

§ 971.207

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§ 971.207 Antitrust information.

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

§ 971.208 Fee.

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

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

§ 971.209 Processing outside the United States.

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

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a find-

ing pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

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

PROCEDURES

§ 971.210 Determination whether application is complete for further processing.

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

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has

determined pursuant to §971.210 is complete, the Administrator will distribute a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

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

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

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§971.212 Public notice, hearing and comment.

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

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

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will