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(14) Methods for disposal of all rubbish and other solid and liquid wastes, and contaminating substances;

(15) An affidavit stating that the operations planned are in compliance with all applicable Federal, State and local laws and regulations;

(16) Background information, including:

(i) A description of the natural, cultural, social and economic environments to be affected by operations, including a description and/or map(s) of the location of all water, abandoned, temporarily abandoned, disposal, production, and drilling wells of public record within a two-mile radius of the proposed site. Where such information is available from documents identified in §9.36(d), specific reference to the document and the location within the document where such information can be found will be sufficient to satisfy this requirement;

(ii) The anticipated direct and indirect effects of the operations on the unit's natural, cultural, social, and economic environment;

(iii) Steps to be taken to insure minimum surface disturbance and to mitigate any adverse environmental effects, and a discussion of the impacts which cannot be mitigated;

(iv) Measures to protect surface and subsurface waters by means of casing and cement, etc.;

(v) All reasonable technologically feasible alternative methods of operations, their costs, and their environmental effects, and

(vi) The effects of the steps to be taken to achieve reclamation;

(17) Any other facets of the proposed operations which the operator wishes to point out for consideration; and

(18) Any additional information that is required to enable the Superintendent to establish whether the operator has the right to conduct operations as specified in the plan of operations; to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit; and to make a recommendation to the Regional Director regarding approval or disapproval of the plan of operations and the amount of the performance bond to be posted.

(b) Where any information required to be submitted as part of a proposed plan of operations has been submitted to the Superintendent in substantially the same form in a prior approved plan of operations, a specific cross-reference to that information contained in the prior approved plan of operations will be sufficient to incorporate it into the proposed plan and will satisfy the applicable requirement of this section.

(c) Information and materials submitted in compliance with this section will not constitute a plan of operations until information required by §9.36(a) (1) through (18), which the Superintendent determines as pertinent to the type of operations proposed, has been submitted to and determined adequate by the Regional Director.

(d) In all cases the plan of operations must consider and discuss the unit's Statement for Management and other planning documents as furnished by the Superintendent, and activities to control, minimize or prevent damage to the recreational, biological, physical, scientific, cultural, and scenic resources of the unit, and any reclamation procedures suggested by the Superintendent.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

§9.37 Plan of operations approval.

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

(1) Until the operator shows that the operations will be conducted in a manner which utilizes technologically feasible methods least damaging to the federally-owned or controlled lands, waters and resources of the unit while assuring the protection of public health and safety.

(2) For operations at a site the surface estate of which is not owned by the Federal government, where operations would constitute a nuisance to Federal lands or waters in the vicinity of the operations, would significantly injure federally-owned or controlled lands and waters; or

(3) For operations at a site the surface estate of which is owned or controlled by the Federal government, where operations would substantially interfere with management of the unit

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to ensure the preservation of its natural and ecological integrity in perpetuity, or would significantly injure the federally-owned or controlled lands or waters; *Provided, however,* That if the application of this standard would, under applicable law, constitute a taking of a property interest rather than an appropriate exercise of regulatory authority, the plan of operations may be approved if the operations would be conducted in accordance with paragraph (a)(1) of this section, unless a decision is made to acquire the mineral interest.

(4) Where the plan of operations does not satisfy each of the requirements of §9.36 applicable to the operations proposed.

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

(1) Notify the operator that the plan of operations has been approved or rejected, and, if rejected, the reasons for the rejection; or

(2) Notify the operator that the plan of operations has been conditionally approved, subject to the operator's acceptance of specific provisions and stipulations; or

(3) Notify the operator of any modification of the plan of operations which is necessary before such plan will be approved or of additional information needed to effectively analyze the effects that the operations will have on the preservation, management and use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and the amount of the performance bond to be posted; or

(4) Notify the operator that the plan of operations is being reviewed, but that more time, not to exceed an additional thirty days, is necessary to complete such review, and setting forth the reasons why additional time is required. *Provided, however,* That days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophe, acts of God, etc., for inspection shall not be included when computing either this time period, or that in subsection (b) above; or

(5) Notify the operator that the plan of operations has been reviewed, but

cannot be considered for approval until forty-five (45) days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(6) Notify the operator that the plan of operations is being reviewed, but that more time to provide opportunities for public participation in the plan of operations review and to provide sufficient time to analyze public comments received is necessary. Within thirty (30) days after closure of the public comment period specified by the Regional Director, he shall comply with §9.37(b) (1) through (5).

(c) The Regional Director shall act as expeditiously as possible upon a proposed plan of operations consistent with the nature and scope of the operations proposed. Failure to act within the time limits specified in this section shall constitute a rejection of the plan of operations from which the operator shall have a right to appeal under §9.49.

(d) The Regional Director's analysis shall include:

(1) An examination of all information submitted by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit (See §9.48);

(4) An evaluation of the need for any additional requirements in the plan;

(5) A determination regarding the impact of this operation and cumulative impacts of all proposed and existing operations on the management of the unit; and

(6) A determination whether implementation by the operator of an approved plan of operations would be a major Federal action significantly affecting the quality of the human environment or would be sufficiently controversial to warrant preparation of an environmental statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in the National Register of Historic Places or National Registry of Natural

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Landmarks may be affected by the proposed operations. This determination will require the acquisition of adequate information, such as that resulting from field surveys, in order to properly determine the presence and significance of cultural resources within the areas to be affected by operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by operations, the Regional Director shall comply with section 106 of the Historic Preservations Act of 1966 as implemented by 36 CFR part 800.

(f) Approval of each plan of operations is expressly conditioned upon the Superintendent having such reasonable access to the site as is necessary to properly monitor and insure compliance with the plan of operations.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

§ 9.38 Temporary approval.

(a) The Regional Director may approve on a temporary basis:

(1) Access on, across or through federally-owned or controlled lands or waters for the purpose of collecting basic information necessary to enable timely compliance with these regulations. Such temporary approval shall be for a period not in excess of sixty (60) days.

(2) The continuance of existing operations, if their suspension would result in an unreasonable economic burden or injury to the operator; provided that such operations must be conducted in accordance with all applicable laws, and in a manner prescribed by the Regional Director designed to minimize or prevent significant environmental damage; and provided that within sixty (60) days of the granting of such temporary approval the operator either:

(i) Submits an initial substantially complete plan of operations; or

(ii) If a proposed plan of operations has been submitted, responds to any outstanding requests for additional information.

(b) The Regional Director may approve new operations on a temporary basis only when:

(1) The Regional Director finds that the operations will not cause signifi-

cant environmental damage or result in significant new or additional surface disturbance to the unit; and either

(2) The operator can demonstrate a compelling reason for the failure to have had timely approval of a proposed plan of operations; or

(3) The operator can demonstrate that failure to grant such approval will result in an unreasonable economic burden or injury to the operator.

[43 FR 57825, Dec. 8, 1978, as amended at 44 FR 37914, June 29, 1979]

§ 9.39 Reclamation requirements.

(a) Within the time specified by the reclamation provisions of the plan of operations, which shall be as soon as possible after completion of approved operations and shall not be later than six (6) months thereafter unless a longer period of time is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the Federal government does not own the surface estate, the operator shall at a minimum:

(i) Remove or neutralize any contaminating substances; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance or would not adversely affect, injure, or damage federally-owned lands or waters, including removal of above ground structures and equipment used for operations, except that such structures and equipment may remain where they are to be used for continuing operations which are the subject of another approved plan of operations or of a plan which has been submitted for approval.

(2) On any site where the surface estate is owned or controlled by the Federal government, each operator must take steps to restore natural conditions and processes. These steps shall include but are not limited to:

(i) Removing all above ground structures, equipment and roads used for operations, except that such structures, equipment and roads may remain