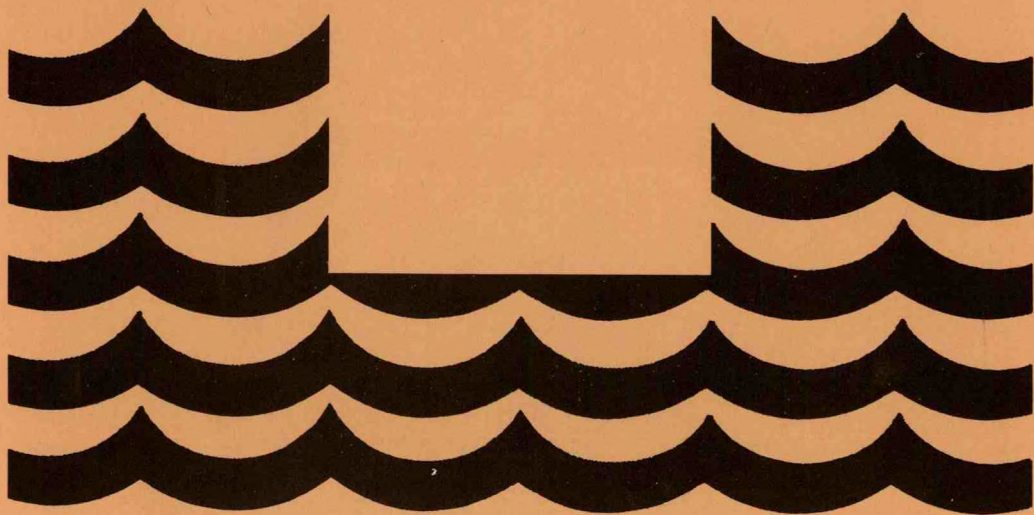


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## Deep Seabed Mining

Final Regulations



U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of Ocean Minerals and Energy  
September 1981

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Tuesday  
September 15, 1981

# Final Report Deep Seabed Mining

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## Part IV

# Department of Commerce

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National Oceanic and Atmospheric  
Administration

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Deep Seabed Mining Regulations for  
Exploration Licenses: Final Rules

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1981



## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 970

## Deep Seabed Mining Regulations for Exploration Licenses

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final rules.

**SUMMARY:** Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), establishes a program pursuant to which the Administrator of the National Oceanic and Atmospheric Administration (NOAA) is authorized to issue to eligible United States citizens licenses for exploration for deep seabed hard mineral resources and permits for the commercial recovery of such resources. The Act calls for NOAA to issue such regulations as are required by or are necessary and appropriate to implement this program. These rules set forth the procedures and substantive requirements according to the terms of the Act pursuant to which U.S. citizens may apply for and NOAA will issue exploration licenses.

**DATES:** These rules will become effective October 15, 1981.

**ADDRESSES:** Inquiries and submissions should be mailed to: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** James P. Lawless, Acting Director, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, Telephone: (202) 653-7695.

**SUPPLEMENTARY INFORMATION:** The Act was signed into law on June 28, 1980. It establishes a legal structure pursuant to which United States citizens may proceed with the exploration for and commercial recovery of deep seabed hard minerals (commonly referred to as "manganese nodules"), pending conclusion of an acceptable Law of the Sea Treaty which would address the same issue. The Act authorizes the Administrator of NOAA to issue to eligible U.S. citizens licenses for the exploration for deep seabed hard minerals (which licenses may not be issued before July 1, 1981) and permits for the commercial recovery of such minerals (which permits may not authorize commercial recovery to

commence before January 1, 1988). The Act also authorizes NOAA, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, to designate as reciprocating states those other nations which establish seabed mining programs which are compatible with and recognize the U.S. program. These reciprocal arrangements will provide a mechanism whereby each nation will recognize the rights of the others' miners.

These regulations for the issuance of exploration licenses have been developed, consistent with the purposes of the Act, to establish a legal framework to facilitate the development of the new seabed mining industry in the United States, while assuring that such efforts proceed in a responsible and environmentally sensitive manner. The regulations are intended to provide the necessary degree of certainty to the industry in the United States, while also recognizing the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative on behalf of miners to develop mining techniques and systems in a manner compatible with requirements of the Act and these regulations. In this regard the regulations reflect an approach, pursuant to the Act, whereby the issues discussed ultimately will be addressed and evaluated on the basis of the application and exploration plan submitted by each applicant.

#### Structure of the Regulations

The proposed regulations are structured to present procedures and requirements in the approximate chronological order they will be encountered in the application process. They begin by setting out their underlying purpose and the basic legal premises established by the Act, as well as the definitions applicable to the rules. Next, the steps that the applicant and NOAA will follow are set forth mostly in Subparts B through E, while the more substantive discussion of major issues that arise during the course of issuing and operating under a license are found primarily in Subparts F, G, and H. Miscellaneous provisions, plus the primary procedural subparts, follow.

#### Public Comment Opportunities

In developing these regulations, NOAA has pursued a continuing effort to provide for and encourage public participation. On July 28, 1980, NOAA published in the *Federal Register* and distributed an advance notice of proposed rulemaking (45 FR 49953), seeking comments and information for

use in this rulemaking. In November 1980, after considering the responses received on the advance notice, NOAA issued a discussion paper on the major issues to be addressed in regulations. This paper was sent to interested persons and organizations, and a notice published in the *Federal Register* (45 FR 79089, November 28, 1980), seeking comments. Also, a public hearing was held on December 17, 1980, to receive comments. With the benefit of these earlier comments NOAA published proposed rules on pages 18448-18475 of the *Federal Register* of March 24, 1981, and invited comments to be submitted by May 29, 1981. Also during this period public hearings were held in Honolulu, San Francisco and Washington, D.C. Comments on the proposed rules were received from 25 sources, including industry, state representatives, environmental groups, academia and other Federal agencies. Copies of the comments are available for review at the above address.

#### Summary of Comments and Responses

The comments submitted were useful in assisting NOAA to consider further the issues raised by the requirements of the Act and the related provisions in the regulations. A number of such comments provided improvements and refinements to the general approach proposed by NOAA, while many were the basis for clarification of specific provisions. The following summarizes the major comments and NOAA's responses.

#### Subpart A—General

Two commentators proposed that NOAA define or distinguish in greater detail those activities for which a license is not required. In the preamble to its proposed rules, NOAA indicated its initial view that a definitive and useful expansion in defining these exempted activities could not be provided, and that there were sufficient other incentives for a person to file an application for a license, if required, that such expansion was not necessary. Since these commentators did not offer any specific provisions or any reason why NOAA's initial view was invalid, and having reconsidered this issue, NOAA has concluded that it still is not necessary to expand on these exemptions.

Another commentator suggested that the regulations require parties, when undertaking in a license area those activities authorized to occur without a license, to give prior notice thereof, so as to allow for preventing conflicts with the activities of the licensee. Since such exempted activities do not require a

NOAA license, NOAA believes the Act does not provide authority to require such notice in the absence of conflict. However, NOAA believes that the public nature of issuing a license will provide adequate notice to such interested parties so as to alert them to the possibility of conflict and thus reduce the likelihood of its occurring.

#### Subpart B—Applications

*Pre-application consultations.* It was suggested that, with respect to the pre-application consultation provided for in § 970.200(d), the regulations should specify that in appropriate circumstances NOAA would provide written confirmation to the applicant of and verbal guidance resulting from such consultations. This has been incorporated into the regulations.

*Statement of financial resources.* The point was made that, at the time of submitting a license application, it is unlikely that an applicant would have actual assurance of the funding necessary for his entire exploration program. Rather, the comment suggested that a more realistic test should be whether the applicant can demonstrate a reasonable capability to commit or raise sufficient resources. (Thereafter, periodic review could be maintained satisfactorily through diligence requirements.) This revision was incorporated in § 970.201(a) and also is reflected in § 970.401. Commentors also suggested that the application need contain financial information with respect to only the applicant and those entities upon which the applicant will rely to finance his exploration activities and further suggested reliance on current Securities and Exchange Commission filings as sufficient documentation for publicly-held companies. NOAA agrees that these are reasonable revisions to this portion of the regulations, and has incorporated changes to this effect. Thus, the regulations no longer rely on the § 970.101(d) definition of "affiliate" in addressing the financial resources of the applicant. In addition, NOAA has incorporated the suggestion that § 970.201(b) request credit and bond ratings only if relevant. NOAA does not believe, however, that it can justify incorporating the suggested automatic exclusion of such information because it is proprietary or not reasonably available. Such information is still likely to be necessary for NOAA's determination. With respect to the former, § 970.902 specifically provides for protection of proprietary information, so that such exclusion is unnecessary. As for the latter, it would be impossible to define in these

regulations what constitutes reasonable availability. Rather, individual difficulties can be addressed during pre-application consultations in each case.

*Technological capabilities.* In regard to this issue, it was suggested that an applicant be allowed to present technological knowledge and skills to which he can demonstrate access, as well as that which he possesses. This clarification has been incorporated in both §§ 970.202 and 970.402. The latter section, in response to a comment, also clarifies that the applicant need not demonstrate existing availability of all technology for the full exploration plan, particularly pertaining to the later stages of exploration. Rather, to allow for the future evolution of such technology, he need only show a reasonable expectation of obtaining the necessary technology.

*Exploration plan.* Several comments proposed that, rather than indicating that an exploration plan must reflect the actual initiation of commercial recovery by the end of the ten-year license period, it would be more appropriate for the regulations to provide that the plan must reflect the development of information within the license period which is sufficient to provide a basis for an application for a commercial recovery permit. NOAA concurs with this concept and has incorporated language in § 970.203(a) to reflect it. Related provisions in § 970.602(b) pertaining to diligence requirements also have been revised to reflect this approach. In addition, in response to comment, NOAA has clarified its view that the intended exploration schedule in an exploration plan can be sufficiently flexible to take into account the different concepts and chronologies to be employed by different applicants. This clarification includes the recognition in the regulations that a proposed licensee's approach could rely on the future participation by other entities to develop a mine site. If so, the plan should include a general description of how the applicant proposes to dovetail its activities with those of the other entities. The regulations also clarify, in response to comment, that at the time of application descriptions of planned designs and tests of recovery and processing systems can be general. These provisions were accompanied by other clarifications on the contents for an exploration plan, in response to comments. In particular, NOAA has added the specific recognition that the plan may include a retrospective element in the form of a description of any relevant activity, i.e., exploration and prospecting work,

completed by the applicant prior to the submission of the application. One commentator also proposed that the provisions in § 970.203(b)(7), pertaining to plans for environmental monitoring and protection, be deleted and deferred until commercial recovery. However, NOAA believes this would be contrary to the Act since section 103(a)(2)(B) thereof specifies this as one element of an exploration plan.

#### *Environmental information.*

Comments requested some clarification of the information needed for the site-specific EIS which NOAA must issue for each license, including clarification on the timeliness of submission of such information. The regulations have been revised in § 970.204(a) in this regard. They set forth the approach which has been developed in more detail in the technical guidance document referenced in that subsection. The clarification includes the minimum information which NOAA will need with an application, as well as the explanation of the need for all information at least one year prior to the testing of integrated mining systems. Although the regulations strongly encourage the submission of all needed information with the application, this need for any remaining information one year in advance of testing is based upon the possibility that, to the extent that detailed information on system tests is submitted subsequent to the basic application, NOAA may be required to issue a supplement to the site-specific EIS relating to the license. Until its EIS responsibilities are met, NOAA cannot authorize such system testing activities. NOAA did not feel it could accept one comment, that information need be submitted only on prototype or large-scale equipment tests since small-scale tests will not require the filing of a supplement. NOAA believes it is premature to make this distinction and determination in the absence of more specific information. Thus, the regulations provide for information on all tests of integrated mining systems.

*Vessel safety.* One comment received questioned the authority of the Administrator to require foreign flag vessels to comply with structural and safety requirements for United States vessels when the flag state is not a party to either SOLAS 74 or SOLAS 60. It was suggested that flag state requirements in conjunction with satisfaction of the applicable rules of an international classification society would provide adequate protection for the safety of life and property at sea. NOAA believes the commentator was not correct in stating that Congress did not convey authority

to the Administrator to require adherence by foreign flag vessels to standards adequate to insure the safety of life and property at sea, whether the standards be those of the United States or some other adequate criterion. The United States has adhered to the position that minimum design and construction standards should be implemented through competent international organizations. Thus, the suggestion that satisfaction of flag state requirements would suffice to enable the Administrator to make the necessary findings is not compelling. Further, such an approach would demand a case-by-case review of the design and construction standards for non-SOLAS flag states. However, consideration of the suggestion that certification of international classification societies would adequately address the safety concerns at issue has led to the conclusion that the small percentage of vessels not registered under SOLAS flags could most effectively be handled by requiring their certification to the applicable published rules of a member of the International Association of Classification Societies (IACS). Therefore, § 970.205(b)(3) has been altered to allow such certification to provide the basis for the necessary determinations with respect to safety of life and property at sea, pursuant to §§ 970.507, 970.521 and Subpart H of these regulations.

**NPDES requirements.** Although section 109(e) of the Act provides that requirements pertaining to National Pollutant Discharge Elimination System (NPDES) permits, pursuant to the Clean Water Act, apply to any discharge of a pollutant from a vessel or other floating craft engaged in deep seabed mining exploration, there is no legal requirement for an applicant to obtain such a permit prior to NOAA's issuance of an exploration license. Nevertheless, in its proposed rules NOAA had included a mechanism, as part of the NOAA application, for facilitating the efforts of both prospective miners and the Environmental Protection Agency (EPA) with respect to NPDES permits. This effort also included the assessment in NOAA's programmatic environmental impact statement of the effects on water quality of discharges from deep seabed mining exploration activities. However, in subsequent discussions with NOAA, EPA has advised of its intention to issue a general NPDES permit to cover all deep seabed mining exploration activities which are covered by these regulations, and has initiated efforts to do so. Since EPA's regulations providing for the issuance of general NPDES

permits eliminate the need for applications, NOAA has deleted from its application regulations reference to EPA's requirements for NPDES applications. However, owners or operators of deep seabed mining facilities will be required under EPA procedures to notify EPA of their intent to be covered by the general permit when it is issued. If EPA's procedures should result in that agency's not issuing a final general NPDES permit to cover these activities, the individual explorer would be required to apply for an individual NPDES permit under 40 CFR 122.53.

**Antitrust information.** Comments urged that the information requested in the original § 970.208, to assist the Attorney General and the Federal Trade Commission in the antitrust review provided for in section 103(d) of the Act, in part was overly broad and unduly burdensome. In response to these concerns, NOAA has eliminated the requirement for market studies, surveys and other memoranda on the future prospects for deep seabed mining, as well as the requirement for supplementary information upon request. Furthermore, in lieu of the original request for certain business information pertaining to all affiliates of the applicant, the final regulations require such information only if such affiliate, or parent or subsidiary of the affiliate, is engaged in production in, or the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals, or any metals refined from these minerals.

**Fee.** In response to suggestions to allow for adjustment in the application fee so as to reflect more closely the actual cost of reviewing and processing the application, the regulations now specify that NOAA will subsequently adjust the fee if costs incurred are significantly less than the original fee, as well as if they are significantly greater. In addition, NOAA has responded to the suggestion for a substantially reduced fee, in case of transfer of a license to an applicant previously found qualified, by providing for an appropriate fee reduction in advance in such cases, on the basis of pre-application consultations pursuant to § 970.200(d). NOAA cannot specify in advance how extensive such reduction may be, and thus believes that a case-by-case review will be necessary.

**Substantial compliance.** It was suggested that the regulations provide that, if an application is in substantial but not full compliance with the regulations, NOAA's notice thereof should specify the information which the

applicant must submit in order to bring it into full compliance, and why the additional information is necessary. NOAA believes this would be appropriate and has incorporated language to this effect. However, NOAA has determined that the Act does not grant it the discretion to employ a "good faith" test for pre-enactment explorers, rather than the substantial compliance test, as was suggested by one commentator.

**Federal consultation and cooperation.** In response to requests that NOAA identify those other agencies which have indicated statutory responsibilities which would be affected by proposed seabed mining exploration activities, and thus automatically would be sent copies of each application, NOAA has listed these other agencies in the regulations.

**Public hearings.** A commentator pointed out that NOAA's procedures could be interpreted to require a public hearing on a license application both before certification of the application and after preparation of the draft EIS on such application. NOAA does not believe that it generally would be necessary to hold multiple public hearings on each application, and did not intend to so require in its regulations. Therefore, new § 970.212(b) clarifies that the required public hearing will be held after preparation of the draft EIS on an application.

#### **Subpart C—Procedures for Applications Based on Exploration Commenced before June 28, 1980**

In its preamble to its proposed rules, NOAA pointed out that, in developing the final version of this subpart involving resolution of potential conflicts among applications of pre-enactment explorers, NOAA would consider procedures being developed in negotiations among reciprocating states. This was because NOAA recognizes that, for the most part, the procedures should be compatible. Although a number of comments were submitted on this subpart of the proposed rules, a primary thrust likewise was that NOAA should assure that the domestic procedures in these rules and comparable procedures agreed to among reciprocating states should be conformed. Since the terms of such procedures have not been completely resolved among reciprocating states, NOAA has concluded that it would be premature to publish Subpart C at the present time. Thus, it has been reserved in the final regulations, so that NOAA can assure adequate compatibility between this subpart and the terms

established among reciprocating states. When those terms are resolved, which should be in the near future, NOAA will publish the final regulations for Subpart C. NOAA will not accept applications from any person until after Subpart C is published.

#### Subpart D—Certification of Applications

*Denial of certification.* A commentator urged that, contrary to NOAA's proposed rules, the only basis for denial of certification is failure to meet the requirements of Subpart D of the regulations pertaining to certification, and that reference to the requirements for issuance or transfer should be deleted as a requirement at this stage. As a general rule, prior to certification NOAA intends to devote its efforts to review of the application only in the context of the certification requirements specified in Subpart D of the regulations. However, NOAA cannot concur with the particular comment that the agency has no authority to deny certification on the basis of failure to meet a requirement for issuance or transfer of a license. This authority is set forth in section 106(a) of the Act. Therefore, although NOAA views this occurrence as rather unlikely, if in the course of reviewing an application for certification the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer of a license will not be met, NOAA believes that it would be an unwarranted and useless expenditure of public resources to continue with the review and procedures associated with the issuance of a license. Thus, the general concept has been retained, although the regulations have been clarified to reflect that review of issuance requirements is not expected as a matter of course.

#### Subpart E—Issuance/Transfer/Terms, Conditions and Restrictions

*Terms, conditions, and restrictions.* In response to comment, NOAA has included in the regulations the provision from the Act that proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

*Freedom of the high seas.* One commentator objected to the inclusion of specific factors in § 970.503(c)(2) pertaining to the Administrator's decision on whether proposed exploration activities would

unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law. NOAA has deleted the list of factors. However, NOAA believes that it would be inappropriate, as recommended by another commentator, to specify in this section that this applies to "superior" freedoms. Rather, NOAA believes it more appropriate to refer to the general principles of international law as the basis for such determination.

*Suspension or modification of activities; suspension or revocation of licenses.* NOAA has incorporated the suggested addition to the new § 970.511 that the Administrator will immediately rescind a suspension order as soon as he has determined that the cause for suspension has been removed. A commentator also suggested providing for appeal of agency decisions pursuant to the Administrative Procedure Act; this is already included in § 970.511(g).

*Revision of a license.* In response to comment, § 970.513 has been revised to clarify that applications for revisions to licenses are required only for major changes in exploration activities, and a description has been included as to what constitutes a major change.

*Duration of a license.* One commentator suggested that, with respect to the extension of a license, the Administrator should make allowance for deviations from the original exploration plan for good cause. NOAA concurs with this concept and has included provision in the regulations to this effect. The regulations also now specify that a request for extension must be accompanied by an amended exploration plan.

*License transfers.* A commentator urged that, in instances where only the form or ownership of a licensee is changed, the application for a transfer should not be required. NOAA does not believe it appropriate to delete the requirement altogether, but it recognizes that full application procedures may be unduly burdensome and believes that the regulations should allow the Administrator to take account of such circumstances. Therefore, the regulations have been revised to allow him to waive relevant determinations for requirements for which no changes have occurred since the preceding application. Another commentator requested that, since section 105(a) of the Act contained no requirement for a public interest determination for license transfers, this provision should be deleted from the regulations. Section 115(b) of the Act does require such a determination, however, so the provision has been retained.

#### Subpart F—Resource Development Concepts

*Logical mining unit.* One commentator suggested that the 1866 Clarke Spheroid may be an inappropriate reference, and that perhaps another method should be prescribed for delineating an applicant's logical mining unit. After discussions with representatives of cognizant Federal agencies, NOAA has revised the regulations to specify that the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum, and that a boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used. NOAA believes this approach is consistent with another comment which supported the concept that there should be no restriction on the shape of a logical mining unit, so long as it can be explored and ultimately mined efficiently, and the boundaries are described by north-south and east-west lines. In response to another commentator's query as to the justification for a presumed limit of 80,000 square kilometers as the size of an exploration area, and in recognition of the relationship of any presumed size to conflict resolution among pre-enactment explorers' applications, NOAA has presently deleted the reference in § 970.601(b) to any presumed number. However, the application still must describe how the size and location selection constitutes a logical mining unit. If a presumed number is agreed to as a part of the reciprocating state discussions, this will be incorporated in Subpart C and § 970.601(b). Finally, while one commentator objected to the inclusion in § 970.601(b) of an optional double logical mining unit for satisfying a possible obligation under a future Law of the Sea Treaty, another proposed that this provision should be mandatory. Due to the presently undefined nature of such a treaty, NOAA believes the proposed approach remains the most appropriate, whereby the regulations provide a mechanism if an applicant wants to plan accordingly, but they do not mandate tying into a presently undefined system.

*Conservation of resources.* Two commentators proposed that conservation of resources is a concept which applies only to commercial recovery, and that therefore the conservation requirements referred to in §§ 970.519 and 970.603 should be deleted from these regulations, which deal only with exploration. NOAA agrees that it presently appears unnecessary to

impose conservation measures during exploration. However, because of the potential significance of this issue during subsequent commercial recovery, NOAA also believes that the agency cannot justify ignoring the issue altogether during exploration. Rather, NOAA views license phase mining system tests as an opportunity to examine with industry, the conservation implications of any mining patterns used during exploration. Thus, in order to develop information needed during commercial recovery, the regulations now provide for license terms, conditions and restrictions only for the submission of collector track and nodule production data. Only if the information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will NOAA modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problem.

#### Subpart G—Environmental Effects

*Effects of exploration activities.* In the draft programmatic EIS, NOAA listed four impacts which may have the potential for significant environmental impact. One of these, the effect on zooplankton and their predators of trace metals associated with abraded nodules, has been the subject of further review by the National Marine Fisheries Service. In summary, this review has concluded that there is a low probability of significant ecological effect from such trace metals, even at the commercial recovery stage. Accordingly, NOAA has reduced in § 970.701(b) the list of impacts with potential for significance to three, with the trace metal issue among those subject to further studies and monitoring, as appropriate, to verify the above preliminary conclusion. The final programmatic EIS summarizes the reasoning behind the conclusion. In response to one comment, NOAA also has clarified in § 970.701(a) that the list of exploration activities with no significant impact refers to all similar types of activities. Another commentor suggested that NOAA identify the limited number of effects from exploration activities (e.g., from the testing of mining systems) that are expected to have potential for significant environmental effect. NOAA has clarified under § 970.701(b)(2) that the three effects presented in that subsection as having the potential for significance also occur during mining system tests that may be conducted under a license, but are expected to be insignificant during exploration.

*Environmental monitoring.* In response to concern expressed over the possibility of undue restrictions on equipment to be used for monitoring NOAA has inserted in § 970.702 the clarification that a monitoring plan, which will be included in terms, conditions and restrictions specified by the agency, will be based on the monitoring plan proposed by an applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. In response to another comment, NOAA has reviewed this section further to specify that monitoring plans will look at parameters relating to verification of NOAA's findings concerning potential impacts, but relating mainly to the three concerns listed in § 970.701(b)(2), and not just the effects of the benthic plume. With respect to the comment that nothing in the regulations indicates an intention to require the mitigation of adverse environmental effects during exploration, nor are any measures prescribed for mitigation, NOAA believes that the provision in § 970.702(b), for modification of license terms, conditions or restrictions to specify mitigation measures if found necessary, does address this potential and is appropriate at this stage since no significant adverse effects from exploration have been identified. As for another comment, NOAA agrees with the suggested need for field studies on this issue; that will be the function of the monitoring requirements in each license. However, NOAA disagrees with the proposal to include a requirement in these regulations for the use of best available technologies, since the Act directs this provision only to commercial recovery permits. With respect to the suggestion to require reports on environmental information and effects from exploration, including notice of circumstances that may create a significant adverse effect on the environment, NOAA believes that both the monitoring as referred to in § 970.702(a), which will include the reporting of results of monitoring, and submission of the annual report specified in § 970.901(b), accomplish this purpose.

#### Subpart I—Miscellaneous

*Proprietary information.* Commentors expressed some concern that greater protection should be afforded to applicants' proprietary information. Some techniques or procedures were suggested, such as providing for the presumptive proprietary status of material so designated by an applicant or licensee, and equal opportunity for an applicant to participate in procedures

triggered by another's request for such information. In response to comments, NOAA has revised § 970.902 in several respects. Although NOAA believes it cannot provide in advance in these regulations for the presumptive proprietary status of all material so designated by an applicant or licensee, the rules now provide for a possible case-by-case determination by the Administrator in advance of receipt of a request for the information in question. The regulations also now provide for notice and opportunity for response from an applicant or licensee in case a request is received for information for which confidential treatment was requested. Also, the rules now provide for coordinating confidential treatment between NOAA and other Federal agencies.

#### Subpart J—Uniform Procedures

In response to comment, NOAA has incorporated several minor revisions to these procedures.

#### Subpart K—Enforcement

NOAA also has incorporated several refinements in this subpart, in response to comment. Primarily, these clarify in § 970.1105 the arrangements for, and the role and functions of, NOAA-designated observers on licensees' vessels. These clarifications include notice by NOAA of: whether it proposes to place an observer on a vessel, the name of the observer, if known, the nature of proposed activities and a description of the intended monitoring equipment. NOAA has not specified the time period for such notice, since flexibility will be needed in that regard. The notice also will not include medical histories of proposed observers, since NOAA believes this would be an unwarranted invasion of privacy. NOAA plans to assure that all observers are physically fit, however, before so assigning them. The above notice is complemented by a provision for notice from the licensee to NOAA of planned voyages and mining system tests. The rules also provide, in response to comment, that observers will have no authority over the operation of the vessel or its activities, or over the officers, crew or personnel of the vessel, and that observers will comply with all rules and regulations issued by the licensee and all orders from the Master or senior operating official pertaining to vessel and personnel safety. There also is a provision for protection of confidential information, including review by the licensee of relevant parts of any observer's report.

### Other Comments

One commentator suggested that there may be some jurisdictional question as to the U.S. legal regime for seabed mining within 200 nautical miles of the U.S. (which the commentator refers to as an exclusive economic zone) but seaward of the outermost limit of the continental shelf. This comment proposed that the regulation should provide for an alternative seabed mining regime within this area. NOAA believes that the Act in its present form, based on its definition in section 4(4) of "deep seabed," calls for a single U.S. seabed mining regime. Although the Act recognizes a potential Law of the Sea treaty and regime in the future, at this time NOAA believes that only a single regime, as presented in the regulations, is authorized under the Act.

Certain commentators also proposed that NOAA explicitly provide in the regulations that specific actions under a license such as modification of terms, conditions and restrictions, as well as modification to the regulations, are subject to the procedures and cost-benefit analysis in Executive Order 12291. NOAA has concluded that, with respect to individual license actions, the actual procedures in the executive order do not apply, so their incorporation into these rules would be inappropriate. In implementing such actions, however, NOAA intends to consider the relative costs and benefits thereof, keeping in mind the requirements of the Act. As for future amendments to these regulations, it is impossible for NOAA to predict whether any such amendments, if undertaken, would be classified as "major" under the executive order, and thus to specify the applicable procedures. Nevertheless, the terms of the executive order apply regardless of NOAA's reference in these regulations.

### Classification Under Executive Order 12291

The NOAA Administrator considers these regulations to be major with respect to the criteria of Executive Order 12291 (E.O. 12291) of February 17, 1981, because they will foster and govern development of the United States deep seabed mining industry. NOAA has prepared and transmitted to the Office of Management and Budget a final regulatory impact analysis as specified by section 3 of E.O. 12291. The Administrator of NOAA has determined that these final rules are clearly within the authority delegated by law and consistent with Congressional intent. The rules are authorized by section 308 of the Act, and respond to specific provisions or requirements found in

sections 101 through 117 of Title I of the Act as well as the NOAA enforcement provisions in Title III of the Act.

### Regulatory Impact Analysis

NOAA has prepared a final regulatory impact analysis on these regulations. This analysis, which examines the potential impact of the proposed regulations, is available to all interested parties. The analysis examines the various alternatives NOAA considered as it addressed the major issues in the regulations, considers benefit and cost implications of the alternatives, and explains NOAA's reasons for making the choices reflected in these regulations. The analysis has been done in such a way as to include a final regulatory flexibility analysis in compliance with the Regulatory Flexibility Act, Pub. L. 96-354. Copies of the analysis may be obtained by writing to the Director, NOAA Office of Ocean Minerals and Energy, at the address specified in the ADDRESS section of this rulemaking.

### Summary of Final Regulatory Flexibility Analysis

Because of the large scale and costs of deep seabed mining operations, the primary involvement of small business concerns in this industry is expected to be as contractors or subcontractors, rather than as sole owners or operators of such operations. Only one license, obtained by the overall operator, is required. The general regulatory approach selected by NOAA for these regulations was designed to provide the greatest flexibility for, and to minimize any adverse economic impact on, any entity—large or small—which may be involved in deep seabed mining development. The regulations do not impose any reporting, record-keeping, or other compliance requirements on small governmental jurisdictions or small organizations. Copies of the combined final regulatory flexibility analysis and final regulatory impact analysis may be obtained by writing to the Director, NOAA Office of Ocean Minerals and Energy, at the address in the ADDRESS section of this rulemaking.

### Paperwork Reduction Act, Pub. L. 96-511

Because of the limited number of persons initially subject to these regulations (historically there have been four consortia with U.S. companies participating which are involved in deep seabed mining development, and these four will apply to NOAA for exploration licenses), NOAA believes the regulations do not contain "collection of information" requests within the

meaning of 44 U.S.C. 3502(4) and 3502(11). Accordingly, § 970.906 of these regulations contains a statement that the information requested is not subject to the requirements of 44 U.S.C. 3507. NOAA plans to review these regulations periodically, and to revise them if necessary based on that review. During the review, or earlier if necessary, NOAA will review its projections of the expected number of license applications and take any actions necessary under the Paperwork Reduction Act on that basis.

### Environmental Impact Statement

Pursuant to section 109(c) of the Act and the National Environmental Policy Act of 1969, NOAA has prepared a final programmatic environmental impact statement (PEIS) assessing the environmental impacts of exploration and commercial recovery in the area of the oceans in which such activities by any United States citizen will likely first occur under the authority of the Act. The PEIS has been filed with the Environmental Protection Agency. Copies may be obtained by writing the Director, NOAA Office of Ocean Minerals and Energy, at the address specified in the ADDRESS section of this rulemaking.

Accordingly, new Subparts A, B and D through K are added to Part 970 of Title 15 of the Code of Federal Regulations. The text of these Subparts read as follows:

Dated: September 10, 1981.

John V. Byrne,  
Administrator.

## PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

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\* \* \* \* \*  
 Authority: 30 U.S.C. 1401 *et seq.*

**Subpart A—General****§ 970.100 Purpose.**

(a) *General.* The purpose of this part is to implement those responsibilities and authorities of the National Oceanic and Atmospheric Administration (NOAA), pursuant to Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens licenses for the exploration for deep seabed hard minerals.

(b) *Purposes of the Act.* In preparing these regulations NOAA has been mindful of the purposes of the Act, as set forth in section 2(b) thereof. These include—

(1) Encouraging the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind

and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) Establishing, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(3) Accelerating the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assuring that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea;

(4) Encouraging the continued development of technology necessary to recover the hard mineral resources of the deep seabed; and

(5) Pending the ratification by, and entry into force with respect to, the United States of a Law of the Sea Treaty, providing for the establishment of an international revenue-sharing fund the proceeds of which will be used for sharing with the international community pursuant to such treaty.

(c) *Regulatory approach.* (1) These regulations incorporate NOAA's recognition that the deep seabed mining industry is still evolving and that more information must be developed to form the basis for future decisions by industry and by NOAA in its implementation of the Act. They also recognize the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative by miners to develop mining techniques and systems in a manner compatible with the requirements of the Act and regulations. In this regard, the regulations reflect an approach, pursuant to the Act, whereby their provisions ultimately will be addressed and evaluated on the basis of exploration plans submitted by applicants.

(2) In addition, these regulations reflect NOAA's recognition that the difference in scale and effects between exploration for and commercial recovery of hard mineral resources normally requires that they be distinguished and addressed separately. This distinction is also based upon the evolutionary stage of the seabed mining industry referenced above. Thus, NOAA will issue separate regulations

pertaining to commercial recovery, in Part 971 of this chapter.

**§ 970.101 Definitions.**

For purposes of this part, the term:

(a) "Act" means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96-283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, or a designee;

(c) "Applicant" means an applicant for an exploration license pursuant to the Act and this part;

(d) "Affiliate" means any person—

(1) In which the applicant or licensee owns or controls more than 5% interest;

(2) Which owns or controls more than 5% interest in the applicant or licensee; or

(3) Which is under common ownership or control with the applicant or licensee.

(e) "Commercial recovery" means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) "Continental Shelf" means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) "Controlling interest", for purposes of paragraph (t)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such

jurisdiction is recognized by the United States;

(i) "Exploration" means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(j) "Hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(k) "International agreement" means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(l) "Licensee" means the holder of a license issued under this part to engage in exploration;

(m) "New entrant" means a person who was not engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(n) "NOAA" means the National Oceanic and Atmospheric Administration;

(o) "Permittee" means the holder of permit issued under NOAA regulations to engage in commercial recovery;

(p) "Person" means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) "Pre-enactment explorer" means a person who was engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(r) "Reciprocating state" means any foreign nation designated as such by the Administrator under section 118 of the Act;

(s) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(t) "United States citizen" means

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (t)(1) or (t)(2) of this section.

**§ 970.102 Nature of licenses.**

(a) A license issued under this part will authorize the holder thereof to engage in exploration within a specific portion of the sea floor consistent with the provisions of the Act, this part, and the specific terms, conditions and restrictions applied to the license by the Administrator.

(b) Any license issued under this part will be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected within the same area of the sea floor. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of the Act.

**§ 970.103 Prohibited activities and restrictions.**

(a) *Prohibited activities and exceptions.* (1) Except as authorized under Subpart C of this part, no United States citizen may engage in any exploration or commercial recovery unless authorized to do so under—

(i) A license or a permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit, or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section will not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted on shore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the Administrator to a licensee or permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license issued pursuant thereto; the filing of specious claims in the United States or any other nation; and any other activity designed to harass deep seabed mining activities authorized by law. Interference does not include the exercise of any rights granted to United States citizens by the Constitution of the United States, any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens must exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of licenses or permits.* The Administrator will not issue—

(1) Any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(2) Any license or permit the exploration plan or recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) Any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) A permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(5) Any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act; or

(6) A license or permit, or approve the transfer of a license or permit, except to a United States citizen.

#### Subpart B—Applications

##### § 970.200 General.

(a) *Who may apply; how.* Any United States citizen may apply to the Administrator for issuance or transfer of an exploration license. Applications must be submitted in the form and manner prescribed in this subpart.

##### (b) *Place, form and copies.*

Applications for the issuance or transfer of exploration licenses must be submitted in writing, verified and signed by an authorized officer or other authorized representative of the applicant, in 30 copies, to the following address: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Suite 410, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

##### (c) *Use of application information.*

The contents of an application, as set forth below, must provide NOAA with the information necessary to make determinations required by the Act and this part pertaining to the issuance or transfer of an exploration license. Thus, each portion of the application should identify the requirement in this part to which it responds. In addition, the information will be used by NOAA in its function under the Act of consultation and cooperation with other Federal agencies or departments in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies' responsibilities.

(d) *Pre-application consultation.* To assist in the development of adequate applications and assure that applicants understand how to respond to the provisions of this subpart, NOAA will be available for pre-application consultations with potential applicants. This includes consultation on the procedures in Subpart C. In appropriate circumstances, NOAA will provide written confirmation to the applicant of any oral guidance resulting from such consultations.

(e) *Priority of right.* (1) Priority of right for issuance of licenses to pre-enactment explorers will be established pursuant to Subpart C of this part.

(2) Priority of right for issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications, which are in substantial compliance with the requirements established under this subpart, pursuant to § 970.209, are filed with the Administrator.

(3) Applications must be received by the Office of Ocean Minerals and Energy on behalf of the Administrator before a priority can be established.

(4) Upon (i) a determination that:

(A) An application is not in substantial compliance in accordance with § 970.209 or Subpart C, as applicable;

(B) An application has not been brought into substantial compliance in

accordance with § 970.210 or Subpart C, as applicable;

(C) A license has been relinquished or surrendered in accordance with § 970.903; or

(ii) A decision to:

(A) Deny certification of a license pursuant to § 970.407; or

(B) Deny issuance of a license pursuant to § 970.508,

and after the exhaustion of any administrative or judicial review of such determination or decision, the priority of right for issuance of a license will lapse.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to § 970.902.

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#### § 970.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the financial resources of the applicant to carry out, in accordance with this part, the exploration program set forth in the applicant's exploration plan. The information must show that the applicant is reasonably capable of committing or raising sufficient resources to cover the estimated costs of the exploration program. The information must be sufficient for the Administrator to make a determination on the applicant's financial responsibility pursuant to § 970.401.

(b) *Contents.* In particular, the information on financial resources must include:

(1) A description of how the applicant intends to finance the exploration program;

(2) The estimated cost of the exploration program;

(3) With respect to the applicant and those entities upon which the applicant will rely to finance his exploration activities, the most recent audited financial statement (for publicly-held companies, the most recent annual report and Form 10-K filed with the Securities and Exchange Commission will suffice in this regard); and

(4) The credit rating and bond rating of the applicant, and such financing entities, to the extent they are relevant.

#### § 970.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the technological capability of the applicant to carry out, in accordance with the regulations contained in this part, the exploration program set out in the

applicant's exploration plan. It must contain sufficient information for the Administrator to make a determination on the applicant's technological capability pursuant to § 970.402.

(b) *Contents.* In particular, the information submitted pursuant to this section must demonstrate knowledge and skills which the applicant either possesses or to which he can demonstrate access. The information must include:

(1) A description of the exploration equipment to be used by the applicant in carrying out the exploration program;

(2) A description of the environmental monitoring equipment to be used by the applicant in monitoring the environmental effects of the exploration program; and

(3) The experience on which the applicant will rely in using this or similar equipment.

#### § 970.203 Exploration plan.

(a) *General.* Each application must include an exploration plan which describes the applicant's projected exploration activities during the period to be covered by the proposed license. Generally, the exploration plan must demonstrate to a reasonable extent that the applicant's efforts, by the end of the 10-year license period, will likely lead to the ability to apply for and obtain a permit for commercial recovery. In particular, the plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a license and to the development and enforcement of the terms, conditions and restrictions for a license.

(b) *Contents.* The exploration plan must contain the following information. In presenting this information, the plan should incorporate the applicant's proposed individual approach, including a general description of how projected participation by other entities will relate to the following elements, if appropriate. The plan must present:

(1) The activities proposed to be carried out during the period of the license;

(2) A description of the area to be explored, including its delineation according to § 970.601;

(3) The intended exploration schedule which must be responsive to the diligence requirements in § 970.602. Taking into account that different applicants may have different concepts and chronologies with respect to the types of activities described, the schedule should include an approximate projection for the exploration activities

planned. Although the details in each schedule may vary to reflect the applicant's particular approach, it should address in some respect approximately when each of the following types of activities is projected to occur.

(i) Conducting survey cruises to determine the location and abundance of nodules as well as the sea floor configuration, ocean currents and other physical characteristics of potential commercial recovery sites;

(ii) Assaying nodules to determine their metal contents;

(iii) Designing and testing system components onshore and at sea;

(iv) Designing and testing mining systems which simulate commercial recovery;

(v) Designing and testing processing systems to prove concepts and designing and testing systems which simulate commercial processing;

(vi) Evaluating the continued feasibility of commercial scale operations based on technical, economic, legal, political and environmental considerations; and

(vii) Applying for a commercial recovery permit and, to the extent known, other permits needed to construct and operate commercial scale facilities (if application for such permits is planned prior to obtaining a commercial recovery permit);

(4) A description of the methods to be used to determine the location, abundance, and quality (i.e., assay) of nodules, and to measure physical conditions in the area which will affect nodule recovery system design and operations (e.g., seafloor topography, seafloor geotechnic properties, and currents);

(5) A general description of the developing recovery and processing technology related to the proposed license, and of any planned or ongoing testing and evaluation of such technology. To the extent possible at the time of application, this description should address such factors as nodule collection technique, seafloor sediment rejection subsystem, mineship nodule separation scheme, pumping method, anticipated equipment test areas, and details on the testing plan;

(6) An estimated schedule of expenditures, which must be responsive to the diligence requirements as discussed in § 970.602;

(7) Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery. These measures must take into account the provisions in

§§ 970.506, 970.518, 970.522 and Subpart G of this part; and

(8) A description of any relevant activity that the applicant has completed prior to the submission of the application.

**§ 970.204 Environmental and use conflict analysis.**

(a) *Environmental information.* To enable NOAA to implement better its responsibility under section 109(d) of the Act to develop an environmental impact statement (EIS) on the issuance of an exploration license, the application must include information for use in preparing NOAA's EIS on the environmental impacts of the activities proposed by the applicant. The applicant must present physical, chemical and biological information for the exploration area. This information should include relevant environmental information, if any, obtained during past exploration activities, but need not duplicate information obtained during NOAA's DOMES Project. Planned activities in the area, including the testing of integrated mining systems which simulate commercial recovery, also must be described. NOAA will need information with the application on location and boundaries of the proposed exploration area, and plans for delineation of features of the exploration area including baseline data or plans for acquiring them. The applicant may at his option delay submission of baseline and equipment data and system test plans. However, applicants so electing should plan to submit this latter information at least one year prior to the initial test, to allow time for the supplement to the site-specific EIS, if one is required, to be prepared by NOAA, circulated, reviewed and filed with EPA. The submission of this information with the application is strongly encouraged, however, to minimize the possibility that a supplement will be required. If such latter information is submitted subsequent to the original application such tests may not be undertaken in the absence of concurrence by NOAA (which, if applicable, will be required in a term, condition, or restriction in the license). NOAA has developed a technical guidance document which will provide assistance for the agency and the applicant, in consultation, to identify the details on information needed in each case. NOAA may refer to such information for purposes of other determinations under the Act as well. NOAA also will seek to facilitate other Federal and, as necessary, state decisions on exploration activities by functioning as lead agency for the EIS

on the application and related actions by other agencies, including those pertaining to any onshore impacts which may result from the proposed exploration activities.

(b) *Use conflict information.* To assist the Administrator in making determinations relating to potential use conflicts between the proposed exploration and other activities in the exploration area, pursuant to §§ 970.503, 970.505, and 970.520, the application must include information known to the applicant with respect to such other activities.

**§ 970.205 Vessel safety.**

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to §§ 970.507, 970.521 and Subpart H of this part, the application must contain the following information, except for those vessels under 300 gross tons which are engaged in oceanographic research if they are used in exploration.

(a) *U.S. flag vessel.* The application must contain a demonstration or affirmation that any United States flag vessel utilized in exploration activities will possess a current valid Coast Guard Certificate of Inspection (COI). To the extent that the applicant knows which United States flag vessel he will be using, the application must include a copy of the COI.

(b) *Foreign flag vessel.* The application must also contain information on any foreign flag vessels to be used in exploration activities, which responds to the following requirements. To the extent that the applicant knows which foreign flag vessel he will be using, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels he will be using, he must submit the applicable certification for each vessel

before the cruise on which it will be used.

**§ 970.206 Statement of ownership.**

The application must include sufficient information to demonstrate that the applicant is a United States citizen, as required by § 970.103(b)(6), and as defined in § 970.101(t). In particular, the application must include:

(a) Name, address, and telephone number of the United States citizen responsible for exploration operations to whom notices and orders are to be delivered; and

(b) A description of the citizen or citizens engaging in such exploration, including:

(1) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(2) The state of incorporation or state in which the partnership or other business entity is registered;

(3) The name of registered agent or equivalent representative and places of business;

(4) Certification of essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(5) The name of each member of the association, partnership, or joint venture, including information about the participation of each partner and joint venturer and/or ownership of stock.

**§ 970.207 Antitrust information.**

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) A copy of each agreement between any parties to any joint venture which is applying for a license, provided that said agreement relates to deep seabed hard mineral resource exploration or mining;

(2) The identity of any affiliate of any person applying for a license; and

(3) For each applicant, its affiliate, or parent or subsidiary of an affiliate which is engaged in production in, or the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals or any metals refined from these minerals:

(i) The annual tons and dollar value of any of these minerals and metals so purchased, sold or produced for the two preceding years;

(ii) Copies of the annual report, balance sheet and income statement for the two preceding years; and

(iii) Copies of each document submitted to the Securities and Exchange Commission.

**§ 970.208 Fee.**

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of an exploration license will be certified unless the applicant pays to NOAA a reasonable administrative fee, which must reflect the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* In order to meet this requirement, the application must include a fee payment of \$100,000, payable to the National Oceanic and Administration, Department of Commerce. If costs incurred by NOAA in reviewing and processing an application are significantly less than or in excess of the original fee, the agency subsequently will determine those differences in costs and adjust the fee accordingly. If the costs are significantly less, NOAA will refund the difference. If they are significantly greater, the applicant will be required to submit the additional payment prior to issue or transfer of the license. In the case of an application for transfer of a license to an entity which has previously been found qualified for a license, the Administrator may, on the basis of pre-application consultations pursuant to § 970.200(d), reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

**Procedures**

**§ 970.209 Substantial compliance with application requirements.**

(a) Priority of right for the issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under this subpart are filed with the Administrator pursuant to § 970.200.

(b) In order for an application to be in substantial compliance with the requirements of this subpart, it must include information specifically identifiable with and materially responsive to each requirement contained in §§ 970.201 through 970.208. A determination on substantial compliance relates only to whether the application contains the required information, and does not constitute a determination on certification of the application, or on issuance or transfer of a license.

(c) The Administrator will make a determination as to whether the application is in substantial compliance. Within 30 days after receipt of an application, he will issue written notice to the applicant regarding such determination. The notice will identify, if applicable, in what respects the application is not in either full or substantial compliance. If the application is in substantial but not full compliance, the notice will specify the information which the applicant must submit in order to bring it into full compliance, and why the additional information is necessary.

**§ 970.210 Reasonable time for full compliance.**

Priority of right will not be lost in case of any application filed which is in substantial but not full compliance, as specified in § 970.209, if the Administrator determines that the applicant, within 60 days after issuance to the applicant by the Administrator of written notice that the application is in substantial but not full compliance, has brought the application into full compliance with the requirements of this subpart.

**§ 970.211 Consultation and cooperation with Federal agencies.**

(a) Promptly after his receipt of an application, the Administrator will distribute a copy of the application to each other Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (i.e., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, Small Business Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application which is in full compliance with this subpart, recommend certification of the application, issuance or transfer of the license, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to § 970.207, must be submitted within 90 days after their receipt of a copy of the application which is in full compliance with this subpart. NOAA will use the benefits of this process of consultation and cooperation to facilitate necessary Federal decisions on the proposed

exploration activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities.

(b) In any case in which a Federal agency or department recommends a denial, it will set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and will indicate how the application may be amended, or how terms, conditions or restrictions might be added to the license to assure compliance with such law or regulation.

(c) A recommendation from another Federal agency or department for denying or amending an application will not affect its having been in substantial compliance with the requirements of this subpart, pursuant to § 970.209, for purposes of establishing priority of right. However, pursuant to section 103(e) of the Act, NOAA will cooperate with such agencies and with the applicant with the goal of resolving the concerns raised and satisfying the statutory responsibilities of these agencies.

**§ 970.212 Public notice, hearing and comment.**

(a) *Notice and comments.* The Administrator will publish in the Federal Register, for each application for an exploration license, notice that such application has been received. Subject to § 970.902, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) After preparation of the draft EIS on an application pursuant to section 109(d) of the Act, the Administrator shall hold a public hearing on the application and the draft EIS in an appropriate location, and may employ such additional methods as he deems appropriate to inform interested persons about each application and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart J of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(c) Hearings held pursuant to this section and other procedures will be consolidated insofar as practicable with

hearings held and procedures employed by other agencies.

**§ 970.213 Amendment to an application.**

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a license, the applicant must submit an amendment to the application if required by a significant change in the circumstances represented in the original application and affecting the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, he will provide a copy of such amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 970.212. Such amendment, however, will not affect the priority of right established by the filing of the original application. After the issuance of or transfer of a license, any revision by the licensee will be made pursuant to § 970.513.

**Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980 [Reserved]**

**Subpart D—Certification of Applications**

**§ 970.400 General.**

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a license and its actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a license, he must determine that issuance of the license would not violate any of the restrictions in § 970.103(b). He also must make written determinations with respect to the requirements set forth in §§ 970.401 through 970.406. This will be done after consultation with other departments and agencies pursuant to § 970.211.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification of an application within 100 days after submission of an application which is in full compliance with Subpart B of this part. If final certification or denial of certification

has not occurred within 100 days after such submission of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the agency's efforts to resolve them, and an estimate of the time required to do so.

**§ 970.401 Financial responsibility.**

(a) Before the Administrator may certify an application for an exploration license he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will be financially responsible to meet all obligations which he may require to engage in the exploration proposed in the application.

(b) In order for the Administrator to make this determination, the applicant must show to the Administrator's satisfaction that he is reasonably capable of committing or raising sufficient resources to carry out, in accordance with the provisions contained in this part, the exploration program set forth in his exploration plan.

**§ 970.402 Technological capability.**

(a) Before the Administrator may certify an application for an exploration license, he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will possess, or have access to or a reasonable expectation of obtaining, the technological capability to engage in the proposed exploration.

(b) In order for the Administrator to make this determination, the applicant must demonstrate to the Administrator's satisfaction that the applicant will possess or have access to, at the time of issuance or transfer of the license, the technology and expertise, as needed, to carry out the exploration program set forth in his exploration plan.

**§ 970.403 Previous license and permit obligations.**

In order to certify an application, the Administrator must find that the applicant has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act.

**§ 970.404 Adequate exploration plan.**

Before he may certify an application, the Administrator must find that the proposed exploration plan of the applicant meets the requirements of § 970.203.

**§ 970.405 Appropriate exploration site size and location.**

Before the Administrator may certify an application, he must approve the size and location of the exploration area

selected by the applicant. The Administrator will approve the size and location of the area unless he determines that the area is not a logical mining unit pursuant to § 970.601.

**§ 970.406 Fee payment.**

Before the Administrator may certify an application, he must find that the applicant has paid the license fee as specified in § 970.208.

**§ 970.407 Denial of certification.**

(a) The Administrator may deny certification of an application if he finds that the requirements of this subpart have not been met. If, in the course of reviewing an application for certification, the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer under §§ 970.503 through 970.507 will not be met, he may also deny certification of the application.

(b) When the Administrator proposes to deny certification he will send to the applicant, and publish in the *Federal Register*, written notice of intention to deny certification. Such notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed denial is the result of a correctable

deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

#### § 970.408 Notice of certification.

Upon making a final determination to certify an application for an exploration license, the Administrator will promptly send written notice of his determination to the applicant.

### Subpart E—Issuance/Transfer/Terms, Conditions and Restrictions

#### § 970.500 General.

(a) *Proposal.* After certification of an application pursuant to Subpart D of this part, the Administrator will proceed with a proposal to issue or transfer a license for the exploration activities described in the application.

(b)(1) *Terms, conditions and restrictions.* Within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) after certification, the Administrator will propose terms and conditions for, and restrictions on, the proposed exploration which are consistent with the provisions of the Act and this part as set forth in §§ 970.517 through 970.524. Proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose these in writing to the applicant. Also, public notice thereof will be provided pursuant to § 970.501, and they will be included with the draft of the EIS on the issuance of a license which is required by section 109(d) of the Act.

(2) If the Administrator does not propose terms, conditions and restrictions within 180 days after certification, he will notify the applicant in writing of the reasons for the delay and will indicate the approximate date on which the proposed terms, conditions and restrictions will be completed.

(c) *Findings.* Before issuing or transferring an exploration license, the Administrator must make written findings in accordance with the requirements of §§ 970.503 through 970.507. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. He will make a final determination on issuance or transfer of a license, and will publish a final EIS on that action, within 180 days (or such longer period of time as he may establish for good cause shown in writing) following the date on which proposed terms, conditions and restrictions, and the draft EIS, are published.

#### Issuance/Transfer; Modification/Revision; Suspension/Revocation

#### § 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the Federal Register notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to § 970.902, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart J of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for, the license.

(c) Hearings held pursuant to this section will be consolidated insofar as practicable with hearings held by other agencies.

#### § 970.502 Consultation and cooperation with Federal agencies.

Prior to the issuance or transfer of an exploration license, the Administrator will continue the consultation and cooperation with other Federal agencies which were initiated pursuant to § 970.211. This consultation will be to

assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. He also will consult, prior to any issuance, transfer, modification or renewal of a license, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to such license could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

#### § 970.503 Freedom of the high seas.

(a) Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that exploration for hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each licensee must act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the exploration program of an applicant or licensee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place in a manner in which neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the exploration plan, the Administrator will decide whether to issue or transfer the license.

#### § 970.504 International obligations of the United States.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not conflict with any international obligation of the United States established by any treaty



or international convention in force with respect to the United States.

**§ 970.505 Breach of international peace and security involving armed conflict.**

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

**§ 970.506 Environmental effects.**

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable EIS prepared pursuant to section 109(c) or 109(d) of the Act. This finding also will be based upon the considerations and approach in § 970.701.

**§ 970.507 Safety at sea.**

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements reflected in §§ 970.205 and 970.801.

**§ 970.508 Denial of issuance or transfer.**

(a) The Administrator may deny issuance or transfer of a license if he finds that the applicant or the proposed exploration activities do not meet the requirements of this part for the issuance or transfer of a license.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the *Federal Register*, written notice of such intention to deny issuance or transfer. Such notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

The *Federal Register* notice will not include the coordinates of the proposed exploration area.

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a license is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

**§ 970.509 Notice of issuance or transfer.**

If the Administrator finds that the requirements of this part have been met, he will issue or transfer the license along with the appropriate terms, conditions and restrictions. Notification thereof will be made in writing to the applicant and in the *Federal Register*.

**§ 970.510 Objections to terms, conditions and restrictions.**

(a) The licensee may file a notice of objection to any term, condition or restriction in the license. The licensee may object on the grounds that any term, condition or restriction is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the licensee does not file notice of an objection within the 60-day period immediately following the licensee's receipt of the notice of issuance or transfer under § 970.509, he will be deemed conclusively to have accepted the terms, conditions and restrictions in the license.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must contain the precise legal

basis for the objection, and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the *Federal Register*, as well as provide to the licensee, written notice of his decision.

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart J of this part.

(e) Any final determination by the Administrator on an objection to terms, conditions or restrictions in a license after the formal hearing provided in paragraph (d) of this section is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

**§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.**

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart K of this part, or in addition to the imposition of any fine under Subpart K, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

(2) Suspend or modify particular activities under any license, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) of this section will proceed pursuant to the procedures in § 970.1103. Any action taken in accordance with paragraph (a)(2) of this section will proceed pursuant to paragraphs (c) through (i) of this section.

(c) Prior to taking any action specified in paragraph (a)(2) of this section the Administrator will publish in the *Federal Register*, and send to the

licensee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the licensee can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (this period of time may not exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date the notice is sent to the licensee, under paragraph (c) of this section, unless before such 30th day the licensee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) of this section in which the licensee must correct the deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (d)(1) of this section is not pending or in progress.

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the licensee, and publish in the **Federal Register**, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of exploration activities by a licensee, except as provided in paragraph (i) of this section.

(i) The provisions of paragraphs (c), (d), (e) and (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension of a license, or immediate suspension or modification of particular activities under such license, is

necessary for the reasons set forth in paragraph (a)(2) of this section; or

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 970.1103(d)(4).

(j) The Administrator will immediately rescind the emergency order as soon as he has determined that the cause for the order has been removed.

#### § 970.512 Modification of terms, conditions and restrictions.

(a) After issuance or transfer of any license, the Administrator, after consultation with interested agencies and the licensee, may modify any term, condition, or restriction in such license for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the provisions of § 970.503;

(2) If relevant data and other information (including, but not limited to, data resulting from exploration activities under the license) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) The procedures for objection to the modification of a term, condition or restriction will be the same as those for objection to an original term, condition or restriction under § 970.510, except that the period for filing notice of objection will run from the recipient of notice of proposed modification. Public notice of proposed modifications under this section will be made according to § 970.514. On or before the date of publication of public notice, written notice will be provided to the licensee.

#### § 970.513 Revision of a license.

(a) During the term of an exploration license, the licensee may submit to the Administrator an application for a

revision of the license or the exploration plan associated with it. NOAA

recognizes that changes in circumstances encountered, and in information and technology developed, by the licensee during exploration may require such revisions. In some cases it may even be advisable to recognize at the time of filing the original license application that although the essential information for issuing or transferring a license as specified in §§ 970.201 through 970.208 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a license which would authorize exploration activities and plans only to the extent described in the application.

(b) The Administrator will approve such application for a revision upon a finding in writing that the revision will comply with the requirements of the Act and this part.

(c) A change which would require an application to and approval by the Administrator as a revision is a major change in one or more of:

(1) The bases for certifying the original application pursuant to §§ 970.401 through 970.406;

(2) The bases for issuing or transferring the license pursuant to §§ 970.503 through 970.507; or

(3) The terms, conditions and restrictions issued for the license pursuant to §§ 970.517 through 970.524.

A major change is one which is of such significance so as to raise a question as to:

(i) The applicant's ability to meet the requirements of the sections cited in subparagraph (1) and (2) of paragraph (c) of this section; or

(ii) The sufficiency of the terms, conditions and restrictions to accomplish their intended purpose.

#### § 970.514 Scale requiring application procedures.

(a) A proposal by the Administrator to modify a term, condition or restriction in a license pursuant to § 970.512, or an application by a licensee for revision of a license or exploration plan pursuant to § 970.513, is significant, and the full application requirements and procedures will apply, if it would result in other than an incidental:

(1) Increase in the size of the exploration area; or

(2) Change in the location of the area.

An incidental increase or change is that which equals two percent or less of the original exploration area, so long as such adjustment is contiguous to the licensed area.

(b) All proposed modifications or revisions other than described in paragraph (a) of this section will be acted on after a notice thereof is published by the Administrator in the **Federal Register**, with a 60-day opportunity for public comment. On a case-by-case basis, the Administrator will determine if other procedures, such as a public hearing in a potentially affected area, are warranted. Notice of the Administrator's decision on the proposed modification will be provided to the licensee in writing and published in the **Federal Register**.

**§ 970.515 Duration of a license.**

(a) Each exploration license will be issued for a period of 10 years.

(b) If the licensee has substantially complied with the license and its associated exploration plan and requests an extension of the license, the Administrator will extend the license on terms, conditions and restrictions consistent with the Act and this part for a period of not more than 5 years.

In determining substantial compliance for purposes of this section, the Administrator may make allowance for deviation from the exploration plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended exploration plan to govern the activities by the licensee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria, and for the length of time, specified in paragraph (b) of this section.

**§ 970.516 Approval of license transfers.**

(a) The Administrator may transfer a license after a written request by the licensee. After a licensee submits such a request to the Administrator, the proposed transferee will be deemed an applicant for an exploration license, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a license if the proposed transferee and exploration activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a licensee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

**Terms, Conditions, and Restrictions**

**§ 970.517 Diligence requirements.**

The terms, conditions and restrictions in each exploration license must include provisions to assure diligent development. The Administrator will establish these pursuant to § 970.602.

**§ 970.518 Environmental protection requirements.**

(a) Each exploration license must contain such terms, conditions and restrictions, established by the Administrator, which prescribe actions the licensee must take in the conduct of exploration activities to assure protection of the environment. The Administrator will establish these pursuant to § 970.702.

(b) Before establishing the terms, conditions and restrictions pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. He also will take into account and give due consideration to the information contained in the final EIS prepared with respect to that proposed license.

**§ 970.519 Resource conservation requirements.**

For the purpose of conservation of natural resources, each license issued under this part will contain, as needed, terms, conditions and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the license area. The Administrator will establish these pursuant to § 970.603.

**§ 970.520 Freedom of the high seas requirements.**

Each license issued under this part must include such restrictions as may be necessary and appropriate to ensure that the exploration activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law, such as fishing, navigation, submarine pipeline and cable laying, and scientific research. The Administrator will consider the provisions in § 970.503 in establishing these restrictions.

**§ 970.521 Safety at sea requirements.**

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any license issued under this part, in conformity with principles

of international law, that vessels documented under the laws of the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to Subpart H of this part.

**§ 970.522 Monitoring requirements.**

Each exploration license must require the licensee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee in exploration activities to:

(1) Monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license; and

(2) Report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(b) To cooperate with such officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the exploration activities in accordance with a monitoring plan approved and issued by the Administrator as license terms, conditions and restrictions, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects. This environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart G of this part.

**§ 970.523 Special terms, conditions, and restrictions.**

Although the general criteria and standards to be used in establishing terms, conditions, and restrictions for a license are set forth in this part, as referenced in §§ 970.517 through 970.522, the Administrator may impose special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

**§ 970.524 Other Federal requirements.**

Pursuant to § 970.211, another Federal agency, upon review of an exploration license application submitted under this part, may indicate how terms, conditions, and restrictions might be added to the license, to assure compliance with any law or regulation within that agency's area of responsibility. In response to the intent, reflected in section 103(e) of the Act, to reduce the number of separate actions to satisfy the statutory responsibilities of these agencies, the Administrator may include such terms, conditions, and restrictions in a license.

**Subpart F—Resource Development Concepts****§ 970.600 General.**

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, under section 103(a)(2)(D) of the Act, the applicant will select the size and location of the area of an exploration plan, which will be approved unless the Administrator finds that the area is not a "logical mining unit." Also, pursuant to section 108 of the Act the applicant's exploration plan and the terms, conditions and restrictions of each license must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each license is to contain, but only as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

**§ 970.601 Logical mining unit.**

(a) In the case of an exploration license, a logical mining unit is an area of the deep seabed which can be explored under the license, and within the 10-year license period, in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan. In addition, it must be of sufficient size to allow for intensive exploration.

(b) Approval by the Administrator of a proposed exploration logical mining unit will be based on a case-by-case review of each application. In order to provide a proper basis for this

evaluation, the applicant's exploration plan should describe the seabed topography, the location of mineral deposits and the nature of planned equipment and operations. Also, the exploration plan must show the relationship between the area to be explored and the applicant's plans for commercial recovery volume, to the extent projected in the exploration plan.

(c) In delineating an exploration area, the applicant need not include unmineable areas. Thus, the area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit. In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

(d) At the applicant's option, for the purpose of satisfying a possible obligation under a future Law of the Sea Treaty, the exploration area proposed may be up to twice the size of a logical mining unit, which can be divided into two exploration sites of equal estimated commercial value. The application should specify if this option is chosen.

**§ 970.602 Diligent exploration.**

(a) Each licensee must pursue diligently the activities described in his approved exploration plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. To help assure this diligence, terms, conditions and restrictions which the Administrator issues with a license will require such periodic reasonable expenditures for exploration by the licensee as the Administrator may establish, taking into account the size of the area of the deep seabed to which the exploration plan applies and the amount of funds which is estimated by the Administrator to be required during exploration for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. However, such required expenditures will not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(b) In order to fulfill the diligence requirement, the applicant first must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 970.203(b) (3) and (6). The schedule must show, and the Administrator must be able to make

a reasonable determination, that the applicant can complete his exploration activities within the term of the license. In this regard, there must be a reasonable relationship between the size of the exploration area and the financial and technological resources reflected in the application. Also, the exploration must clearly point toward developing the ability, by the end of the 10-year license period, to apply for and obtain a permit for commercial recovery.

(c) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the licensee's reasonable conformance to the approved exploration plan. Such determination, however, will take into account the need for some degree of flexibility in an exploration plan. It also will include consideration of the needs and stage of development of each licensee, again based on the approved exploration plan. In addition, the determination will take account of legitimate periods of time when there is no or very low expenditure, and will allow for a certain degree of flexibility for changes encountered by the licensee in such factors as its resource knowledge and financial considerations.

(d) In order for the Administrator to make determinations on a licensee's adherence to the diligence requirements, the licensee must submit a report annually reflecting his conformance to the schedule of activities and expenditures contained in the license. In case of any changes requiring a revision to an approved license and exploration plan, the licensee must advise the Administrator in accordance with § 970.513.

**§ 970.603 Conservation of resources.**

(a) With respect to the exploration phase of seabed mining, the requirement for the conservation of natural resources, encompassing due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license applies, may not be particularly relevant. Thus, since the Act requires such terms, conditions and restrictions only as needed, exploration licenses will require such provisions only as the Administrator deems necessary.

(b) NOAA views license phase mining system tests as an opportunity to examine, with industry, the conservation implications of any mining patterns used. Thus, in order to develop information needed for future decisions during commercial recovery, NOAA will

include with a license a requirement for the submission of collector track and nodule production data. Only if information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will the Administrator modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problems.

(c) If the Administrator so modifies such terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration activities, economic and resource data, and the national need for hard mineral resources.

#### Subpart G—Environmental Effects

##### § 970.700 General.

Congress, in authorizing the exploration for hard mineral resources under the Act, also enacted provisions relating to the protection of the marine environment from the effects of exploration activities. For example, before the Administrator may issue a license, pursuant to section 105(a)(4) of the Act he must find that the exploration proposed in an application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. Also, the Act requires in section 109(b) that each license issued by the Administrator must contain such terms, conditions and restrictions which prescribe the actions the licensee must take in the conduct of exploration activities to assure protection of the environment. Furthermore, the Act in section 105(c)(1)(B) provides for the modification by the Administrator of any term, condition or restriction if relevant data and other information indicates that modification is required to protect the quality of the environment. In addition, section 114 of the Act specifies that each license issued under the Act must require the licensee to monitor the environmental effects of the exploration activities in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

##### § 970.701 Significant adverse environmental effects.

(a) *Activities with no significant impact.* NOAA believes that exploration activities of the type listed below are very similar or identical to activities considered in section 6(c)(3) of NOAA Directives Manual 02-10, and therefore have no potential for significant environmental impact, and will require no further environmental assessment.

- (1) Gravity and magnetometric observations and measurements;
- (2) Bottom and sub-bottom acoustic profiling or imaging without the use of explosives;
- (3) Mineral sampling of a limited nature such as those using either core, grab or basket samplers;
- (4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if permitted by the National Marine Fisheries Service or another Federal agency;
- (5) Meteorological observations and measurements, including the setting of instruments;
- (6) Hydrographic and oceanographic observations and measurements, including the setting of instruments;
- (7) Sampling by box core, small diameter core or grab sampler, to determine seabed geological or geotechnical properties;
- (8) Television and still photographic observation and measurements;
- (9) Shipboard mineral assaying and analysis; and
- (10) Positioning systems, including bottom transponders and surface and subsurface buoys filed in *Notices to Mariners*.

(b) *Activities with potential impact.* (1) NOAA research has identified at-sea testing of recovery equipment and the operation of processing test facilities as activities which have some potential for significant environmental impacts during exploration. However, the research has revealed that only the following limited effects are expected to have potential for significant adverse environmental impact.

- (2) The programmatic EIS's documents three at-sea effects of deep seabed mining which cumulatively during commercial recovery have the potential for significant effect. These three effects also occur during mining system tests that may be conducted under a license, but are expected to be insignificant. These include the following:

(i) *Destruction of benthos in and near the collector track.* Present information reflects that the impact from this effect during mining tests under exploration licenses will be extremely small.

(ii) *Blanketing of benthic fauna and dilution of food supply away from mine site subareas.* The settling of fine sediments disturbed by tests under a license of scale-model mining systems which simulate commercial recovery could adversely affect benthic fauna by blanketing, dilution of their food supply, or both. Because of the anticipated slow settling rate of the sediments, the affected area could be quite large. However, research results are insufficient to conclude that this will indeed be a problem.

(iii) *Surface plume effect on fish larvae.* The impact of demonstration-scale mining tests during exploration is expected to be insignificant.

(3) If processing facilities in the United States are planned to be used for testing during exploration, NOAA also will assess their impacts in the site-specific EIS developed for each license.

(c) *NOAA approach.* In making determinations on significant adverse environmental effects, the Administrator will draw on the above conclusions and other findings in NOAA's programmatic environmental statement and site-specific statements issued in accordance with the Act. He will issue licenses with terms, conditions and restrictions containing, as appropriate, environmental protection or mitigation requirements (pursuant to § 970.518) and monitoring requirements (pursuant to § 970.522). The focus of NOAA's environmental efforts will be on environmental research and on monitoring during mining tests to acquire more information on the environmental effects of deep seabed mining. If these efforts reveal that modification is required to protect the quality of the environment, NOAA then may modify terms, conditions and restrictions pursuant to § 970.512.

##### § 970.702 Monitoring and mitigation of environmental effects.

(a) *Monitoring.* If an application is determined to be otherwise acceptable, the Administrator will specify an environmental monitoring plan as part of the terms, conditions and restrictions developed for each license. The plan will be based on the monitoring plan proposed by the applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. This monitoring strategy will be devised to insure that the exploration activities do not deviate significantly from the approved exploration plan and to determine if the assessment of the plan's acceptability was sound. The monitoring plan, among other things, will include monitoring environmental parameters

relating to verification of NOAA's findings concerning potential impacts, but relating mainly to the three unresolved concerns with the potential for significant environmental effect, as identified in § 970.701(b)(2). NOAA has developed a technical guidance document, which includes parameters pertaining to the upper and lower water column and operational aspects, which document will provide assistance in developing monitoring plans in consultation with applicants.

(b) *Mitigation.* Monitoring and continued research may develop information on future needs for mitigating environmental effects. If such needs are identified, terms, conditions and restrictions can be modified appropriately.

#### Subpart H—Safety of Life and Property at Sea

##### § 970.800 General.

The Act contains requirements, in the context of several decisions, that relate to assuring the safety of life and property at sea. For instance, before the Administrator may issue a license, section 105(a)(5) of the Act requires that he find that the proposed exploration will not pose an inordinate threat to the safety of life and property at sea. Also, under section 112(a) of the Act the Coast Guard, in consultation with NOAA, must require in any license or permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea. In addition, under section 105(c)(1)(B) of the Act, the Administrator may modify terms, conditions and restrictions for a license if required to promote the safety of life and property at sea.

##### § 970.801 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements. These inspection requirements may be identified by reference to present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 U.S.C. 86 (Loadlines); 46 U.S.C. 395 (Inspection of seagoing barges over 100 gross tons); 46 U.S.C. 367 (Inspection of sea-going motor vessels over 300 gross tons); and 46 U.S.C. 404 (Inspection of vessels above 15 gross tons carrying freight for hire).

All United States flag vessels will be required to meet existing regulatory requirements applicable to such vessels. This includes the requirement for a current valid Coast Guard Certificate of Inspection, as specified in § 970.205. Being United States flag, these vessels will be under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements or alternative IACS requirements, as specified in § 970.205, apply.

#### Subpart I—Miscellaneous

##### § 970.900 General.

This subpart contains miscellaneous provisions pursuant to the Act which are relevant to exploration licenses.

##### § 970.901 Records to be maintained and information to be submitted by licensees.

(a)(1) In addition to the information specified elsewhere in this part, each licensee must keep such records, consistent with standard accounting principles, as the Administrator may specify with each license. Such records must include information which will fully disclose expenditures for exploration for hard mineral resources in the area under license, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part, each applicant or licensee will be required to submit to the Administrator at his request such data or other information as he may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of the license in question; compliance with the biennial Congressional report requirement contained in section 309 of the Act; and evaluation of the exploration activities conducted by the licensee. At a minimum, licensees must submit an annual written report, within 90 days after each anniversary of the license issuance or transfer, of exploration activities and expenditures to address the diligence requirements in § 970.602, and of environmental monitoring to address the requirements of § 970.522(c) and § 970.702(a).

##### § 970.902 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part may request that certain information not be subject to public disclosure. The substantiation requested from such persons is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part, which information is considered by him to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the information be given confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of such information pursuant to paragraph (d) of this section.

(ii) If information is submitted to NOAA without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, NOAA will make such efforts as are administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which NOAA distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant or licensee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves

impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to NOAA in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(iii) With respect to information submitted as part of an application, twenty-five copies of the information for which confidential treatment is requested must be submitted.

(4) Normally, NOAA will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may decide to make a determination in advance of a request for disclosure, where it would facilitate NOAA's obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any such statement submitted will be treated as confidential if so requested by the person requesting confidential treatment. Any such statement for which confidential treatment is requested must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part shall be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether such person continues to maintain the request for confidential treatment;

(ii) Notify such person of the date (generally, not later than the close of business on the fourth working day after issuance of the notice) by which the person is strongly encouraged to deliver to NOAA a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform such person that by such date as the Administrator specifies (generally, not later than the close of business on the fourth working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to NOAA a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(B) Is strongly encouraged to deliver to NOAA an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in such forum as the Administrator deems appropriate (such as by

telephone or in an informal conference), such person's arguments against disclosure of the information; and

(iv) Inform such person that the burden is on him to assure that any response to the notice is delivered to NOAA within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any such response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section;

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the Assistant General Counsel for Administration, whether confidential treatment is warranted based on the information then available to NOAA;

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information;

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8;

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That such final agency action may be subject to judicial review under Chapter 7 of Title 5, United States Code; and

(iv) That on the fourth working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless NOAA has first been notified of

the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) NOAA will keep a record of the date any notice is issued, and of the date any response is received, by NOAA under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if 10 working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submissions of confidential information.* If any person (for example, an affiliate) has reason to believe that it would be prejudiced by furnishing information required from it to the applicant or licensee, such person may file the required information directly with NOAA. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by NOAA to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by NOAA to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secrets Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to NOAA for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

#### **§ 970.903 Relinquishment and surrender of licenses.**

(a) Any licensee may at any time, without penalty:

(1) Surrender to the Administrator a license issued to the licensee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration activities authorized by the license.

(b) Any licensee who surrenders a license or relinquishes any such right will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee as a result of activities engaged in by the licensee under such license.

#### **§ 970.904 Amendment to regulations for conservation, protection of the environment and safety of life and property at sea.**

The Administrator may at any time amend the regulations in this part as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, and the safety of life and property at sea. Such amended regulations will apply to all exploration activities conducted under any license issued or maintained pursuant to this part; except that any such amended regulations which provide for conservation of natural resources will apply to exploration conducted under an existing license during the present term of such license only if the Administrator determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee. Any amendment to regulations under this section will be made pursuant to the procedures in Subpart J of this part, except that § 970.1001(f)(1) will not apply. Instead, the parties of right to the hearing will be limited to the Administrator. Other persons may file a request under § 970.1001(f)(2) or (3) to participate in the hearing.

#### **§ 970.905 Computation of time.**

Saturdays, Sundays, and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part, but when such time period expires on such a day, such time period will be extended to include the next following Federal Government work day. Also, filing periods expire at the close of business on the day specified, and for the office specified.

#### **§ 970.906 Compliance with Paperwork Reduction Act.**

In accordance with 44 U.S.C. 3506(c) and 3512 NOAA hereby informs affected persons that the requests for information under this part requiring:

(a) Submissions of specified information with applications; and

(b) Compliance with specified recordkeeping and reporting requirements;

Are not subject to the requirements of Chapter 35 of title 44, United States Code, including 44 U.S.C. 3705.

### **Subpart J—Uniform Procedures**

#### **§ 970.1000 Applicability.**

The regulations of this subpart govern the following proceedings conducted by NOAA under this part.

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of license;

(2) All proposed terms, conditions and restrictions on a license; and

(3) All proposals to significantly modify a license;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee to any term, condition or restriction in a license, or to modification thereto, where the licensee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee for review of:

(1) A proposed denial of issuance or transfer of a license; or

(2) A proposed suspension or modification of particular activities under a license after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with Subpart C of this part to determine priority of right among pre-enactment explorers.



**§ 970.1001 Formal hearing procedures.**

(a) *General.* (1) All hearings described in paragraph (a) of § 970.1000 are governed by 5 U.S.C. sections 554-557 and the procedures contained in this section.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provision of this part he will provide for a formal hearing.

(c) *Assignment of administrative law judge.* Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the NOAA Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(d) *Notice of formal hearing.*

(1) The Administrator will publish notice of the formal hearing in the **Federal Register** at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant or licensee, and to all persons who submitted written comments upon the action in question, testified at any prior informal hearing on the action or filed a request for the formal hearing under this part.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing;  
 (ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(e) *Powers and duties of the administrative law judge.* Judges have all the powers and duties necessary to preside over the parties and proceedings and to conduct fair and impartial hearings, as specified by 5 U.S.C 554-557 and this section, including the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation;

(3) Hold conferences in accordance with paragraph (i) of this section for the simplification or, if appropriate, settlement of the issues by consent of the parties or to otherwise expedite the proceedings;

(4) Administer oaths and affirmations;  
 (5) To the extent authorized by law, rule upon requests for, and issue, subpoenas for the attendance and testimony of witnesses and the production of books, records, and other evidence upon proper application under paragraph (p) of this section;

(6) Rule on discovery requests, establish discovery schedules, and take or cause depositions or interrogatories to be taken;

(7) Rule on requests for protective orders to protect persons in the discovery process from undue burden or expense, or for other good cause;

(8) Require, at or prior to any hearing, the submission and exchange of evidence;

(9) Rule upon offers of proof and evidence and receive, exclude and limit evidence as set forth in paragraph (j)(3) of this section;

(10) Introduce documentary or other evidence into the record;

(11) Examine and cross-examine witnesses;

(12) Consider and rule upon motions, procedural requests, and similar matters;

(13) Take such measures as may be necessary, such as sealing of portions of the hearing record, to protect classified information, proprietary and privileged information and information consisting of trade secrets and confidential commercial and financial information;

(14) Schedule the time and place of the hearing, or the hearing conference, continue the hearing from day-to-day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the recommended or initial decision, all in the judge's discretion, having due regard for the convenience and necessity of the parties;

(15) Establish rules, consistent with applicable law, for media coverage of the proceedings and for the closure of the hearing in the interest of justice;

(16) Strike testimony of a witness refusing to answer a question ruled to be proper;

(17) Make and file decisions in conformity with this subpart; and

(18) Take any action authorized by the rules in this section or in conformance with 5 U.S.C. sections 554-557.

**Hearings**

(f) *Participation.* (1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;  
 (ii) Any involved applicant or licensee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the 10 days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within 10 days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the 10 day rule for good cause, such as if the interested person, making this request after the expiration of the 10 days, shows that he lacked actual notice of the formal hearing during the 10 days, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit

evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) of this section.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(h) *Obligation to raise issues before a formal hearing is held.* Whenever a formal hearing is conducted pursuant to an objection to any term, condition, or restriction in a license in accordance with section 105 (b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not submitted to the administrative record on the action unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process.

(i) *Conferences.* (1) At any time the judge considers appropriate, he may upon his own motion or the motion of any party or interested person, direct the parties and interested persons, or their attorneys, to meet (in person, by telephone conference call, or otherwise) in a conference to consider:

(i) Simplification of the issues;

(ii) Settlements, in appropriate cases;

(iii) Stipulations and admissions of fact, and contents and authenticity of documents;

(iv) Exchange of evidence, witness lists, and summaries of expected testimony;

(v) Limitation of the number of witnesses; and

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record will show how the matters were disposed of by order and by agreement in such conferences.

(j) *Appearance and presentation of evidence.* (1) A party or interested person may appear at a hearing under this section in person, by attorney, or by other representative.

(2) Absent a showing of good cause, failure of a party to appear at a hearing:

(i) Constitutes waiver of the right to a hearing under this section;

(ii) Constitutes consent of the party to the making of a decision on the record of the hearing; but

(iii) Will not be deemed to be a waiver of the right to be served with a copy of the judge's decision.

(3) *Evidence.* (i) The order of presentation of evidence will be at the judge's discretion.

(ii) The testimony of witnesses will be upon oath or affirmation administered by the judge and will be subject to such cross-examination as may be required for a full and true disclosure of the facts. The formal rules of evidence do not apply, but the judge will exclude evidence which is immaterial, irrelevant, nonprobative, or unduly repetitious. Hearsay evidence is not inadmissible as such.

(iii) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party must state briefly the grounds for such objections. Rulings on each objection will appear in the record.

(iv) Formal exception to an adverse ruling is not required.

(v) At any time during the proceedings, the judge may require a party or a witness to state his position on any issue, and theory in support of such position.

(vi) Upon the failure of a party or interested person to effect the appearance of a witness or the production of a document or other evidence ruled relevant and necessary to the proceeding, the judge may take appropriate action as authorized by law.

(4) *Authority of judge to expedite adjudication.* To prevent unnecessary delays or an unnecessarily large record, the judge may:

(i) Limit the number of witnesses whose testimony may be cumulative;

(ii) Strike argumentative, repetitious, cumulative, immaterial, nonprobative or irrelevant evidence;

(iii) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(iv) Impose such time limitations on arguments as the judge determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

(5) *Official notice.* Official notice may be taken of any matter not appearing in evidence in the record, which is among the traditional matters of judicial notice,

or concerning which the Department of Commerce, by reason of its functions, is deemed to be expert, or of a nonprivileged document required by law to be filed with, or prepared or published by a government body, or of any reasonably available public document. The parties will be given adequate notice, at the hearing or otherwise before the judge's decision, of the matters so noticed, and upon timely request by a party will be given reasonable opportunity to show the contrary.

(6) *Argument.* At the close of the formal hearing, each party shall be given the opportunity to submit written arguments on the issues before the judge.

(7) *Record.* (i) The judge or the Administrator will arrange for a verbatim tape or other record of any oral hearing proceedings. An official transcript will be prepared and copies may be obtained upon written request filed with the reporter and upon payment of the fees at the rate provided in the agreement with the reporter.

(ii) The official transcript, exhibits, briefs, requests, and other documents and papers filed will constitute the exclusive record for the decision on the issues concerning which the hearing was held.

(iii) The record developed in any hearing held pursuant to section 116(b) of the Act will be part of the basis for the Administrator's decision to take any action referred to in section 116(a) of the Act.

(k) *Interlocutory appeals.* (1) At the request of a party or on the judge's own motion, the judge may certify to the Administrator for review a ruling which does not finally dispose of the proceeding if the judge determines that such a ruling involves a controlling question of law and that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(2) Upon certification by the judge of an interlocutory ruling for review, the Administrator will expeditiously decide the matter, taking into account any briefs in this respect filed by the parties within 10 days after certification. The Administrator's order on an interlocutory appeal will not be considered the final decision of the Administrator except by operation of other provisions in this section.

(3) No interlocutory appeal will lie as to any ruling not certified to the Administrator by the judge. Objections to non-certified rulings will be a part of the record and will be subject to review at the same time and in the same

manner as the Administrator's review of the judge's initial or recommended decision.

(1) *Decisions.*—(1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within 20 days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within 10 days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* As soon as practicable, but normally not later than 90 days after the record is closed, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material issues of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

#### Miscellaneous

(m) *Motions and requests.* Motions or requests must be filed in writing with the judge or must be stated orally and made part of the hearing record. Each motion or request must state the

particular order, ruling or action desired, and the grounds therefor.

(n) *Witnesses and fees.* Witnesses subpoenaed will be paid the same fees and mileage, and in the same manner, as are paid for like services in the District Court of the United States for the district in which the hearing is located.

(o) *Depositions.* (1) Any party desiring to take the deposition of a witness must make application in writing to the judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and mailing address of the person before whom the deposition is requested to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(2) Depositions may be taken orally or upon written interrogatories before any person designated by the judge.

(3) Such notice as the judge may order will be given for the taking of a deposition, but this ordinarily will not be less than 5 days' written notice when the deposition is to be taken within the United States and ordinarily will not be less than 20 days' written notice when the deposition is to be taken elsewhere.

(4) Each witness testifying upon deposition will be sworn and any party will have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, will be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the person presiding. Thereafter, the person presiding will deliver or mail a copy of the document to each party. Subject to such objection to the questions and answers as were noted at the time of taking the deposition which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(p) *Extension of time.* The time for the filing of any document under this section may be extended by the judge if:

(1) The request for the extension of time is made before or on the final date allowed for the filing; and

(2) The judge, after giving written or oral notice to and considering the views of all other parties (when practicable), determines that there is good reason for the extension.

(q) *Filing and service of documents.*

(1) Whenever the regulations in this subpart or in an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of

the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

#### § 970.1002 Ex parte communications.

(a) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of *ex parte* matters as authorized by law, upon assignment of a matter to an administrative law judge and until the final decision of the Administrator is effective under these regulations, no *ex parte* communication relevant to the merits of the proceeding shall be made, or knowingly caused to be made:

(1) By the judge or by an agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce; or

(2) By an interested person outside the Department of Commerce to the judge or to any agency employee involved in the decisional process of the proceeding.

(c) The judge may not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate.

(d) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto and the judge, or Administrator, as appropriate, may take action in this respect consistent with this part, the Act, and 5 U.S.C. 556(d) and 557(d).

(e) This section does not apply to communications to or from the attorney representing the Administrator in the proceedings (the agency representative); however, the agency representative may not participate or advise in the initial or recommended decision of the judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the judge may not consult any person or party on the substance of the matter in issue unless on notice and opportunity for all parties to participate.

(f) Paragraphs (b) through (d) of this section do not apply to communications concerning national defense or foreign policy matters. Any such Ex Parte communications on those subjects to or from an agency employee or from employees of the United States Government involving intergovernmental negotiations are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

Ex Parte communications subject in this paragraph shall be made a part of the public record to the extent that they do not include information classified pursuant to Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

### Subpart K—Enforcement

#### § 970.1100 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed \$25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license, or suspend or modify activities under a license, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee under the Act to monitor compliance and environmental effects of activities under the license.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against a alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 970.1101–970.1102), and license sanctions (§ 970.1103); the remission or mitigation of forfeitures (§ 970.1104); observers (§ 970.1105); protection of certain information related to enforcement (§ 970.1106); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§ 970.1107).

#### (b) *Filing and service of documents.*

(1) Filing and service of documents required by this subpart shall be in accordance with § 970.1001(r). The method for computing time periods set forth in § 970.1001(r) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within 10 days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by § 970.1101(b) or by order of an administrative law judge, no requests for an extension of time may be granted.

#### § 970.1101 Assessment procedure.

(a) *Notice of violation and assessment (NOVA).* (1) A notice of violation and assessment (NOVA) will be issued by the Administrator and served personally or by registered or certified, mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the affected licensee, and the owner of an affected vessel (defined in paragraph (f) of this section), if the licensee or owner is not the respondent. Although no specific form is prescribed, the NOVA will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulations, license, or order allegedly violated;

(iii) The findings and conclusions upon which the Administrator based the proposed assessment; and

(iv) The amount of penalty proposed to be assessed.

(2) In respect to the amount of civil penalty, the Administrator will take into account information available to the agency concerning the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the respondent, any history of prior offenses, good faith demonstrated in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require.

(3) The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the facts believed to show a violation. The NOVA will advise the respondent of the respondent's rights at that point in the proceeding, and will be accompanied by a copy of regulations governing civil enforcement procedures, this subpart and the applicable provisions of Subpart J of this part.

#### (b) *Procedures upon receipt of NOVA.*

(1) The respondent shall have 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(i) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(ii) Seek to have the NOVA amended or modified as prescribed in paragraph (b)(2) of this section;

(iii) Request a hearing, as prescribed in paragraph (b)(5) of this section;

(iv) Take no action, in which case the NOVA becomes final in accordance with paragraph (c) of this section; or

(v) Request an extension of the time allowed to respond to the NOVA under paragraph (b)(3) of this section.

Options in paragraph (b)(1), (ii), (iii), (iv) and (v) of this section may also be exercised by the affected licensee or the owner of an affected vessel.

(2) The respondent, the affected licensee or the owner of an affected vessel may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the NOVA. Where amendment or modification is sought, the Administrator will either amend the

NOVA or decline to amend it, and will so notify the respondent, affected licensee or owner, as appropriate.

(3) The respondent, affected licensee or owner of an affected vessel may, within the 30-day period specified in paragraph (b)(1) of this section, request an extension of time to respond. The Administrator may grant an extension of up to 30 days unless the Administrator determines that the requestor could, exercising reasonable diligence, prepare a response within the 30-day period specified in paragraph (b)(1) of this section. If the Administrator does not respond to the request within 48 hours of its receipt by the Administrator, the request will be granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period will be considered effective response, and will be followed by written confirmation.

(4) The Administrator may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (b)(3) of this section.

(5) If the respondent, the affected licensee, or the owner of an affected vessel wishes a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA. The requestor shall either attach a copy of the relevant NOVA or refer to the relevant NOAA case number.

(6) Any denial, in whole or in part, of any request under this section which is based upon untimeliness will be made in writing.

(7) The Administrator may, in the Administrator's discretion, treat any communication from a respondent, an affected licensee, or owner as a request for a hearing pursuant to paragraph (b)(5).

(c) *Final decision.* (1) If no request for a hearing is filed under paragraph (b)(5) of this section, the NOVA becomes effective and constitutes the final decision and order of the Administrator on the 30th calendar day after service of the NOVA, or on the last day of any delay period granted under § 970.1100(b)(2) or paragraph (b)(3) or (b)(4) of this section.

(2) If a request for hearing is filed in accordance with paragraph (b)(5) of this section, the date of the final decision will be as provided in § 970.1102.

(d) *Payment of final assessment.* (1) The respondent shall make full payment of the civil penalty assessed within 30 days after the date upon which the assessment becomes effective as the final decision and order of the Administrator under paragraph (c) of

this section or § 970.1102(k); or, if judicial review of the assessment is initiated under section 302(b) of the Act during the 30-day period, within 10 days after the appropriate court has entered final judgment in favor of the Administrator, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(2) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States, or may take action under paragraph (e) of this section. In any court action under this paragraph (d)(2) of this section, the validity and appropriateness of the final order imposing the civil penalty is not subject to review.

(e) *Compromise of civil penalty.* (1) In his or her sole discretion, the Administrator may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty, imposed under this subpart, or which is subject to imposition, unless a court action, brought either under section 302(b) of the Act to review a civil penalty or under section 302(c) of the Act to recover a civil penalty, is pending in a court of the United States.

(2) The compromise authority of the Administrator under this paragraph (e) is in addition to any similar authority provided in the Act or in this subpart, and may be exercised either upon the initiative of the Administrator or in response to a request by the alleged violator or other interested person.

(3) If the Administrator acts under this paragraph (e) prior to issuing of a NOVA or after a final assessment becomes payable under paragraph (d) of this section, the Administrator will prepare a document indicating the action taken and citing this paragraph (e) and section 302(d) of the Act as authority. Once the case has been assigned for hearing under § 970.1102 (a), the Administrator will, except in unusual circumstances, defer any compromise action under this paragraph (e) until the administrative law judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this paragraph (e) nor the Administrator's exercise thereof at any time changes the date upon which an assessment becomes final or payable.

(4) If compromise action is requested or otherwise becomes appropriate for the Administrator's consideration during the pendency of a petition for relief from forfeiture filed under § 970.1104, the Administrator may consolidate, consistent with the provisions of § 970.1104, consideration of the two matters.

(f) *Application of this section to licensees and vessel owners.* (1) This section applies to affected licensees. "Affected licensee" means the holder of a license issued under the Act which license may be subject to sanctions as a result of civil penalty proceedings under this subpart.

(2) This section also applies to owners of affected vessels. "Affected vessel" means any vessel of the United States that may be liable *in rem* for any civil penalty assessed as a result of civil penalty proceedings under this subpart.

#### § 970.1102 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for hearing timely filed under § 970.1101(b), the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the NOAA Office of Administrative Law Judges, which will docket the matter for hearing. Written notice of the referral will promptly be given to the respondent, the affected licensee, and the owner of an affected vessel (if the licensee or owner is not the respondent), with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleadings and other documents shall be filed directly with the NOAA Office of Administrative Law Judges, and a copy shall be served on the opposing party (respondent or agency representative).

(b) *Ex parte communications.* Upon assignment of the case to an administrative law judge and until an assessment or other action on the matter becomes effective under these regulations as the final administrative decision of the Administrator, ex parte communications shall be governed by the regulations set forth in § 970.1002. However, § 970.1002 will not be interpreted to diminish the authority of the Administrator under § 970.1101(e).

(c) *Duties and powers of judge.* To the extent consistent with this subpart, the administrative law judge has all powers and responsibilities enumerated in § 970.1001(e) except that paragraph (e)(2) thereof does not apply. Instead, the judge has the power to rule on a

request to participate as a party in the proceedings by allowing, denying, or limiting such participation, except that the respondent, the affected licensee, the owner of an affected vessel, and the agency representative will be parties. The judge will, prior to ruling, ascertain the views of the other parties and base the ruling on whether the request is from a person who could be directly and adversely affected by the final decision and who may contribute materially to the disposition of the proceedings.

(d) *Participation by parties.* (1) The respondent, the affected licensee, the owner of an affected vessel, the agency representative, and, to the extent permitted by the judge, any other party, may appear in person, by counsel, or by other representative, and may examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, present documentary or other evidence in support of that party's case or defense, and conduct oral argument at the close of testimony. This paragraph shall not be interpreted to diminish the powers and duties of the judge provided in paragraph (c) of this section.

(2) Failure of any party to appear at the hearing will be deemed a waiver of the right to a hearing and consent to the making of a decision on the record of the hearing.

(e) *Appearance and presentation of evidence.* Appearance and the presentation of evidence are governed by in § 970.1001(k).

(f) *Settlements.* An agreement by respondent and the agency representative to settle the matter, if filed before an assessment or other action in the case becomes effective under these regulations as the final decision of the Administrator, will terminate the proceedings, and vacate any initial or administrative appellate decision which has been issued. However, if settlement is reached before the judge submits the initial decision and certifies the record under paragraph (i) of this section, the judge may require submission of a copy of the agreement solely to assure that the judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

(g) *Interlocutory appeals.* Appeals of interlocutory rulings by the judge under this subpart are governed by § 970.1001(k), except that objections to rulings not certified to the Administrator by the judge are subject to review at the same time and in the same manner as the Administrator's review of the initial decision of the judge upon any appeal therefrom under paragraph (j) of this section.

(h) *Proposed findings and conclusions.* Unless a different schedule is established in the discretion of the judge, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 days after the judge closes the hearing. Reply briefs may be submitted within 15 days after receipt of the proposed findings and conclusions to which they respond, unless the judge sets a different schedule.

(i) *Initial decision.* (1) After expiration of the period provided in paragraph (h) of this section for filing reply briefs, the judge will render a written initial decision upon the record in the case, setting forth:

(i) Findings and conclusions, and reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record. In determining the amount of a penalty assessment, the judge is not bound by the amount proposed or assessed in the NOVA, or elsewhere, but will decide the matter *de novo*, stating the reasons in view of the factors as set forth in section 302(a) of the Act and § 970.1101(a)(2);

(ii) Reasons for rejecting findings and conclusions proposed by the parties;

(iii) A statement of facts officially noticed and relied upon in the decision, if the parties have not previously been advised of such notice; and

(iv) Such other matters as the judge considers appropriate, including recommendations, if any, regarding forfeiture action and license sanctions.

(2) The judge will submit the initial decision to the Administrator, serve copies on the parties, and transmit to the Administrator the record of the proceeding together with a certification to the effect that, to the best of the judge's knowledge and belief, the record is a complete and accurate compilation of all evidence and other documents in the proceeding, except in such particulars as are specified.

(j) *Appeals.* (1) Any party may appeal the initial decision of the judge by filing a notice of appeal with the Administrator, within 45 days after the date of the initial decision. The notice of appeal shall concisely state such exceptions as the appellate takes to the initial decision and shall contain citations to the record or other authority relied upon. The appellant shall serve a copy of the notice of appeal on the other parties.

(2) The Administrator will decide the appeal upon the record already made, except that the Administrator may issue orders:

(i) Specifying the filing of supplemental briefs; or

(ii) Remanding the matter to the judge for receipt of further evidence other assistance in the determination of the matter. The decision of the Administrator will be in writing and will state the reasons for accepting or rejecting the exceptions taken by the appellant. To the extent the Administrator's decision is silent as to a material issue of fact, law, or discretion presented on the record, the decision will be deemed to adopt the findings and conclusions thereon, and the reasons or basis therefor, contained in the initial decision.

(k) *Final decision.* (1) Unless notice of appeal is timely filed in accordance with paragraph (j) of this section, the initial decision of the judge becomes effective and constitutes the final decision and order of the Administrator on the 45th calendar day after the date it is rendered.

(2) If a notice of appeal is timely filed as provided in paragraph (j) of this section, the Administrator's decision becomes effective and constitutes the final decision and order of the Administrator on the date the decision is issued, or as otherwise specified by the Administrator in the decision.

(3) Payment of any assessment which becomes final under this paragraph (k) shall be made in accordance with § 970.1101(d).

(1) *Application of this section to affected licensees and vessel owners.* The provisions of this section apply to affected licensees and owners of affected vessels as defined in § 970.1101(f).

#### § 970.1103 License sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license issued under the Act, or the suspension or modification of any particular activity or activities under a license, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license issued under the Act, or any particular activity or activities under such a license, if the licensee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the

following actions or combinations thereof with respect to a license issued under the Act:

- (1) Revoke the license;
- (2) Suspend the license, either for a specified period of time or until certain stated requirements are met, or both; or
- (3) Suspend or modify any activity under the license, such as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NOS) setting forth the sanction to be imposed and the basis therefor. The NOS will state:

- (i) A concise statement of the facts believed to show a violation;
- (ii) A specific reference to the provisions of the Act, regulation, license, or order allegedly violated;
- (iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee under paragraph (e)(1) of this section to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective under paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NOS will be served personally or by registered or certified mail, return receipt requested, on the licensee. The Administrator will also publish in the **Federal Register** a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NOS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

- (i) Prevent a significant adverse effect on the environment; or
- (ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NOS will be accompanied by a copy of regulations governing civil

enforcement procedures, this subpart and the applicable provisions of Subpart J of this part.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NOS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee can correct. Such determination, and the basis therefor, will be set forth in the NOS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee can correct, the Administrator will allow the licensee a reasonable period of time, up to 180 days from the date of the NOS, to correct the deficiency. The NOS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee may, within the time period prescribed by the Administrator under paragraph (e)(2) of this section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, it will be considered denied.

(4) When the licensee believes that the deficiency has been corrected, the licensee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for a hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee of the

Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee has 30 days from receipt of the NOS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing of which the licensee has been given notice and has had an opportunity to participate.

(2) If the licensee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOS. The request shall either attach a copy of the relevant NOS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section in the manner provided in § 970.1102.

(2) The hearing and appeal procedures in § 970.1102 apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the administrative law judge orders differently.

(4) The Administrator will serve notice of the initial and final decision on the licensee in the manner described by paragraph (d)(3) of this section.

#### § 970.1104 Remission of forfeitures.

(a) *Application of subpart.* (1) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources. This section establishes procedures for filing with the Administrator a petition for

relief from forfeitures incurred or pending.

(2) For purposes of this subpart, the "remission or mitigation of a forfeiture" or "relief from forfeiture" means action by the Administrator, following coordination as necessary with other Federal agencies and the courts, to release from the custody of the United States property seized and subject to forfeiture under the Act, or part of such property, upon compliance with any terms and conditions set by the Administrator, such as payment of a stated amount in settlement of the forfeiture aspects of a violation. Although the Administrator may properly combine consideration of a petition for relief from forfeiture with other consequences of a violation of the Act, the Administrator's remission or mitigation of a forfeiture is not dispositive of a criminal charge under section 303 of the Act, or a civil penalty or sanction under this subpart, unless the Administrator expressly so states in the decision. Remission or mitigation of a forfeiture is in the nature of executive clemency granted in the sole discretion of the Administrator only when consistent with the purposes of the Act and the provisions of this section.

(b) *Petition for relief from forfeiture.*

(1) Any person having an interest in a vessel, hard mineral resource, or other property seized and subject to forfeiture under the Act may file a petition for relief from the forfeiture. The petition shall be addressed to the Administrator and filed, within 60 days after the seizure, by mailing or delivering it to the Director, Office of Ocean Minerals and Energy at the address specified in § 970.200(b).

(2) The petition need not be in any particular form, but shall set forth the following:

- (i) A description of the property seized;
- (ii) The date and place of the seizure;
- (iii) The interest of petitioner in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;
- (iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;
- (v) Any request for release under paragraph (f) of this section of all or part of the seized property pending final decision on the petition, together with any offer of payment to protect the Government's interest that petitioner makes in return for such release, and the facts and circumstances relied upon by petitioner in the request; and
- (vi) The signature of petitioner, petitioner's attorney, or other authorized agent.

(3) A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* The Administrator will promptly investigate the facts and circumstances shown by the petition and the seizure, and may appoint an examiner to find the facts, by informal hearing on sworn testimony or otherwise, and to prepare a report with recommendations.

(d) *Decision on petition.* (1) After the investigation specified in paragraph (c) of this section, the Administrator will decide the matter and notify petitioner. The Administrator may remit or mitigate the forfeiture, on such terms and conditions as under the Act and the circumstances the Administrator deems reasonable and just, if the Administrator finds:

(i) That the forfeiture to which the property is subject was incurred without willful negligence and without any intention on the part of the petitioner to violate the Act, regulation, order, or license;

(ii) That other circumstances justify remission or mitigation of the forfeiture.

(2) Unless the Administrator determines no valid purpose would thereby be served, the Administrator will condition a decision to remit or mitigate a forfeiture upon the submission by petitioner of an agreement, in a form satisfactory to the Administrator, to hold the United States and its officers or agents harmless from any claim based on loss of or damage to seized property. If the petitioner is not the beneficial owner of the property, the Administrator may also require petitioner to submit such an agreement executed by the beneficial owner.

(e) *Compliance with decision.* A decision by the Administrator to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, is effective for 60 days after the date of the decision. If the petitioner does not within such period comply with the stated conditions, in the manner prescribed by the decision, or make arrangements satisfactory to the Administrator for later compliance, the matter will promptly be referred to the Attorney General of the United States to effect judicial forfeiture in full of the seized property to the United States under section 306 of the Act.

(f) *Release of seized property pending decision.* (1) Upon request in the petition for relief from forfeiture, and taking account of any interim report or recommendation of an examiner appointed under paragraph (c) of this section, the Administrator may order the release, pending final decision on the petition, of all or part of the seized

property upon payment by petitioner of the full value of the property to be released or such lesser amount as the Administrator in the Administrator's sole discretion deems sufficient to protect the interests served by the Act.

(2) If the Administrator grants the request, the Administrator will deposit the amount paid by petitioner in a suspense account maintained for that purpose. The amount deposited will for all purposes be considered to represent property seized and subject to forfeiture under the Act, and payment of the amount by petitioner constitutes a waiver of any claim of defective seizure, custody and control, commingling of proceeds, or related defenses. The Administrator will keep records of amounts deposited in the suspense account and will retain the deposits pending the Administrator's further order under section 304 of the Act or a court order under section 306 of the Act.

(3) The provisions of paragraph (d)(2) of this section apply to a release of property made under this paragraph (f).

§ 970.1105 *Observers.*

(a) *Purpose of observers.* Each licensee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board and accompany any vessel used by the licensee in exploration activities (hereafter referred to in this section as a "vessel"), for the purposes of observing and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's activities under the license.

(b) *Notice to licensee.* (1) The Administrator may notify a licensee that the Administrator plans to place an observer aboard a vessel.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator may include, among other things.

(i) The name of the observer, if known at the time the notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel.



(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring; and

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(iv) Information concerning the monitoring equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Licensee's response.* Upon request by the Administrator, a licensee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next exploration voyage, or, if the vessel is at sea, suggesting a time and methods for transporting the observer to the vessel.

(d) *Duties of licensee, owner or operator.* Each licensee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(e) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be carried out in a manner that minimizes

interference with the licensee's activities under the license.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(f) *Non-interference with observer.* Licensees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(g) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee an opportunity:

(1) To review those parts of the observer's reports which may contain proprietary information; and

(2) To request confidential treatment of such information under § 970.902.

#### § 970.1106 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in exploration will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under

§ 970.1101(e)(13) or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purposes of the Act.

#### § 970.1107 Advance notice of civil actions.

(a) *Actions against alleged violators.*

(1) No civil action may be filed in a United States District Court under section 114 of the Act against any person for alleged violation of the Act, or any regulation, or license term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Actions against the Administrator.*

(1) No civil action may be filed in a United States District Court under section 114 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or license believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

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