

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION: COUNCIL - PART II

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

DR 96ter

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

~~1. Save for circumstances in which it is determined by the Chief Inspector expedient and safe to conduct a no-notice inspection, the Chief Inspector shall give reasonable notice to a Contractor of the projected time and duration of inspections, the names of means of identifying the Inspector(s) and details of any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor. The activities of the Inspector(s) should in any case not [unnecessarily] impede activities in the Area unless otherwise provided in these Regulations.~~

~~2. [Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that reasonable notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an inspection [without prior notification,] and shall cooperate with a Contractor to conduct the inspection as soon as practically possible.]~~

4. The Contractor, ~~its subcontractors, agents and employees~~ shall cooperate with Inspectors and give full assistance to Inspectors in the performance of their duties, and shall: [...]

(b) Cooperate with and assist in the inspection of any:

(i) ship or Installation or equipment; or

(ii) other premises, offices, laboratories, facilities or sites,

used to carry out, or for purposes related to, Exploitation activities,

~~and activities related to such activities in the Area conducted pursuant to this Regulation~~ and comply with the requests of an Inspector;

4. Please indicate the rationale for the proposal. [150-word limit]

Paragraphs (1) and (2) raise a policy issue that needs to be settled by the ISA, namely, whether unannounced inspections should be allowed, as a routine part of the ISA’s inspection regime. As drafted, paragraph (2) – which directly contradicts (1) – appears to allow that there may be emergency situations in which no-notice inspections could occur. We believe unannounced inspection events should not be reserved for emergencies only. Indeed, even in an emergency, an inspector may take days to reach a mine site, so notice would be possible if deemed desirable. Rather we believe unannounced inspections should be a routine and essential element of the inspection regime for the ISA. If a Contractor knows it will have advance notice for every inspection, it could employ very low

standards most of the time, only implementing best practice when it knows an inspection is due. No regulator can be everywhere, hence it is a common regulatory practice to impose a climate of uncertainty regarding inspection schedules, as an incentive for the regulated entity to operate to high standards.

We have also heard some delegations indicating that no-notice inspections may be dangerous. It is important to note that the rationale for a no-notice inspection is to enable inspectors to arrive ship-side for periodic spot-checks without the Contractor knowing they are coming days in advance. Some notice will be given as the inspector approaches, before boarding, to ensure necessary measures for the safety of the inspector and for the crew (e.g. temporary suspension of operations during boarding, if appropriate) and this is captured in para \graph 97 bis (1).

For these reasons, we propose allowing no-notice inspections at the Chief Inspector's discretion, with parameters of safety and expediency; and we propose deletion of paragraph (2). Deletion of paragraph (2) is important because, as currently drafted, Inspectors are unfairly being given conflicting obligations in paragraphs (1) and (2) that they cannot legally implement simultaneously.

We also question in paragraph (1) the prescription that the 'names of Inspectors' must be shared, which would provide the Contractor with the ability to research their inspector(s) in advance, enabling corruption, intimidation or other interference tactics. We think inspectors may wish in some circumstances to identify themselves by other means (e.g. official ID passes or pre-agreed code words, upon arrival.) The final sentence in paragraph (1) should be deleted, as this same point is more clearly and properly covered in DR97 bis (Inspectors' Functions and Liabilities').

In the chapeau of paragraph (4), we presume '*employees, subcontractors, and agents*' is deleted because these entities are now subsumed within the definition of 'Contractor' in the Schedule to the Regulations, which we support. We note there remains inconsistency of use of this defined term in the Regulations, as in other locations in the regulations some of those Contractor-associated entities are listed separately (and in some they are not). The defined term should be applied consistently throughout the Regulations.

DR96(ter) does not appear to differentiate between inspections on a mining vessel and inspections ashore e.g. office premises, processing facilities, storage facilities or laboratories. We are unsure if this is intentional - because the ISA does not plan to conduct any inspections within national jurisdictions, or whether this is an aspect that needs further consideration within the Regulations. We imagine the ISA may wish to reserve the right to conduct inspections within national jurisdiction, e.g. working with that State, and suggest broader reference to premises that may be subject to ISA inspection interests should be included in DR 96 ter – we propose to add this to paragraph (4)(b), and propose some other edits to clean up the drafting of that sub-paragraph.