

## §9.7

## 36 CFR Ch. I (7-1-13 Edition)

### §9.7 Assessment work.

(a) An access permit and approved plan of operations must be obtained by a claimant prior to the performance of any assessment work required by Revised Statute 2324 (30 U.S.C. 28) on a claim in a unit.

(b) Permits will be issued in accordance with the following:

(1) In units subject to the surface disturbance moratorium of section 4 of the Act and §9.4, no access permits will be granted for the purpose of performing assessment work.

(2) It has been determined that in all other units the Secretary will not challenge the validity of any unpatented claim within a unit for the failure to do assessment work during or after the assessment year commencing September 1, 1976. The Secretary expressly reserves, however, the existing right to contest claims for failure to do such work in the past. No access permits will be granted solely for the purpose of performing assessment work in these units except where claimant establishes the legal necessity for such permit in order to perform work necessary to take the claim to patent, and has filed and had approved a plan of operations as provided by these regulations. (For exploratory or development type work, see §9.9.)

### §9.8 Use of water.

(a) No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the right to the water has been perfected under applicable State law, has a priority date prior to the establishment of the unit and there has been a continued beneficial use of that water right.

(b) If an operator whose operations will require the use of water from a point of diversion within the boundaries of the unit can show that he has a perfected State water right junior to the reserved water right of the United States and can demonstrate that the exercise of that State water right will not diminish the Federal right, which is that amount of water necessary for

the purposes for which the unit was established, he will be authorized to use water from that source for operations, if he has complied with all other provisions of these regulations.

### §9.9 Plan of operations.

(a) No operations shall be conducted within any unit until a plan of operations has been submitted by the operator to the Superintendent and approved by the Regional Director. All operations within any unit shall be conducted in accordance with an approved plan of operations.

(b) The proposed plan of operations shall relate, as appropriate, to the proposed operations (e.g. exploratory, developmental or extraction work) and shall include but is not limited to:

(1) The names and legal addresses of the following persons: The operator, the claimant if he is not the operator, and any lessee, assignee, or designee thereof;

(2) A map or maps showing the proposed area of operations; existing roads or proposed routes to and from the area of operations; areas of proposed mining; location and description of surface facilities, including dumps;

(3) A description of the mode of transport and major equipment to be used in the operations;

(4) A description of the proposed operations and an estimated timetable for each phase of operations and the completion of operations;

(5) The nature and extent of the known deposit to be mined. When the claim is located in a National Monument in Alaska and is unpatented, a completed Supplemental Claim Information Statement shall be submitted describing the quantity, quality, and any previous production of the deposit;

(6) A mining reclamation plan demonstrating compliance with the requirements of §9.11;

(7) All steps taken to comply with any applicable Federal, State, and local laws or regulations, including the applicable regulations in 36 CFR, chapter I;

(8) In units subject to the surface disturbance moratorium of section 4 of the Act and §9.4, proof satisfactory to the Regional Director that the surface of the area on which the operation is to

occur was significantly disturbed for purposes of mineral extraction prior to February 29, 1976, or if the area was not so disturbed, proof, including production records for the years 1973, 1974, and 1975, that new disturbance is necessary to maintain an average annual rate of production not to exceed that of the years 1973, 1974, and 1975;

(9) An environmental report analyzing the following:

(i) The environment to be affected by the operations,

(ii) The impacts of the operations on the unit's environment,

(iii) Steps to be taken to insure minimum surface disturbance,

(iv) Methods for disposal of all rubbish and other solid and liquid wastes,

(v) Alternative methods of extraction and the environmental effects of each,

(vi) The impacts of the steps to be taken to comply with the reclamation plan, and

(10) Any additional information that is required to enable the Regional Director to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and issuance or denial of the access permit.

(c) In all cases the plan must consider and discuss the unit's Statement for Management and other planning documents, and activities to control, minimize or prevent damage to the recreational, biological, scientific, cultural, and scenic resources of the unit.

(d) Any person conducting operations on January 26, 1977, shall be required to submit a plan of operations to the Superintendent. If otherwise authorized, operations in progress on January 26, 1977, may continue for 120 days from that date without having an approved plan. After 120 days from January 26, 1977, no such operations shall be conducted without a plan approved by the Regional Director, unless access is extended under the existing permit by the Regional Director. (See §9.10(g).)

[42 FR 4835, Jan. 26, 1977, as amended at 44 FR 11069, Feb. 27, 1979]

#### §9.10 Plan of operations approval.

(a) The Regional Director shall not approve a plan of operations:

(1) For existing or new operations if the claim was patented without surface use restriction, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands; or

(2) For operations which had not significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been patented, or if the patent is subject to surface use restrictions, where the operations would preclude management for the purpose of preserving the pristine beauty of the unit for present and future generations, or would adversely affect or significantly injure the ecological or cultural resources of the unit. No new surface mining will be permitted under this paragraph except under this standard; or

(3) For operations which had significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been taken to patent, or the patent is subject to surface use restrictions, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands. Provided, however, operations under this paragraph shall be limited by the provisions of §9.4, notwithstanding the limitation of that section's applicability to the three enumerated units;

(4) Where the claim, regardless of when it was located, has not been patented and the operations would result in the destruction of surface resources, such as trees, vegetation, soil, water resources, or loss of wildlife habitat, not required for development of the claim; or

(5) Where the operations would constitute a violation of the surface disturbance moratorium of section 4 of the Act; or

(6) Where the plan does not satisfy each of the requirements of §9.9.

(b) Within 60 days of the receipt of a proposed plan of operations, the Regional Director shall make an environmental analysis of such plan, and