no production for the period. The Director, Regional Director concerned and in the case of quarry resources and Small-Scale Mining Permits, the Provincial Governor/City Mayor concerned shall be promptly notified in writing before implementation of any mine suspension or mine closure.

Submission of the applicable report cited above shall be made part of the terms and conditions of Mineral Agreements, FTAA, Exploration Permit, Quarry Permit, Sand and Gravel Permit, Guano Permit and Gemstone Gathering Permit.

**Section 271. Fines**

In case of late or non-submission of any of the reports mentioned in Section 270 (a) to (h) and (o), the following fines shall be imposed:

- a. Late submission of any of the required reports including copies to be furnished to the Director and Regional Director concerned.

	<u>Basic Fine</u>	<u>Daily Fine</u>
1st Violation	1,000.00	10.00
2nd Violation	2,000.00	20.00
3rd Violation and subsequent violations	3,000.00	30.00

- b. Non-submission of any of the required reports after one (1) month from the prescribed reporting period.

	<u>Basic Fine</u>	<u>Daily Fine</u>
1st Violation	2,000.00	20.00
2nd Violation	3,000.00	30.00
3rd Violation and subsequent violations	5,000.00	50.00

*Provided*, That a late report classified under non-submission category shall not pay the accumulated fine in (a) but instead pay the fines imposed in (b) of this Section: *Provided, further*, That the total fine for non-submission of any of the required reports at any one time shall not exceed Ten Thousand Pesos (PhP10,000.00).

- c. Failure of the Contractor or holder of any of the quarry resources permits or its Operator to submit any of the reports prescribed in the preceding Section three (3) months after the third violation or failure to pay fines within one (1) year shall be sufficient ground for cancellation or non-renewal of a permit, Mineral Agreement or FTAA.

In case of late or non-submission of reports mentioned in Section 270 (i) to (q) and (s) except (m) and (r), a fine of One Thousand Pesos (PhP 1,000.00) shall be imposed. The Secretary may adjust the above-mentioned fines from time to time as conditions warrant such changes.

Payment of fines involving the herein cited reports shall be made to the Treasurer or Cashier of the following offices:

- a. Provincial Governor/  
City Mayor
  - MGB Form No. 29-11
  - MGB Form No. 29-13
  - MGB Form No. 29-14
  - MGB Form No. 29-15
  - MGB Form No. 29-17
  - MGB Form No. 29-18
- b. Regional Director
  - MGB Form No. 29-10  
(for Mineral Agreements and FTAA's)
- c. Director
  - MGB Form Nos. 29-1 to 29-9
  - MGB Form No. 29-16
  - MGB Form No. 29-18
  - MGB Form No. 29-12

Late or non-submission of any of the reports mentioned in Section 270 hereof shall be a ground for the withholding, upon due notice, of other pending transactions or the processing of other mining applications of the Permittee/Contractor/Permit Holder with the Bureau and/or Regional Office concerned.

In case of renewal applications, Permittees/Contractors/Permit Holders shall secure a written Certification from the Provincial/City Mining Regulatory Board concerned/Regional Director concerned/Director as to the timely and complete submission of the required reports. Non-submission of said reports shall be a ground for denial of the renewal application.

## **CHAPTER XXX TRANSITORY AND MISCELLANEOUS PROVISIONS**

### **Section 272. Non-Impairment of Existing Mining/Quarrying Rights**

All valid and existing mining lease contracts, permits/licenses, leases pending renewal, MPSAs, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired and shall be recognized by the Government: *Provided*, That the provisions of Chapter XXI on Government share in MPSA and of Chapter XVI on incentives of the Act shall immediately govern and apply to a mining Lessee or Contractor unless the mining Lessee or Contractor indicates its intention to the Secretary, in writing, not to avail of said provisions: *Provided, further*, That no renewal of mining lease contracts shall be granted after the expiration of its term: *Provided, finally*, That such leases, Production-Sharing Agreements, FTAA's shall comply with the applicable provisions of these implementing rules and regulations.

All pending applications for MPSA/FTAA covering forest land and Government Reservations shall not be required to re-apply for Exploration Permit: *Provided*, That where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, the applicant/proponent shall be given an extension of one (1) year, reckoned from September 13, 1996, to divest or relinquish pursuant to Department Administrative Order No. 96-25 in favor of the Government, areas in excess of the maximum area allowance provided under the Act. For this purpose, a Special Exploration Permit of limited applications and activities shall be issued by the Secretary upon the recommendation of the Director, subject to the terms and conditions specified in the Permit and pertinent provisions of Chapter V hereof: *Provided*, That an area permission shall be granted likewise by the Secretary to undertake limited exploration activities in non-critical forest reserves and forest

reservations and such other areas within the jurisdiction of the Department. In other areas, however, the applicant/proponent shall secure the necessary area clearances or written consent by the concerned agencies or parties, as provided for by law: *Provided, further*, That the time period shall be deducted from the life of the MPSA/FTAA and exploration costs can be included as part of pre-operating expenses for purposes of cost recovery should the FTAA be approved: *Provided, finally*, That this provision is applicable only to all FTAA/MPSA applications filed under Department Administrative Order No. 63 prior to the effectivity of the Act and these implementing rules and regulations.

All pending applications for Industrial Sand and Gravel Industrial Permit covering more than five (5) hectares with the LGU shall be endorsed to the Regional Office concerned for its processing, evaluation and approval.

**Section 273. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications**

Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of Mineral Agreement with the Government until September 14, 1997: *Provided*, That failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for mining application by other interested parties.

**Section 274. Separability Clause**

If any clause, sentence, section or provision of these implementing rules and regulations is held or declared to be unconstitutional or invalid by a competent court, the remaining parts of these implementing rules and regulations shall not be affected thereby.

**Section 275. Repealing and Amending Clause**

Department Administrative Order No. 95-23 and all orders, rules and regulations inconsistent with or contrary to the provisions of these implementing rules and regulations are hereby repealed or modified accordingly. The Secretary shall furthermore have the authority, inter alia, to amend, revise, add to, clarify, supplement, interpret, delete, or make exemptions (to the extent not contrary to the provisions of the Act) to any provision of these implementing rules and regulations with the end in view of ensuring that the Act is appropriately implemented, enforced and achieved.

**Section 276. Effectivity**

These implementing rules and regulations shall take effect fifteen (15) days following its complete publication in two newspapers of general circulation.

**HORACIO C. RAMOS**  
Acting Secretary