

**PART 971—DEEP SEABED MINING
REGULATIONS FOR COMMERCIAL
RECOVERY PERMITS**

Subpart A—General

- Sec.
971.100 Purpose.
971.101 Definitions.
971.102 Nature of permits.
971.103 Prohibited activities and restrictions.
971.104 OMB control number.

Subpart B—Applications

- 971.200 General.

CONTENTS

- 971.201 Statement of financial resources.
971.202 Statement of technological experience and capabilities.
971.203 Commercial recovery plan.
971.204 Environmental and use conflict analysis.
971.205 Vessel safety and documentation.
971.206 Statement of ownership.
971.207 Antitrust information.
971.208 Fee.
971.209 Processing outside the United States.

PROCEDURES

- 971.210 Determination whether application is complete for further processing.
971.211 Consultation and cooperation with Federal agencies.
971.212 Public notice, hearing and comment.
971.213 Amendment to an application.
971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

- 971.300 General.
971.301 Required findings.
971.302 Denial of certification.
971.303 Notice of certification.

**Subpart D—Issuance/Transfer: Terms,
Conditions and Restrictions**

- 971.400 General.

**ISSUANCE/TRANSFER, MODIFICATION/REVISION;
SUSPENSION/REVOCAATION**

- 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.
971.402 Consultation and cooperation with Federal and State agencies.
971.403 Freedom of the high seas.
971.404 International obligations of the United States.
971.405 Breach of international peace and security involving armed conflict.

- 971.406 Environmental effects.
971.407 Safety at sea.
971.408 Processing outside the United States.
971.409 Denial of issuance or transfer.
971.410 Notice of issuance or transfer.
971.411 Objections to terms, conditions and restrictions.
971.412 Changes in permits and permit terms, conditions, and restrictions.
971.413 Revision of a permit.
971.414 Modification of permit terms, conditions, and restrictions.
971.415 Duration of a permit.
971.416 Approval of permit transfers.
971.417 Suspension or modification of activities; suspension or revocation of permits.

TERMS, CONDITIONS AND RESTRICTIONS

- 971.418 Diligence requirements.
971.419 Environmental protection requirements.
971.420 Resource conservation requirements.
971.421 Freedom of the high seas requirements.
971.422 Safety at sea requirements.
971.423 Best available technology.
971.424 Monitoring requirements.
971.425 Changes of circumstances.
971.426 Annual report and records maintenance.
971.427 Processing outside the United States.
971.428 Other necessary permits.
971.429 Special terms, conditions and restrictions.
971.430 Other Federal requirements.

Subpart E—Resource Development

- 971.500 General.
971.501 Resource assessment, recovery plan, and logical mining unit.
971.502 Conservation of resources.
971.503 Diligent commercial recovery.

Subpart F—Environmental Effects

- 971.600 General.
971.601 Environmental requirements.
971.602 Significant adverse environmental effects.
971.603 At-sea monitoring.
971.604 Best available technologies (BAT) and mitigation.
971.605 Stable References Areas. [Reserved]
971.606 Onshore information.

**Subpart G—Safety of Life and Property at
Sea**

- 971.700 General.
971.701 Criteria for safety of life and property at sea.

Subpart H—Miscellaneous

- 971.800 General.

- 971.801 Records to be maintained and information to be submitted by licensees and permittees.
- 971.802 Public disclosure of documents received by NOAA.
- 971.803 Relinquishment and surrender of licenses and permits.
- 971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.
- 971.805 Computation of time.

Subpart I—Uniform Procedures

- 971.900 Applicability.
- 971.901 Formal hearing procedures.

Subpart J—Enforcement

- 971.1000 General.
- 971.1001 Assessment procedure.
- 971.1002 Hearing and appeal procedures.
- 971.1003 License and permit sanctions.
- 971.1004 Remission or mitigation of forfeitures.
- 971.1005 Observers.
- 971.1006 Proprietary enforcement information.
- 971.1007 Advance notice of civil actions.

AUTHORITY: 30 U.S.C. 1401 *et seq.*

SOURCE: 54 FR 525, Jan. 6, 1989, unless otherwise noted.

Subpart A—General

§971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Public Law 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§971.101 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 the Administrator's designee;

(c) *Affected State* means any State with a coastal zone management program approved under Section 306 of the Coastal Zone Management Act, as amended, where coastal zone land and water uses are affected by the issuance

of a commercial recovery permit under the provisions of the Act or this part;

(d) *Applicant* means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, "applicant" also means an applicant for an exploration license pursuant to the Act and part 970 of the title. "Applicant" also means a proposed permit transferee;

(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 (v)(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;

§971.102

15 CFR Ch. IX (1–17 Edition)

(i) *Environment* or *environmental* as used in the definitions of “irreparable harm” and “significant adverse environmental effect” means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected by the commercial recovery activities, and the living and non-living resources of those areas;

(j) *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;

(k) *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 is manganese, nickel, cobalt, or copper;

(l) *Irreparable harm* means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the activities authorized under the permit;

(m) *Licensee* means the holder of a license issued under NOAA regulations to engage in exploration;

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

(o) *Permittee* means the holder of a permit issued or transferred under this part 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) *Reciprocating state* means any foreign nation designated as such by the

Administrator under section 118 of the Act;

(r) *Recovery plan* or *commercial recovery plan* means the plan submitted by an applicant for a commercial recovery permit pursuant to §971.203;

(s) *Significant adverse environmental effect* means: (1) Important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values;

(t) *State agency* means the agency responsible for implementing the responsibilities of section 306(c)(5) under the Coastal Zone Management Act, as amended, and 15 CFR part 930;

(u) *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

(v) *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 (v)(1) or (v)(2).

§971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provisions of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is 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 under 15 CFR part 970 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 from within the license area. 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 and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.*

(1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) 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 do not apply to all 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 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 onshore, 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 any relevant 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 permittee which is authorized to be undertaken under a permit issued by the Administrator to a 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 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 or permit issued pursuant thereto; the filing of a spurious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall 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 permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement.

(2) The 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 15 CFR part 970 or this part;

§971.104

15 CFR Ch. IX (1-1-17 Edition)

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

(iii) An 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) 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) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that 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 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;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefore holds a valid exploration license under part 970 of this title.

§971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part were approved by the Office of Management and Budget under control number 0648-0170.

Subpart B—Applications

§971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the

area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner described in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commercial recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to:

Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commercial recovery plan and the financial, technical, environmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part. Although the ultimate standards for determinations under these rules are identical for both transferees and original preexisting licensees, NOAA anticipates that applicants who are transferees will have to supply more information with the application than licensees will [see subsection (e) in this section].

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license.* Information previously submitted as part of an exploration license application, as well as information submitted during the course of license activities (such as data included in annual reports to NOAA), may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it

must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations. Such consultation is required for the purpose of § 971.207. The applicant is encouraged to consult with affected States as early as is practicable [see also §§ 971.213 and 971.606(b)].

(h) *Compliance with Federal consistency requirements.* An applicant for a commercial recovery permit must comply with all necessary requirements, including procedures, pursuant to 15 CFR part 930, subpart D. Applications and other necessary data and information must be transmitted to the designated State agency as prescribed under 15 CFR 930.50.

CONTENTS

§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources is expected to be general in nature but must include the likely sources and timing of funds to meet the applicant's scheduled expenditures in the recovery plan. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will

have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access [see § 971.200(e)]. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the types of technical persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities, in a general way, for the twenty year period to be covered by the proposed permit. Although preliminary and subject to change, the plan must be more detailed for that portion of the permit term leading up to the initiation of commercial recovery. 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 permit

§ 971.204

15 CFR Ch. IX (1-1-17 Edition)

and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of the activities proposed to be carried out during the period of the permit;

(2) The intended schedule of commercial recovery (see “Diligent commercial recovery,” § 971.503);

(3) Environmental safeguards and monitoring systems, which must take into account requirements under subpart F of this part, including best available technologies (BAT) (§ 971.604) and monitoring (§ 971.603);

(4) Details of the area or areas proposed for commercial recovery, which meet requirements for diligence (§ 971.503) and conservation of resources pursuant to subpart E (especially § 971.502);

(5) A resource assessment of the area or areas proposed for commercial recovery which meets the requirements for resource assessment and logical mining unit (§ 971.501);

(6) A description of the methods and technology to be used for commercial recovery and processing (see § 971.202(b)(1)); and

(7) The methods to be used for disposal of wastes from recovery and processing, including the areas for disposal and identification of any toxic substances in wastes.

§ 971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite. The Administrator may require the submission of additional data, in the event he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available.

(b)(1) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm triggered by com-

mercial mining (see subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(2) The EIS must present adequate physical, chemical, and biological information for the permit area. If the permit area lies within the area of NOAA’s Deep Ocean Mining Environmental Study (DOMES), the parameters listed in NOAA’s Technical Guidance Document pertaining to the upper and lower water column should be included. Specifically, these parameters include:

(i) Upper water column—

- Nutrients
Endangered species
Salinity, temperature, density
Currents.

(ii) Lower water column and seafloor—

- Currents
Suspended particulate matter dispersion
Sediment characteristics (mineralogy, particle size, shape and density, and water content)
Topography
Benthos.

(3) For a permit area outside the DOMES area, the applicant is encouraged to consult with NOAA at the earliest opportunity in order to determine the specific parameters to be measured based on the location and specific environmental characteristics of the permit area. The Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, may determine that a programmatic EIS is required for any new area.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities which meets the objectives and requirements of § 971.603.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator’s determination regarding potential use conflicts between commercial mining activities and

those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.606.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessels.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the 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 it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

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

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

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and non-proprietary provisions in articles of incorporation, charter or articles of association; and

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

§ 971.207 Antitrust information.

In order to support the antitrust review referenced in § 971.211, the application must contain information sufficient, in the applicant's view and based on preapplication consultations pursuant to § 971.200(g), to identify the applicant and describe any significant existing market share it has with respect to the mining or marketing of the metals proposed to be recovered under the permit.

§ 971.208

15 CFR Ch. IX (1-1-17 Edition)

§ 971.208 Fee.

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

(b) *Amount.* A fee payment of \$100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of \$100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to, or for a significant change to a permit held by, an entity which has previously been found qualified for a permit, the Administrator may 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.

§ 971.209 Processing outside the United States.

(a) Except as provided in this section and § 971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interests of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site

proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to § 971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

PROCEDURES

§ 971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in § 971.201 through § 971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has determined pursuant to § 971.210 is complete, the Administrator will distribute a copy of the application to every 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 (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal

Trade Commission, International Trade 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, recommend certification of the application, issuance or transfer of the permit, 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 section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery 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. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

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

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as ap-

propriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each complete application for issuance or transfer of a commercial recovery permit, notice that the application has been received. Subject to §971.802, interested persons will be allowed to examine the materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon. A hearing will be conducted in any State in which a processing plant or any of its ancillary facilities (such as a marine terminal or a waste disposal facility) are proposed to be located.

(c) If the Administrator determines there exist 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 metropolitan area in accordance with the provisions of Subpart I 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.

(d) Hearings held pursuant to this section and other procedures will be consolidated, if practicable, with hearings held and procedures employed by other Federal and State agencies.

§971.213 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 permit, the applicant must submit an amendment

§971.214

to the application if there is a significant change in the circumstances represented in the original application which affects 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, the Administrator will provide a copy of that 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 §971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to §971.413. Any amendment or modification which would cause coastal zone effects substantially different than those originally reviewed by the state agency would be subject to Federal consistency review as prescribed in 15 CFR part 930.

§971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and 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 permit, the Administrator must determine that issuance of the permit would not violate any of the restrictions in §971.103(b). The Administrator also must make written determinations with respect to the requirements with respect to the requirements set forth in §971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of cer-

15 CFR Ch. IX (1–1–17 Edition)

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

§971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (1) the area is not a logical mining unit under §971.501, or (2) commercial recovery activities in the proposed area would result in a significant adverse environmental effect which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(1) Has demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(2) Has demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(3) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(4) Has a commercial recovery plan which meets the requirements of §971.203; and

(5) Has paid the permit fee specified in §971.208.

§971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under §971.403 through §971.408, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, via certified mail, return receipt requested, and

publish in the FEDERAL REGISTER, written notice of intention to deny certification. The 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 (not to 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 received by the applicant, under paragraph (b) of the section, unless before the 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) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) 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. 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.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commer-

cial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer: Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms conditions and restrictions.*

(1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in §§ 971.418 through 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

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

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of § 971.403 through § 971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a

§ 971.401

permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

ISSUANCE/TRANSFER, MODIFICATION/
REVISION; SUSPENSION/REVOCAION

§ 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, including notice of a draft EIS, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit that will be included with the draft EIS [see § 971.400(b)]. Subject to § 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons and affected States 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 the public hearing(s) required by § 971.212(b) 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. A copy of the notice and draft EIS will be provided to the affected State agency. Information provided by NOAA may be used to supplement information provided by the applicant, however it will not affect schedules for State agency review and decisions with respect to consistency determinations as required in 15 CFR part 930, subpart D.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administra-

15 CFR Ch. IX (1-1-17 Edition)

tor's decisions on issuance or transfer of, and on TCRs for, the permit.

§ 971.402 Consultation and cooperation with Federal and State agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal and State agencies which were initiated pursuant to §§ 971.211 and 971.200(g). These consultations will be held to assure compliance with, as applicable and among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Coordination Act, and the Coastal Zone Management Act of 1972, as amended. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone (now known as the Exclusive Economic Zone), or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§ 971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery 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 commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall 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 commercial recovery program of an applicant or permittee 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 such that neither will unreasonably interfere with the other.

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

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery 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.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery 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.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect, taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in subpart F. However, as also noted in subpart F, if a determination on this question cannot be made on the basis of available information, and it is found

that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension and, if necessary and appropriate, revocation pursuant to § 971.417(a), or subject to emergency suspension pursuant to § 971.417(h).

§ 971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery 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 in § 971.205 and subpart G.

§ 971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after the opportunity for an agency hearing required by § 971.212(b), that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

§971.409

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

(d) Environmental considerations of the proposed activity will be addressed in accordance with §971.606(c).

§971.409 Denial of issuance or transfer.

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

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, via certified mail, return receipt requested, and publish in the FEDERAL REGISTER, written notice of his intention to deny issuance or transfer. The 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 (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is received by the applicant under paragraph (b) of this section, unless before the 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) in which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) 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 I. 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, the Administrator will send to the applicant written notice of final denial, including the reasons therefor.

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

§971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the FEDERAL REGISTER.

§971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's receipt of the notice of issuance or transfer under §971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee 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 permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee 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 I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to §971.301;

(2) The bases for issuing or transferring the permit pursuant to §971.403 through §971.408;

(3) The TCRs issued as part of the permit pursuant to §§971.418 through 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in paragraphs (c)(1) and (2) of this section;

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittee's corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

(f) A proposed significant or major change, as defined in paragraphs (b) and (c) of this section, may trigger the need for additional review, under the Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended.

§971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in §971.201 through §971.209 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 permit which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in §971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in §971.412(c)

§971.414

15 CFR Ch. IX (1–1–17 Edition)

(See also §971.425 of this part), will be acted on after notice thereof is published by the Administrator in the FEDERAL REGISTER with a 60-day opportunity for public comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the FEDERAL REGISTER.

(e) A permittee may notify the Administrator of minor changes, as defined in §971.412(d), subsequently in the annual report (See §971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with §971.412(e) is required.

§971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit 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 considerations listed in §971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) 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) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in §971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(1) Written notice of the proposal to the permittee; and

(2) Publication of this proposal in the FEDERAL REGISTER with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee an amended permit including the modified TCRs, and shall publish notice of issuance in the FEDERAL REGISTER.

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under §971.411 of this part.

§971.415 Duration of a permit.

(a) Unless suspended or revoked pursuant to §§971.406 and 971.417, each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated

with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§971.416 Approval of permit transfers.

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

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery 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 permittee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

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

(2) Suspend or modify particular activities under any permit, if the Presi-

dent 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) will proceed pursuant to the procedures in §971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the FEDERAL REGISTER, and send to the permittee, 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 permittee can correct:

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

(ii) The time within which any correctable deficiency must be corrected (not to 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 notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee 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) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is

§971.418

made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I 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.

(f) The Administrator will serve on the permittee, 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 commercial recovery activities by a permittee. The provisions of paragraphs (c), (d), (e) and the first sentence of this paragraph (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse environmental effect or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with §971.1003(d)(4).

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

TERMS, CONDITIONS AND RESTRICTIONS

§971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with §971.503, including a requirement that recovery at commercial scale be underway within ten years from the date of permit issuance unless that

15 CFR Ch. IX (1-1-17 Edition)

deadline is extended by the Administrator for good cause.

§971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment. Factors to be taken into account regarding the potential for significant adverse environmental effects are discussed in §§971.601 and 971.602.

(b) Before establishing the TCRs 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. The Administrator also will take into account and give due consideration to formal comments received from the public, including those from the State agency, and to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs 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 recovery area. The Administrator will establish these requirements pursuant to §971.502.

§971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions to ensure that commercial recovery 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. The Administrator will consider the factors in §971.403 in establishing these restrictions.

§ 971.422 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 permit 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 permit comply with conditions regarding 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 G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, (see §§ 971.203(b)(3), 971.602(f), and 971.604(a)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

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

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

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

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a moni-

toring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in significant adverse environmental effects.

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.408.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other necessary Federal, State, and local permits.

§ 971.429 Special terms, conditions and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in §§ 971.418 through 971.428, the Administrator may impose special TCRs 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.

§ 971.430 Other Federal requirements.

Pursuant to § 971.211, another Federal agency, or a State acting under Federal authority, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator will include appropriate TCRs in a permit.

Subpart E—Resource Development

§ 971.500 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, section 103(a)(2)(C) requires a resource assessment to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select the size and location of the area of a recovery plan, which will be approved unless the Administrator finds that the area is not a "logical mining unit" or the commercial recovery activities in the proposed site would result in a significant adverse environmental effect which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to section 108 of the Act, the applicant's recovery plan and the TCRs of each permit 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 permit is to 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 resources.

§ 971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment

to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant shall select the size and location of the area of the recovery plan, which area shall be approved unless the Administrator finds that, among other considerations (see § 971.301(a)), the area is not a logical mining unit. In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit 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 set out in the recovery plan;

(2) Which is not larger than necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(c) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. 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.

(d) 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.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes 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 recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources in the proposed permit area. Although preliminary and subject to change, the discussion must include a plan for the chronology of areas to be mined. This is needed in order for the Administrator to determine if selective mining, expected to be carried out in the early years to improve cash flow, is part of a long range recovery plan.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, e.g., in case of national emergency, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(2). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commercial quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator,

§ 971.600

based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with § 971.413.

Subpart F—Environmental Effects

§ 971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator of any TCR if relevant data and information indicate that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section 106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse environmental effect. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines

15 CFR Ch. IX (1–1–17 Edition)

issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§ 971.601 Environmental requirements.

Before issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commercial recovery is undertaken to gather sufficient information in order to determine the potential for or occurrence of any significant adverse environmental effect. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR part 125, subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§971.603) and the resources and other capabilities to implement it.

§971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect or impact (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case-by-case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data, monitoring results, and other data provided by the applicant or permittee, as well as consideration of the criteria in §971.601(a).

(c) *Related considerations.* In making a determination the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea testing of recovery equipment, the re-

covery of manganese nodules in commercial quantities from the deep seabed, and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse environmental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to §971.419), mitigation (pursuant to §971.419), or best available technology requirements (pursuant to §971.423), as appropriate, and monitoring requirements (pursuant to §971.424) to acquire more information on the environmental effects of deep seabed mining.

§971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to assure compliance with the environmental protection requirements of this part.

(b) The monitoring plan shall include a characterization of the proposed mining system in terms of collector contact, benthic discharge and surface discharge.

(c) The monitoring plan shall include determination of (1) the spatial and temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(d) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA, which areas shall be representative of the environmental characteristics of the permittee's site:

(1) An impact reference area, located in a portion of a permit area tentatively scheduled to be mined early in a commercial recovery plan; and

(2) An interim preservational reference area, located in a portion of a

permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan.

Reference areas may be selected provisionally prior to application for a commercial recovery permit.

(e) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

- (1) Discharges—
 - (i) Salinity, temperature, density.
 - (ii) Suspended particulates concentration and density.
 - (iii) Particulate and dissolved nutrients and metals.
 - (iv) Size, configuration, and velocities of discharge.
 - (2) Upper water column—
 - (i) Nutrients.
 - (ii) Endangered species (observations).
 - (iii) Salinity, temperature, density.
 - (iv) Currents and direct current shear.
 - (v) Vertical distribution of light.
 - (vi) Suspended particulate material advection and diffusion.
 - (vii) In-situ settling velocities of suspended particulates.
 - (viii) Zooplankton and trace metals uptake.
 - (ix) Fish larvae.
 - (x) Behavior of biota, including commercially and recreationally valuable fish.
 - (3) Lower water column and seafloor—
 - (i) Currents.
 - (ii) Suspended particulate material advection and diffusion.
 - (iii) In-situ settling velocities of suspended particulates.
 - (iv) Benthic scraping and blanketing, and their impacts and recovery.
- (f) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite, where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

(g) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will include, to

the maximum extent practicable, identification of those activities or events that could cause suspension or modification due to environmental effects under § 971.417, or permit revocation in the event that these effects cannot be adequately mitigated. The TCR also will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(h) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(i) The monitoring plan shall include a sampling strategy that assures: that it is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(j) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See § 971.1005), and if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the

best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required above, the use of BAT, the alternatives considered to the specific equipment or procedures proposed, and the rationale as to why one alternative technology was selected in place of another. This analysis shall include a discussion of the relative costs and benefits of the technologies considered.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a problem, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharges, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. In report-

ing any such change, the permittee shall submit information to indicate the use of BAT, alternatives considered, and rationale for selecting one technology in place of another, in a manner comparable to and to the extent required in paragraph (a) of this section. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator may disapprove or require modification of the changes.

§ 971.605 Stable Reference Areas. [Reserved]

§ 971.606 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other environmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with the federally approved State coastal management program, where applicable, and evidence of the status of compliance with other State or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to NOAA to prepare an adequate environmental impact statement. The applicant is encouraged to consult with potentially affected States as early as is practicable [see also §§ 971.200(g) and 971.213].

§ 971.700

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G—Safety of Life and Property at Sea

§ 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any 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 permit 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 (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§ 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to § 971.205(a)). United States flag vessels are under United States juris-

15 CFR Ch. IX (1–1–17 Edition)

diction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in § 971.205(b) apply.

Subpart H—Miscellaneous

§ 971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§ 971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these 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 and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

§ 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR part 970 may request that certain information not be subject to public disclosure. The substantiation requested 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 or 15 CFR part 970, which information is considered by that person 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 Administrator give the information 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 the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator 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, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator 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, licensee or permittee, 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 the Administrator 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.

(4) Normally, the Administrator 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 make a determination in advance of a request, where it would facilitate 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 substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure 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 the 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 possesses, 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 of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must 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 that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator 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 that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator 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 this statement was not previously submitted;

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

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) arguments against disclosure of the information; and

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

(3) To the extent permitted by applicable law, part or all or 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 response 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.

(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 General Counsel for the Department of Commerce, 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 the final agency action is subject to judicial review under chapter 7 of title 5, United States Code; and

(iv) That on the seventh 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 the Administrator 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) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, 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 ten 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 submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. 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 the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator 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 Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

§ 971.803

(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 the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 971.803 Relinquishment and surrender of licenses and permits.

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

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

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

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

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

The Administrator may amend the regulations in this part and 15 CFR part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery ac-

15 CFR Ch. IX (1–17 Edition)

tivities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in subpart I of this part.

§ 971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart I—Uniform Procedures

§ 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR part 970:

(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 licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where

the licensee or permittee 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 or permittee for review of:

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

(2) A proposed suspension or modification of particular activities under a license or permit 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 § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR part 970, subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by subpart C of 15 CFR part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR part 904, subpart C, to the extent there is a conflict.

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

(3) For the purposes of this subpart, *involved applicant, licensee or permittee* means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office of Administrative Law Judges for as-

signment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *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, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR part 970.

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

(i) Time and place of the hearing and the name of the presiding judge, as determined under paragraph (b) of this section;

(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.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR part 904. Subpart C, judges will have 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; and

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

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

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

- (i) The NOAA General Counsel;
- (ii) Any involved applicant, licensee or permittee; 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 ten 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 ten 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 ten 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 ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten days, the formal hearing, and the evidence he proposes to submit may sig-

nificantly 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) below.

(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.* (1) 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.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of certification, issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit 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 previously raised in the administrative proceedings on the action pursuant to any such section, unless the judge determines that good cause is shown for the failure to raise 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, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *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 ten 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 ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* (i) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, 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.

(ii) Within thirty days after the date the recommended decision is served, any party may file with the Administrator exceptions to the recommended decision. The exceptions must refer to all portions of the record and to all authorities relied on in support of the exceptions.

(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. The Administrator shall assure that the record shows the ruling on each exception presented.

(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.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or 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 at 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.

Subpart J—Enforcement

§ 971.1000 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

§971.1001

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 permit, or suspend or modify activities under a license or permit, 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 or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an 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 (§§971.1001–971.1002), and license and permit sanctions (§971.1003); the remission or mitigation of forfeitures (§971.1004); observers (§971.1005); protection of certain information related to enforcement (§971.1006); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with §971.901(i). The method for computing time periods set forth in §971.901(i) 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.

15 CFR Ch. IX (1–1–17 Edition)

(2) If an oral or written request is made to the Administrator within ten 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 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§971.1001 Assessment procedure.

Subpart B of 15 CFR part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or activities under a license or permit, 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 or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee 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 or permit.

(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 or permit issued under the Act:

- (1) Revoke the license or permit;
- (2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or
- (3) Modify any activity under the license or permit, 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 therefore. 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 permit, 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 or permittee 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 or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to 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 or permittee. 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 environmental effect; 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 this subpart and the applicable provisions of 15 CFR part 904 and 15 CFR part 971, subpart I.

(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 or permittee 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 or permittee can correct, the Administrator will allow the licensee or permittee 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 or permittee 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 or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of the 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, the request will be considered denied.

§971.1004

15 CFR Ch. IX (1–1–17 Edition)

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee 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 or permittee of such determination.

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

(i) Grant the licensee or permittee 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 or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for 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 or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee 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 in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee 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 by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR part 904, subpart C 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) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with §971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with §971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§971.1004 Remission or mitigation of forfeitures.

(a) 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 or permit 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.

(b) Subpart F of 15 CFR part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee 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 or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a "vessel"), for the purpose of observing, evaluating and reporting on:

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

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

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

(b) *Notice to licensee or permittee.* (1) If the Administrator plans to place an observer aboard a vessel, the Administrator will so notify the affected licensee or permittee.

(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 will include, among other things:

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

(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

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the 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) *Initial monitoring period.* The Administrator shall require the placement of an observer on each permittee's mining vessel(s) at least once during the initial year of the permittee's commercial recovery activities.

(d) *Licensee's and permittee's responsibilities for observer placement.* (1) Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

(2) In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such

§971.1006

changes are made, or 90 days prior to the previously scheduled departure.

(e) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, 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.

(f) *Reasonableness of observer activities.*

(1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(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 or permittee, 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.

(g) *Non-interference with observer.* Licensees, permittees 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.

15 CFR Ch. IX (1-1-17 Edition)

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

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

(2) To request confidential treatment of such information under §971.802.

§971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery 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 15 CFR part 904 subpart C, 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 purpose of the Act.

§971.1007 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 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit 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 or permit allegedly violated; and

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

Nat'l Oceanic and Atmospheric Adm., Commerce

§971.1007

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under section 117 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 permit

believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the non-discretionary 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.