

**DENR Administrative Order
No. 23
August 15, 1995**

SUBJECT : Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the "Philippine Mining Act of 1995"

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

**CHAPTER I
INTRODUCTORY PROVISIONS**

Section 1. Title. The title of this Administrative Order shall be "Implementing Rules and Regulations of the Philippine Mining Act of 1995".

Sec. 2. Declaration of Policy. All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the state. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of the Government and private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities.

Sec. 3. Objectives. These rules and regulations are promulgated toward the attainment of the following objectives:

- (a) To promote the rational exploration, development, utilization and conservation of mineral resources under the full control and supervision of the State;
- (b) To enhance the contribution of mineral resources to economic recovery and national development, with due regard to the protection of the environment and the affected communities as well as the development of local science and technical resources;
- (c) To promote equitable access to economically efficient development and fair sharing of benefits and costs derived from the exploration, development and utilization of mineral resources; and

- d. To enable the Government and the investor to recover their share in the production, utilization and processing of minerals to attain sustainable development with due regard to the environment, social equity and fair return of investment.

CHAPTER II DEFINITIONS

Sec. 4. Definition Of Terms. As used in and for purposes of these rules and regulations, the following terms shall mean:

- (a) "**The Act**" refers to R.A. No. 7942 otherwise known as the "Philippine Mining Act of 1995."
- (b) "**Ancestral Lands**" refers to all lands exclusively and actually possessed, occupied or utilized by indigenous cultural communities by themselves or through their ancestors in accordance with their customs and traditions since time immemorial, and as may be defined and delineated by law.
- (c) "**Annual Environmental Protection and Enhancement Program (AEPEP)**" refers to a yearly environmental management work plan based on the approved environmental protection and enhancement strategy.
- (d) "**Archipelagic Sea**" refers to all waters within the baseline of an archipelago except internal waters such as roadsteads, lakes and rivers.
- (e) "**Block or Meridional Block**" means an area bounded by one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, containing approximately eighty-one (81), hectares.
- (f) "**Bureau**" means the Mines and Geo-Sciences Bureau under the Department of Environment and Natural Resources.
- (g) "**Commercial Production**" refers to the production of sufficient quantity of minerals of sustained economic viability of mining operations reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, whichever comes first.
- (h) "**Conservation**" means the wise use and optimum utilization of mineral resources.

- (i) “**Contiguous Zone**” refers to water, sea bottom and substratum measured twenty-four (24) nautical miles seaward from the baseline of the Philippine Archipelago.
- (j) “**Contract Area**” refers to the land or body of water delineated under a mineral agreement or FTAA subject to the relinquishment obligations of the Contractor and properly defined by longitude and latitude.
- (k) “**Contractor**” means a qualified person acting alone or in consortium who is a party to a mineral agreement or FTAA.
- (l) “**Co-Production Agreement (CA)**” refers to an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.
- (m) “**Department**” means the Department of Environment and Natural Resources of the Republic of the Philippines.
- (n) “**Development**” means the work undertaken to explore and prepare an orebody or a mineral deposit for mining, including the construction of necessary infrastructure and related facilities.
- (o) “**Development Stage**” as used exclusively for FTAAAs means the periods to prepare an explored orebody or mineral deposit for mining including the construction of necessary infrastructure and related facilities.
- (p) “**Director**” means the Director of the Mines and Geosciences Bureau.
- (q) “**Ecological Profile or Eco-Profile**” refers to geographic-based instruments for planners and decision-makers which present a description of the environmental setting including the state of environmental quality and evaluation of the assimilative capacity of an area.
- (r) “**Effluent**” means any wastewater, partially or completely treated or any waste liquid flowing out of mining mill operations, wastewater treatment plants or tailings disposal system.
- (s) “**Environmental Compliance Certificate (ECC)**” refers to the document issued by the Department certifying that the project under

consideration will not bring about an unacceptable environmental impact and that the proponent has complied with the requirements of the Environmental Impact Statement System.

- (t) “**Environmental Impact Assessment (EIA)**” refers to a process which consists of identifying and predicting the impact(s) of proposed projects and programs on the physical, cultural, biological environment and on man’s health and well-being, recommending mitigating measures to address environmental impacts and interpreting/ communicating information about such impacts in a manner which can be utilized.
- (u) “**Environmental Impact Statement (EIS)**” refers to a document which aims to identify, predict, interpret, and communicate information regarding changes in environmental quality associated with a proposed project and which examines the range of alternatives for the objectives of the proposal and their impacts on the environment.
- (v) “**Environmental Protection and Enhancement Program (EPEP)**” refers to the comprehensive and strategic environmental management plan for the life-of-the mining project from which annual environmental work programs are based and implemented to achieve the environmental management objectives, criteria and commitments including protection and rehabilitation of the disturbed environment.
- (w) “**Exclusive Economic Zone**” refers to the water, sea bottom and subsurface measured from the baseline of the Philippine Archipelago up to two hundred (200) nautical miles offshore.
- (x) “**Existing Mining/Quarrying Right**” means a valid and subsisting mining claim or permit or quarry permit or any mining lease contract or agreement covering a mineralized area granted/issued under pertinent mining laws.
- (y) “**Exploration**” means searching, or prospecting for mineral resources by geological, geochemical, geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quality and quantity of mineral resources and the feasibility of mining them for profit.

- (z) **“Financial or Technical Assistance Agreement (FTAA)”** means a contract involving financial or technical assistance for large scale exploration, development and utilization of mineral resources.
- (aa) **“Force Majeure”** means act or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbance, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by government or by any instrumentalities or subdivision thereof, act of God or of any public enemy, and any cause not herein described over which the affected party has no reasonable control.
- (ab) **“Foreign-owned Corporation”** means any corporation, partnership, association or cooperative duly registered in accordance with law in which less than fifty percent (50%) of the capital is owned by Filipino citizens.
- (ac) **“Government”** means the Government of the Republic of the Philippines.
- (ad) **“Gross Output”** means the actual value of minerals or mineral products from each mine or mineral land operated as a separate entity, without any deduction for mining, processing, refining, transporting, handling, marketing or any other expenses: provided, that if the minerals or mineral products are sold or consigned abroad by the Contractor under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted: provided, however, that in the case of mineral concentrates which are not traded in commodity exchanges in the Philippines or abroad, such as copper concentrates, the actual market value shall be the world price quotations of the refined mineral products contents thereof prevailing in the said commodity exchanges, after deducting the smelting, refining, treatment, insurance, transportation and other charges incurred in the process of converting mineral concentrates into refined metal traded in those commodity exchanges.
- (ae) **“Indigenous Cultural Community”** means a group or tribe of indigenous Filipinos who have continuously lived as communities on communally-bounded and defined land since time immemorial and have succeeded in preserving, maintaining and sharing common bonds of languages, customs, traditions, and other distinctive cultural traits, and as may be defined and delineated by law.

- (af) “**Joint Venture Agreement (JVA)**” refers to an agreement where a joint venture company is organized by the Government and the Contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.
- (ag) “**Lessee**” means a person or entity with a valid and existing mining lease contract.
- (ah) “**Metallic Mineral**” means a mineral having a brilliant appearance, quite opaque to light, usually gives a black or very dark streak and where a metallic element/component can be extracted/utilized for profit.
- (ai) “**Minerals**” refers to all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy.
- (aj) “**Mineral Land**” means any area where mineral resources, as herein defined, are found.
- (ak) “**Mineral Processing**” means the milling, beneficiation, leaching, smelting, cyanidation, calcination or upgrading of ore(s)/minerals/rocks/ mill tailings/mine waste/other metallurgical by-products or by similar means to convert the same into marketable products.
- (al) “**Mineral Processing Permit**” refers to the permit granted to a qualified person for milling, beneficiation, leaching, smelting, cyanidation, calcination or upgrading of ore(s)/minerals/rocks mill tailings/mine waste/other metallurgical by-products or by similar means to convert the same into marketable products.
- (am) “**Mineral Products**” means materials derived from mineral ores/rocks and prepared into a marketable state by metallurgical processes which include, but not limited to milling, beneficiation, cyanidation, leaching, smelting, calcination and other similar processes.
- (an) “**Mineral Resources**” means concentration of minerals/rocks with potential economic value.
- (ao) “**Mill Tailings**” means materials whether solid, liquid or both segregated from the ores during concentration/milling operations which has no present economic value to the generator of the same.

- (ap) “**Mine Waste**” means soil and/or rock materials from surface or underground mining operations with no present economic value to the generator of the same.
- (aq) “**Mineral Agreement**” means a contract between the government and a Contractor, involving Mineral Production-Sharing Agreement, Joint Venture Agreement, or Co-Production Agreement.
- (ar) “**Mining Area**” means a portion of the contract area identified by the Contractor for purposes of development, mining, utilization, and sites for support facilities or in the immediate vicinity of the mining operations.
- (as) “**Mining Operations**” means mining activities involving exploration, feasibility study, development, utilization and mineral processing.
- (at) “**Mining Right**” means any right to explore, develop, or utilize mineral resources.
- (au) “**Mining Right Application**” means any application for small-scale mining permit, exploration permit, quarry permit, sand and gravel permit, guano permit, gemstone gathering permit, mineral agreement or FTAA.
- (av) “**Net Assets**” refers to the property, plant and equipment as reflected in the audited financial statement of the Contractor net of depreciation, as computed for tax purposes, excluding appraisal increase and construction in progress.
- (aw) “**Net Income**” means gross income from operations less allowable deductions which are necessary or related to mining operations.
- (ax) “**Non-Metallic Mineral**” refers to mineral usually having a dull luster, generally light-colored, transmits light, usually gives either colorless or light colored streak and where a non-metallic element/component can be extracted/utilized for a profit.
- (ay) “**Non-Government Organization (NGO)**” includes nonstock, nonprofit organizations involved in activities dealing with resource and environmental conservation, management and protection.
- (az) “**Offshore**” means the water, sea bottom, and subsurface from the shore or coastline reckoned from the mean low tide level up to the

two hundred (200) nautical miles Exclusive Economic Zone including the archipelagic sea and contiguous zone.

- (ba) “**Onshore**” means the landward side from the mean low tide elevation, including submerged lands in lakes, rivers and creeks.
- (bb) “**Ore**” means naturally occurring substance or material from which a mineral or element can be mined and/or processed for profit.
- (bc) “**Ore Transport Permit**” refers to the permit that may be granted to a Contractor, accredited dealer, retailer, processor and other mining permit holders to transport mineral/mineral products.
- (bd) “**Permittee**” means the holder of an exploration permit. The permittee referred to in previous administrative orders shall mean holders of permits subject of such orders.
- (be) “**Permit Holder**” means a holder of any permit issued under these rules and regulations other than exploration permit.
- (bf) “**Pollution Control Devices and Facilities**” refers to infrastructure, machinery, equipment and/or improvements used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailings as well as eliminating or reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal.
- (bg) “**Pre-Operating Expenses**” refer to all exploration expenses, special allowance, administrative costs related to the project, feasibility and environmental studies, and all costs of mine construction and development.
- (bh) “**President**” refers to the President of the Republic of the Philippines.
- (bi) “**Private Land**” refers to land belonging to any private person or entity which includes alienable and disposable land being claimed by a holder, claimant or occupant who has already acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued.
- (bj) “**Public Land**” refers to land of the public domain which has been classified as agricultural land, mineral land, forest or timber land

subject to management and disposition or concession under existing laws.

- (bk) **“Qualified Person”** means any Filipino citizen with capacity to contract, or a corporation, partnership, association or cooperative organized or authorized for the purpose of engaging in mining and with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty per centum (60%) of the capital of which is owned by Filipino citizens: provided, that a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.
- (bl) **“Quarrying”** means the process of extracting, removing and disposing quarry resources found on or underneath the surface of public or private land.
- (bm) **“Quarry Permit”** means a document granted to a qualified person for the extraction and utilization of quarry resources on public or private land.
- (bn) **“Quarry Resources”** refers to any common rock or other mineral substances as the Director may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clays for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass: provided, that such quarry resources do not contain metals or metallic constituents and/or other valuable minerals in economically workable quantities: provided, further, that non-metallic minerals such as kaolin, feldspar, bull quartz, quartz or silica, sand and pebbles, bentonite, talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semi-precious stones, and other non-metallic minerals that may later be discovered and which the Director declares to be of economically workable quantities, shall not be classified under the category of “Quarry Resources”.
- (bo) **“Regional Director”** means the Regional Director of any Mines Regional Office of the Department of Environment and Natural Resources.

- (bp) “**Regional Office**” means any of the Mines Regional Offices of the Department of Environment and Natural Resources.
- (bq) “**Royalty**” means any payment over and above other existing taxes for the utilization of minerals within a mineral reservation, indigenous cultural community, or in areas covered by small-scale mining.
- (br) “**Secretary**” means the Secretary of the Department of Environment and Natural Resources.
- (bs) “**Service Contractor**” means a person or entity who enters into an agreement to undertake a specific work related to mining or quarrying operations of a Contractor/permittee/lessee/other mining permit holders.
- (bt) “**Special Allowance**” refers to payment to the claimowner or surface right owners particularly during the transition period from P.D. No. 463 and Executive Order No. 279, Series of 1987.
- (bu) “**State**” means the Republic of the Philippines.
- (bv) “**Tailings Disposal System**” refers to a combination of methods, equipment and manpower used in handling, transporting, disposal or impounding of mill tailings.
- (bw) “**Waste Dump Area**” refers to a designated place where the mine wastes are accumulated or collected.

CHAPTER III GOVERNMENT AUTHORITY

Sec. 5. Authority of the Department. The Department, thru the Secretary, shall have the following authority, among others:

- (a) The Department is the primary Government agency responsible for the conservation, management, development, and proper use of the State’s mineral resources including those in reservations, watershed areas, and lands of the public domain;
- (b) The Secretary shall have the authority to enter into mineral agreements on behalf of the government or recommend FTAA to the President upon the recommendation of the Director;

- (c) The Secretary is authorized to promulgate rules and regulations as may be necessary to implement the intent and provisions of R.A. 7942;
- (d) The Secretary shall have the authority to enforce applicable related laws such as Administrative Code, Civil Code, etc.; and
- (e) The Secretary may delegate such authority and other powers and functions to the Director.

Sec. 6. Authority of the Bureau. The Bureau which is transformed into a line bureau consistent with Sec. 100 of the Act shall have the following authority, among others:

- (a) To have direct charge in the administration and disposition of contracts, agreements or permits relating to mineral lands and mineral resources;
- (b) To undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys;
- (c) To confiscate surety, performance, and guaranty bonds after notice of compliance;
- (d) To recommend to the Secretary the granting of mineral agreements or to endorse to the Secretary, for action by the President, the grant of FTAAAs, in favor of duly qualified persons and shall monitor the compliance by the Contractor(s) of the terms and conditions of the mineral agreements and FTAAAs. For this purpose, an efficient and efficacious monitoring system shall be established to ascertain periodically whether or not the objectives are realized;
- (e) To deputize, when necessary, any member or unit of the Philippine National Police and barangay, duly registered and Department accredited Non-governmental Organization (NGO) or any qualified person to police all mining activities;
- (f) The Director shall have the authority to enforce applicable related laws such as Administrative Code, Civil Code, etc.; and
- (g) The Director may delegate such authority and other powers and functions to any Regional Director.

CHAPTER IV RECORDING SYSTEM AND MINERAL GAZETTE

Sec. 7. Mining Recorder Unit. The Bureau and its Regional and other offices shall have a Mining Recorder Unit in their respective offices to receive, record and manage all mining documents submitted by concerned individuals or companies relating to mining rights. However, same unit may be established in Provincial Governor's/City Mayor's Office.

Documents relating to applications for mineral agreements, FTAAs, exploration permits and small-scale mining permits in mineral reservations shall be registered at the Bureau.

Documents relating to applications for mineral agreements, FTAAs and exploration permits outside mineral reservations, and industrial sand and gravel permits covering more than five (5) hectares shall be registered at the Regional Offices.

Documents relating to applications for quarry permits, sand and gravel permits, including industrial sand and gravel permits covering five (5) hectares or less, guano permits, gemstone gathering permits and small-scale mining permits outside mineral reservations shall be registered at the Provincial Governor's or City Mayor's office where the applied area is located.

The functions of the Mining Recorder Unit shall include the following:

- (a) Pre-processing of applications particularly the documentary provisions of the implementing rules and regulations of the Act;
- (b) Computation of fees to be paid by the applicant;
- (c) Recording of mining documents;
- (d) Providing information and advice on the status of applications;
- (e) Inputting data relating to applications, contracts, and permits into the mining rights management system;
- (f) Organizing and maintaining record holdings on mining rights applications in accordance with standard records management practices;
- (g) Issuing certifications and copies of mining documents;

- (h) Follow-up compliance of requirements needed in the processing of mining rights applications; and
- (i) Projection/verification of area applied for either through the mining rights management system or control maps of the unit if free from mining conflict.

Sec. 8. Mining Register. A mining register is a hardbound logbook, arranged in rows and columns, for chronologically recording a set of documents received by the Mining Recorder.

The following shall have their own mining register:

- (a) **Applications for mining rights;**
 - 1. Exploration permits;
 - 2. Mineral agreements;
 - 3. FTAAAs;
 - 4. Quarry, sand and gravel, guano, gemstone gathering permits; and
 - 5. Small-scale mining permits
- (b) **Mining rights involving;**
 - 1. Exploration permits;
 - 2. Mineral agreements;
 - 3. FTAAAs;
 - 4. Quarry, sand and gravel, guano, gemstone gathering permits; and
 - 5. Small-scale mining permits
- (c) **Miscellaneous Documents:**
 - 1. Power of Attorney;
 - 2. Deeds of Assignment/Transfer/Conversion;
 - 3. Operating Agreements;
 - 4. Protests or Adverse Claims; and
 - 5. All other instruments concerning or affecting mining rights.

All applications for mining rights shall be recorded in their corresponding mining register with the following information, among others:

- (a) Application number;
- (b) Date and time of filing;

- (c) Applicant's/Proponent's name;
- (d) Location;
- (e) Area applied for in blocks/hectares;
- (f) Official receipt number; and
- (g) Amount paid.

For approved mining rights, the contract or permit number and the Contractor's or permit holder's name should be recorded in lieu of application number and applicant's/proponent's name, respectively.

All miscellaneous documents shall be recorded in their respective mining registers containing the following information:

- (a) Date and time of filing;
- (b) Document or application number;
- (c) Entity involved;
- (d) Document title;
- (e) Page number;
- (f) Book number;
- (g) Year series;
- (h) Amount paid; and
- (i) Official receipt number.

Sec. 9. Administrative Fees Relating To Mining Registration.

Before any of the documents enumerated in Section 7 can be registered, payment of the required fees in accordance with the rates specified in Annex 4-A shall be made. The amount, receipt number and time of payment shall be recorded in the appropriate mining register.

Sec. 10. Registration And Filing Procedures. Upon compliance with the documentary requirements and payment of required fees, all documents subject for registration shall be recorded immediately in the appropriate mining register in black ink by the Mining Recorder.

Copies of applications for mining rights and their supporting documents shall be compiled with and bound in durable folders/boxes arranged chronologically and each page of the document consecutively numbered starting from the bottom page of the earliest document, herein referred to as a marked page. A document inventory report indicating the contents of the folder/box beginning from the marked page number 1 shall be maintained at all times. The document inventory report shall contain the following:

- a. Document control number;
- b. Marked page number(s) of the document; and

- (c) Brief description of the document.

The document control number is a unique number recorded in the general receiving and releasing logbook of the Bureau or Regional Office. The Regional Office shall submit to the Bureau an annual document inventory report which shall serve as a guide for easy retrieval and reconstruction of file in case of loss.

For miscellaneous documents, their physical files shall be compiled according to type (that is, Special Power of Attorney, Deed of Transfer, etc.); numbered consecutively in the order of time and date of receipt; and bound in a book form beginning with Book 1, and where practicable, each book to contain two hundred fifty (250) documents. An inventory report of each book shall also be maintained and provided the Bureau annually. Original copies should be kept as restricted files inaccessible to unauthorized persons. Photocopies or extra duplicate copies, bound in book form, will be kept in shelves as working copies for public use.

Duplicate copies of miscellaneous documents shall be sent to the Bureau within thirty (30) days from date of registration for archiving purposes: provided, that a certified photocopy issued and signed by the Mining Recorder could serve the purpose in the absence of a duplicate copy.

Sec. 11. Mining Document Archive. A national mining document archive shall be established at the Bureau and maintained by its Mining Recorder. Original or duplicate copies of applications/ contracts/permits and relevant documents sent by Regional Offices shall be filed in this archive to produce a replica of the regional records. Copies of these documents sent by Regional Offices shall contain the control numbers and the marked page numbers written on the original document to guide the filing of the records.

A microfilm or digital copy of each relevant record, if available, may replace the paper records in the archive. The Bureau shall plan and acquire an efficient and appropriate technology for archiving these documents.

Sec. 12. Mineral Rights Management System. In order to facilitate the mechanical processing and recording of applications/contracts/permits and provide a systematic basis for the management of data relating to applications/contracts/permits, a computer-based mining rights management system shall be established and maintained by the Bureau and its Regional Offices which may be updated and improved as the need arises. This system should not only guide and expedite the mechanical processing of applications but should also be capable of building-up a national database and producing reports and maps that may be required by the Bureau and its Regional Offices or requested by its clients, and linking or interfacing with other mining industry-related systems which the Bureau may later acquire or develop.

A set of standards covering procedures, programming, data codes, data definitions, training, operating, system/platform and related matters shall be established by the Bureau to guide the operation and development of the system. A system documentation and a user's manual shall be produced and maintained for each new version.

A guideline on the operation and establishment of the responsibility of the Bureau and its Regional Offices on the implementation of the system is given in Annex 4-B, which may also be updated as the need arises.

Sec. 13. Mineral Resources Database System. A mineral resources database shall also be established at the Bureau and other bureaus/offices of the DENR to record all exploration and related data from its own projects and those submitted by mining rights holders to serve as repository of such information for national and regional policy and planning studies, monitoring and research purposes. This database should be designed to be accessed by the mining rights management system provided for in the previous section and other mining industry-related systems to be established or acquired by the Bureau.

Sec. 14. Mineral Gazette Publication. To provide an official medium for releasing information on mining policy issuances of the Government, mining rules and regulations, current listing of mining rights and their locations on the map, other official acts affecting mining, and other information relevant to mineral resources development, a mineral gazette of nationwide circulation shall be organized and established by the Bureau. This Gazette shall be published at least annually and be made available to libraries of the Department, the Bureau, its Regional and District Offices, U. P. Law Center, the National Library, appropriate information officers of Provincial Governments and Municipal Offices and such other places as may be determined by the Director: provided, that such Gazette shall also be made available for subscription to the public at a reasonable price.

Sec. 15. Recording System And Publication Fund. The Director and Regional Directors shall ensure that adequate budget shall be allocated every year from their regular appropriations to effect and sustain the physical filing and recording setup, the publication of the mineral gazette and the development, operation and maintenance of mining rights management system, the mineral resources database system and other mining industry-related system which the Bureau may establish or acquire.

Funds to be allocated for the mining rights management system shall include adequate capital outlay for the purchase of the required softwares, hardwares and support equipment and their subsequent upgrades. Funds shall also be provided for transportation and travel expenses needed in troubleshooting, in-house training, repairs and upgrading of hardwares and related equipment, cost of supplies and

materials, cost of external training, subscription services, and cost of communication services for data exchange and system coordination.

CHAPTER V SCOPE OF APPLICATION

Sec. 16. Areas open to Mining Applications. The following areas are open to mining applications:

- (a) Public or private lands not covered by valid and existing mining rights and applications;
- (b) Lands covered by expired/abandoned/cancelled/mining/ quarrying rights;
- (c) Mineral reservations; and
- (d) Timber or forestlands as defined in existing laws.

Sec. 17. Areas Closed to Mining Applications. Mining applications shall not be allowed:

- (a) In military and other Government reservations, except upon prior written clearance by the Government agency having jurisdiction over such reservations;
- (b) Near or under public or private buildings, cemeteries, archaeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams, or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the Government agency or private entity concerned subject to technical evaluation and validation by the Bureau;
- (c) In areas covered by valid and existing mining rights;
- (d) In areas covered by existing mining applications;
- (e) In areas expressly prohibited by law;
- (f) In areas covered by small-scale mining under R.A. No. 7076/PD No. 1899 unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socio-economic development of the community concerned;

- (g) In old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forest, parks, greenbelts, game refuge, bird sanctuaries, and area proclaimed as tourist zones as defined by law and in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under R.A. No. 7586, Department Administrative Order No. 25, Series of 1992 and other laws; and
- (h) In areas which the Secretary may exclude based, inter alia, on proper assessments of their environmental impacts and implications on sustainable land uses.

Sec. 18. Ancestral Lands. In areas claimed as ancestral lands and domains which are the subject of existing civil reservations and/or existing Certificates of Ancestral Domain Claims, or in areas of ancestral lands as may be defined by law, mining applications may not be granted without the prior consent of the concerned indigenous cultural community(ies).

In the event that land that as specified in the preceding paragraph is opened for mining operations, the parties concerned shall agree on the royalty payment for the concerned indigenous cultural community(ies). Representatives from the Bureau and the Office of Cultural Communities may be requested to act as mediators between the indigenous cultural community(ies) concerned and the Contractor/permittee in the negotiation for the royalty payment. Said royalty shall form part of a trust fund for the socio-economic well-being of the indigenous cultural community(ies).

CHAPTER VI MINERAL RESERVATIONS AND OTHER GOVERNMENT RESERVATIONS

Section 19. Establishment, Disestablishment or Modification of Boundary of a Mineral Reservation. In all cases, the Director shall conduct public hearings allowing all affected sectors and communities, interested Non-governmental and People's Organizations as well as Local Government Units to air their views regarding the establishment, disestablishment or modification of any mineral reservation. The public shall be notified of the public hearings by publication in a newspaper of general circulation in the province as well as by posting in all affected municipalities and barangays at least thirty (30) days before said hearings are conducted.

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

1. The grounds for the establishment, disestablishment or modification of any specific mineral reservation, and;

2. This shall likewise be published after submission to the Secretary.

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

Upon the recommendation of the Director, thru the Secretary, the President may, subject to valid and existing rights, set aside and establish an area as a mineral reservation when the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development or certain minerals for scientific, cultural or ecological value. The Secretary shall cause the periodic review of existing mineral reservations by detailed geological, mineral and ecological evaluation for the purpose of determining whether their continued existence is consistent with the national interest. Upon the recommendation of the Secretary, the President may, by proclamation, alter or modify the boundaries thereof or revert the same to the public domain without prejudice to prior existing rights.

All submerged lands, within the archipelagic sea, contiguous zone and Exclusive Economic zone of the Philippines, are considered mineral reservations.

In the proclamation of such mineral reservations, all valid and existing mining/quarrying rights shall be respected.

Sec. 20. Other Government Reservations. For reserve lands other than mineral reservations, the Department may directly undertake exploration, development and utilization of mineral resources. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person: **Provided**, that the rights to develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: **Provided, Further**, that such right shall be granted only after exploration activities reveal the presence of potentially economic deposits: **Provided, Finally**, that the party who undertook the exploration of said reservations shall be given priority.

Sec. 21. Mining Operations Within Mineral And Other Government Reservations. Mining operations in existing mineral and other Government reservations and such other reservations as may hereafter be established shall be undertaken by the Department or through a qualified person under any of the following modes:

- (a) Exploration permit;
- (b) Mineral agreement;
- (c) Financial or technical assistance agreement;

- (d) Small-scale mining; and
- (e) Quarry permit

Application for Exploration Permit/Mineral Agreement/ FTAA/quarry Permit within mineral and other Government reservations shall be governed by Chapters VII, VIII, IX, XII of these rules and regulations.

Mining operations in Government reservations other than mineral reservations shall be first undertaken thru an exploration permit, subject to limitations prescribed herein, before the same is open for mineral agreement/FTAA application or other mining rights application.

Sec. 22. Small-Scale Mining Operations Within Mineral Reservations.

For small-scale mining operations inside mineral reservations, the pertinent rules and regulations provided for in MRDB A.O. No. 3, Series of 1984 and MRDB AO No 3-A, Series of 1986, as amended (Annex 6-A and Annex 6-B) shall govern. Small-scale mining cooperatives covered by R.A. No. 7076 shall be given preferential right to apply for a small-scale mining agreement for a maximum aggregate area of twenty-five per centum (25%) of such mineral reservation subject to valid and existing mining/quarrying rights.

Sec. 23. Payment of Royalty of Minerals/Mineral Products Extracted from Mineral Reservations. The Contractors and holders of mining rights shall pay to the Bureau a royalty which shall not be less than five per centum (5%) of the market value of the gross output of the minerals/mineral products extracted or produced from the mineral reservation exclusive of all other taxes. A ten per centum (10%) share of all royalties, administrative fees, clearance fees, exploration fees, and other related fees to be derived by the Government from the development and utilization of the mineral resources within mineral reservations shall accrue to the Bureau as trust fund and shall be deposited in a Government depository bank to be allotted for special projects and other administrative expenses related to the exploration, development and environmental management of minerals in other Government reservations.

CHAPTER VII EXPLORATION PERMIT

Sec. 24. General Provisions. Exploration activities may be directly undertaken by the Bureau or in behalf of the Contractor subject to reimbursement of all expenditures. In the event that the Bureau can not undertake such exploration activities, it may be undertaken by a qualified person in specified areas within Government and Non-government reservations.

Sec. 25. Application for Exploration Permit. Any qualified person may apply for an exploration permit (MGB Form No. 7-1) with the Regional Office concerned, except offshore exploration permit applications which shall be filed with the Bureau, through payment of the required fees (Annex 4-1) and submission of five (5) sets of the following:

- (a) Clearance from the concerned Government agency if the applied area falls within Government reservation;
- (b) Location map/sketch plan using NAMRIA topographic map in a scale of 1:50,000 showing the geographic coordinates and boundaries of the areas to be explored;
- (c) Work Program and Financial Plan prepared by a licensed geologist or mining engineer for exploration covering the two-year period and the subject area of the permit;
- (d) Environmental Work Program (EWP) to include an assessment of the potential environmental effect of the proposed activities and mitigating measures as provided for in Section 184 (c) hereof;
- (e) Proof of technical capability including but not limited to list of technical personnel and their bio-data;
- (f) Proof of financial capability to undertake the two (2) year work program such as the following:
 - 1. In case of individual - statement of assets and liabilities duly sworn to in accordance with existing laws and income tax return for the preceding year of the applicant; or
 - 2. In case of corporation, association, cooperative or partnership, its Financial Statement and Annual Report of the preceding year.
- (g) Articles of Incorporation or Partnership, by-laws, duly certified by the Securities and Exchange Commission (SEC), in case of a corporation, association, cooperative or partnership.
- (h) Other supporting papers as the Bureau may require or the proponent may submit.

For offshore exploration permit applications the following additional requirements shall be submitted:

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

Sec. 26. Renewal of Exploration Permit. Within sixty (60) days before the expiration of an exploration permit, the permittee may submit to the Director, copy furnished the Regional Director concerned, an application to renew the exploration permit coupled with two (2) sets of the following:

- (a) Justification of renewal;
- (b) Comprehensive and validated technical report on the outcome of the two-year exploration works, including their environmental effects

prepared by a licensed geologist or mining engineer;

- (c) Audited report of expenditures incurred during the exploration period; and
- (d) Work Program and Financial Plan prepared by a licensed geologist or mining engineer.

The Secretary may grant the renewal after field verification by the Bureau/concerned Regional Office of the foregoing requirements.

Sec. 27. Maximum Areas for Exploration Permit. The maximum area that a qualified person may apply or hold at any one time shall be:

- (a) Onshore in any one province -
 - 1. For individuals - twenty (20) blocks or approximately 1,620 hectares; and
 - 2. For partnerships, corporations, cooperatives or associations - two hundred (200) blocks or approximately 16,200 hectares.
- (b) Onshore in the entire Philippines -
 - 1. For individuals - forty (40) blocks or approximately 3,240 hectares; and
 - 2. For partnerships, corporations, cooperatives or associations - four hundred (400) blocks or approximately 32,400 hectares.
- c. Offshore, in the entire Philippines - The maximum area that a qualified person may apply or hold at any one time for offshore areas beyond five hundred meters (500 m) from the mean low tide level shall be:
 - 1. For individuals - one hundred (100) blocks or approximately 8,100 hectares; or
 - 2. For partnerships, corporations, cooperatives, or associations - one thousand (1,000) blocks or approximately 81,000 hectares.

Sec. 28. Posting of an Exploration Permit Application. The exploration permit applicant shall, upon filing of the application, cause the posting of a summary of its exploration permit application for thirty (30) days in the bulletin

boards of affected provinces and municipalities, copy furnished the concerned barangays in a language generally understood in the locality as well as publish the same in a newspaper of general circulation in the area affected once a week for two (2) consecutive weeks. The summary of application must contain, among others, the name and complete address of the applicant, duration of the permit, nature and extent of the exploration to be undertaken, area location, geographical coordinates of the proposed permit area and location map/sketch plan with index map relative to the nearest municipalities and information that any party opposing the exploration should file a written complaint with the Panel of Arbitrators through the Director or the Regional Office concerned: **Provided**, that any such opposition/adverse claim shall be filed within thirty (30) days from the last date of posting/publication.

No exploration permit shall be issued unless the posting/publication requirement under this Section has been complied with and relevant issues raised by any party opposing the exploration is resolved by the Panel of Arbitrators and/or the concerned appellate body(ies) pursuant to the provisions of the Act and these implementing rules and regulations.

Sec. 29. Registration of an Exploration Permit. Upon review and finding that all the terms and conditions are in order and that the subject area has been cleared from any conflict, the Director, in case of areas within mineral reservations of the concerned Regional Director, in case of areas outside mineral reservations, shall within thirty (30) days from such finding, approve and issue the exploration permit and shall cause the registration of the same with the Bureau/concerned Regional Office after payment of the required fees (Annex 4-A). In case of renewal, the Secretary shall, within thirty (30) days from the recommendation of the Director, issue the exploration permit (MGB Form No. 7-2).

Sec. 30. Terms and Conditions of an Exploration Permit. An exploration permit shall contain the following terms and conditions:

- (a) The right to explore shall be subject to valid, prior and existing rights of any party(ies) within the subject area. In case of offshore exploration, it shall be in accordance with the United Nations Convention on the Law of the Sea (UNCLOS);
- (b) The right to explore shall be for the exclusive use and benefit of the permittee or his duly authorized representative and shall under no circumstances be used by the permittee for purposes other than exploration;
- (c) The right to explore shall be for a period not exceeding two (2) years from date of issuance, renewable for a term of two years each but in no case shall the total exceed six (6) years: **Provided**, that

the permittee has complied with the terms and conditions of the permit and shall not have been guilty of any violations of the Act and these rules and regulations;

- (d) The permittee shall submit to the Bureau/concerned Regional Office within thirty (30) days after the end of each semester a report under oath of the work done including the results of the survey, laboratory reports, geological reports/maps, EWP implementation and expenditures showing discrepancies/deviations with approved exploration plans and programs and proposed expenditures or budget subject to semi-annual inspection and verification by the Bureau/concerned Regional Office at the expense of the permittee;
- (e) That the permittee shall annually relinquish at least 20% of the remaining permit area during the first two years of exploration and at least 10% of the remaining permit area thereafter. A separate report of relinquishment shall be submitted with a detailed geologic report of the relinquished area accompanied by maps at a scale of 1:50,000 and results of analyses, and corresponding expenditures, among others;
- (f) The Secretary or his duly authorized representative shall annually review the performance of the permittee;
- (g) The permittee shall submit a final report upon the expiration of the permit or conversion into mineral agreement or FTAA in a form and substance comparable to published reports of respected international organizations and shall incorporate all the findings in the permit area, including locations of samples, assays, chemical analyses and assessment of the mineral potential. Such report shall include complete detailed expenditures incurred during the exploration;
- (h) In case of diamond drilling, the permittee shall, upon request of the Director/Regional Director, submit to the Regional Office a quarter of the core samples which shall be deposited in the Regional Office Core Library for safekeeping and reference;
- (i) In case the permittee applies for a Mineral Agreement or FTAA over the permit areas, the exploration period covered by the exploration permit shall be included as part of the exploration period of the mineral agreement or FTAA; and
- (j) Other terms and conditions which the Bureau may deem appropriate.

Sec. 31. Rights and Obligations of a Permittee. A permittee shall have the following rights and obligations:

- (a) An exploration permit shall grant to the permittee, his/her heirs or successors-in-interest, the right to enter, occupy and explore the area.
- (b) In cases where private or other parties including surface owners, indigenous cultural community and legitimate small-scale miners are affected, the permittee shall first discuss or negotiate with the said party(ies) the extent, necessity and manner of his/her entry, occupation and exploration. In case of disagreement, a Panel of Arbitrators shall resolve the conflict or disagreement;
- (c) The permittee shall undertake an exploration work on the area as specified in its permit based on an approved work program and financial plan; **Provided**, that any significant change/negative variance of at least 20% in the exploration work program and corresponding expenditures shall be subject to approval of the Director/concerned Regional Director;
- (d) Any expenditure in excess of the yearly budget of the approved work and financial program may be carried forward and credited to the succeeding years covering the duration of the permit; and
- (e) For offshore exploration, the activities shall be carried out in such a way that they will not adversely affect the safety of navigation at sea, will not cause undue environmental damage, and will ensure accommodation with other marine activities such as fishing, aquaculture, transportation, etc.

Sec. 32. Transfer or Assignment. An exploration permit may be transferred or assigned to another qualified person(s) subject to the approval of the Secretary upon recommendation of the Director.

Sec. 33. Renunciation of Areas Covered by Exploration Permit. The permittee may, at any time, renounce the whole or any portion of the total area covered by the permit by filing a notice of renunciation with the Bureau/concerned Regional Office.

Sec. 34. Cancellation of an Exploration Permit. The Director/concerned Regional Director may, at any time, cancel the Exploration Permit for failure of the permittee to comply with any of the requirements, and violations of the terms and conditions under which the permit is issued. In case of renewals, the Secretary, upon the recommendation of the Director, shall cause the cancellation of

exploration permits.

Upon cancellation of the permit covering areas within government reservations, the same shall automatically revert to its original status.

Sec. 35. Effect of Renunciation, Relinquishment or Cancellation of Exploration Permit. The foregoing provisions notwithstanding, renunciation, relinquishment or cancelation shall not release the permittee from any and all obligations it may have, at the time of renunciation, relinquishment or cancellation, in favor of any public or private party(ies).

Sec. 36. Declaration of Mining Project Feasibility. If results of exploration reveal the presence of mineral deposits economically and technically feasible for mining operations; the permittee may, within the terms of the exploration permit, file a declaration of mining project feasibility accompanied by a three - (3) year work program for development. The approval of the declaration of mining project feasibility shall grant the permittee the exclusive right to a mineral agreement or FTAA over the permit area: **Provided**, however, that failure of the permittee to exercise such exclusive right within a period of one (1) year, shall mean the automatic cancellation of the declaration of mining project feasibility.

The application for mineral agreement or FTAA of a permittee shall be accompanied by the following:

- (a) Project Feasibility Study (MGB Form No. 7-3);
- (b) Complete Geologic Report of the area;
- (c) Approved Survey Plan;
- (d) Environmental Compliance Certificate; and
- (e) Proof of award of the area by the President, for areas within government reservations other than mineral reservation.

The approval of the declaration of mining project feasibility shall entitle the holder to an exclusive right to a Mineral Production Sharing Agreement or other Mineral Agreement or Financial or Technical Assistance Agreement.

The processing of the application for a Mineral Agreement or FTAA shall be in accordance with Chapters III and IX of these implementing rules and regulations.

CHAPTER VIII MINERAL AGREEMENT

Sec. 37. Kinds of Mineral Agreements and Nature Thereof. There are three (3) kinds of mineral agreements, namely:

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

Sec. 38. Eligibility. The following conditions shall govern the eligibility of applicants for a Mineral Agreement:

- (a) Any qualified person may be eligible to apply for a Mineral Agreement, provided that the same person/s possess satisfactory environmental management and socio-cultural relations track records. The detailed guidelines for the determination and applicability of such track records shall be specified by the Secretary.
- (b) The applicant can commit the necessary financial resources as well as staff who are regular employees, qualified to conduct environmental assessment, and able to formulate and implement programs for meeting existing environmental programs and environmental rehabilitation; and, further, such staff shall include sufficiently qualified personnel able to communicate and relate effectively with communities and sectors directly affected including concerned indigenous cultural communities.

The Department, through the Secretary, may provide for such other requirements as may be necessary given the peculiar circumstances of each applicant.

If a significant portion of the operations of an applicant is based in a foreign country or countries, the Department shall verify the relevant requirements through the Philippine Embassy(ies) or Consulate(s) based in such country or countries.

The following qualified persons may directly apply for a mineral agreement:

- (a) **In Case of Individual** - must be of legal age, with capacity to contract, and a citizen of the Philippines; or
- (b) **In Case of a Corporation, Partnership, Association, or Cooperative** - must be organized and duly registered in accordance with law to engage in mining and at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines.

Sec. 39. Maximum Areas Allowed.

The maximum area that a qualified person may apply or hold at any time under a mineral agreement shall be as follows:

- (a) **Onshore, in Any One Province** -
 - 1. **For individuals**, ten (10) blocks or approximately eight hundred ten (810) hectares; and
 - 2. For partnerships, cooperatives, associations, or corporations, one hundred (100) blocks or approximately eight thousand one hundred (8,100) hectares.
- (b) **Onshore, in the Entire Philippines** -
 - 1. For individuals, twenty (20) blocks or approximately one thousand six hundred twenty (1,620) hectares; and
 - 2. For partnerships, cooperatives, associations or corporations, two hundred (200) blocks or approximately sixteen thousand two hundred (16,200) hectares
- c. **Offshore, in the Entire Philippines** -
 - 1. For individuals, fifty (50) blocks or approximately four thousand fifty (4,050) hectares;
 - 2. For partnerships, cooperatives, associations, or corporations five hundred (500) blocks or approximately forty thousand five hundred (40,500) hectares; and

3. ***For the exclusive economic zone***, a larger area to be determined by the Secretary upon recommendation by the Director.

The maximum areas mentioned above that a Contractor may apply or hold under a mineral agreement shall not include mining/quarry areas under operating agreements between the Contractor and a claimowner/lessee/permittee/licensee entered into under Presidential Decree No. 463.

Sec. 40. Acceptance of Mineral Agreement Applications. Five (5) sets of a Mineral Agreement application (MGB Form No. 8-1) shall be filed by the applicant/proponent either personally or thru his/her duly authorized representative to the Bureau for areas outside mineral reservations: **Provided**, that any application that transcends into mineral reservation or two (2) or more regions shall be filed with the Bureau/concerned Regional Office which has the biggest area covered by the application, copy furnished the other concerned office(s) by the proponent: **Provided, Further**, that a mineral agreement application shall be accepted only upon payment of the required fees to the Bureau for areas within mineral reservations or to the concerned Regional Office for areas outside mineral reservations (Annex 4-A): **Provided, Finally**, that any application with incomplete mandatory requirements shall not be accepted.

Sec. 41. Mandatory Requirements for Mineral Agreement Application. The applicant/proponent shall submit at least two (2) sets of the following mandatory requirements applicable to the type of agreement being entered into:

(a) **For Individuals -**

1. Proof of sufficiency of capital and/or credit lines to undertake the work program;
2. Program and Financial Plan duly prepared and signed by a licensed Geologist, Mining Engineer and/or Metallurgical Engineer;
3. Location plan/sketch map of the applied area in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared, signed and sealed by a deputized Geodetic Engineer;
4. Environmental Work Program during exploration (MGB Form No. 19-2) or Environmental Compliance Certificate prior to development/construction and/or utilization;

5. **Technical Competence of Applicant/Proponent - Proof of technical competence shall be submitted by the applicant/proponent showing, among others, the names and bio-data of the technical men to undertake the operation pursuant to submitted work program and track record in mining operations; and**
 6. **In case the applicant/proponent has been in the mining industry for any length of time, he/she should possess a satisfactory environmental management track record as determined by the Bureau in consultation with and duly certified by the Environmental Management Bureau or the Regional Environmental Management and Protected Areas Sector Office of the Department.**
 7. **Commitment to conduct an Environmental Impact Assessment and secure an Environmental Compliance Certificate prior to development/construction and/or utilization.**
- b. For Corporations, Partnerships, Associations or Cooperatives**
1. **Certified photocopy of Certificate of Registration issued by the Securities and Exchange Commission or the concerned authorized government agency;**
 2. **Certified photocopies of the Articles of Incorporation/ Partnership/Association and By-Laws;**
 3. **Proof of financial capability such as credit lines, bank guarantees and similar negotiable instruments equivalent to the two (2) year work program;**
 4. **Work Program and Financial Plan duly prepared and signed by a licensed Geologist, Mining Engineer and/or Metallurgical Engineer;**
 5. **Location plan/sketch map of the applied area in relation to major environmental features and other projects using NAMRIA topographic map in a scale of 1:50,000 duly prepared signed and sealed by a deputized Geodetic Engineer;**
 6. **Environmental Work Program during exploration (MGB Form No. 19-2) or ECC prior to development, construction and/or utilization;**

7. Environmental Management Track Record - In case the applicant/proponent has been in the mining industry for any length of time, he/she should possess a satisfactory environmental management track records as determined by the Bureau in consultation with and duly certified by the Environmental Management Bureau or the Regional Environmental Management and Protected Areas Sector Office of the Department; and
8. Technical Competence of Applicant/Proponent - Proof of technical competence shall be submitted by the applicant/proponent showing, among others, the names and bio-data of the technical men to undertake the operation pursuant to submitted work program and track record in mining operations.

c. **For Holders of Valid and Existing Mining Lease Contracts, Operating Agreements, Quarry Permits/Licenses or Unperfected Mining/Quarry Claims**

The following shall be submitted in two (2) sets in addition to the aforesaid requirements, whenever applicable, to wit:

1. Certification from the concerned Regional Office that the mining/quarry claims are valid and subsisting;
2. Appropriate environmental report on the restoration/rehabilitation of mined-out and/or mine waste/tailings covered-areas and anti-pollution measures undertaken during the mining operations, if any; and
3. Environmental Compliance Certificate for any new phase outside of the originally approved operation under the mining project.

Sec. 42. Area Clearance. Within fifteen (15) working days from receipt of the mineral agreement application, the concerned Regional Office(s) for areas outside mineral reservation, or the Bureau for areas within mineral reservation, shall check in the control maps if the area is free/open for mining purposes. The Regional Office shall forward a copy of the location plan/sketch map of the applied area to the DENR sector(s) affected by the mineral agreement application for area clearance/comments, copy furnished the proponent who shall secure the necessary clearance. Failure of the concerned sector(s) to submit area clearance/comments on the proposed contract area within thirty (30) days from receipt of the notice

shall mean that the concerned sector(s) does (do) object to the opening of the area(s) for mining purposes. Likewise, the concerned Office(s) which has jurisdiction over the lesser area(s) of the application shall follow the same procedure.

If the proposed contract area is open for mining purposes, the Bureau/concerned Regional Office(s) shall give written notice to the applicant/proponent to pay the corresponding clearance fee (Annex 4-A): **Provided**, that if a portion of the area applied for is not open for mining purposes, the concerned Regional Office shall, within fifteen (15) working days from receipt of said written notice, work out for the exclusion of the same from the coverage of mineral agreement application.

Sec. 43. Publication/Posting of Mineral Agreement Application. The concerned Regional Director in case of areas outside mineral reservation or the Director in case of areas within mineral reservation shall cause the publication of the mineral agreement application once a week for two (2) consecutive weeks in two (2) newspapers, one of general circulation published in Metro Manila and another published in the municipality or province where the contract area is situated, if there be such newspaper; otherwise in the newspaper published in the nearest municipality or province at the expense of the applicant/proponent. The publication shall be done within fifteen (15) working days from receipt of notice for area clearance and shall include announcement in a local radio program within the same period. The notice of publication of the Mineral Agreement application must contain, among other, the name and complete address of the applicant/proponent, duration of the agreement, extent of operation to be undertaken, area location, geographical coordinates of the proposed contract area, and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Director or concerned Regional Director (as the case may be) shall also cause the posting of the application, in a language generally understood in the concerned locality, on the bulletin boards of the Bureau, the concerned Regional Office and in the concerned province(s) and municipality(ies), copy furnished the barangays where the proposed contract area is located once a week for two (2) consecutive weeks. If no adverse claim, protest or opposition is filed within thirty (30) days from the last date of publication/posting, the concerned office shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed, within thirty (30) days from the last date of publication/posting, directly with the Regional Office concerned or through any concerned Community Environment and Natural Resources Officer (CENRO) or any concerned Provincial Environment and Natural Resources Officer (PENRO) for filing in the Regional Office for purposes of its resolution by the Panel of Arbitrators and/or the concerned appellate body(ies)

pursuant to the provisions of the Act and these implementing rules and regulations. However, previously published valid and subsisting mining claims are exempted from the publication/posting required under this Section.

No mineral agreement shall be approved unless the requirements under this section are complied with and any opposition/adverse claim is resolved by the Panel of Arbitrators and/or the concerned appellate body(ies).

Sec. 44. Evaluation of Mineral Agreement Application. Within fifteen (15) days from compliance with the publication/posting requirements and resolution of adverse claim, protest or opposition, if any, the concerned Regional Director shall evaluate the Mineral Agreement application in respect of areas outside mineral reservations. He shall thereafter forward his findings to the Bureau for further review, evaluation and recommendation by the Director within fifteen (15) days from receipt of the forwarded documents. Thereafter, the Director shall endorse the same to the Secretary for consideration and action of the latter within fifteen (15) days from receipt of such endorsement.

In the case of Mineral Agreement applications within mineral reservations, and within fifteen (15) days from compliance with the publication/posting requirements and resolution of adverse claim, protest or opposition, if any, the same shall be evaluated and endorsed by the Director to the Secretary for the latter's consideration and action within fifteen (15) days from receipt of such endorsement.

The concerned Regional Office shall regularly provide the Bureau a list, consolidated map, and status report of all mineral agreement applications filed in its region.

Sec. 45. Registration of Mineral Agreement. Upon approval of the Mineral Agreement by the Secretary, the same shall be forwarded to the Bureau for numbering. The Bureau shall notify the Contractor to cause the registration of its Mineral Agreement with the Bureau for mineral reservation areas or to the concerned Regional Office for areas outside mineral reservation within fifteen (15) working days from receipt of written notice. Registration of mineral agreement is effected only upon payment of the required fees (Annex 4-A). The Bureau/Regional Office shall officially release the mineral agreement to the Contractor after registration.

Failure of the Contractor to cause the registration of its mineral agreement within the prescribed period shall be a sufficient ground for cancellation of the mineral agreement.

Sec. 46. Terms and Conditions of a Mineral Agreement. The following terms and conditions shall be incorporated in the agreement:

- (a) All the necessary management, technology and financial services to be furnished by the Contractor;
- (b) The use of local goods and services to the maximum extent practicable, must be given preference;
- (c) A condition that the Contractor shall not acquire title to the contract area;
- (d) The stipulated share in revenues and manner of payment thereof;
- (e) A period of exploration not exceeding two (2) years from date of issuance of agreement, renewable for a term of two (2) years each unless an exploration permit has been granted but in no case shall the total exceed six (6) years;
- (f) A period not exceeding 25 years from date of execution, subject to renewal for another period not exceeding twenty-five (25) years under the same terms and conditions subject to changes mutually agreed upon by the parties and **Provided**, further, that such terms and conditions are not inconsistent with law and do not prejudice the principle of sustainable development;
- (g) Obligatory relinquishment of portions of the contract area after the exploration period which are not needed for development and utilization;
- (h) The Contractor shall undertake an exploration work on the area as specified in its agreement permit based on an approved work program and financial plan: **Provided**, that any significant change/negative variance of at least 20% in the exploration work program and corresponding expenditures shall be subject to approval of the Director;
- (i) Provision on consultation and arbitration with respect to interpretation and implementation of the agreement;
- (j) Employment and training of Filipino personnel;
- (k) Industrial safety and anti-pollution measures;
- (l) Restoration and/or protection of the environment;
- (m) Transfer of technology to the government or local mining company;

- (n) A stipulation that all data and information gathered by the Contractor shall be furnished to the Bureau subject to verification and that all books of accounts and records shall be open to inspection;
- (o) Commitment to respect local customs, values and traditions and support local community development and human rights; and
- (p) Such other terms and conditions as the Secretary may deem to be in the best interest of the Government.

Sec. 47. Rights and Obligations of the Contractor. The Contractor shall have the following rights and obligations:

- (a) Exclusively conduct mining operations within the contract area with full rights of ingress and egress and the right to occupy the same;
- (b) Construct and operate any facilities specified in the mineral agreement or approved work program;
- (c) Determine the exploration, mining and treatment process to be utilized in the mining operations;
- (d) Extract, remove use and dispose of any tailings as authorized by an approved work program: **Provided**, that there will be no commercial disposition of the same; and
- (e) Secure all permits necessary or desirable for the purposes of mining operations.

Sec. 48. Temporary Exploration Permit. Upon recommendation for approval of the Mineral Agreement by the Secretary, the Director may, upon request of the applicant, issue a temporary exploration permit subject to the applicable provisions of Chapter VII of these implementing rules and regulations.

Sec. 49. Conversion of a Mineral Agreement into Any Mode of Mineral Agreement or FTAA. A contractor may file for the conversion of its mineral agreement into any mode of mineral agreement or financial FTAA at any time during the term of the agreement subject to the approval of the Secretary. As such, the Contractor shall notify the Secretary in writing of its intention to convert the mineral agreement into any mode of mineral agreement or FTAA after payment of a conversion fee (Annex 4-A) to the Bureau/concerned Regional Office. All revisions into the mineral agreement, required by the conversion to any mode of mineral agreement or FTAA, shall be submitted to the Secretary within sixty (60)

days from the filing of the applicant's intention to convert into any mode of mineral agreement or FTAA: **Provided**, that the mineral agreement or FTAA shall only be for the remaining period of the original agreement.

Upon compliance with all the requirements for such conversion by the Contractor, the Secretary shall execute and approve the mineral agreement and a copy thereof shall be submitted to the President. The approved mineral agreement or FTAA shall then be registered with the concerned regional Office/Bureau within five (5) days from approval of the same.

In case of conversion into FTAA, it shall be executed and approved by the President and a copy thereof shall be submitted to Congress.

Sec. 50. Assignment/Transfer. A Contractor may file an application for the assignment/transfer of its agreement, in whole or in part, to a qualified person(s) upon payment of an application fee (Annex 4-A) to the Bureau/concerned Regional Office. Any assignment or transfer of rights and obligations under any mineral agreement shall be subject to the prior approval of the Secretary upon recommendation of the Director: **Provided**, that any assignment or transfer of a mineral agreement shall not be approved unless the assignor/transferor or Contractor has complied with all the relevant terms and conditions of the agreement and the provisions of the Act and these implementing rules and regulations at the time of assignment/transfer: **Provided, further**, that any assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal including such assignment or transfer being violative of concerned rules and regulations: **Provided, finally**, that the transferee shall comply with all eligibility requirements as set forth in Section 38, CHAPTER VIII of these implementing rules and regulations.

If circumstances warrant, the Secretary, *motu proprio* or upon the recommendation of the Director, may impose additional conditions prior to the approval of the assignment/transfer.

Sec. 51. Withdrawal/Termination Of Mineral Agreements. The Contractor may, by giving due notice at any time during the term of the agreement, apply for the cancellation/termination of the mineral agreement due to causes which, in the opinion of the contractor, make continued mining operations no longer feasible or viable. The Secretary shall consider the notice and issue his/her decision within a period of thirty (30) working days: **Provided**, that the Contractor has met all its financial, fiscal, environmental and legal obligations at the time of withdrawal/termination.

CHAPTER IX
FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT (FTAA)

Sec. 52. Eligibility of Applicant for Financial or Technical Assistance Agreement. Any qualified person, with eligibility to apply for a Mineral Agreement, may enter into FTAA with the President through the Secretary for large-scale exploration, development and utilization of mineral resources as enumerated in the succeeding section: **Provided, however,** that the applicant satisfies all the eligibility requirements prescribed in Section 38, Chapter VIII of these implementing rules and regulations.

Sec. 53. Mineral Subject to FTAA. The following minerals may be subject to FTAA:

- (a) Gold;
- (b) Copper;
- (c) Nickel;
- (d) Chromite;
- (e) Lead and zinc;
- (f) Associated minerals of each of the above; and
- (g) Other strategic minerals as may be determined by the Bureau.

Sec. 54. Maximum FTAA Contract Area. The maximum FTAA contract area for the exploration, development and utilization of mineral resources that may be applied for or granted per qualified person in the entire Philippines shall be:

- (a) 1,000 meridional blocks onshore or approximately 81,000 hectares;
- (b) 4,000 meridional blocks offshore or approximately 342,000 hectares;
or
- (c) Combination of 1,000 meridional blocks onshore and 4,000 meridional blocks offshore.

Provided, that no further area expansion shall be allowed during the duration of the original agreement and/or renewal thereof.

The aforesaid FTAA contract area shall be subject to a relinquishment of at least twenty-five per centum (25%) of the contract area after two years of exploration and at least ten per centum (10%) annual relinquishment of the remaining contract area during the extension of the exploration period. **Provided,** that the Contractor will have the option to declare the percentage of the mining area that it would retain after its relinquishment obligations subject to technical evaluation and

approval by the Secretary upon the recommendation of the Director. A separate report of relinquishment shall be submitted with a detailed geologic report of the relinquished area accompanied by maps in a scale of 1:50,000, and results of analyses and corresponding expenditures, among others.

The minimum exploration expenditure for the relinquished area shall be based on the approved exploration work program and financial plan.

Sec. 55. Mandatory Requirements. Upon payment of the required fees (Annex 4-A), a FTAA applicant shall file eight (8) sets of FTAA proposal with the concerned Regional Office in case of areas outside mineral reservation or with the Bureau in case of areas within mineral reservation to be accompanied by the following:

(a) Upon filing of the Proposal -

1. Articles of Incorporation, by-laws and SEC registration papers;
2. Latest Annual Audited Financial Statement and Annual Report, if any;
3. History of the company's mining operations for the previous years including the names and curriculum vitae of technical staff;
4. Certified copies, if any, of exploration permits/contracts, operating contracts, mining agreements, leases, permits, assignments, transfers or similar agreements it has entered into with any local or foreign juridical and natural persons;
5. Environmental Work Program covering the exploration period as provided for in Section 186(c) hereof;
6. Location map/sketch plan indicating the positions of the proposed contract area in relation to other environmental features and major projects, duly prepared, signed and sealed by a deputized Geodetic Engineer;
7. Proof of financial capability such as credit lines, bank guarantees and similar negotiable instruments equivalent to the amount of expenditures for the approved two (2) year work program; and

8. Work Program and Financial Plan prepared by a licensed Geologist, Mining Engineer and/or Metallurgical Engineer.

(b) Before the Approval of the FTAA - the proponent shall post a financial guarantee bond upon notification by the Secretary.

(c) Prior to Construction, Development and/or Utilization

1. Feasibility Study;
2. Approved survey plan of the mining area; and
3. Environmental Compliance Certificate.

Sec. 56. Area Clearance. A FTAA application shall be filed with the concerned Regional Office in areas outside mineral reservation or to the Bureau in areas within mineral reservation. Upon receipt of the application, the subject contract areas shall be closed to mining right applications for minerals mentioned in Section 53 hereof, and quarry permit applications: **Provided**, that the applied/contract area may be open to mining right applications for other minerals subject to written consent of the FTAA applicant/Contractor and verification of the Bureau/concerned Regional Office: **Provided, further**, that if consent is unreasonably withheld, the case shall be resolved by the Panel of Arbitrators.

The other applicant however, can operate the area applied for pending resolution of the case only after the posting of the bond to be determined by the Director/concerned Regional Director.

Any FTAA proposal that transcends into mineral reservation or two or more regions shall be filed with the Bureau/concerned Regional Office which covers the biggest area, copy furnished the other region(s) by the proponent.

If the proposed contract area is open for mining purposes, the Bureau/concerned Regional Office shall give written notice to the applicant/proponent to pay the corresponding clearance fee (Annex 4-A)

The Bureau/concerned Regional Office thru the initiative of the proponent/applicant shall check in the control maps if the area is open for mining location and simultaneously furnish the affected DENR sector(s) for area clearance(s)/comment(s) within thirty (30) days from receipt of the same. The Bureau/Regional Office shall furnish the negotiating panel members a copy of the FTAA proposal within five (5) days from the date of area clearance.

Likewise, the concerned Regional Office shall regularly provide the Bureau a list and status report of FTAA proposals filed in its region.

Sec. 57. Publication/Posting of FTAA. Within five (5) days from area clearance, the concerned Regional Director in case of areas outside mineral reservation or the Director in case of areas within mineral reservation shall cause the publication of the FTAA application once a week for two (2) consecutive weeks in two (2) newspapers, one of general circulation published in Metro Manila and another published in the affected barangay, municipality or province in a language generally understood in the locality where the contract area is situated, if there be such newspaper; otherwise, in the newspaper published in the nearest municipality or province including announcement in a local radio program. Expenses incurred in compliance with the publication and posting requirements shall be charged to the applicant.

The notice of publication for FTAA application must contain, among others, the name and complete address of the applicant/proponent, proposed duration of the agreement, extent of operations to be undertaken, area location, geographical coordinates of the proposed contract areas, location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities, and information that any party opposing the application should file a written complaint with the Director or the concerned Regional Director (as the case may be).

The Bureau/concerned Regional Director shall also cause the posting of the application on the bulletin boards of the Bureau, concerned Regional Office(s) and in the affected province(s) and municipality(ies) where the proposed contract area is located, copy furnished the barangays, for two (2) consecutive weeks in a language generally understood in the locality. After thirty (30) days from the last date of publication/posting, the concerned office shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed, within thirty (30) days from the last date of publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed, within thirty (30) days from the last date of publication/posting, directly with the Regional Office concerned or through any concerned CENRO/PENRO for filing in the concerned Regional Office and for purposes of its resolution by the Panel of Arbitrators and/or the concerned appellate body(ies) pursuant to the provisions of the Act and these implementing rules and regulations. However, previously published valid and subsisting mining claims are exempted from the publication/posting required under this Section.

No FTAA shall be approved unless the requirements in this section are fully complied with and all issues raised by any party opposing the FTAA is resolved by the Panel of Arbitrators and/or the concerned appellate body(ies).

Sec. 58. Evaluation Of FTAA Application. All initial evaluations by the members of the Negotiating Panel shall be submitted, within fifteen (15) days from receipt of the proposal, to the Bureau for its consolidation. The consolidated initial evaluations shall be forwarded to the members of the Negotiating Panel for further evaluation within fifteen (15) days from receipt thereof.

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

Sec. 59. Negotiation of FTAA. The Negotiating Panel shall be composed of the following:

- | | | |
|---|---|---------------|
| (a.) The Secretary | - | Chairman |
| (b.) The Director | - | Vice Chairman |
| ©. Representative from Board of Investments, Department of Trade and Industry | - | Member |
| (d.) Representative from the Department's Field Operations | - | Member |
| (e.) Representative from the Department's Legal Service | - | Member |
| (f.) Representative from the Department's Environment Service | - | Member |
| (g.) Representative(s) from the concerned Regional Office (s) | - | Member/s |

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

Sec. 60. Registration. Upon approval of the FTAA by the President, the same shall be forwarded to the Bureau/concerned Regional Office, thru the Department, for registration. The Bureau/Regional Office shall notify the Contractor

to cause the registration of the FTAA within fifteen (15) days from receipt of the written notice. Registration shall be effected only upon payment of the required fees (Annex 4-A).

The Bureau/Regional Office shall officially issue the FTAA to the Contractor after registration of the same. Failure to register the FTAA within the prescribed period shall be a ground for cancellation of the agreement.

Sec. 61. Duration of FTAA. The FTAA shall have a term not exceeding twenty five (25) years to start from the execution thereof and renewable for another period not exceeding twenty five (25) years under such terms and conditions as may be provided for by law, and/or mutually agreed upon by the parties. The activities of each phase of mining operations must be completed within the following periods:

- (a) Exploration - period specified in FTAA of up to 2 years from date of FTAA execution, extendible for another two (2) years;
- (b) Feasibility Study - up to 2 years from declaration of mining project feasibility; and
- (c) Development, Construction and/or Utilization - remaining years of FTAA.

Sec. 62. Terms and Conditions. The following terms, conditions and warranties shall be incorporated in the FTAA, to wit:

- (a) A firm commitment, in the form of a sworn statement during the existence of the FTAA, that the Contractor shall comply with a minimum expenditure obligation of at least US four (4) million dollars during the exploration and feasibility study periods and at least US twenty-five (25) million dollars for infrastructure and development or their equivalent in Philippine currency in case of Filipino qualified applicant, that will be invested in the contract/mining area. In the event that the expenditure commitment for exploration and feasibility study can not be met, the Contractor shall convert the FTAA into an MPSA in accordance with Section 65 hereof or withdraw in accordance with Section 69 hereof;
- (b) A financial guarantee bond, letters of credit, certificate of bank deposits, and other forms of negotiable instruments shall be posted in favor of the Government before the approval of FTAA by the President, which shall be in any foreign currency negotiable with

the Bangko Sentral ng Pilipinas for foreign Contractor, or their equivalent in Philippine Currency in case of Filipino qualified applicant for an amount equivalent to the expenditure obligations of the applicant for any year;

- (c) Submission of proof of technical competence, such as, but not limited to, its track record in mineral resource exploration, development and utilization, details of technology to be employed in the proposed operation as well as environmental management and details of technical personnel to undertake the mining operations, environmental protection and rehabilitation;
- (d) Representations and warranties that the applicant has all the qualifications and none of the disqualifications for entering into FTAA;
- (e) A stipulation that a Contractor shall not acquire any title or interest in the FTAA contract/mining areas;
- (f) Representations and warranties that the Contractor has or has access to all the financing, managerial and technical expertise and, if circumstances demand, the technology required to promptly and effectively carry out the objectives of the agreement with the understanding to timely deploy these resources under its supervision pursuant to the periodic work programs and related budgets, when proper, providing an exploration period up to two (2) years, extendible for another two (2) years but subject to annual review by the Secretary, in accordance with these implementing rules and regulations;
- (g) A stipulation that the Contractor shall relinquish at least 25% percent of the original contract area at the end of the exploration period and at least 10% percent of the then remaining contract area at the end of each year by which the exploration period is extended. After the exploration period and prior to or upon approval of declaration of mining project feasibility, the Contractor shall finally relinquish to the Government any portion of the contract area which shall not be necessary for mining operations and not covered by any declaration of mining feasibility with corresponding submission of geologic report, and geologic and other pertinent maps in the scale 1:50,000;
- (h) Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and

such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the Contractor shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mining operations for and in the contract/mining area;

- (i) The mining operations shall be conducted in accordance with the provisions of the Act and these implementing rules and regulations;
- (j) The Contractor shall perform its activities within the periods expressed in the FTAA plans and work programs, save as may be excused by force majeure;
- (k) Preferential use of goods and services produced and offered in the Philippines of comparative quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use buildings which can be constructed by using materials and skills available in the Philippines, employ Filipino sub-Contractors for road construction and transportation, and purchase Philippine household equipment, furniture and food;
- (l) A stipulation that the Contractor is obligated to give preference to Filipinos in all types of mining employment for which they are qualified and that the technology shall be transferred to the same;
- (m) Requiring the proponent to effectively use appropriate anti-pollution technology and facilities to protect the environment and to restore or rehabilitate mined-out areas and other areas affected by mine waste/mill tailings and other forms of pollution or destruction in compliance with the requirements of the Environmental Compliance Certificate and P.D. 984. This should be undertaken in coordination with the Environmental Management Bureau or the Department's Regional Office;
- (n) The Contractor shall furnish the Government records of geologic, accounting and other relevant data for its mining operations, and that book of accounts and records shall be open for inspection by the Government;
- (o) Requiring the proponent to dispose of the minerals and by-products produced under the FTAA at the highest market price and more advantageous terms and conditions as provided for in these implementing rules and regulations;

- (p) Provide for consultation and arbitration with respect to the interpretation and implementation of the terms and conditions of the agreement;
- (q) Pay taxes, royalties, shares or obligations in accordance with existing laws, rules and regulations;
- (r) A stipulation that alien employees shall be limited to technologies and executives requiring highly specialized training and long experience and whose employment shall be subject to the required approval under existing laws, rules and regulations on the matter;
- (s) In every case where foreign technologies and executives are employed, an effective program of training of understudies shall be undertaken;
- (t) Conform to laws and regulations regarding, among others, labor, safety, demarcation of the contract/mining area and non-interference with the rights of other mining Contractors/operators/permit holder;
- (u) Recognize and respect the rights, customs and traditions of indigenous cultural communities over their ancestral lands;
- (v) Contribute to national development by helping develop the host and neighboring communities of the mining area, local geoscience and mining technology, and mitigating environmental effects of mining operations;
- (w) A stipulation that the FTAA shall be canceled for failure to comply with the terms and conditions of the agreement;
- (x) The Contractor shall undertake an exploration work on the area as specified in its agreement permit based on an approved work program and financial plan: provided, that any significant change/negative variance of at least 20% in the exploration work program and corresponding expenditures shall be subject to approval of the Director; and
- (y) Such other terms and conditions not inconsistent with the Constitution, the Act and with these implementing rules and regulations, as well as those which the Secretary may deem to be for the interest of the State and the welfare of the Filipino people.

Sec. 63. Rights and Obligations of a Contractor. The following are the rights and obligations of the Contractor:

- (a) Exclusively conduct mining operations within the contract area with full rights of ingress and egress and the right to occupy the same;
- (b) Construct and operate any facilities specified in the FTAA or approved work program;
- (c) Determine the exploring, mining and treatment process to be utilized in the mining operations;
- (d) Extract, remove, use and dispose of any tailings as authorized by an approved work program: **Provided**, that there will be no commercial disposition of the same; and
- (e) Secure all permits necessary or desirable for the purposes of mining operations.

Sec. 64. Temporary Exploration Permit. Upon request of an FTAA applicant, a temporary exploration permit may be issued by the Secretary while awaiting the approval of the FTAA by the President. The temporary exploration permit shall be governed by the applicable provisions of Section 48 of Chapter VII of these implementing rules and regulations.

Sec. 65. Conversion of FTAA into a Mineral Agreement. The Contractor may file for the conversion of its FTAA into a mineral agreement at any time during the term of the agreement, if the economic viability of the ores in the contract area is found to be inadequate to justify large scale mining operations. As such, the Contractor shall notify the Secretary in writing of its intention to convert the FTAA into mineral agreement under terms and conditions of mineral agreement after payment of a conversion fee (Annex 4-A) to the Bureau/concerned Regional Office. All revisions to the FTAA required by its conversion into a mineral agreement, shall be submitted to the Secretary within six (6) months from the filing of the applicant's intention to convert into mineral agreement, **Provided**, that the mineral agreement shall only be for the remaining period of the FTAA.

In the case of a foreign Contractor, it shall be given a period of one (1) year within which to satisfy the sixty per centum (60%) Filipino equity, subject to an extension of another one (1) year as may be approved by the Secretary taking into consideration the economic and other relevant factors. Upon compliance with this requirement by the Contractor, the Secretary shall execute and approve the mineral agreement and a copy thereof shall be submitted to the President. The approved

mineral agreement shall then be registered by the Contractor with the Bureau/concerned Regional Office. Failure of the Contractor to meet the 60% equity requirement within the prescribed period shall cause the forfeiture of the Contractor's rights to such conversion.

Sec. 66. Filing of Application for Assignment/Transfer of FTAA. A FTAA Contractor may file an application for the approval of an assignment/transfer of its FTAA, in whole or in part, with the President, upon payment of an application fee (Annex 4-A) to the Bureau/concerned Regional Office. No application shall be accepted for filing unless accompanied by a deed of assignment sought to be approved.

Sec. 67. Approval of Assignment/Transfer of FTAA. Any assignment/transfer of FTAA shall not be approved unless the assignor/transferor has complied with the relevant terms and conditions of the Act and these implementing rules and regulations at the time of assignment/transfer of FTAA, and the assignee/transferee is a qualified person. If circumstances warrant, the Secretary, upon recommendation of the Director, may impose additional conditions for the approval of assignment/transfer of FTAA.

Sec. 68. Area Relinquishment. Where the Contractor originally derived its rights to the contract area from then claimowners or mining rights owners, such part of the contract area relinquished pursuant to the provisions of Section 54 hereof, shall revert to the Government. Said claimowners or mining right owner shall have preferential rights over the area: **Provided**, that within thirty (30) days from notification of relinquishment by Contractor, the former shall signify its intention to enter into a mineral agreement with the Secretary. **Provided, further**, that all documents necessary for mineral agreement application shall be submitted within sixty (60) days from receipt of such intention.

Sec. 69. Withdrawal from Financial or Technical Assistance Agreement. The Contractor shall manifest in writing to the Secretary its intention to withdraw from the agreement, if in its judgment the mining project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause(s) or situation(s). The Secretary may accept the Contractor's withdrawal from the FTAA.

Upon compliance or satisfaction of all the Contractor's financial, fiscal, environmental and legal obligations at the time of withdrawal, the Secretary shall send an acceptance notice of withdrawal to the Contractor; cause the opening of the subject area to other purposes or land use; and release the Contractor's financial guaranty/performance bond.

Sec. 70. Cancellation/Revocation of FTAA. A FTAA may be canceled under any of the grounds provided for under Chapter XXIX of these implementing rules and regulations.

CHAPTER X SURVEY OF CONTRACT/MINING AREAS

Sec. 71. Identification of Meridional Blocks. A system for identifying meridional blocks other than geographic coordinates shall be established by the Bureau. The boundaries of contract/mining area shall coincide with the full one minute or one-half (1/2) minute of latitude and longitude based on the NAMRIA map. In cases where such boundaries are not attainable due to geographic features, environmental considerations, existence of adjoining valid mining rights or concessions, other areas closed to mining locations, settlement of conflicts and other justifiable considerations that render it impractical to conform with such requirements, the boundaries shall be defined by specific technical description.

Sec. 72. Filing of Application for Survey. A Permittee/Contractor shall file an application for order of survey of the perimeter boundary of the contract/mining area simultaneous with the submission of the Declaration of the Mining Project Feasibility and to be accompanied by the following:

- (a) One (1) set of certified true copy of approved Exploration Permit/FTAA/Mineral Agreement;
- (b) Pertinent documents such as deed of assignment and power of attorney duly registered with the Bureau/concerned Regional Office;
- (c) A notarized survey service contract executed by and between the Permittee/Contractor and the deputized geodetic engineer, except when the deputized geodetic engineer is employed by the applicant and/or company interested in the survey: **Provided**, that proof of employment of the deputized Geodetic Engineer is submitted;
- (d) Affidavit of the deputized Geodetic Engineer representing that he/she can execute the survey of the area and to submit the complete survey returns thereof within the period prescribed by these implementing rules and regulations;
- (e) A surety bond (Annex 4-A0 for order of survey, which shall be forfeited for failure of the deputized Geodetic Engineer to execute and/or comply with his/her obligations; and
- (f) Proof of payment of the required fees (Annex 4-A).

However, any contractor or applicant whose MPSA/FTAA agreement/application was granted/filed in accordance with the implementing rules and regulations of E.O. No. 279, may avail of the provision of this Section.

Sec. 73. Issuance of Order of Survey. Upon verification of the application for Order of Survey (MGB Form No. 10-1) and compliance with the requirements in the preceding section, the Director/concerned Regional Director shall issue the order of survey in the prescribed form (MGB Form No. 10-2).

Sec. 74. Who May Execute Mineral Land Surveys. Mineral land surveys shall be executed by Geodetic Engineers of the Bureau/Regional Offices, deputized Geodetic Engineers in private practice and company-employed deputized Geodetic Engineers.

Sec. 75. Execution of Mineral Land Surveys. Corners of the contract or mining area shall be defined by monuments placed at intervals of about four hundred fifty (450) meter apart. When the boundary lines of the permit/contract area traverses mountain or rolling terrain, the intermediate monuments between corners shall be established on ridges, whenever practicable, in which cases, all consecutive corners shall be intervisible.

The corner monuments of a permit/contract or mining area shall be as follows:

- (a) 20 cm. x 20 cm. x 50 cm. concrete rectangular monuments set 40 cm. in the ground for principal corners which fall on points with exact minutes or half minute of latitude and longitude; and
- (b) 15 cm. in diameter x 50 cm. long set 40 cm. in the ground for other corners of the permit/contract or mining area.

Such corners of the permit/contract or mining area shall be identified by concrete monuments or cement patches on boulders, centered with a hole, spike, pipe or nail and marked with the corresponding corner numbers and survey numbers. The latitude and longitude of the principal corners shall also be indicated on the sides of the concrete monuments when they coincide with the full one (1) minute and/or one-half (1/2) minute of latitude and longitude.

When the permit/contract or mining area adjoins submerged land, a witness corner monument along the boundary leading to the shoreline shall be set on the ground to witness the boundary point-corner of the mining rights at the mean low tide level of the sea or lake. Concrete monuments, galvanized iron pipes, fixed rocks, boulders or stakes and other monuments shall be set to define the corners of the mining rights along the shoreline at mean low tide level.

All area computations, plans and maps of permit/contract or mining areas to be submitted to the Bureau/Regional Office for verification and approval shall be prepared using the Philippine Plane Coordinate System (Annex 10-A).

Should any discrepancy of datum plane between or among tie points arise, proper investigation shall be conducted by the Bureau/concerned Regional Office and a report thereon shall be submitted to form part of the survey returns for further investigation and record purposes.

Survey plans of permit/contract or mining areas recorded under these implementing rules and regulations shall be drawn to scale in drawing ink on the prescribed form (MGB Form No. 10-3).

The execution of mineral lands surveys shall be in accordance with these implementing rules and regulations, as supplemented by the applicable provisions of the Revised Manual of Lands Surveys of the Philippines pursuant to Lands Administrative Order No. 4, dated July 3, 1980: **Provided**, that PRS-92 may be used in the execution of mineral land surveys during the transition period (1993-2000) pursuant to the provisions of DAO No. 22, Series of 1994: **Provided, further**, that reference points enumerated in Annex 10-C can still be used if standardized and converted into PRS-92 subject to implementing guidelines that may hereinafter be issued.

Sec. 76. Submission of Survey Returns. Survey returns shall be submitted to the Director/concerned Regional Director within one (1) year from receipt of the order of survey, and shall consist of the following:

- (a) Duly notarized field notes with cover (MGB Form No. 10-4) accomplished, signed and sealed by a deputized Geodetic Engineer;
- (b) Azimuth computations from astronomical observations (MGB Form No. 10-5), topographic survey computations (MGB Form NO. 10-6), traverse computations (MGB Form No. 10-7), area computations (MGB Form No. 10-8), coordinate conversion - geographic to grid (MGB Form NO. 10-9) and coordinate conversion - grid to geographic (MGB Form No. 10-10) and other reference computations, all in sets of original and duplicate, properly accomplished and signed by a deputized Geodetic Engineer;
- (c) Microfilm plan(s) in appropriate scale duly accomplished with the corresponding working sheet thereof;

- (d) Descriptive and field investigation report on the permit/contract or mining area in quintuplicate, duly signed by the deputized Geodetic Engineer and authorized assistant, if any, and duly notarized; and
- (e) A certification under oath by the Barangay Chairman that the survey was actually undertaken in the locality.

Incomplete survey returns, however, shall not be accepted for verification and approval purposes.

Except for reasons of force majeure, failure to submit the survey returns within the prescribed period shall cause the cancellation of the permit/mineral agreement/FTAA. If the survey returns are filed through the mail, the date appearing on the postmark shall be considered as the date of filing. However, the Contractor and/or concerned deputized Geodetic Engineer shall notify the Director/concerned Regional Director by telegram/fax message not later than the deadline for the filing of the survey returns that he/she has filed the same through the mail.

Corners and/or location monuments of verified survey returns of mining rights areas, inspite of the nullity, cancellation, rejection or abandonment of the mining rights over the surveyed area, shall be preserved as reference marks and the geographic position thereof shall be kept for use in future mineral land surveys, unless otherwise said survey is found to be erroneous by later approved mineral land surveys.

Sec. 77. Withdrawal of Survey Order. If the Director/concerned Regional Director finds that the deputized Geodetic Engineer has violated any of the terms and conditions of the survey order or the survey service contract, or has failed to execute the survey and submit the survey returns within the prescribed period, the Director/concerned Regional Director shall withdraw the existing authority over the subject area, forfeit the corresponding bond and shall not issue any new survey order in favor of the said deputized Geodetic Engineer without prejudice to any criminal, professional or other liabilities arising out from such failure, violation or misrepresentation.

Sec. 78. Withdrawal of Defective Survey Returns. The deputized Geodetic Engineer or his/her duly authorized representative may withdraw documents within thirty (30) days upon receipt of notice from the Bureau/concerned Regional Office for correction of errors, discrepancies and/or deficiencies of the submitted survey returns. A period of ninety (90) days from the date of withdrawal of the said survey returns is given to the deputized geodetic engineer or his/her duly authorized representative to re-submit the same without any extension save

for reason of force majeure. Failure of the deputized Geodetic Engineer to re-submit the withdrawn survey returns within the prescribed period shall cause the revocation of the survey order and confiscation of his surety bond and non-issuance and the rejection of new survey order over the subject area.

Sec. 79. Field Verification and Approval of Survey Plan. Upon submission of the corrected survey returns, the Director/concerned Regional Director shall cause the immediate field verification of the subject area. Thereafter, the survey plan shall be submitted to the Director/concerned Regional Director for approval of the same within fifteen (15) days from receipt thereof.

Sec. 80. Non-Transferability of Survey Order. Survey order is non-transferable except in cases of death, physical incapacity of the deputized Geodetic Engineer, or any other causes which render it impracticable to execute the survey, subject to the approval of the Director/concerned Regional Director. **Provided, however,** that the execution of the survey shall be completed within the remaining period covered by the original survey order.

CHAPTER XI DRILLING OF AREAS BY THE BUREAU

Sec. 81. General Provision. In line with the policy of the Government to hasten the exploration, development and utilization of the mineral resources of the country, the Bureau may conduct exploration in open areas other than mineral reservations upon its own initiative or upon request by Claimant/Contractor/Permittee in areas covered by existing and valid mining claims/contract/permit: **Provided,** that whatever expenses that may be incurred thereof shall be taken from the appropriation of the Bureau or from the requesting party, as the case maybe.

Sec. 82. Priority Areas. The Director shall determine whether the area is included in the priority list of areas and contains critical minerals included in the mineral development program of the government.

If it is ascertained that the area should be explored, a contract between the Contractor/Claimant/Permittee and the Director shall be executed to include, among others, a statement that Bureau shall conduct the necessary geological studies on the area, and if warranted, diamond drilling, test pitting, trenching or auger drilling operations thereon.

In case the drilling reveals substantial ore reserves to warrant commercial mining operations, the Contractor/claimant/permittee as well as his/her successor(s) or assignee(s) shall then take all steps required to secure any mode of mineral agreement.

Sec. 83. Reimbursement. Upon completion of exploration activities by the Bureau in open areas other than mineral reservation, it shall render a certified report on the total expenses incurred thereon. Any interested party who wishes to apply for mineral right shall reimburse to the Bureau the certified amount plus an interest of 12% of the expenses.

Sec. 84. Lease of Drilling Equipment. The Director may lease the drilling equipment of the Bureau to permittees, lessees, Contractors and holders of other permits desiring to conduct exploration and development work on the area applied for.

Drilling equipment maybe leased upon application made with the Director, by any qualified person as defined in these implementing rules and regulations.

Sec. 85. Preferential Right to Lease. In case there are two or more applications, the Director shall grant the lease agreement to the first applicant who has satisfactorily complied with all the requirements.

Sec. 86. Terms and Conditions of the Drilling Lease Agreement. The terms and conditions of the lease agreement are the following:

- (a) The lessee shall have an approved exploration permit;
- (b) The drilling equipment shall be used exclusively for exploration purposes in the areas specified in the agreement;
- (c) The drilling equipment shall not be subleased to any person, partnership or corporation;
- (d) The lessee shall satisfactorily comply with all the requirements imposed by the Director;
- (e) The lease shall be for a minimum period of three (3) months from the date specified in the lease agreement;
- (f) The lease agreement may be renewed by the Director when the evaluation of the drilling results justifies the continuation of the drilling program: **Provided**, that the lessee has not violated any terms and conditions of the original lease agreement;
- (g) The Director or his/her duly authorized representative may conduct an inspection of the drilling operation at any time during the term of the lease at the expense of the lessee;

- (i) The lessee shall pay the daily rental plus a surcharge of 100% per day for failure to return the leased equipment as stipulated in the agreement;
- (j) The lessee has not violated any terms and conditions of previous lease agreement; and
- (k) The violation of any terms and conditions of the lease agreement shall be a ground for cancellation of the same.

Sec. 87. Rights and Obligations of the Lessee. The following are the rights and obligations of the lessee:

- (a) The lessee shall maintain and keep the equipment in good working condition during the terms of the lease until it is returned to the Bureau;
- (b) The lessee shall replace and/or repair all parts rendered unusable thru breakage, loss or abnormal wear during the term of the lease. All parts missing at the time the equipment is returned shall be replaced within one (1) month from the time such equipment are returned. For this purpose, the lessee shall make the required cash deposit. If the lessee returns the equipment in bad condition and fails to restore them into running condition or fails to replace the missing parts or accessories within the allowable time, the lessor shall use the cash deposit and/or forfeit the bond without prior notice to the lessee to put the equipment back into running condition or replace any missing accessories. The lessee shall be required to deposit additional cash to defray the above mentioned expenses if the original cash deposit for the purpose is insufficient;
- (c) Transportation of the drilling equipment and all its accessories from the Bureau and return shall be for the lessee's account;
- (d) The lessee shall submit monthly to the Director all the information, data and footage obtained thru drilling which shall be treated as confidential. Such information, however, shall be made available to the public after a period of two (2) years;
- (e) The lessee shall pay the required monthly rental fee (Annex 11-A);
- (f) To guarantee the faithful compliance with the terms and conditions of the lease agreement, and to answer for any loss and/or damage of

the equipment during the term of the lease, the lessee shall file with the Bureau the required surety bond issued by a company accredited by the Insurance Commission, which may either be in cash or with a surety satisfactory to the Director;

- (g) The lessee shall pay in advance an amount corresponding to two (2) months rentals and per diem including transportation expenses of one (1) driller upon the signing of the contract of lease agreement. The rentals and per diems for succeeding months shall be due and payable at the beginning or the first day of every month;
- (h) Rentals not paid within thirty (30) days after they become due and payable shall bear a surcharge of five per centum (5%) per month until fully paid. Rentals shall continue to be charged for returned equipment not in running condition and for accessories lost or missing until repaired and replaced respectively; and
- (i) Balance of rentals and per diems paid and/or deposits made after termination of the lease shall be applied to pending obligations of the lessee with the lessor. Excess rentals or deposits shall be refunded to the lessee.

Sec. 88. Receipts from Rentals. All rental fees of drilling equipment shall accrue to the Drilling Fund which shall be used for the purchase of supplies, materials and spare parts needed in the repair of said drilling equipment subject to the provisions of Commonwealth Act No. 246, as amended.

CHAPTER XII QUARRY OPERATIONS

Sec. 89. Extraction/Utilization of Quarry and Sand and Gravel Resources. Quarry and sand and gravel resources may be extracted/utilized in privately-owned lands and/or public lands: **Provided**, that prior to the granting of quarry and sand and gravel permits all applicants shall furnish a copy each of the quarry and sand and gravel applications to the owner(s) of the private lands and the Offices of Provincial Governor/City Mayor, Municipal Mayor, Barangay Chairman and Regional Office concerned and for posting at their respective bulletin boards or other conspicuous places for a period of fifteen (15) days, and thirty (30) days for large scale ones: **Provided, further**, that in large scale quarry operations involving cement raw materials, marble, granite, and sand and gravel, a qualified person and the Government may enter into a mineral agreement as defined therein.

Sec. 90. Quarry Permit. Quarry permit application maybe filed with and processed by the Provincial/City Mining Regulatory Board and the corresponding quarry permit maybe granted by the Provincial Governor/City Mayor to a qualified person for the extraction and utilization of quarry resources covering an area of not more than 5 hectares for a term of 5 years, renewable for one or more terms but not to exceed 25 years: **Provided**, that application for renewal shall be filed before the expiry date of the permit, and the permittee has complied with all the requirements and shall not have been guilty of any violation of the Act and these implementing rules and regulations: **Provided, further**, that no quarry permit shall be issued or granted on any area covered by a Mineral Agreement or FTAA.

Sec. 91. Commercial Sand and Gravel Permit. Commercial Sand and Gravel Permit application may be filed with and processed by the Provincial/City Mining Regulatory Board and the corresponding permit may be granted by the Provincial Governor/City Mayor to a qualified person for the removal of sand and gravel and other loose or unconsolidated materials which are used in their natural state without undergoing processing covering an area of not more than five (5) hectares and in such quantities as maybe specified in the permit. **Provided**, that only one (1) permit shall be granted by the concerned Provincial Governor/City Mayor to a person in a municipality at any one time for a period of one (1) year, renewable for like period under such terms and conditions as provided herein.

Sec. 92. Industrial Sand and Gravel Permit. Industrial Sand and Gravel Permit application (MGB Form No. 12-1) may be filed with the processed by the Regional Office and the corresponding permit (MGB Form No. 12-2) may be granted by the Regional Director to a qualified person for the removal of sand and gravel and other loose or unconsolidated materials that necessitate the use of mechanical processing covering an area of more than five (5) hectares but not to exceed 20 hectares at any one time for a term of five (5) years, renewable for like periods but not to exceed a total of twenty-five (25) years. However, for areas covering five (5) hectares or less, an Industrial Sand and Gravel Permit may be filed at and processed by the Provincial/City Mining Regulatory Board and the corresponding permit may be granted by the Provincial/City Mayor to a qualified person.

Sec. 93. Exclusive Sand and Gravel Permit. Exclusive Sand and Gravel Permit application may be filed with and processed by the Provincial/City Mining Regulatory Board and the corresponding permit may be granted by the Provincial Governor/City Mayor to a qualified person to extract/utilize sand and gravel and other loose or unconsolidated materials from public land for his/her own use covering an area of not more than one (1) hectare for a non-renewable period not exceeding sixty (60) days and a maximum volume of 50 cubic meters: **Provided**, that there will be no commercial disposition thereof.

Sec. 94. Government Gratuitous Permit. Government Gratuitous Permit application may be filed with and processed by the Provincial/City Mining Regulatory Board and the corresponding permit may be granted by the Provincial Governor/City Mayor to any government entity/instrumentality in need of quarry, sand and gravel or loose/unconsolidated materials in the construction of building(s) and/or infrastructure for public use or other purposes covering an area of not more than two (2) hectares for a period coterminous with the construction stage of the project in public/private land(s).

Sec. 95. Private Gratuitous Permit. Private Gratuitous Permit application may be filed with and processed by the Provincial/City Mining Regulatory Board and the corresponding permit may be granted by the Provincial Governor/City Mayor to the land owner applying to extract sand and gravel, quarry, or loose/unconsolidated materials from his/her land, **Provided**, there is adequate proof of ownership and that the materials will be for personal use. The permit shall be for a non-renewable period of sixty (60) days.

Sec. 96. Who May Apply for a Quarry or Sand and Gravel Permit.

- (a) In case of individual, he/she should be of legal age and a citizen of the Philippines; or
- (b) In case of a corporation, cooperative, association or partnership, it should be organized under the laws of the Philippines and duly registered with the government agency concerned and at least sixty per centum (60%) of the capital of which is owned and held by citizens of the Philippines. A certified copy of its duly registered articles of incorporation or partnership shall be submitted in support of the application.

Sec. 97. Application for Quarry or Sand and Gravel Permit. Application for quarry or sand and gravel permit shall be filed with the concerned Provincial City Mining Regulatory Board or to the Regional Office concerned in case of application for industrial sand and gravel permit covering more than five (5) hectares using the prescribed form (MGB Form No. 12-3) upon payment of filing fees: **Provided**, that all application shall be cleared by the concerned Regional Office concerned.

Sec. 98. Provincial/City Mining Regulatory Board. The Provincial/City Mining Regulatory Board shall, among others, accept, process and evaluate applications and determine administrative charges and fees for quarry, sand and gravel, guano, gemstone gathering and small-scale mining permits duly filed with the Board. It shall be chaired by the Regional Director concerned or his/her duly authorized representative with the following members:

- (a) Governor/City Mayor or his/her representative;
- (b) Small-scale mining representative;
- (c) Large scale mining representative; and
- (d) DENR-duly accredited environmental Non-government organization representative.

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

For purposes of these implementing rules and regulations, city refers to an independent component city as classified under the Local Government Code.

Sec. 99. Documents to Accompany Applications for Quarry and Commercial and Industrial Sand and Gravel Permits. Applications for quarry and commercial and industrial sand and gravel permit shall be accomplished by the following documents:

- (a) Clearance from the government agencies concerned that may be affected by the quarry or sand and gravel permit or written permission from the landowner(s) and surface owner(s) of the area applied for;
- (b) Survey plan of the area;
- (c) Articles of Incorporation/Partnership & By-Laws, if applicable;
- (d) Audited Financial Statement for Corporation/Partnership or Income Tax Return immediately preceding three (3) years for individuals or credit lines;
- (e) Work Programs;
- (f) Commitment to secure Environmental Compliance Certificate (ECC) prior to the extraction for small quarry and commercial sand and gravel permits while large quarry and commercial sand and gravel permits and all industrial sand and gravel permits shall be required to secure an ECC;
- (g) Other documents that may be required by the approving authority.

Sec. 100. Processing and Approval of Application for Quarry or Commercial/Industrial Sand and Gravel Permit. After the application for a quarry or commercial/industrial sand and gravel permit shall have been processed and evaluated and the requirements therefore fully complied with, the Regional Director or Provincial Governor/City Mayor concerned shall issue the quarry or

commercial/industrial sand and gravel permit on the prescribed form (MGB Form No. 12-4).

Section 101. Conditions and Limitations of Quarry or Commercial/Industrial Sand and Gravel Permits. Permits for quarry and sand and gravel operations shall be issued subject, among others, to the following terms and conditions:

- (a) The permit shall be for the exclusive use of the permit holder and shall not be transferred or assigned without prior written approval by the concerned Regional Director/Provincial Governor/City Mayor;
- (b) The statements made in the application or those made later in support thereof shall be considered as conditions and essential parts of the permit and any misrepresentation contained therein shall be a cause for the suspension or revocation of the permit;
- © No extraction or removal of materials shall be allowed within a distance of one (1) kilometer from the boundaries of reservoirs established for public water supply, archaeological and historical sites and of any public or private works or structures, unless the prior clearance of the agency or owner concerned is obtained. No extraction or removal of materials shall likewise be allowed in offshore areas within five hundred (500) meters distance from the coast and two hundred (200) meters from the mean low tide level along the beach;
- (d) The removal or taking of materials under the permit shall be confined within the area specified therein, the boundaries of which, according to the application, are established on the ground with prominent marks;
- (e) The permit holder shall assume full responsibility and be liable for damages to private and/or public property(ies) that may be occasioned by his/her extraction or operation under the permit;
- (f) Unless otherwise renewed or amended, the permit shall ipso facto terminate after the whole quantity and kind of materials specified therein have been removed or taken;
- (g) The permit holder shall file with the Office of the concerned Regional Director or Provincial Governor/City Mayor a sworn statement of the quantity of materials removed or extracted under the permit;

- (h) The permit shall be made available at all times for the inspection and examination by the representative(s) of the concerned Regional Director/Provincial Governor/City Mayor;
- (i) An ECC shall be secured prior to application for quarry operations; and
- (j) The permit may be suspended or revoked at any time by the Secretary, Director or Provincial Governor or City Mayor, as the case maybe, when in his/her opinion, public interest so requires or upon failure of the permit holder to comply with the other terms and conditions stated in the permit.

Sec. 102. Surety Bond. To answer for and guarantee payment for whatever actual damages that may be incurred by the quarry or sand and gravel operations, a surety bond (Annex 4-A) shall be posted by the applicants except for those applying for Gratuitous and Exclusive Sand and Gravel Permits.

Sec. 103. Conditions and Limitations of Government Gratuitous Permit. A government gratuitous permit may be issued under the following conditions:

- (a) The period of the grant shall be coterminous with the term of the construction stage of the project but not to exceed one (1) year;
- (b) The applicant shall submit a project proposal stating where the materials to be taken shall be used and the estimated volume needed;
- (c) The government office concerned shall, whenever practicable, use and utilize its own vehicle(s) and equipment in extracting, hauling and transporting the materials: **Provided, however,** that the permit holder may enter into a contract with a private person/entity for the purpose of hauling and transporting such materials;
- (d) The materials authorized to be removed shall be strictly for infrastructure project and in no case shall the same be disposed of commercially, otherwise, persons responsible thereof shall be liable for prosecution under appropriate laws;
- (e) The permit holder shall submit to the Regional Director or Mineral District Officer concerned a monthly report copy furnished the Director and Provincial/City Treasurer concerned; and
- (f) The quarry operators shall be managed in a technically and

environmentally responsible manner to achieve a safe, non-polluting and self-sustaining post disturbance land form.

Sec. 104. Records of Removed or Disposed Quarry or Sand and Gravel Resources. The permit holder shall keep books of accounts wherein there shall be entered everyday the quantity of quarry or sand and gravel resources removed or extracted from the area as well as the quantity disposed of or sold during the day, their selling prices, the names and addresses of the persons or parties to whom the same were sold or disposed of.

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

Sec. 105. Quarry Fee and Taxes to be Paid. All permit holders except for gratuitous permits under this Chapter shall pay the required quarry fees (Annex 4-A) to the city/municipal treasurer concerned. Likewise, an excise tax in mineral products as provided for in Republic Act No. 7729 amending Section 151(a) of the National Internal Revenue Code shall be paid upon removal thereof to the Government thru the concerned agent or representative of the Bureau of Internal Revenue.

Sec. 106. Cancellation/Revocation of Quarry or Sand and Gravel Permit. The quarry or sand and gravel permit may be cancelled or revoked by the Regional Director or Provincial/City Mayor concerned based on the following grounds:

- (a) Violation of any of the terms and conditions of the permit;
- (b) Failure to pay the excise tax for two (2) consecutive years;
- (c) If quarry operations endangers the life and health of the laborers/miners;
- (d) If the commodity stipulated in the permit has been exhausted before the expiry date thereof; and
- (e) When public welfare, peace and order conditions so require and for environmental protection or ecological reasons.

Sec. 107. Guano Permit. A guano permit application may be filed with and processed by the Provincial/City Mining Regulatory Board and the

corresponding permit may be granted by the Provincial Governor/City Mayor to extract and utilize loose unconsolidated guano and other organic fertilizer deposits in specific caves and/or confined sites such as sites identified as not part of the National Integrated Protected Areas System (NIPAS) excluding phosphatic rocks.

Sec. 108. Kinds of Guano Permit.

- (a) **Gratuitous permit** - a permit to extract or remove guano issued to individual for his/her personal use and or to any government agency in need of the material within a specified period and quantity; and
- (b) **Commercial permit** - a permit to extract or remove guano issued to person for sale or commercial disposition thereof within a specified period and quantity.

Sec. 109. Who May be Issued or Granted a Guano Permit. Permits may be issued or granted to applicants who have complied with the requirements provided herein and who possess the following qualifications:

- (a) In case of an individual, the applicant shall be of legal age and has established domicile in the municipality where the area applied for is located; or
- (b) In case of a corporation, partnership, cooperative or Association, it should be organized under the laws of the Philippines, majority of its incorporators, partners or members have established domicile in the municipality where the area applied for is located, is duly registered with the Government agency concerned, and at least sixty per centum (60%) of the capital of which is owned and held by citizens of the Philippines.

Sec. 110. Application For Guano Permit. Application for guano permit shall be filed with the Provincial/City Mining Regulatory Board concerned after payment of filing and processing fees. The application shall be accompanied by following:

- (a) Location map/sketch plan of the caves and/or confined sites;
- (b) Certification of Barangay Chairman stating that the applicant has established domicile in the area applied for; and
- (c) Verification and clearance by the Regional Office and other agencies concerned.

Sec. 111. Quantity of Guano Allowed. A gratuitous permit holder shall be allowed to extract and remove not more than Two Thousand kilograms (2,000 kg.) of guano and a commercial permit holder shall be allowed such quantity as may be specified in the permit.

Sec. 112. Maximum Area. The maximum area which a qualified person may hold at any one time shall not be more than five (5) hectares.

Sec. 113. Issuance of Guano Permit. Upon processing and evaluation of the application by the Provincial/City Mining Regulatory Board, the Provincial Governor/City Mayor shall issue the corresponding permit covering areas within its jurisdiction for a term of one (1) year or upon the extraction of the quantity specified in the permit; **Provided**, that only one guano permit shall be issued for the same cave or area.

Sec. 114. Specific Conditions Under Which a Guano Permit is Issued. Permit for the extraction and utilization of guano resources shall be issued subject, among others, to the following terms and conditions:

- (a) The guano permit shall be for the exclusive use of the permit holder;
- (b) Removal or taking of guano shall be confined within the cave or area specified in the permit, the location of which shall be indicated in a location map;
- (c) Permit holder shall file quarterly with the Provincial Governor/City Mayor a sworn statement of the quantity of guano removed and the amount of fees paid therefor;
- (d) The applicant shall state in his/her application more or less the quantity of guano available in the cave/area applied for;
- (e) The permit holder shall immediately stop digging and extracting guano the moment man-made articles or artifacts are found. He/she shall notify the Director of the National Museum of such findings, in which case, the digging shall be under the supervision of the National Museum until said artifacts are recovered;
- (f) No explosive shall be used in extracting guano; and
- (g) The holder of the permit shall not violate any terms and conditions of the permit.

Sec. 115. Fee. The quarry fee (Annex 4-a) shall be paid by the permit holder to the concerned City/Municipal Treasurer.

Sec. 116. Gemstone Gathering Permit. Gemstone gathering permit may be granted by the Provincial Governor/City Mayor to a qualified person for the extraction and utilization of loose stones useful as gemstones.

Sec. 117. Who May Be Issued A Gemstone Gathering Permit. Permits may be issued or granted to applicants who possess the following qualifications:

- (a) In case of an individual, the applicant shall be of legal age and citizen of the Philippines; or
- (b) In case of corporation, partnership or association, it should be organized under the laws of the Philippines and duly registered with the Securities and Exchange Commission, at least sixty per centum (60%) of the capital of which is owned and held by citizens of the Philippines.

Sec. 118. Application Of Gemstone Gathering Permit. Application for gemstone gathering permit shall be filed with and processed by the concerned Provincial/City Mining Regulatory Board upon submission of location plan/sketch map and payment of filing and processing fees to the concerned City/Municipal Treasurer.

Sec. 119. Processing and Issuance of Permit. Upon processing and evaluation of the application by the Provincial/City Mining Regulatory Board, the Provincial Governor/City Mayor concerned shall issue the corresponding gemstone gathering permit covering areas within their respective jurisdiction.

Sec. 120. Terms And Conditions Of The Permit. The permit shall be governed by the following:

- (a) Gemstone gathering shall be allowed in rivers and other locations except in areas which are expressly prohibited by law;
- (b) The removal/gathering of gemstone shall be conducted manually without the aid of any tools or mechanized equipment;
- (c) The permit holder shall assume full responsibility and be liable for damages to rights or properties that may be occasioned by its gemstone gathering activities under the permit;

- (d) Prior to the transport and/or disposition of gemstone gathered/ removed from the allowed area, the permit holder shall pay the Government, through the concerned agent or representative of Bureau of Internal Revenue the excise tax due thereon, as provided for under Republic Act 7729 amending Section 151 (1) of the National Internal Revenue Code;
- (e) The permit holder shall submit to the Provincial Governor/City Mayor and to the Regional Director copies of sworn reports stating the quantity of gemstone removed or gathered by the permittee, the amount of fees paid, the quantity/volume of gemstone sold or disposed of during the period covered by the report, their selling prices, the names and addresses of the persons to whom the same were sold, and the quantity/volume of materials left in stock;
- (f) The permit shall be for the exclusive use and benefit of the permit holder, his/her heir(s) and successor(s) in-interest and the same shall not be transferred unless with the approval of the Provincial Governor/City Mayor.
- (g) The permit holder shall not violate any of the terms and conditions of the permit.

Sec. 121. Duration of the Permit. The permit shall be for a term not exceeding one (1) year from the date of issuance renewable for one or more terms: **Provided**, that the application for renewal shall be filed before the expiry date of the permit and the permit holder has complied with the terms and conditions of the original permit and shall have not been guilty of any violation of the Act and these implementing rules and regulations.

Sec. 122. Suspension/Revocation of the Permit. The permit may be suspended or revoked at any time by the Provincial Governor/City Mayor or the Regional Director when in his opinion, public interest so requires or for ecological reasons or upon failure of the permit holder to comply with the terms and conditions stipulated under the permit or any misrepresentation on the statement made in the application or those made later in support thereof.

CHAPTER XIII SMALL SCALE MINING

Sec. 123. General Provisions. Small-scale mining applications shall be filed with, processed and evaluated by the Provincial/City Mining Regulatory Board

concerned and the corresponding permits to be issued by the Provincial/City Mayor concerned except small scale mining applications within the mineral reservations which shall be filed, processed and evaluated by the Bureau and the corresponding permit to be issued by the Director.

The guidelines and provisions specified in MRD 41 (Annex 13-A), DAO No. 28 (Annex 13-B) and MRDB 3 and 3A, (Annexes 6-A & 6-B) which are the implementing rules and regulations of P.D.1899 and the guidelines and provisions of DAO No. 34 (Annex 13-C) which are the implementing rules and regulations of R. A. No. 7076, insofar as they are not inconsistent with the provisions of these implementing rules and regulations, shall continue to govern small-scale mining operations.

CHAPTER XIV

Granting of Mineral Processing Permits

Sec. 124. Mineral Processing Permit. No person shall engage in the processing of minerals without first securing a mineral processing permit (MGB Form No. 14-1) from the Secretary or his/her duly authorized representative. Mineral processing permit shall be for a period of five (5) years renewable for like periods but not to exceed a total term of twenty-five (25) years.

In the case of mineral ores and minerals produced by the small-scale miners, the processing thereof as well as licensing of their custom mills, or processing plants shall, notwithstanding the provisions of Section 123 above, continue to be governed by the provisions of R. A. No. 7076 and its implementing rules and regulations under DAO No. 34, Series of 1992 (Annex 13-C).

In the case of Contractors, holders of sand and gravel industrial permits and quarry permits, the approved Work Program for the production period is sufficient requirement for them to process their minerals in lieu of mineral processing permits.

Those who are presently engaged in the said activity shall secure a mineral processing permit within six (6) months from the effectivity of these implementing rules and regulations.

Sec. 125. Qualifications. Any qualified person, with eligibility to apply for a Mineral Agreement, may apply for and be granted a mineral processing permit.

Sec. 126. Application. An application (MGB Form No. 14-2) for a mineral processing permit by a qualified person shall be filed with the concerned Regional Office upon payment of an application fee (Annex 4-A) and to be accompanied by the following:

- (a) Latest Annual Audited Financial Statements and/or bank certification, if any;
- (b) Feasibility Study including work plans, plant site, mill and plant layout/design, anti-pollution devices/measures as well as the plant capacity;
- (c) Articles of Incorporation, partnership, By-Laws and SEC registration papers;
- (d) Environmental Compliance Certificate;
- (e) Interim Importation Permit/Certification from EMB on the use of chemicals (e.g. Cyanide, Mercury) in compliance to RA 6969;
- (f) Brief history of company's activities for the last five (5) years, if any;
- (g) Supply Contract/Agreement with mining rights holders;
- (h) Proof of technical competence, such as but not limited to, its track record in environmental protection and mineral processing, details of technology to be employed in the proposed operations; and details of technical personnel to undertake the operation; and
- (i) Sworn statement that the applicant shall:
 - 1. Give preference to goods and services produced and offered in the Philippines of comparative quality. In particular, the applicant shall give preference to Filipino construction enterprises and use buildings which can be constructed by using materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation, and purchase Philippine household equipment, furniture and food;
 - 2. Give preference to Filipinos in all types of employment for which they are qualified and that the technology shall be transferred to the same;
 - 3. Not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mineral processing except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such

other generally accepted and permissible financial schemes for raising funds for valid business purposes in case of foreign-owned/controlled corporation; and

- (j) Other requirements as the Secretary may require.

Sec. 127. Approval of the Permit. Within five (5) days from receipt of application by the Regional Office, it shall initially evaluate and then forward the same to the Bureau for Final review and evaluation by the latter within fifteen (15) days from receipt thereof of the forwarded documents. Thereafter, the Director shall indorse the same to the Secretary who in turn shall act within fifteen (15) days upon receipt thereof.

Sec. 128. Renewal. The application for renewal of a mineral processing permit shall be filed thirty (30) days before the expiration of the permit. Any renewal shall be approved by the Secretary upon recommendation of the Director: **Provided**, that the applicant has complied with all the terms and conditions of the permit as well as existing rules and regulations.

A Temporary Permit to Operate (TPO), which shall be valid for thirty (30) days, shall be issued by the Director while awaiting the approval of the renewal: **Provided**, that succeeding TPOs of same duration shall be issued until the renewal is granted.

Sec. 129. Compliance with Health and Environmental Laws. All applicable laws, rules and regulations governing health, sanitation, pollution control, zoning, labor and mine safety as well as those for the protection and enhancement of the environment shall be observed.

Sec. 130. Monitoring and Submission of Reports. The holders of mineral processing permits shall submit production and activity reports prescribed in Chapter XXXI of these implementing rules and regulations. The Director/concerned Regional Director or his/her duly authorized representative may conduct an on-site validation of the reports submitted: **Provided**, that the permit holders shall be charged verification and inspection fees thereon.

CHAPTER XV

TRANSPORT OF MINERALS/MINERAL PRODUCTS AND CONFISCATION SEIZURE, AND DISPOSITION OF ILLEGALLY-SOURCED MINERALS/MINERAL PRODUCTS

Sec. 131. Scope. Illegally-sourced minerals/mineral products are those which are mined, extracted, removed, and/or disposed of without authority or permit under existing mining laws, rules, and regulations.

Sec. 132. Documents Required in the Transport of Minerals/Mineral Products. The transport of all minerals/mineral products by permit holders, contractors, accredited traders, retailers, processors and other mining rights holders must be accompanied by an Ore Transport Permit (MGB Form No. 15-1) issued by the Regional Director or his/her duly authorized representative.

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

For ore samples not exceeding two (2) metric tons to be used exclusively for assay and pilot test purposes, a certification regarding the same to be issued by the concerned Regional Director or his/her duly authorized representative is required.

Sec. 133. Basis of Arrests and Confiscation. Absence of any of the foregoing documents shall be considered prima facie evidence of illegal mining and this shall cause the seizure of the minerals/mineral products and the tools and equipment including conveyance used in the commission of the offense in favor of the government pursuant to P.D. No. 1281 subject to further investigation. If it is found that the minerals/mineral products seized have been mined, extracted or removed without any permit or authority under existing laws, rules and regulations, final confiscation can be effected to be followed by the filing of the complaint for theft of minerals. The Bureau officers which include the Regional Director, District Officer and other Bureau personnel duly authorized by the Director shall have authority to arrest offenders and seize/confiscate illegally-sourced minerals/mineral products and the tools equipment and conveyance used in the commission of offense.

Sec. 134. Execution of Sworn Statements. Immediately after seizure of the minerals/mineral products together with the tools, conveyance/s and equipment used in the commission of the offense, the apprehending Bureau officer shall execute his/her sworn statement/affidavit surrounding the facts of the case in the form hereto attached as MGB Form No. 15-2. He/she shall also take affidavits or statements of witnesses, if any, in the form hereto attached as MGB Form No. 15-3.

Sec. 135. Assessment and Issuance of Seizure Receipt. The kind, volume or quantity of the seized minerals/mineral products shall be determined immediately and the assessment thereof shall be based on the gross volume or weight without benefit of deduction for natural defects, after which the corresponding seizure receipt shall be issued by the signing Bureau officer, duly acknowledged by the apprehended person/s or party/ies. In case the apprehended person/s or party/ies refuse to acknowledge, the local government authority may attest as to the veracity of the seizure receipt.

Sec. 136. Custody of the Seized Minerals/Mineral Products, Tools, Conveyance, and Equipment. This shall be made in accordance with the following procedures:

- (a) In case of apprehension by the Bureau field officer, the mineral products, tools, equipment and conveyance/s used shall be deposited with the nearest Regional/District office, as the case may be, and wherever it is most convenient, for safekeeping. If the transfer of the seized products to the aforesaid offices is not immediately feasible, the same shall be placed under the custody of any licensed mine operator or the nearest local public official such as the Barangay Captain, Municipal/City Mayor, Provincial Governor or the Philippine National Police (PNP), at the discretion of the confiscating officer taking into account the safety of the confiscated items. The apprehending officer is authorized to seek assistance from licensed mine operators to provide transportation facilities for the transfer of the confiscated items from the place of apprehension to the place of custody. In any event, the custody shall be duly acknowledged and received by the official taking custody thereof: **Provided**, however, that in the case of seizure/confiscation by the Bureau the case shall be referred to the Regional/District Office concerned for further investigation and disposition;
- (b) In case of apprehension by the PNP, Economic Intelligence and Investigation Bureau (EIIB), Coast Guard, and other government law enforcement agencies, the apprehending agency shall notify the nearest Regional Office and turn over the seized items to the Regional/District Office, as the case may be, for proper investigation and disposition; and
- (c) For confiscated gold and other precious metals, the Regional Office/District Office, as the case may be, shall first determine if they conform with the Bangko Sentral ng Pilipinas (BSP) specifications or requirements for acceptance. If the confiscated gold satisfies the minimum weight requirements but it does not conform with the physical requirements, the said metal shall be delivered by an accountable officer escorted by security officers to the nearest Bureau/Regional Office Metallurgy Laboratory for processing. In cases, where the weight requirement is not satisfied, the Chief Cashier/Accountant of the Regional Office/District Office concerned shall store the confiscated metal in a safe deposit box of the nearest reputable banking institution duly accredited by the DENR Regional Office. Once the inventory of metals reaches the minimum BSP

weight specifications, the Chief Cashier/Accountant shall turn over the confiscated gold to the Metallurgy office. The latter shall turn over immediately after processing into saleable form the metals to the Chief Cashier/Accountant. In each turn-over, accountability is transferred through Memorandum Receipts.

Sec. 137. Filing of Complaint. The Regional Office/District Office, as the case may be, shall file the complaint with the proper court for violation of Sec. 103 of the Act (Theft of Minerals).

The following documents should be attached to the complaint:

- (a) Sworn statement of the apprehending/arresting officer (MGB Form No. 15-2);
- (b) Affidavits of witnesses, if any (MGB Form No. 15-3);
- (c) Copy of the seizure receipt; and
- (d) Photographs showing the minerals/mineral products seized including the tools, equipment and conveyances used in the commission of the offense.

Sec. 138. Referral of Complaint. Immediately after the complaint is filed, the District Office shall transmit copy of the complaint and all supporting documents to the Regional Office for proper handling and disposition, copy furnished the Department Undersecretary for Legal Affairs.

Sec. 139. Disposition of Confiscated Minerals/Mineral Products. The disposition of confiscated minerals/mineral products shall be handled in accordance with the following procedures:

- (a) The District Officer/Regional Director, as the case may be, or his/her duly authorized representative(s) shall expeditiously sell at public auction and/or dispose in accordance with existing laws and regulations all confiscated minerals/mineral products except the following:
 - 1. Those subject of judicial proceedings where ownership of the minerals is at issue until proper authority is obtained for their disposition from the court where the case is pending;
 - 2. Those earmarked for donation to other government agencies; and

3. Those determined by the Department for its own needs.
- (b) For confiscated gold and precious metals, there shall be no bidding as the same shall be sold directly to the BSP. The sale shall be made as follows:
1. If confiscated metals conform with existing BSP specifications, District Office/Regional Office concerned shall prepare a letter of intent or advice to sell confiscated precious metals addressed to the nearest BSP Buying Station Director/Administrator; and
 2. The Accountable Officer escorted by Security Officers shall finally deliver said metals together with the letter/advice to the BSP Buying Station and receive payment therefor.
- (c) Confiscated minerals/mineral products except gold and other precious metals shall be disposed of through a Committee on Bids and Awards on Confiscated Mineral Products (CBACMP) which, in all cases, shall be composed of the Regional Director/District Officer responsible for or having custody over the confiscated minerals or his/her duly authorized representative as Chairman and Local Government and accredited Non Government Organization (NGOs) representatives and COA representative as members.

In cases of confiscated minerals/mineral products that are the subject of court cases, especially those that easily deteriorate like pumice and clay, representations with the proper court shall be made for the immediate disposition thereof through public auction. The proceeds of the sale shall be deposited as the court directs and the same shall be awarded by the latter based on the final court decision. The procedures in handling the sale of confiscated minerals/mineral products through public auction are indicated in Annex 15-A.

Sec. 140. Remittance of Proceeds of Sale. The proceeds of sale of confiscated minerals/mineral products, after deducting all administrative costs related to the confiscation of the minerals/mineral products and their disposition shall be remitted by the Chairman of the CBACMP to the Department either in the form of Cashier's or Manager's check immediately upon receipt of the full payment of the bided mineral products.

Sec. 141. Reporting.

- (a) **Individual Cases/Report Confiscation/seizure/impounding** shall

be reported immediately by the apprehending officer to the District Office/Regional Office within twenty-four (24) hours who shall send a report to the next higher officer. A detailed report by the apprehending officer must be submitted within three (3) days from the date of seizure indicating actions taken thereon. If the confiscation/seizure is made with personnel from the Regional Office, the same procedure shall be followed by a report of the Regional Director concerned to the Director.

(b) Monthly Report

1. A monthly confiscation report shall be submitted by the District Officer/Regional Director together with the status of the confiscated minerals/mineral products; and
2. The Director shall consolidate the monthly confiscation reports of all the Regional Offices and in turn forward the same to Secretary.

(c) Quarterly Report

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

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

Sec. 142. General Provisions. No person shall engage in the trading of minerals/mineral products and by-products either locally or internationally, unless registered with the Department of Trade and Industry and accredited by the Department, with a copy of said registration and accreditation submitted to the Bureau.

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

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

Sec. 143. Scope. This chapter shall include all minerals and ores including construction materials such as raw sand, gravel, wash out pebbles and filling materials, semiprocessed mineral products such as but not limited to rock, concrete aggregates, unpolished decorative stone (such as marble, granite, or limestone), tiles and slabs, metallic ore concentrates/tailings, smelter slags, cathodes, ingots, billets, blooms, unrefined precious metals/bars/bullion and agricultural/industrial lime. Exempted are finished/ manufactured minerals and metal products such as cement, transit mixed concrete, ceramics, polished decorative stone tiles, refined or alloyed metal sheets, wires, bars, beams, plates, refined precious metal bars, jewelry ornaments and other mineral products in their final form or stage ready for consumption by end-users.

Sec. 144. Requirements for Accreditation. The following shall be submitted by the applicants:

- (a) Duly accomplished application form as prescribed in MGB Form No. 16-1;
- (b) Copy of the permit/contract of the suppliers/sources of minerals/mineral products/by-products or copy of Certificate of Accreditation in case the source of materials is a trader, dealer or retailer;
- (c) DTI Registration; and
- (d) Proof of legal source or supply as supported by any of the following documents:
 - 1. Supply contract/agreement with a permit holder/contractor/ accredited dealer producing the specified minerals/mineral products/by-products;
 - 2. Affidavit executed by a permit holder/contractor/ accredited dealer to the effect that he/she is willing or currently selling and will continue to sell or supply the applicant with the minerals/mineral products/by products specified in the application;
 - 3. Delivery or Purchase Receipts issued by a permit holder, Contractor or previously accredited dealer/trader; and
 - 4. Ore Transport Permit (OTP) or Bill of Lading which clearly indicates that the applicant is the consignee of a permittee or a duly accredited dealer/trader/shipper.

Sec. 145. Procedure for Accreditation. The following procedures shall be observed on the issuance of the Certificate of Accreditation:

- (a) Power to issue Certificate of Accreditation - The Regional Director/District Officer who exercises territorial jurisdiction over applicant's business operation shall issue the Certificate;
- (b) Standard Operating Procedure for Processing of Applications;
 - 1. The Regional Office/District Office receives application upon payment of the required fees;
 - 2. The Regional Office/District Office evaluates application and validates supporting documents; and
 - 3. The Regional Director/District Officer, within fifteen (15) days, issues certificates or rejects application based on merits or demerits, respectively;
- (c) The Regional Director/District Officer shall regularly submit lists of accredited processors, traders, dealers and retailers of minerals/mineral products and by-products to the Director.

Sec. 146. Fees. Each applicant shall pay an application and filing fee (Annex 4-A) to the concerned Regional Office/District Office.

Sec. 147. Effectivity of the Certificate of Accreditation. Shipments of minerals/mineral products and by-products by non-accredited traders and other illegal sources shall be apprehended, confiscated and disposed of in accordance with the provisions of Chapter XV of these implementing rules and regulations.

CHAPTER XVII DEVELOPMENT OF MINING COMMUNITIES, SCIENCES AND MINING TECHNOLOGY

Sec. 149. Development of Community and Mining Technology and Geosciences.

- (a) A Contractor shall assist in the development of its mining community to promote the general welfare of its inhabitants (Indigenous Cultural Community and Non-Indigenous Cultural Community) living in the host and neighboring communities;

- (b) The Contractor shall assist in developing mining technology and geoscience as well as the corresponding national pool of manpower talents;
- (c) The Contractor shall incorporate in the mine feasibility study the planned expenditures necessary to implement paragraphs (a) and (b) of this section.

Sec. 150. Credited Activities or Expenditures. The following activities or expenditures shall be considered in enhancing the development of mining and neighboring communities:

- (a) Establishment and maintenance of community schools, hospitals, churches and recreational facilities which will be open to the general public whether or not they are mine employees;
- (b) Construction and maintenance of community access roads, bridges, piers and wharfs;
- (c) Establishment and maintenance of communication, waterworks, sewerage and electric power systems which are accessible to members of the community;
- (d) Development and maintenance of community housing projects which are not for exclusive use of mine employees;
- (e) Establishment of training facilities for manpower development not for the exclusive use of mine employees; and
- (f) Establishment of livelihood industries for the dependents of mine employees as well as for other members of the community.

In addressing the future mine development, the Contractors may involve the concerned communities, Local/National Government or concerned private institutions in the preconstruction and social planning stage.

The following activities or expenditures shall be considered towards the development of mining, geosciences and processing technology and the corresponding national pool of manpower talents:

- (a) Advanced studies conducted in the mine area such as but not limited to institutional and manpower development and basic and applied researches;

- (b) Advanced studies related to mining which are conducted by qualified researchers, as construed in the practices at the Department of Science and Technology, who are not employees of the mine and which shall be published in referred technical journals or monographs accessible to the local scientific community, including the cost of publication;
- (c) Expenditures for scholars, fellows and trainees on mining, geoscience and processing technology and related subjects such as community development and planning, mineral and environmental economics;
- (d) Expenditures on equipment and capital outlay as assistance for developing research and educational institutions which serve as a venue for developing mining, geoscience and processing technology and the corresponding national pool or manpower talents; and
- (e) Other activities that the Director may consider upon proper recommendation by the concerned professional organizations and/or research institutions, where appropriate.

Sec. 151. Development of Host and Neighboring Communities. The Contractor shall perform the following:

- (a) Coordinate with proper authorities in providing development plans for the host and neighboring communities;
- (b) Help create self-sustaining income generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income generating activities are identified to be present within the host and/or neighboring communities, the Contractor shall work with such communities towards the preservation and/or enhancement of such activities; and
- (c) Give preference to Filipino citizens, who have established domicile in the host and neighboring communities, in the hiring of personnel for its mining operations. If necessary skills and expertise are currently not available, the Contractor must immediately prepare and undertake a training and recruitment program at its expense.

Sec. 152. Development of Mining Technology and Geosciences. The Contractor shall, among others, perform the following:

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

Sec. 153. Use of Indigenous Goods, Services and Technologies. To the maximum extent compatible with efficient mining operations, the Contractor shall give preference to products, services, technologies produced and offered in the Philippines of comparable quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use building which can be constructed by using materials and skills available in the Philippines, employ Filipino subcontractors for road construction, and transportation and purchase of Philippine household equipment, furniture and food.

Sec. 154. Donations/Transfer of Facilities. The Contractor shall within one (1) year from the abandonment, cancellation or termination of the agreement, remove all improvements deemed no longer socially usable after consultation with concerned Local Government Unit(s)/ community(s), on the mining premises found on public land(s). Otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper government authorities, national or

local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring communities.

Sec. 155. Hiring of Foreigners for Technical and Specialized Work During Mining Operations. A Contractor or a mineral processing permit holder will be allowed to hire foreigner(s) for technical and specialized work during its mining operations if Filipino citizens with necessary skills and expertise are not available. The foreigner will be required to seek working permits/visa from the government agency concerned and the Contractor must notify the Director of the specific nature of the work and the credentials of such foreigner certifying his/her expertise and must obtain the approval of the Director for such employment: **Provided**, that in no case shall each employment exceed five (5) years or the payback period of the project as stated in the approved original feasibility study, which ever is longer.

Sec. 156. Requirements for Foreigners Employed as Mine Manager, Vice President for Operations or in an Equivalent Managerial Position In-Charge of the Mining Operations. Foreigners employed as specified above shall:

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

CHAPTER XVIII MINE SAFETY AND HEALTH

Sec. 157. Responsibilities of a Contractor/Permittee/ Lessee/Permit Holder and Service Contractor. All Contractors, permittees, lessees, permit holders and service Contractors shall strictly comply with all the rules and regulations embodied under Mines Administrative Order No. MRD 51, Series of 1991, otherwise known as the "Mine Safety Rules and Regulations."

For new technologies/equipment in mining and milling operations which are not covered under the provisions of MRD 51, Series of 1991, the Bureau shall

come up with appropriate rules and regulations to govern the same after due consultation with all parties concerned.

Sec. 158. Accreditation of Service Contractors. No service Contractor shall henceforth be hired by the Contractor/permittee/lessee/permit holder to undertake mining/quarrying operations unless they are duly accredited by the Bureau.

The following are the requirement for accreditation:

- (a) Proof of financial and technical capabilities to undertake safe mining/quarrying operations and related activities showing among others, the names and bio-data of technical men to undertake said activities; and
- (b) Mine safety track record.

Sec. 159. Submission of Safety and Health Program. The Director shall require a Contractor/permittee/ lessee/permit holder/service Contractor to submit a safety and health program covering its area of operation within fifteen (15) days before the start of every calendar year and thereafter, copy furnished the Regional Office, with the following terms and conditions:

- (a) The safety and health program shall include, but not limited to, the following:
 - 1. Standard Operating procedures for mining and milling operation;
 - 2. Management and employee training;
 - 3. Good Housekeeping
 - 4. Health control and services;
 - 5. Provisions for personnel protective equipment, etc; and
 - 6. Monitoring and reporting;
 - 7. Environmental Risk Management including a Disaster Preparedness Program;
 - 8. Occupational Health and Safety Management.
- (b) For the entire duration of the contract period, the Contractor/ permittee/lessee/permit holder shall be responsible in the monitoring of the safety and health program of the service Contractor: **Provided**, that the former shall ensure the compliance of the latter to existing rules and regulations: **Provided, further**, that the safety records of the service Contractor shall be included in the safety record of the Contractor/permittee/lessee/permit holder.

- (c) A Service Contractor shall be required to assign a safety engineer and/or safety inspector if the service area requires close supervision where imminent hazards exist.

Sec. 160. Mine/Quarry Inspection. The Regional Director or his/her duly authorized representative shall have exclusive jurisdiction over the conduct of safety inspection of all installations, surface or underground, in mining/quarrying operations and monitoring of the safety and health program in a manner that will not impede or obstruct work in progress of a Contractor/permittee/lessee/permit holder and shall submit to the Director a quarterly report on their inspection and/or monitoring activities: **Provided**, that the Director reserves the right to undertake safety audit as may be necessary to assess the effectiveness of the safety and health program.

Sec. 161. Registration of Safety Engineer and Safety Inspector. All safety engineers and safety inspectors of a mining/quarrying operations shall be duly registered with the Regional Office and the corresponding permit shall be issued for this purpose (MGB Form Nos. 18-1, 18-2 and 18-3).

Sec. 162. Qualification for Registration as Safety Engineer or Safety Inspector.

a. *For Registration as Safety Engineer*

1. For Permanent Registration

- i.) A duly registered and currently licensed Mining Engineer with at least one (1) year supervisory experience in mining/quarrying operations and/or mine safety work; or
- ii.) A duly registered and currently licensed Engineer, Geologist, or Chemist with at least five (5) years experience in mining/quarrying operations and/or mine safety work.

- 2. For Temporary Registration - Any duly registered and currently licensed Engineer, Geologist, or Chemist with at least two (2) years experience as Safety Inspector preferably in the employ of the company.

b. *For Registration as Safety Inspector.*

1. For Permanent Registration -

- i) A graduate in any engineering, geology, or chemistry course with at least one (1) year experience in safety work or two (2) years experience in mining operations; or
- ii) A college undergraduate in any engineering; geology or chemistry course with at least two (2) years experience in safety work or three (3) years experience in mining operations; or
- iii) At least high school graduate with four (4) years experience in safety work or five (5) years experience in mining operations.

2. For Temporary Registration as Safety Inspector -

- i) A graduate in any engineering, geology, or chemistry course with one (1) year experience in mining operation; or
- ii) A college graduate in any engineering, geology, or chemistry course with at least one (1) year experience in safety work or two (2) years experience ~ mining operation; or
- iii) At least high school graduate with two (2) years experience in safety work or three (3) years experience in mining operation.

Sec. 163. Permit to be Issued Upon Registration. The following requirements shall be accomplished before a permit can be issued:

- (a) Duly filled-up application form, three (3) copies;
- (b) Certified photocopy of college diploma or high school diploma, or pertinent credentials, as the case maybe, three (3) copies;
- (c) Certificate of employment (present and previous), three (3) copies, signed under oath;
- (d) Latest photograph, 2 in. x 2 in., three (3) copies; and
- (e) Registration fees in the amount specified under Annex 4-A.

Sec. 164. Duration/Term of Temporary Safety Engineer/ Inspector Permit. A temporary safety engineer/inspector permit is valid for one (1) year from date of issuance, renewable every year.

Sec. 165. Permit for Electrical/Mechanical Installations. No electrical and/or mechanical installation shall be undertaken inside a mining/quarrying operations compound without a permit issued for the purpose by the Regional Director.

Sec. 166. Applications and Plans.

- (a) Application for such installation shall be filed by the Contractor/ Permit holder or his/her authorized representative with the Regional Office concerned accompanied by plans and specifications;
- (b) Plans shall be prepared in accordance with the provisions of Electrical Engineering Law with respect to electrical installation and of Commonwealth Act No. 294, as amended by R.A. 5336 (Mechanical Engineering Law) with respect to mechanical installation and such plans must conform to the rules and regulations which have been or may be formulated in pursuance of the above mentioned laws; and
- (c) Application for alteration and/or addition of any electrical or mechanical installations shall be filed in the same manner as for a new installation.

Sec. 167. Permits.

- (a) Authority to install shall be issued only after the plans have been cleared and certified to conform with the rules and regulations of the aforementioned laws;
- (b) Upon completion of installation but prior to regular operation, an inspection shall be conducted by the Regional Director or his/her duly authorized representative;
- (c) If upon inspection by the engineers of the Regional Office, the installation is found to be in accordance with the plans and specifications, a written permit good for a period of one (1) year shall be issued; and
- (d) Application for renewal of an electrical/mechanical permit shall be filed by the Contractor/permit holder or his/her authorized

representative with the Regional Office at least thirty (30) days before the expiration date of such permit.

Sec. 168. Charges. The applicant shall bear all expenses in the filed inspection including the cost of transportation of the field inspectors from their official station to the mine/quarry and back. In addition, an inspection fee of One Thousand Pesos (P1,000.00) per man per day is charged to the applicant: **Provided**, that the minimum charge shall not be less than Five Thousand (P5,000.00) Pesos.

Sec. 169. Power to Issue Orders.

- (a) As the need arises, the Regional Director shall require the Contractor/permittee/lessee/permit holder and service Contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with the provisions of MRD No. 51, Series of 1991; and
- (b) The same may summarily suspend the mining/quarrying operations, in case of imminent danger to life or property, until the danger is removed, or appropriate measures are taken by the Contractor/permittee/lessee/permit holder and service Contractor.

Sec. 170. Report of Accidents.

- a. In case of any incident or accident, causing or creating the danger of loss of life or serious physical injuries, the person in charge of operations shall report the same to the Regional Office where the operations are situated within twenty-four (24) hours, copy furnished the Bureau. Failure to report the same without justifiable reason shall be cause for the imposition of administrative sanctions prescribed under MRD No. 51; and
- b. Other Reports. The employer shall furnish the Regional Office and the Bureau the following:
 - 1. Monthly Employer's Report of Accident or Sickness (MGB Form No. 18-4);
 - 2. Monthly General Accident Report (MGB Form No. 18-5); and
 - 3. Minutes of the Central Safety Committee meetings.

Sec. 171. Who Are Entitled to Posses Explosives. A Contractor/ permittee/lessee/permit holder/service Contractor shall have the right to possess and use explosives within its contract area, as may be necessary, for its mining/ quarrying operations upon approval of an application by the Philippine National Police thru recommendation by the Regional Office and endorsement of the Bureau in accordance with MRD No. 51, Series of 1991.

Sec. 172. Batangas Bay Requirements in the Application to Possess and Purchase/Transfer Explosives/Blaster Foreman's License for Mining/ Quarrying Purposes. No application for license to possess and purchase explosives (MGB Form No. 18-6) shall be accepted for filing with the Regional Office unless accompanied by a processing/ application fee in accordance with schedule in Annex 4-A and accompanied by four (4) copies of supporting documents prescribed in Annex 18-A.

Sec. 173. Field Inspection of Proposed Storage Facilities (Magazines) and Verification of Blasting Scheme. Immediately after the filing of application for Purchaser's License, the Regional Director or his/her duly authorized representative shall authorize the conduct of field inspection of specifications of magazines are in accordance with those prescribed under MRD No. 51, Series of 1991 and to verify the proposed blasting scheme(s). The applicant shall bear all expenses in the field verification and the cost of transportation of the field investigators from their Official Station to the mine/quarry site and return.

Sec. 174. License to Possess Explosives (Purchaser's License). An application, after satisfying all the requirements mentioned in these implementing rules and regulations, shall be endorsed by the Bureau to the Philippine National Police for approval.

Sec. 175. Applications For Amendment and Renewal of Purchaser's License.

- (a) Application for amendment of purchaser's license shall be filed in the same manner as for a new purchaser's license; and
- (b) Application for renewal of purchaser's license shall be filed by the holder at least thirty (30) days before the expiration date of such license.

Sec. 176. Right of Inspection. The Director reserves the right to inspect the mine/quarry explosives magazines and audit records of explosive transactions at the expense of the explosive purchaser's license holder and at specified rates as may be deemed necessary: **Provided**, that failure to immediately implement, without justifiable reasons, the recommendation(s) to ensure the proper

safekeeping and maintenance of explosives and its magazines shall cause for the imposition of administrative sanctions prescribed under MRD 51, Series of 1991.

Sec. 177. Submission of Reports by Purchaser's License Holders. Holders of purchaser's licenses shall be required to keep records of daily explosive transactions and regularly submit to the Director a monthly report of explosive transactions in the prescribed (MGB Form No. 18-7) explosive form within (15) days after every calendar month.

Sec. 178. Mine Labor. No person under sixteen (16) years of age shall be employed in any phase of mining operations and no person under eighteen (18) years of age shall be employed underground in a mine.

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

Sec. 179. Mine Supervision. All mining and quarrying operations that employ more than fifty (50) workers shall have at least one licensed mining engineer with at least five years of experience in mining operations, and one registered foreman.

Sec. 180. Coverage of the Magna Carta for Public Health Workers. All personnel of the Bureau, its Regional Offices and other Department Bureaus/Offices particularly the Environmental Management Bureau involved in the actual implementation of mines safety, health and environmental rules and regulations shall be covered and entitled to the allowances and other benefits under R.A. No. 7305, otherwise known as the "Magna Carta of the Public Health Workers". As such automatic funding for this purpose shall be included in the regular budget of the Bureau/Department.

CHAPTER XIX ENVIRONMENTAL PROTECTION

Sec. 181. General Provision. Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Department adopts the policy that mining activities attendant to permits, agreements and leases shall be managed in a technically, financially, socially, culturally and environmentally responsible manner to achieve, generally, the welfare of the country and, particularly, the sustainable development objectives and responsibilities as provided for under these implementing rules and regulations.

Sec. 182. Environmental Protection Objectives. The environmental objectives include the following:

- (a) **Maintenance of sustainable environmental conditions at every stage of the mining operation.** - During every stage of the mining operation as well as after the termination stage thereof, all open pit work areas, underground workplace, mine waste and tailings impoundment system, quarry sites and other mining-disturbed landforms, including those disturbed during mineral exploration shall be periodically rehabilitated to a condition prescribed in the Environmental Compliance Certificate or Environmental Management and Protection Plans.
- (b) **Establishment of a functional post-disturbance land use capability.** - Minesite decommissioning and rehabilitation aim to establish a land use capability that is functional and proximate to the land use prior to the disturbance of the mine area, unless other beneficial land uses and predetermined and agreed in partnership with local communities and local government units.
- (c) **Preservation of downstream freshwater quality;** - The quality of surface and ground water emanating from the exploration or contract/lease area shall be maintained at acceptable levels, as determined from the actual and/or potential downstream water uses.
- (d) **Preservation of sea water quality and natural habitats for marine life; and**
- (e) **Preservation of communities (ICCs/non ICCs) with traditional and/or sustainable management strategies of their natural resources.**

Sec. 183. The Environmental Protection and Enhancement Program (EPEP) and Environmental Work Program (EWP) - Rationale and Coverage. The submission of an Environmental Protection and Enhancement Program (MGB Form No. 19-1) shall be required to provide the operational link between the environmental protection and enhancement commitments under these implementing rules and regulations, the Environmental Compliance Certificate's (ECC) under P.D. 1586 and the Contractors' plan of mining operation, except exploration work where the environmental and social concerns shall be addressed through an Environmental Work Program (MGB Form No. 19-2): **Provided**, however, that submission of the EPEP shall complement and not substitute for the requirement for an Environmental Compliance Certificate.

The EPEP/EWP shall set out the environmental protection, enhancement and rehabilitation commitments for the life-of-mine/exploration period and extend to the completion of rehabilitation of disturbed land in a technically and environmentally competent manner. The program shall be based on practical options and demonstrated practice and should include costing, implementation schedules, system of environmental compliance guarantees, monitoring and reporting provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

Sec. 184. Submission of the EPEP or EWP. The following shall be required to submit an EPEP or EWP:

- (a) Mineral Agreement or FTAA Contractors and other permit holders shall submit, within thirty (30) calendar days after the issuance and receipt of the ECC, an EPEP covering all areas to be affected by mining development, utilization and processing under their contracts. Environmental impact control and rehabilitation activities proposed during the life-of-mine shall be allocated to meet the life-of-mine commitments. Such financial requirements of the EPEP shall be the basis for the lodging of the Mine Rehabilitation Fund;
- (b) Existing MPSA or FTAA Contractors with ECCs, operating miners and quarries may submit, within sixty calendar (60) days from the effectivity of these implementing rules and regulations, an EPEP covering all areas to be affected by mining development, utilization and processing under its contract and/or lease. Environmental impact control and rehabilitation activities proposed during the remaining life-of-mine period shall be costed to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments. Such financial requirements of the EPEP shall be basis for the lodging of the Mine Rehabilitation Fund; and
- (c) Permittees shall submit within sixty (60) calendar days prior to undertaking ground geophysical survey, test pitting, trenching, diamond drilling, shaft sinking, tunnelling and other major earth moving activities, in lieu of an EPEP, an EWP detailing the environmental impact control and rehabilitation activities proposed during the exploration period including the cost to enable sufficient financial resources to be allocated to meet the environmental commitments. A semi-annual status report on the EWP shall be submitted to the Bureau within fifteen (15) days after the end of each semester.

Sec. 185. Annual Environmental Protection and Enhancement PROGRAM (AEPEP). To effectively implement the approved EPEP, an Annual Environmental Protection and Enhancement Program (MGB Form No. 19-3) shall be submitted within thirty (30) days prior to the beginning of every calendar year. Such program shall be based on the approved EPEP and shall be implemented during the year for which it was submitted and to include, but not limited to exploration, development, utilization, rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out areas, waste dumps, tailings covered areas, aquaculture, watershed development and water conservation, and socioeconomic development.

Sec. 186. Processing and Approval of the EPEP and AEPEP. The Contractor shall submit at least seven (7) legible copies of the document to the Mine Rehabilitation Fund (MRF) Committee (described in Sections 196 and 197 of these implementing rules and regulations) thru the Bureau for review. The Contractor shall also provide a copy each to the representatives of concerned Local Government Units and affected communities at least thirty (30) calendar days prior to the intended date of commencement of mining exploration or operation.

Upon receipt of the EPEP and/or AEPEP, the Bureau shall, within thirty (30) working days from receipt thereof, conduct preliminary evaluation on the submitted document as to its form and substance, require additional requirements and documentation deemed necessary and consult with individual experts, Representatives from the Local Government Unit and Local Communities concerned and advisory body(ies) as may be required to clarify proposals and to discuss adequacy of control and rehabilitation measures.

All preliminary evaluations shall be consolidated and forwarded to the members of the MRF Committee for further evaluation and approval/disapproval. Both the EPEP and AEPEP shall be deemed automatically approved, if not acted upon within a period of thirty (30) working days and unless the MRF Committee notifies the Contractors or other permit holders.

Any significant change in the mining plan particularly those on environmental protection, enhancement and rehabilitation programs which in effect entail a variance of minus twenty per centum (-20%) of the approved financial resources shall require a notice of variations to be submitted to the MRF Committee for approval at least thirty working (30) days before the proposed change would come to effect and the conduct of an information dissemination directed to the host and mining communities concerned. Unless the MRF Committee notifies the Contractors or other permit holders within the period of assessment, the variations as submitted is deemed

automatically accepted. The notice of variations shall be subject to the same procedures on public notice, consultation and participation as set forth in the preceding paragraphs.

Sec. 187. Guidelines in the Preparation of EPEP and AEPEP. Guidelines in the preparation of the EPEP and the AEPEP is provided for in Annex 19-A which shall form an integral part of these implementing rules and regulations and is intended to assist the development of project specific environmental management practices.

Sec. 188. Organization of an Environmental Protection and Enhancement Office. All Contractors shall incorporate in their mine organization structures a "Mine Environment Executive Office (MEEO)" which shall set the level of priority and marshall the resources needed to implement environmental management programs. The MEEO shall be responsible for addressing the company's environmental concerns through adequate and sustainable programs.

Sec. 189. Environmental Monitoring and Audit. To ensure and check performance and compliance of the approved AEPEP, a Multipartite Monitoring Team to be formed and headed by Regional Office concerned shall conduct quarterly environmental monitoring of the activities stipulated in the AEPEP and as deemed necessary at the expense of the Contractors/other permit holders. Environmental monitoring reports shall be submitted by the Regional Offices concerned to the Bureau. Said reports will be one of the basis for the annual environmental audit to be conducted by the Bureau and during MRF Committee meetings as discussed in Section 200 hereof.

Sec. 190. Power to Issue Order. The Regional Director in consultation with the Environmental Management Bureau shall require the Contractor/permittee/lessee/permit holder to remedy any practice connected with mining or quarrying operations which is not in accordance with anti-pollution laws and regulations. The Regional Director may summarily suspend mining or quarrying operations in case of imminent danger to the environment, until the danger is removed or appropriate measures are taken by the Contractor/permittee/lessee/permit holder.

Sec. 191. Mines Environmental Award. A Mines Environmental Award will be given to mining company(ies) based on its yearly environmental performance, accomplishments and merits in close coordination with the Environmental Management Bureau. A Committee shall be created for this purpose and shall set the criteria for the award, subject to approval of the Director.

CHAPTER XX ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

Sec. 192. Processing of the Environmental Impact Statement (EIS) and the Project Description (PD). The Environmental Management Bureau (EMB) and the Regional Environmental Management and Protected Areas Sector (EMPAS), as the case may be, and in coordination with the Bureau, shall take primary responsibility for the acceptance, processing, monitoring and evaluation of the Environmental Impact Statements (EISs) and Project Descriptions (PDs). The EMB shall have the authority to recommend to the Secretary any appropriate action on pending applications for an Environmental Compliance Certificate (ECC).

Sec. 193. Environmental Impact Assessment (EIA) Monitoring and Audit. The ECC issued by the Secretary or his/her duly authorized representative to a Contractor/permit holder shall be the basis in the preparation of EPEP and AEPES. The EPEP and AEPES shall be subject to environmental monitoring by the multipartite team described in Section 198 of these implementing rules and regulations and an annual audit by the Bureau.

Sec. 194. Penalties. Mining projects found operating without ECC or mining projects found willfully violating and grossly neglecting to abide by the terms and conditions of the ECC and which causes environmental damage through pollution shall suffer the penalty prescribed in the penal provisions of Department Administrative Order No. 11, Series of 1992 and Department Administrative Order No. 21, Series of 1994 and pertinent environmental laws.

CHAPTER XXI REHABILITATION

Sec. 195. Mine Rehabilitation Fund. A Mine Rehabilitation Fund (MRF) shall be established for each operating Contractor as a reasonable environmental deposit to ensure satisfactory compliance with the commitments/strategies of the EPEP/AEPEP and availability of funds for the performance of the EPEP/AEPEP during specific project phase. The MRF shall be deposited as Trust Fund in a government depository bank and shall be used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation.

The MRF shall be in two forms:

- (a) **Monitoring Trust Fund.** This fund shall be initiated by the Contractor/permit holder and deposited in a mutually acceptable government depository bank for the exclusive use in the monitoring

program approved by the MRF Committee. The program of activities shall be embodied in the EPEP/AEPEP as earlier discussed in Chapter XIX, to be submitted to the MRF Committee thru the Bureau, for consideration and approval.

The Trust Fund shall be in cash and in an amount to be determined by the MRF Committee which shall not be less than the amount of Fifty Thousand Pesos (P50,000.00) to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services and other reasonable expenses incurred by the monitoring team. The Contractor/permit holder shall notify the Chairman or the Co-Chairman of its compliance with the deposit requirement attaching a certification from the bank.

Authorization for the disbursement of said funds shall only be given by the designated representative of both the MRF Committee and the Contractor/permit holder. Replenishment of this amount shall be done monthly to correspond to the expenses incurred by the monitoring team for the month. This amount shall be the subject of review and may be increased as deemed necessary by the MRF Committee based on the expenses incurred in research and monitoring.

- b. Rehabilitation Cash Fund. The Contractor/permit holder shall set up a cash fund for a designated amount to ensure compliance with the approved rehabilitation activities and schedule for specific mining project phase including research programs as defined in the EPEP/AEPEP. The cash fund shall be deposited as Trust Fund in a mutually agreed government depository bank for an amount equivalent to ten per centum (10%) of the total amount needed to implement the EPEP or Five Million Pesos (P5,000,000.00) annually, whichever is lower: **Provided**, however, that said amount shall be deposited in four (4) equal quarterly deposit within fifteen (15) calendar days from the beginning of each quarter.

For the succeeding years, until this Trust Fund is finally terminated and abolished, the aforesaid amounts shall continue to be deposited as Trust Fund as earlier described. Any interests or earnings of the fund shall be made part thereof to comprise and satisfy the total amount required annually. The Contractor/permit holder shall notify the Chairman or the Co-Chairman of its compliance with the deposit requirement attaching a certification from the bank.

The request for withdrawal and disbursement of said amounts by the Contractor/permit holder shall be based on its EPEP/AEPEP to be submitted to the MRF Committee thru the Bureau for consideration and approval.

Sec. 196. The Mine Rehabilitation Fund Committee. There shall be a Mine Rehabilitation Fund (MRF) Committee to be created and which shall have the following duties and liabilities:

- (a) Manage, operate, monitor and look after the safety of the MRF that shall be established and deposited in a government depository bank in accordance with the provisions of these implementing rules and regulations;
- (b) Resolve issue involving mine decommissioning and rehabilitation that will be brought before it;
- (c) Issue decisions on complaints/questions involving the implementation of the mine rehabilitation program;
- (d) Hire credible experts to do independent studies and research regarding the environmental, engineering and sociocultural impacts of the project in order to assist the MRF Committee in making judicious decisions.
- (e) Designate the composition and deputize a Multipartite Monitoring Team to serve as the monitoring arm of the MRF Committee with the concerned Bureau/Regional Office taking the lead role;
- (f) In the maintenance of records and reporting requirements, ensure that the funds are kept separate and distinct from all other MRF's or property belonging to or in custody of the MRF Committee and shall maintain independent and specific book of records for all transactions of the fund per Contractor/permit holder; and
- (g) In the absence of fraud, bad faith or gross-negligence on the part of the MRF Committee or any person acting on its behalf, the MRF Committee shall not be liable for any loss or impairment of the fund arising out or in connection with any act done or performed or caused to be done or performed by the Committee pursuant to the provisions of these implementing rules and regulations.

Sec. 197. Composition of the MRF Committee. The Mine Rehabilitation Fund Committee shall be composed of the following:

- (a) MGB Director as Chairman;
- (b) Environmental Management Bureau (EMB) Director as Co-Chairman;
- (c) Regional Director concerned as Member;
- (d) Representative of the Community from mining contact area as member; and
- (e) Representative of the Contractor/permit holder as member.

In case the Director and/or the EMB Director will not attend any meetings or functions of the MRF Committee, he/she shall designate or appoint a representative duly authorized in writing with full power and authority to act in his/her behalf.

On or before the scheduled regular meetings of the Committee, the multipartite monitoring team shall submit to the Committee a quarterly report on the status and/or result of its monitoring activities.

Sec. 198. Meeting of the MRF Committee. The Committee shall have a regular meeting once every quarter. Unless otherwise modified by the Chairman or, in case of inability of the Chairman, by the Co-Chairman, the regular meeting shall be held on the second Mondays of March, June, September and December. Notices of meeting stating the date, time, place and the agenda shall be sent by the Chairman or Co-Chairman to all members at least ten (10) days before the intended date.

Any member of the MRF Committee may call a special meeting of the Committee as they may deem necessary: **Provided**, that notices of the meeting stating the date, time, place and the agenda shall be sent by the Chairman or Co-Chairman to all members at least fifteen (15) days before the intended date.

In all meetings, the presence of at least four (4) members shall constitute a quorum to conduct business. The meeting shall be presided by the Chairman or in his absence, by the Co-Chairman. In the absence of the Chairman or the Co-Chairman, the meetings shall be presided by either one of their representative. Unless otherwise provided herein, a majority vote of the members present in the meeting shall be required to give effect to any resolutions or decisions of the Committee. The officer presiding the meeting shall not vote in any matter brought before the MRF Committee except in case of a tie.

Sec. 199. Disbursement from the Trust Fund. Withdrawal from the Trust Fund shall be made by the Contractor/permit holder only with the written instruction to the bank issued by the MRF Committee authorizing the Contractor/permit holder to withdraw the amount from the Trust Fund. The amount to be withdrawn shall be in accordance with the EPEP/AEPEP approved by the MRF Committee.

Any one of the following is authorized to issue the instruction to the bank in behalf of the MRF Committee:

- (a) The Chairman;
- (b) The Co-Chairman;
- (c) The designated representative of (a) and (b).

In the event that anyone of the above mentioned named persons shall fail to issue the instruction to the bank after the lapse of thirty (30) days from the time the written request for instruction is received by anyone of the abovenamed persons, the Contractor/permit holder shall have the authority to sign the instruction in behalf of the MRF Committee and to withdraw the amount in accordance with the approved EPEP/AEPEP.

Sec. 200. Final Mine Rehabilitation Plan/Decommissioning. Five (5) years before the final decommissioning of the mineral area, Contractors/permit holders are required to formally inform the MRF Committee of its final mine rehabilitation plan and/or decommissioning including its financial requirements. The plan is subject to evaluation and approval of the MRF Committee. The MRF Committee may call on experts or consultants to assist in resolving questions.

Sec. 201. Suspension/Cancellation of Contracts. Failure of the Contractor/permit holder to post a mine rehabilitation fund in the form of a trust fund is sufficient ground to cancel or suspend the operation of the areas under contracts.

CHAPTER XXII MINE WASTE AND TAILING FEES

Sec. 202. Collection of Fees and Objectives. Mine waste and tailings fees shall be collected semi-annually from each operating mining Contractor/lessee permit holder based on the amounts of mine waste and mill tailings it generated for the said period. The amount of fees collected shall accrue to a reserve fund and shall be deposited in a government depository bank to be used for payment of compensation for damages caused by any mining operations, the direct cause of which are mine waste and tailings. Said fund shall also be utilized for research projects approved by the Evaluation Committee which are deemed necessary for the implementation of these implementing rules and regulations.

Sec. 203. Organization and Fund Administration. For the purpose of administering the reserve fund, Inter-Agency Evaluation Committee shall be created to be composed of the following:

- (a) Director of Mines and Geosciences Bureau (MGB) or his/her duly

- authorized representative (MGB) as Chairman;
- (b) Director of Environmental Management Bureau (EMB) or his/her duly authorized representative as Vice-Chairman;
 - (c) Director of Lands Management Bureau (LMB) or his/her duly authorized representative as member;
 - (d) Director of Forest Management Bureau (FMB) or his/her duly authorized representative as member;
 - (e) Director of Bureau of Soils and Water Management (BSWM) or his/her duly authorized representative as member;
 - (f) Director of Bureau of Plant Industry (BPI) or his/her duly authorized representative as member;
 - (g) Director of Bureau of Fisheries and Aquatic Resources (BFAR) or his/her duly authorized representative as member;
 - (h) Administrator of the National Irrigation Administration (NIA) or his/her duly authorized representative as member; and
 - (i) Assistant Director of Mines and Geosciences Bureau as Executive Committee Coordinator

Sec. 204. Inter-Agency Evaluation Committee Administrative Fund.

The Director shall ensure that adequate budget shall be allocated every year from its regular appropriation to implement the "Mine Waste and Tailings Fees" provisions of these implementing rules and regulations. Funds to be allocated for the Inter-Agency Committee shall include sufficient maintenance and operating budget for actual field and travel expenses needed during mine site inspections, cost of in-house and external trainings, monthly honoraria for members of the Committee, cost of supplies and materials, cost of communication services and adequate capital outlay for the purchase of required photocopying machines, computers, microfiche machines, and other support equipment.

Sec. 205. Duties and Responsibilities of the Evaluation Committee.

The Evaluation Committee, which shall hold monthly meetings or special meetings when deemed necessary, shall have the following duties and responsibilities:

- (a) Evaluates and decides on all applications for compensation for damages and awards compensations therefor;

- (b) Implements duly approved guidelines, rules, and regulations;
- (c) Prescribes documentary requirements for applications for compensation for damages;
- (d) Formulates policy recommendations to strengthen the provisions of these implementing rules and regulations for consideration of the Secretary;
- (e) Appoints and/or designates members of the Technical Working Group and Regional Investigation and Assessment Teams for the effective implementation of these implementing rules and regulations and exercise general supervision over them;
- (f) Provides appropriate funds for the development and implementation of research and other special projects which it deems necessary in promoting the objectives of these implementing rules and regulations;
- (g) Recommends to the Secretary the granting of allowances to officials and personnel performing functions and duties relative to the effective implementation of these implementing rules and regulations; and,
- (h) Performs other functions as may be assigned by the Secretary.

Sec. 206. Technical Working Group and Regional Investigation and Assessment Teams. To assist the Evaluation Committee, there shall be a Technical Working Group (TWG) to be created by the Bureau. The Regional Investigation and Assessment Teams (RIAT), which shall be composed of representatives from the Regional Offices and other member agencies when their services are deemed needed, shall also be created. The RIAT shall be headed by the Regional Director.

The functions of the TWG are as follows:

- (a) Receives, processes, evaluates, and conducts preliminary investigations, if necessary, of claims for damages and submit appropriate recommendations to the Committee;
- (b) Develops, packages, and recommends research and other special projects;
- (c) Prepares costings for the rehabilitation of damaged commercial, agricultural, industrial and residential lands;

- (d) Determines/estimates the cost of rehabilitating damaged industrial, commercial, residential, and agricultural lands caused primarily by mine waste and tailings;
- (e) Acts as secretariat to the Committee;
- (f) Coordinates and monitors the activities of the Regional Investigation and Assessment Teams, and other personnel involved in the implementation of these implementing rules and regulations;
- (g) Verifies the amounts of mine waste and mill tailings generated by mining companies;
- (h) Computes and collects the mine waste and tailings fees to be paid by mining companies;
- (i) Drafts guidelines, rules and regulations, resolutions and other documents in connection with the implementation of these implementing rules and regulations;
- (j) Assists in the investigation and assessment of claims for damages and submits appropriate recommendations to the Committee;
- (k) Handles administrative functions specially on finance and budget; and
- (l) Performs other functions as may be assigned by the Committee.

The functions of the RIAT are as follows:

- (a) Provides advice to interested parties on matters relative to the implementation of these implementing rules and regulations;
- (b) Provides applications and other related forms to prospective claimants for damages;
- (c) Receives applications for compensation for damages under these implementing rules and regulations;
- (d) Conducts field investigations and assessments of claims for damages (MGB Form No. 22-1) and submits reports to the Committee, thru the TWG; and
- (e) Committee Chairman.

Sec. 207. Mine Waste and Tailings Fees (MTF). Basic fees shall be P0.05/MT of mine waste produced and P0.10/MT of mill tailings generated. The Secretary is authorized to increase the said fees when public interest so requires, upon the recommendation of the Director. Mine waste and tailings utilized for the following are exempted from payment of fees:

- (a) Filling materials for underground mine openings;
- (b) Filling materials for surface mine openings: **Provided**, that such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- (c) Filling materials for engineered tailings dams, roads, and housing areas: **Provided, further**, that such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative;
- (d) Concreting and manufacture of concrete products; and
- (e) Mine waste impounded for future use: **Provided, however**, that a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: **Provided, further**, that said materials shall be utilized for its beneficial use within a period of two (2) years. Mine waste, which are not utilized within the two-year period, shall be charged the corresponding fee of P0.05/MT. Non-submission of the work program shall mean disqualification from exemption from payment of fees.

Sec. 208. Payment of Mine Waste and Tailings Fees Due. Mine waste and tailings fees (MWTF) shall be payable to the Bureau within forty-five (45) calendar days after the end of each semester. They shall be based on the submitted semiannual report under oath (MGB Form No. 22-1) by each operating mining Contractor/lessee/permit holder stating among others the following:

- (a) The amounts of mine waste and tailings produced, stored/impounded or the amounts of materials that were exempted from payment of fees; and
- (b) The manner for which these materials were utilized.

Mine Contractors/permit holder with no mine waste nor mill tailings generated shall likewise submit sworn semiannual reports stating that for the said period no such materials were generated from their operation.

Sec. 209. Application for Compensation for Damages. Compensable damages are those damages caused by mine waste and tailings incurred on lives and personal safety; lands, agricultural crops and forest products, marine life and aquatic resources, cultural and human resources; and infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing areas.

The following are qualified to apply for compensation in accordance with damages incurred:

- (a) Any individual whose lives and personal safety incurred damages;
- (b) Any private owner of damaged infrastructures, forest products, marine, aquatic and inland resources;
- (c) Any applicant or successor-in-interest for damages to private lands who holds title or any evidence of ownership;
- (d) Any applicant or successor-in-interest for damages to alienable and disposable lands; and
- (e) Any agricultural lessors, lessees and share tenants for the damages to crops.

Application for compensation for damages under these implementing rules and regulations shall be filed in a prescribed application form (MGB Form No. 22-2) with the Regional Investigation and Assessment Teams within thirty (30) calendar days from the occurrence of the damage.

Applications should be supported by the following documents:

- (a) Proof of ownership such as tax declaration, perfected land titles, homestead and free patent. It should be understood, however, that tax declaration shall be honored as proof of ownership only for the purposes of compensation under these implementing rules and regulations;
- (b) Receipt of expenditures for improvements made in the affected property/ies; and
- (c) Other requirements that may be required by the Committee.

Sec. 210. Evaluation and Compensation of Claims for Damages. The following guidelines shall apply in the evaluation of claims for damages under these implementing rules and regulations:

- (a) Amounts paid as compensation for claims for damages under these implementing rules and regulations shall be drawn from the mine waste and tailings fees collected from a Contractor(s)/permit holder(s) or Contractors, as may be determined by the Committee: **Provided**, that in case the assessed amount of damage exceeds the MWTF paid for, the concerned Contractor(s) shall be duty bound to pay for the remaining balance;
- (b) Damages to lives and personal safety shall be compensated at an amount as provided for under pertinent laws;
- (c) Damages caused to agricultural lands which render such lands useless for the traditional purpose for which it was intended, may be compensated at an amount equivalent to either one of the following:
 - 1. The fair market value of the lands as per tax declaration: **Provided, however**, that a quit claim/waiver to any future claims for compensation for damages shall be executed by the claimant/owner before payment which shall be valid only for the duration of the disturbance equivalent to five (5) years; or
 - 2. The cost of rehabilitation of the land;
- (d) Damages to agricultural lands resulting in partial loss of productivity may be compensated at an amount equivalent to the costs of rehabilitation;
- (e) Damages to industrial and residential lands may be compensated at an amount equivalent to the costs of rehabilitation;
- (f) Damages resulting in total or partial loss of agricultural crops, forest products, and/or inland aquatic resources may be compensated at an amount equivalent to the loss of projected net income therefrom;
- (g) Damages to infrastructures may be compensated at an amount equivalent to the costs of rehabilitation to be determined by the Committee;

- (h) The amount of compensation for damages shall be based on the amount claimed or the amount assessed, whichever is lower;
- (i) In case of private leased lands, compensation under these implementing rules and regulations shall be paid in accordance with the sharing agreement between the private landowner and the lessee/s. In the absence of such an agreement, compensations shall be divided on the following scheme:
 1. Seventy-five percent (75%) for tenants and twenty-five percent (25%) for landowners for rice and corn; and
 2. Fifty percent (50%) for tenants and fifty percent (50%) for landowners for crops other than rice and corn.
- (j) Damages compensated by the operating mining company/ies shall no longer be considered compensable under these implementing rules and regulations: **Provided**, that written approval has been secured from the Evaluation Committee and such payment shall be credited to the concerned Contractor for the next paying period. Waiver signed as a condition of payment for such compensation by mining Contractors shall also be considered as a waiver under these implementing rules and regulations; and
- (k) The decision of the Evaluation Committee shall be final and executory unless appealed to the Secretary within thirty (30) days from receipt of the decision.

Sec. 211. Penalty. Non-submission of semiannual reports shall mean non-availment of the exemption from payment of mine waste and tailings fees and a penalty of P5,000.00. Mining Contractors/permit holders, which are found to have discharged their generated tailings in natural drainage systems, shall be subject to suspension of their contract/permit.

Failure to comply with payments of the above fees shall mean a 10% surcharge on the principal amount for every month of delay.

Mine waste and tailings generated, which were previously requested for exemption from payment of fees but were denied based on the verification report, shall transmit payments to the Bureau within ninety (90) calendar days upon receipt of notice. Failure to comply on the said provision shall mean 10% surcharge on the principal amount for every month of delay.

CHAPTER XXIII SURFACE RIGHTS

Sec. 212. Easement Rights. When mining areas are so situated that for purposes of more convenient operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructures as roads, railroads, mills, waste dump sites, tailings ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for waterwells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels or mills, the Contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

As to the payment of just compensation mentioned in the preceding paragraph the amount thereof shall be first agreed upon by the parties. In case of disagreement, the matter shall be brought before the Panel of Arbitrators.

Sec. 213. Entry Into Lands. The holder(s) of mining right(s) shall not be prevented from entry into their contract/mining area(s) for the purpose of mineral exploration, development, and utilization: **Provided**, however, that written notification(s) at their registered addresses were sent to and duly received by the surface owner(s) of the land(s), occupant(s) and concessionaire(s) thereof.

If the surface owner(s) of the land, occupant(s) or concessionaire(s) thereof cannot be found, the permittee, Contractor or concessionaire shall notify the concerned Regional Director, copy furnished the local officials concerned in case of private land or in case of concessionaires, the government agency concerned, attaching thereto a copy of the written notification and a written declaration under oath by the holders of mining rights that he had exerted effort to search such surface owner(s)/occupant(s)/concessionaire(s). Such notice(s) to the Regional Director shall be deemed notice(s) to the surface owner(s) and concessionaire(s).

In cases where the surface owner(s) of the land(s), occupant(s) or concessionaire(s) thereof refuse(s) to allow the permittee/Contractor/permit holder entry into the land(s) despite its/their receipt(s) of the written notification(s) or refuse(s) to receive said written notification(s), the permittee/Contractor/permit holder shall bring the matter before the panel of Arbitrators for proper disposition.

Sec. 214. Posting of a Bond. In all cases mentioned in Section 213 above, the permittee, permit holder or Contractor shall post a cash or surety bond from an accredited surety with the Regional Office concerned. The amount of the bond shall be agreed upon by the parties. In case of disagreement, it shall be determined and approved by the Regional Director in areas outside government reservations, and the Director in areas within government reservations, based on

the (1) type of the land and the (2) value of the trees, plants and other existing improvements thereto.

Sec. 215. Compensation of the Surface Owner and Occupant. Any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of the mining operations shall be properly and justly compensated.

Such compensation shall be based on the agreement entered into between the holder of mining rights and the surface owner, occupant or concessionaire.

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

Sec. 216. Voluntary Agreement. A voluntary agreement between a surface owner, occupant and concessionaire permitting holders of mining rights to enter into and use its land for mining purposes shall be registered with the concerned Regional Office. The said agreement shall be binding upon the parties, their heirs, successors and assigns.

CHAPTER XXIV CONFLICTS/ADVERSE CLAIMS/OPPOSITIONS

Sec. 217. Creation of Panel of Arbitrators. There shall be a Panel of Arbitrators in the Legal Staff of the Regional Office composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one (1) licensed mining engineer or a professional in a related field, all duly designated by the Secretary as recommended by the Director. Those designated as members of the Panel shall serve as such in addition to their work in the Department without additional compensation. The Regional Office shall provide administrative support and structure to the Panel of Arbitrators.

The Panel of Arbitrators shall promulgate its own rules and regulations governing the litigation and disposition of cases.

Sec. 218. Jurisdiction of Panel of Arbitrators. The Panel of Arbitrators shall have exclusive and original jurisdiction to hear and decide on the following:

- (a) Disputes involving rights to mining areas;
- (b) Disputes involving mineral agreements or permits;
- (c) Disputes involving surface owners, occupants, and claimholders/concessionaires; and

- (d) Disputes pending before the Regional Office and the Department at the date of the effectivity of the Act.

Sec. 219. Filing of Adverse Claims/Conflicts/ Oppositions. Notwithstanding the provisions of Sections 28, 43 and 57 above, any adverse claim, protest or opposition specified in said Sections may also be filed directly with the Panel of Arbitrators within the concerned periods for filing such claim, protest or opposition as specified in said Sections.

Sec. 220. Substantial Requirements for Adverse Claims, Protests and Oppositions. No adverse claim, protest or any other kind of opposition involving mining rights shall be accepted for filing unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail.

Likewise, no adverse claim, protest or opposition shall be entertained unless it contains the names and addresses of the adverse party, protestant, oppositor and the respondent and their respective counsels, if any; a detailed statement of the facts relied upon; the grounds for adverse claim, protest or opposition; and an exhaustive discussion of the issues and arguments raised; together with all supporting plans, documents, data and other documentary evidences and affidavits of all witnesses.

Sec. 221. Due Course. If the Panel of Arbitrators finds that the adverse claim, protest or opposition contains a cause of action and is sufficient in form and substance, it shall give due course thereto by requiring the respondent to answer within a period which shall be fixed by the Panel: **Provided**, however, that said period shall not be less than five (5) or more than fifteen (15) days from receipt of the summons.

Sec. 222. Answer. Such answer shall likewise contain a detailed statement of the facts relied upon by the respondent, an exhaustive rebuttal or refutation of the issues and arguments raised in the adverse claim, protest, or opposition, and all the affirmative defenses that he/she may like to raise and may be accompanied by all supporting documentary evidence and affidavits of all witnesses.

In the answers, any counter-adverse claim, counter-protest, or counter-opposition, if any, must be incorporated otherwise, it shall be barred: **Provided**, that it must comply with all the formal requirements of an adverse claim, protest or opposition. The adverse claimant, protestant or oppositor shall have fifteen (15) days from receipt of the counter-adverse claim, counter-protest or counter-opposition within which to answer the same. Failure to file the answer shall not prevent the filing of a counter-adverse claim, counter-protest, or counter-opposition.

Sec. 223. Preliminary Conference/Compromise Agreement. Upon receipt of the answer to the complaint/protest and/or answer to the counter-adverse claim, counter protest, or counter-opposition, the issues are considered joined.

The Panel shall summon the parties to a conference for the purpose of amicably settling the case upon a fair compromise or determining the real parties in interest, defining and simplifying the issues in the case, entering into admissions and/or stipulation of facts, and threshing out all other preliminary matters.

The summons shall specify the date, time and place of the preliminary conference.

Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any, before the Panel. The settlement shall be approved by the Panel after being satisfied that it was voluntarily entered into by the parties and after having explained to them the terms and consequences thereof.

A compromise agreement entered into by the parties not in the presence of the Panel before whom the case is pending shall be approved if, after confronting the parties, particularly the complainants, it is satisfied that they understand the terms and conditions of the settlement and that it was entered into freely and voluntarily by them and the agreement is not contrary to law, morals, public order and public policy.

A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and the Order approving it shall have the effect of a judgement rendered by the Panel in the final disposition of the case.

Sec. 224. Hearing. Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conference, the Panel shall issue an Order requiring the parties to attend the hearing, as scheduled in the aforesaid Order.

Such hearing shall be conducted as much as possible in one sitting or in a number of successive sessions which, to the greatest extent possible, shall be conducted and completed within fifteen (15) days.

Sec. 225. Period to Decide the Case. The Panel shall render its decision within thirty (30) working days after the submission of the case by the parties for decision.

Sec. 226. Execution and Finality of Decision. The decision of the Panel of Arbitrators shall become final and executory after the lapse of fifteen (15) days from the receipt of the notice of decision by the aggrieved party, unless the latter appeals to the Mines Adjudication Board within the same period, by filing a notice of appeal with the Panel of Arbitrators and paying the prescribed appeal fee (Annex 4-A) to the concerned Regional Office. The receipt of payment shall be attached to the records of the case.

The concerned Panel of Arbitrators shall transmit such notice together with the records of the case within five (5) days to the Mines Adjudication Board.

Sec. 227. Proceedings Before the Panel. The proceedings before the Panel shall comply substantially with the requirements of due process. The Panel may avail itself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

Sec. 228. Postponement of Hearings. The parties and their counsels or representative(s) appearing before the Panel shall be prepared for continuous hearing. Postponements of hearing shall be allowed by the Panel only upon meritorious grounds and subject always to the requirement of expeditious disposition of cases. In the event of such postponements, the Panel shall set two or more successive dates of hearing in advance.

Sec. 229. Priority for First Applicant in Conflict of Claims. Whenever there is any conflict between two or more applicants over the contract/mining area, the applicant who first filed and registered his application with the Mines Regional Office concerned, shall be preferred in the processing of said application: **Provided**, that such preferred applicant is qualified to acquire mining rights as provided for under the Act and under these implementing rules and regulations and has paid the required filing and application fees and that the area ought to be registered is free and open for registration; **Provided, further**, that in case such applicant is represented by an agent or attorney-in-fact, the power of attorney in writing shall be recorded with the proper Regional Office on or before the registration of the corresponding mining rights: **Provided, finally**, that if such authority is given in the articles of Partnership/Incorporation, such Articles shall likewise be recorded with the Regional Office concerned.

CHAPTER XXV MINES ADJUDICATION BOARD/APPEALS

Sec. 230. Mines Adjudication Board. There shall be a Mines Adjudication Board composed of three (3) members. The Secretary shall be the Chairman with the Director of the Bureau and Undersecretary for Field Operations

of the department as members thereof. The Board shall promulgate its own internal rules and regulations governing its administration and disposition of appealed cases.

Sec. 231. Secretariat. The Bureau shall act as the Secretariat of the Board and shall be provided with permanent and full time administrative support with sufficient funding in its annual budget appropriation.

Sec. 232. Period to Resolve Appeal. The Board shall resolve the appeal within thirty (30) days from submission of the case by the parties for decision.

Sec. 233. Petition for Review by Certiorari. The decision of the Board may be reviewed by filing a petition for review with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

CHAPTER XXVI GOVERNMENT SHARE IN MINERAL AGREEMENTS/FTAAs

Sec. 234. Government Share in Mineral Production Sharing Agreement. The total Government share in a mineral production sharing agreement shall be the excise tax on mineral products as provided for in R.A. No. 7729, amending Section 151(a) of the National Internal Revenue Code, as amended.

For mineral production sharing agreements, other mining agreements or FTAA within the mineral reservations, the Government share shall be in addition to the royalties payable to the Government.

Sec. 235. Government Share in Other Mining Agreements. The share of the Government in co-production and joint venture shall be negotiated by the Government and the Contractor taking into consideration: (a) capital investment in the project, (b) risks involved, (c) contribution of the project to the economy, and (d) other factors that will provide for a fair and equitable sharing between the parties.

The Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among things, the Contractor's income tax, excise tax, special allowance, withholding tax due from the Contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.

Sec. 236. Government Share in FTAA. The Government share in a financial or technical assistance agreement shall consist of, among others things, the Contractor's corporate income tax, excise tax, special allowance, withholding tax due from the Contractor's foreign stockholder in case of a foreign owned

corporation and all such other taxes, duties and fees as provided for under existing laws.

The Government share in an FTAA shall be negotiated by the government and the Contractor taking into consideration: (a) capital investment of the project (b) risks involved (c) contribution of the project to the economy (d) technical complexity of the project and (e) other factors that will provide for a fair and equitable sharing between the parties.

The collection of Government share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five years or until the date of actual recovery, whichever comes earlier. For clarification, the Government's entitlement to its share shall commence after the FTAA Contractor has fully recovered its pre-operating, exploration and development stage expenses, inclusive and the Contractor's obligations under Chapter XXVII of the rules and regulations do not arise until this time.

Sec. 237. Place and Manner of Payment and Allocation of Government Share. The Government share in a mineral agreement and FTAA as provided for in Sections 234, 235 and 236 hereof, shall be paid to the nearest Bureau of Internal Revenue (BIR) office where the mining contract area is located and in accordance with existing BIR rules and regulations.

The Government share in mining operations within mineral reservations shall be paid directly to the Bureau in addition to the royalty provided for in Section 23 hereof. The share of the Bureau from this royalty shall be paid separately and directly to the Bureau.

The Government share shall be allocated in accordance with Sections 290 and 292 of R.A. No. 7160 otherwise known as the "Local Government Code of 1991." In case the development and utilization of mineral resources is undertaken by a government-owned or controlled corporation, the sharing and allocation shall be in accordance with Sections 291 and 292 of the said Code.

CHAPTER XXVII TAXES AND FEES

Sec. 238. Taxes.

- (a) **Income Tax.** - After the lapse of the income tax holiday, as provided for in the Omnibus Investment Code of 1987, as amended, the Contractor shall pay income tax provided for in the National Internal

Revenue Code, as amended.

(b) **Excise Tax on Mineral Products** - The Contractor shall pay the excise tax on mineral products as provided for under Section 151 of the National Internal Revenue Code, as amended in accordance with the following:

1. On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax in the case of importation in accordance with following schedule:

i) For Copper and other metallic minerals except gold and chromite -

Period of Production	Excise Tax Rate
June 24, 1994 - June 23, 1997	1.0%
June 24, 1997 - June 23, 1999	1.5%
June 24, 1999 and onwards	2.0%

ii) Gold and chromite - a tax of two percent (2%).

2. On all non-metallic minerals and quarry resources, a tax of 2% based on the actual market value of the annual gross output thereof at the time of removal, in case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax in the case of importation.

Sec. 239. Occupation Fees. There shall be collected from any Contractor or permittee on public or private lands, an annual occupation fee in accordance with the following schedule:

(a) For areas outside mineral reservation -

1. Exploration permit - Five (5.00) pesos per hectare or fraction thereof per annum;
2. Mineral agreements and FTAA - Fifty (50.00) pesos per hectare or fraction thereof per annum; and

(b) For mineral reservation areas :

1. Exploration permits, mineral agreements and FTAA - One hundred (100.00) pesos per hectare or fraction thereof per annum.

The Secretary is authorized to increase the occupation fees provided herein when the public interest so requires, upon recommendation of the Director.

Sec. 240. Manner and Place of Payment of Occupation Fees. The occupation fees shall be paid on the date the mineral agreement/FTAA is registered with the appropriate office and on the same date every year thereafter. It shall be paid to the Treasurer of the municipality or city where the onshore mining areas are located, or to the Bureau in case of offshore mining areas. For this purpose, the appropriate officer, (the Director for FTAA's or the Regional Director for mineral agreements) shall submit to the Treasurer of the municipality or city where the onshore mining area is located, a complete list of all onshore mining rights registered with his/her office, indicating therewith the names of the holders, area covered in hectares, name of municipality or city and its provincial location, and date of registration. If the fee is not paid on the date specified, the Contractor shall pay a surcharge of twenty-five per centum (25%) of the amount due in addition to the occupation fees.

If applied area lies on several municipalities, the Director in the case of mineral reservations or the Regional Director in the case of areas outside mineral reservations shall determine the amount to be paid by the Contractor based on official maps available in the respective offices and endorses the same to the Municipal/City Treasurer concerned. If disagreements arise from this payment later, the Provincial Governor shall decide on the proportionate amount to be paid to the municipalities.

Sec. 241. Allocation of Occupation Fees. Thirty per centum (30%) of all occupational fees collected from permittee/Contractor in onshore mining areas shall accrue to the province and seventy per centum (70%) to the municipality where the onshore mining areas are located. In a chartered city, the full amount shall accrue to the city concerned.

Sec. 242. Other Fees and Charges. Filing fees and other charges for services rendered by the Bureau and/or its Regional Office shall be payable in accordance with the fees and charges in Annex 4-A.

CHAPTER XXVIII INCENTIVES

Sec. 243. Incentives Availment To Contractors and Permittees.

Investment incentives granted under Executive Order No. 226 (EO 226), as amended, and otherwise known as the "Omnibus Investment Code of 1987," the Act and other laws shall be made available to Contractors/permittees subject to their compliance with the provisions and implementing rules and regulations of said laws. However, fiscal and non-fiscal incentives sought to be availed of shall require prior approval from the agency administering the incentives.

The incentives granted under Sections 91, 92 and 93 in Chapter XVI of the Act are additional incentives aside from those available under the Omnibus Investment Code of 1987, as amended. They are available to all Contractors in mineral agreements or FTAA's only to the extent in which they are engaged in activities covered by their respective agreements.

Sec. 244. Availment of Incentives Under EO 226, As Amended.

Contractors can avail of fiscal and non-fiscal incentives granted under EO 226, as amended, subject to their registration with the Board of Investments (BOI) and compliance with requirements provided for by the order and its rules and regulations. Holders of exploration permits registered with BOI can also avail of fiscal incentives under EO 226, as amended, but only for the duration of the permits or effectivity of EO 226 as amended, whichever comes first. BOI registration and enjoyment of incentives under said registration shall be governed by the Investment Priorities Plan subject to the provisions of EO 226, as amended, applicable rules and regulations and future amendments thereof. The incentives availed of under EO 226 shall be administered by BOI.

No entitlement to any incentive under EO 226 shall accrue to any Contractor prior to the date of approval of its mineral agreement, or FTAA and/or date of BOI registration, as the case may warrant in the latter.

All mining activities shall always be included in BOI's listing of Investment Priorities Plans.

Sec. 245. Availment of Incentives for Pollution Control Devices.

Pollution control and infrastructure devices as herein defined which were acquired, constructed or installed by Contractors shall not be considered as improvements on the land or building where they are placed, and as such, shall not be subject to real property and other taxes or assessments.

The Contractor shall avail of this incentive in writing to the Director supported by a sworn report containing a detailed list of such devices and infrastructure together with relevant maps or diagrams indicating their location and use in the operations. Such report shall include the acquisition and installation cost of the devices or infrastructure, the corresponding amount of tax exemption availed of by the Contractor. If such devices and infrastructure, after evaluation by the Bureau, were found necessary and appropriate for the operations, only the Director shall issue a Certificate of Tax-Exemption covering the declared devices and infrastructures for the purpose of availing of exemption from local government taxes and assessment. The Director or its representative shall monitor the utilization of these devices and infrastructures in relation to the Contractor's operation to ascertain that such are used for pollution control purposes.

A separate guideline on how to implement this Section shall be prepared by the Bureau.

Sec. 246. Availment of Incentive For Income Tax-Carry Forward of Losses. A net operating loss without the benefit of income tax-accelerated depreciation incurred in any year during the first ten (10) years of the Contractor's operation may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss: **Provided**, that the net operating loss shall be deducted from the taxable income derived from the activity covered by the mineral agreement or FTAA.

Losses incurred in activities other than those pertinent to mining operations cannot be carried over. Only such losses attributable to mining operations covered by the mineral agreement or FTAA, incurred after the approval of the mineral agreement or FTAA and within the ten-year period from date of commercial operation of activity covered by such agreement shall be considered for purposes of availment of incentives on income tax carry forward of losses.

Applications for availment of the incentive on income tax carry forward of losses shall be filed with the Bureau within one (1) month from date of filing with the Bureau of Internal Revenue of the Income Tax Return where net operating loss was deducted.

The following documentary requirements relative to the application for the availment of this incentive should be submitted to the Director:

- (a) Two (2) copies of Audited Financial Statement (AFS) and Income Tax Return (ITR) for the year the net operating loss was incurred;
- (b) Two copies of the AFS and ITR for the year the net operating loss was partially deducted or statement of projected income for the current year (duly certified by an external auditor) from which the net operating loss may be deducted;
- (c) If the Contractor is engaged in an activity other than that covered by the mineral agreement or FTAA, the income statement must be aggregated per activity and duly certified by an external auditor; and
- (d) Sworn statement issued by the Contractor as to the start of commercial operation of the activity applied for the incentive on income tax-carry forward of losses.

Late filing of application for availment of the incentive on income tax-carry forward of losses shall incur a basic fine of 1/2 percent of the amount of the net operating loss to be carried over to applicable taxable year as provided under Section 92 of the Act plus a daily fine of Five (5) Pesos but not to exceed One Hundred Thousand Pesos (P100,000) which shall be paid to the Bureau.

The net operating loss referred to in this Section shall be computed in accordance with the provisions of the National Internal Revenue Code. The ten (10) year period prescribed herein shall be counted from the first year of commercial operation in the activity covered by the mineral agreement or FTAA. The computation of net operating loss shall be subject to post audit by the Bureau of Internal Revenue.

Sec. 247. Availment of Incentive For Income Tax-Accelerated Depreciation. At the option of the Contractor and in accordance with procedure established by the Bureau of Internal Revenue, fixed assets may be depreciated at the rates authorized under Section 93 of the Act. Fixed assets refer to assets subject to depreciation under the National Internal Revenue Code.

Contractors shall avail of this incentive in writing to the Director accompanied by a sworn report containing detailed list of the fixed assets relevant to the Contractor's operation together with relevant maps and diagrams indicating the location and names of the assets. Such report shall include the applicable book value, expected life in years, depreciation schedule and the fixed asset's use in the Contractor's operation.

This incentives may also be availed of for fixed assets acquired before the date of the approval/conclusion of the mineral agreement or FTAA, but only to the undepreciated portion of the fixed assets.

As provided for under Section 93 of the Act, fixed assets may be depreciated as follows:

- (a) To the extent of not more than twice as fast as the normal rate of depreciation if the expected life is ten (10) years or less; or
- (b) Depreciated over any number of years between five (5) years and the expected life if the latter is more that ten (10) years, and the depreciation thereon allowed as a deduction from taxable income: provided, that the Contractor notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this Section will be used.

In computing taxable income, the Contractor may at his/her option, deduct exploration and development expenditures accumulated at cost as of the date of the exploration permit as well as exploration and development expenditures paid or incurred during the taxable year: **Provided**, that the total amount deductible for exploration and development expenditures shall not exceed twenty-five per centum (25%) of the net income from mining operations. The actual operation shall be carried forward to the succeeding years until fully deducted.

Net income from mining operations is defined as gross income from operations less allowable deduction which are necessary or related to mining operations. Allowable deductions shall include mining, milling and marketing expenses, depreciation of properties directly used in the mining operations: **Provided**, that such other deductions allowed by the BIR can also be deducted to arrived at the net income. This paragraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowances for depreciation.

Either of the following methods shall apply in the treatment of income tax accelerated depreciation in the income statement:

- (a) Accelerated depreciation charges may be shown as among the expense items to be deducted from the net income; or
- (b) depreciation expenses at normal life of the assets may be shown as among the expenses items to be deducted from the net income. The accelerated depreciation would be made only in the adjustment of

the taxable income for income computation as an additional expenses.

Sec. 248. Simultaneous Availment of Incentives Under EO 226 And Additional Incentives Under The Act. The Contractor may avail of either the incentive on Income Tax-Carry Forward of Losses under Section 92 of the Act or the Income Tax holiday provided under EO 226, as amended. If the Contractor opts to avail of the Income Tax Holiday incentive under its BOI registration, if and when applicable, then the incentive on Income Tax Carry Forward of Losses under the Act should not be granted to him/her and vice versa. It should then be a choice between Income Tax Holiday or Income Tax-Carry Forward of Losses, with the choice of the first availment governing the succeeding availments. There shall be no switching of these two incentives within the entire prescribed period within which the Contractor is entitled to such incentives.

In availing of the Income Tax Holiday incentive under EO 226, as amended, the Contractor shall submit to the BOI a certification from the Director that the Contractor has never availed of the incentives on Income Tax-Carry Forward of losses under the Act during the Term of the mineral agreement or FTAA. In the same light, Contractors availing of the incentive on Income Tax-Carry Forward of Losses shall submit a certification from the BOI that the Contractor has never availed of the Income Tax holiday incentive under EO 226, as amended during the duration of the mineral agreement or FTAA.

Incentives on Income Tax Accelerated Depreciation provided under Section 93 of the act may be availed of simultaneously with the Income Tax Holiday provided under the BOI registration.

Sec. 249. Conditions For Availment of Incentives. The Contractor's right to avail of incentives under Sections 244 to 248, shall be subject to the following conditions:

- (a) **Compliance with obligations.** - The Contractor shall observe and abide by the provisions of the Act and its implementing rules and regulations, and take adequate measures to ensure that its obligations thereunder are faithfully discharged;
- (b) **Compliance with directives.** - The Contractor shall comply with the directives and instructions which the Bureau may issue from time to time in pursuance of its authority under the law;
- (c) **Visitorial powers.** - The Contractor shall allow the duly authorized representatives of the Bureau to inspect and examine its books of

accounts and other pertinent records and documents to ascertain compliance with the Act and its implementing rules and regulations, and the terms and conditions of the mineral agreement or FTAA;

- (d) **Delinquent Contractors.** - No availment of incentives may be allowed to a Contractor delinquent in compliance with any of the terms and conditions of the mineral agreement or FTAA and/or with the terms and conditions of registration with BOI as the case may warrant, including submission of reports and statistical data which may be required by the Bureau and/or BOI; and
- (e) **Activities not covered by the mineral agreement of FTAA.** - The Contractor proposing to engage in activities not covered by its mineral agreement or FTAA shall install an adequate accounting system segregating the investments, revenues, sales, receipts, purchases, payrolls, costs, expenses, and profits and losses of its operations covered by mineral agreement or FTAA from those which are not covered; or the Bureau may, in separate entity for the activity covered by the agreement in order to facilitate the proper implementation of the Act.

Sec. 250. Investment Guarantees. In addition to the above, the Contractor especially foreign investors shall be entitled to the basic rights and guarantees provided in the Constitution and such other rights recognized by the Government as enumerated hereunder:

- (a) **Repatriation of investments** - In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation;
- (b) **Remittance of earnings** - In the case of foreign investments, the right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance;
- (c) **Foreign loans and contacts** - The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technical assistance contracts;
- (d) **Freedom from expropriation** - There shall be no expropriation by the Government of the property represented by investments or

loans or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance;

- (e) **Requisition of investment** - There shall be no requisition of the property represented by the investment or of the property of the enterprises except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investments were originally made and at the exchange rate prevailing at the time of remittance; and

- (f) **Confidentiality** - Any information supplied by the Contractor which have been agreed upon by the parties in the negotiation as confidential pursuant to the Act and these implementing rules and regulations shall be treated as such during the term of the project to which it relates. However, the following information shall not be classified as confidential:
 - 1. Production and sales of minerals;
 - 2. Employment;
 - 3. Royalty and tax payments;
 - 4. Metallic and Non-metallic Reserves;
 - 5. Operational parameters such as mining and milling capacities and rates, mine and mill recoveries, dilution factors, etc.; and
 - 6. Other data as may be agreed upon by the parties.

The term confidentiality refers only to the act of divulging publicly and information classified as such. It does not prevent the Director or his/her representative(s) from using the data internally within the Bureau for monitoring and for policy, planning and research studies. Documents not otherwise covered by a valid confidentiality agreement between the concerned parties shall be made available to the public upon the filing of an appropriate request duly approved by the authorized officer. Reproduction of such documents shall be allowed upon presentation of an approved written request in sufficient form and payment of reasonable fees.

CHAPTER XXIX
CANCELLATION, REVOCATION and TERMINATION OF
A PERMIT/MINERAL AGREEMENT/FTAA.

Sec. 251. Grounds. The following are the grounds for cancellation, revocation and termination of a permit/mineral agreement/FTAA:

- (a) Violation of any of the terms and conditions of the permits or agreements;
- (b) Non-payment of taxes and fees due the Government for two (2) consecutive years; and
- (c) Falsehood or omission of facts in the application for exploration permit, mineral agreement, FTAA, or other permits which may alter, change or effect substantially the facts set forth in said statements.

Sec. 252. Suspension or Cancellation of Tax Incentives and Credits.

- (a) Grounds for cancellation/suspension - The Bureau may suspend or cancel wholly or partially any incentive granted under the rules and regulations for any cause including the following:
 - 1. Any violation of the Act, rules and regulations implementing the same or of the terms and conditions in the mineral agreement or FTAA;
 - 2. Any material misrepresentation or false statements made to the Bureau at any time before or after the approval/conclusion of its mineral agreement or FTAA;
 - 3. Whenever the project ceases to be viable and its continued operation would require additional costs to the economy. In this case, the Bureau shall evaluate the status of the project and shall decide if suspension/cancellation shall be imposed;
- (b) Withdrawal from the mineral agreement or FTAA - Whenever a Contractor decides to withdraw from business or suspend its operations covered by the agreement, written notice thereof shall be sent to the Director before decision is implemented. Withdrawal from business operations shall automatically cancel the mineral agreement or FTAA. Upon such withdrawal, the Contractor shall cease to be entitled to the incentives. The effect of withdrawal from

business or suspension of operations covered by the agreement shall, in each particular instance, be determined by the Bureau, taking into account the reasons therefor; or

- (c) Refund and penalties - In case of cancellation of the mineral agreement or FTAA, the Bureau may in appropriate cases, recommend to other incentive-dispensing agencies the cancellation of registration without prejudice to the imposition of the corresponding penalties and refund of incentives availed of pursuant to and under EO 226, laws creating export processing zones and other laws.

Sec. 253. Effect of Expiration and Cancellation of a Permit and Mineral Agreements/FTAA. Upon the expiration of a permit or mineral agreement/FTAA, the mining operations may be undertaken by the Government through one of its agencies or through a qualified independent Contractor. In the latter case the contract shall be awarded to the highest bidder in a public bidding held after due publication of the notice thereof. The Contractor/permit holder shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

Upon cancellation of a mineral agreement/FTAA, the Director shall cause the same to be entered in the registration book and a notice thereof shall be posted on the bulletin board of the Bureau and Regional Office and the mining area covered thereby shall thereupon be open to new applicants.

Non-payment of taxes and fees causing for the cancellation of a mineral agreement/FTAA shall have also the effect of re-opening the mining area to new applicants.

CHAPTER XXX ORGANIZATIONAL SET-UP OF THE MGB AS LINE BUREAU

Sec. 254. Organizational Set-up. The Mines and Geosciences Bureau shall be comprised of a Central Office and the necessary regional, district and other pertinent offices. The Secretary shall issue the necessary administrative order for the organizational set-up of the Mines and Geosciences Bureau as a line bureau.

The staff Mines and Geosciences Bureau created under DENR Administrative Order No. 1, Series of 1988, shall be transformed to become the Central Office of the said Bureau under the Act.

The Mines and Geosciences Development Services created pursuant to DENR Administrative Order No. 41, Series of 1990, shall also become the regional offices of the same Bureau.

CHAPTER XXXI REPORTING REQUIREMENTS AND FINES

Sec. 255. Reporting Requirements. Every Contractor or holder of any of the permits covering exploration, quarry resources, sand and gravel, guano and gemstone and Mineral Processing or its operator is required to submit the following reports:

- (a) **Monthly Report On Production, Sales and Inventory of Metallic Minerals and Employment** - A Contractor or its operator or holder of mineral processing permit shall submit to the Director a sworn Monthly Report on Production, Sales, and Inventory of Metallic Minerals and Employment as prescribed in MGB Forms No. 31-1 to 31-9, whichever mineral is applicable, within fifteen (15) days after the end of each calendar month.
- (b) **Monthly Report On Production, Sales and Inventory of Non-Metallic Minerals And Employment** - In the case of mineral agreements, FTAA's or mineral Processing Permits involving non-metallic minerals, a Contractor or its operator or permit holder shall submit to the Regional Director Concerned, copy furnished the Director, a sworn Monthly Report on Production, Sales and Inventory of Non-Metallic Minerals and Employment as prescribed in MGB Form No. 31-10 within fifteen (15) days after the end of each calendar month.
- (c) **Quarterly Report on Production, Sales And Inventory Of Quarry Resources (Except Sand and Gravel) and Employment** - A holder of a quarry permit or its operator shall submit to the Provincial Governor/City Mayor, copy furnished the Director and Regional Director concerned, a sworn Quarterly Report on Production, Sales and Inventory of Quarry Resources and Employment as prescribed in MGB Form No. 31-11 within fifteen (15) days after the end of each calendar quarter.
- (d) **Monthly Report on Production, Sales and Inventory of Industrial Sand and Gravel And Employment** - A holder of an industrial sand and gravel permit or its Operator shall submit to the Director, copy furnished the Regional Director concerned, a sworn Monthly Report on Production, Inventory and Sales of Industrial

Sand and Gravel And Employment as prescribed in MGB Form No. 31-12 within fifteen (15) days after the end of each calendar month.

- (e) **Monthly Report on Production And Sales of Commercial Sand and Gravel And Employment** - A holder of a commercial sand and gravel permit or its Operator shall submit to the Provincial Governor/City Mayor, copy furnished the Director and Regional Director concerned, a sworn Monthly Report on Production, Sales And Inventory of Commercial Sand and Gravel And Employment as prescribed on MGB Form No. 31-13 within fifteen (15) days after the end of each calendar month.
- (f) **Quarterly Report on Production And Sales Of Small-Scale Metallic Mines And Employment** - The holder of a Small-Scale Metallic Mines Permit shall submit to the Provincial Governor/City Mayor, copy furnished the Director and Regional Director concerned, a sworn Quarterly Report on Production And Sales of Small-Scale Metallic Mines and Employment as prescribed on MGB Form No. 31-14 for metallic minerals other than gold or MGB Form No. 31-15 for gold mineral only within fifteen (15) days after the end of each calendar quarter.
- (g) **Integrated Annual Report** - A Contractor of a mineral agreement, FTAA or Mineral Processing Permit holder or its operator shall submit to the Director a sworn Integrated Annual Report using prescribed MGB Form No. 31-16 within two (2) months after the end of each calendar year.

A holder of a Quarry Permit or its Operator shall likewise submit same report (MGB Form No. 31-16) to the Provincial Governor/City Mayor, concerned, copy furnished the Director and the Regional Office concerned, within two (2) months after the end of each calendar year.

All books of accounts, reports and correspondences shall be filed and kept by the Contractor/Quarry Resources Permit Holder or its Operators and shall be opened at all times for verification by the Director or its duly authorized representative.

A Small-Scale Mining Permit Holder shall submit to the Provincial Governor/City Mayor, copy furnished the Director and the Regional Director concerned, a sworn Integrated Annual Report for Small

Scale Mines as prescribed on MGB Form No. 31-17 within two (2) months after the end of each calendar year.

- (h) **Quarterly Energy Consumption Report** - A Contractor of mineral agreement/FTAA or Mineral processing Permit holder or its Operator shall submit to the Director, copy furnished the Regional Director concerned, a Quarterly Energy Consumption Report using prescribed MGB Form No. 31-18 within fifteen (15) days after the end of each calendar quarter.

A holder of a Quarry Permit or its Operator shall submit to the Provincial Governor/City Mayor, copy furnished the Director and the Regional Director concerned, a Quarterly Energy Consumption Report using prescribed MGB Form No. 31-18 within fifteen (15) days after the end of each calendar quarter.

- (i) **Quarterly Drilling Report** - A Contractor or permittee conducting any drilling project or a lessee of an MGB drill machine shall submit to the Director a sworn Quarterly Drilling Report in his/her contract area/permit area/project area within thirty (30) days at the end of each calendar quarter. This drilling report shall include, among others, a description of the geology, a topographic-drill collar location map in 1:50,000 scale and corresponding drill section showing geology, structure and orebody, if applicable; and the core log which shall contain the coordinates of the collar elevation, drill inclination, direction and length, and the physical/chemical analysis of the cores.

- (j) **Annual Mineral Reserve Inventory Report** - A Contractor of a mineral agreement/FTAA or its operator shall submit to the Director copy furnished the concerned Regional Director, an Annual Mineral Reserve/Resources Inventory Report using the prescribed MGB Form No. 31-19, on or before the end of the first quarter of each calendar year.

For areas outside mineral reservations, a holder of Quarry, Sand and Gravel, and Small-Scale Mining Permit or its operator shall likewise submit the same report (MGB Form No. 31-20) to the Provincial Governor/City Mayor concerned, copy furnished the Director and the Regional Director concerned, on or before the end of the first quarter of each calendar year. For areas within mineral reservations, the permit holder or its operator shall submit the same report to the Director.

The Contractor/permittee/operator may submit other types of mineral reserve report provided that the required information data contained in the said form must be included in their report.

- (k) **Monthly General Accident Report** - A Contractor, permit holder or its operator shall submit to the Regional Office and Bureau within fifteen (15) days after each calendar month a Monthly General Accident Report using MGB Form 18-5.
- (l) **Monthly Explosive Consumption Report** - Holders of Purchaser's License for explosives shall submit to the Regional Director, copy furnished the Director, a Monthly Explosive Consumption Report within fifteen (15) days after each calendar month using the prescribe MGB Form 18-7.
- (m) **Semi-Annual Report on Mine Waste and Tailings Generated** - Refer to relevant section in these implementing rules and regulations.
- (n) **Semi-Annual Status Report on the Environmental Work Program** - Refer to relevant section in these implementing rules and regulations.
- (o) **Quarterly Report on Production, Sales, and Inventory of Small-Scale Mines Within Mineral Reservation** - The holder of a small-scale mining permit within mineral reservation shall submit to the Director, a sworn and verified quarterly Report on Production, Sales, and Inventory of Small-Scale Mines Within Mineral Reservation as prescribed in MGB Form No. 31-20 within 30 days after the end of each calendar quarter.
- (p) **Annual and Quarterly Status Report based on Work Program of MPSA/FTAA Contractor** - Refer to relevant section of these implementing rules and regulations.
- (q) **Annual Land Use Report** - A Contractor of a mineral agreement or FTAA or its operator shall submit to the Director a sworn annual land use report within sixty days after each calendar year.
- (r) **Other reports as may be required by the Director** - The Contractor of a mineral agreement or the holder of a quarry Permit, any of the Sand and Gravel permits, Guano Permit, Gemstone Gathering permit or Small Scale Mining Permit is also required to submit reports (a) to (h) mentioned in this Section, whichever is

applicable to its operation, even when there is no production for a given period. The report, however, should indicate the causes or reasons for non-production. The Director, Regional Director concerned and in the case of Quarry Resources and Small-Scale Mining Permits, the Provincial Governor/City Mayor shall be promptly notified in writing before implementation of any mine suspension or mine closure.

Submission of the applicable report cited above shall be made part of the terms and conditions of mineral agreements, FTAA, exploration permit, quarry permit, sand and gravel permit, guano permit and gemstone gathering permit.

Sec. 256. Fines. In case of late or non-submission of any of the reports mentioned in Section 255 (a) to (h) and (o), the following fines shall be imposed:

- (a) Late submission of any of the required reports including copies to be furnished to the Director and Regional Director concerned.

	Basic Fine	Daily Fine
1st Violation	P1,000.00	P10.00
2nd Violation	2,000.00	20.00
3rd Violation and subsequent violations	3,000.00	30.00

- (b) Non-submission of any of the required reports after one (1) month from the prescribed reporting period.

	Basic Fine	Daily Fine
1st Violation	P2,000.00	P20.00
2nd Violation	3,000.00	30.00
3rd Violation and subsequent violations	5,000.00	50.00

Provided, that, a late report classified under non-submission category shall not pay the accumulated fine in (a) but instead pay the fines imposed in (b) of this Section. Provided further that, the total fine for non-submission of any of the required reports at any one time shall not exceed P10,000.00.

- (c) Failure of the Contractor or holder of any of the Quarry Resources permits or its Operator to submit any of the reports prescribed in

the preceding Section three months after the third violation or failure to pay fines within one (1) year shall be sufficient ground for cancellation or non-renewal of a permit, mineral agreement or FTAA.

In case of late or non-submission of reports mentioned in Section 255 (h) to (q) except (m), a fine of P1,000.00 shall be imposed. The Secretary may adjust the above-mentioned fines from time to time as conditions may warrant such changes.

Payment of fines involving the herein cited reports shall be made to the Treasurer or Cashier of the following offices:

- | | | | |
|-----|------------------------------------|---|--|
| (a) | Provincial Governor/
City Mayor | - | MGB Form No. 31-11 |
| | | - | MGB Form No. 31-13 |
| | | - | MGB Form No. 31-14 |
| | | - | MGB Form No. 31-15 |
| | | - | MGB Form No. 31-17 |
| | | - | MGB Form No. 31-18 |
| (b) | Regional Director | - | MGB Form No. 31-10
(for mineral agreements
and FTAA's) |
| (c) | Director | - | MGB Form No. 31-11
to 31-9 |
| | | - | MGB Form No. 31-16 |
| | | - | MGB Form No. 31-18 |
| | | - | MGB Form No. 31-12 |

CHAPTER XXXII TRANSITORY AND MISCELLANEOUS PROVISIONS

Sec. 257. Non-impairment of Existing Mining/Quarrying Rights.

All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired, and shall be recognized by the Government: **Provided**, that the provisions of Chapter XXVI on government share in Mineral Production-Sharing Agreement and of Chapter XVIII on incentives of these implementing rules and regulations shall immediately govern and apply to a mining lessee or Contractor unless the mining lessee or Contractor indicates its intention to the Secretary, in writing, not to avail of said provisions: **Provided, Further**, that no renewal of mining lease contracts

shall be made after the expiration of its term: **Provided, Finally**, that such leases, production-sharing agreements, Financial or Technical Assistance Agreements shall comply with the applicable provisions of these implementing rules and regulations.

All pending applications for MPSA/FTAA and exploration permits issued prior to the promulgation for these implementing rules and regulations shall be governed by the provisions of the Act and these implementing rules and regulations; **Provided**, however, that where the grant of such FTAA applications/proposals would exceed the maximum contract area restrictions contained in Section 34 of the Act, the applicant/proponent shall have one year, from the effectivity of these implementing rules and regulations, to divest or relinquish applications or portions thereof which, if granted, would exceed the maximum contract area allowance provided under the Act; provided, finally, that this provision is applicable only to all FTAA applications filed under DAO 63 prior to the approval of the Act.

All pending applications for Industrial Sand and Gravel Industrial Permit covering more than five (5) hectares with the local government unit shall be endorsed to the concerned Regional Office for its processing, evaluation, and approval.

Sec. 258. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications. Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the Government within two (2) years from the promulgation of these implementing rules and regulations: **Provided**, that failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise its preferential rights within two (2) years from the promulgation of these implementing rules and regulations to enter into any mode of mineral agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for relocation by other interested parties.

Sec. 259. Separability Clause. If any clause, sentence, section or provision of these implementing rules and regulations is held or declared to be unconstitutional or invalid by a competent court, the remaining parts of these implementing rules and regulations shall not be affected thereby.

Sec. 260. Repeal and Amendment. All orders, rules and regulations inconsistent with or contrary to the provisions of these implementing rules and regulations are hereby repealed or modified accordingly. The Secretary shall furthermore have the authority, inter alia, to amend, revise, add to, clarify, supplement, interpret, delete, or make exceptions (to the extent not contrary to the provisions of the Act) to any provisions of these implementing rules and regulations with the end in view of ensuring that the Act or its objectives are appropriately implemented, enforced and achieved.

Sec. 261. Effectivity. These implementing rules and regulations shall take effect fifteen (15) days following their complete publication in two newspapers of general circulation.

VICTOR O. RAMOS
Secretary