

## National Park Service, Interior

## § 9.4

other means of access on National Park System lands, regardless of whether such activities and uses take place on Federal, State, or private lands.

(c) *Operator*. A person conducting or proposing to conduct operations.

(d) *Person*. Any individual, partnership, corporation, association, or other entity.

(e) *Superintendent*. The Superintendent, or his designee, of the unit of the National Park System containing claims subject to these regulations.

(f) *Surface mining*. Mining in surface excavations, including placer mining, mining in open glory-holes or mining pits, mining and removing ore from open cuts, and the removal of capping or overburden to uncover ore.

(g) *The Act*. The Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. 1901 et seq.

(h) *Commercial vehicle*. Any motorized equipment used for transporting the product being mined or excavated, or for transporting heavy equipment used in mining operations.

(i) *Unit*. Any National Park System area containing a claim or claims subject to these regulations.

(j) *Claimant*. The owner, or his legal representative, of any claim lying within the boundaries of a unit.

(k) *Claim*. Any valid, patented or unpatented mining claim, mill site, or tunnel site.

(l) *Significantly disturbed for purposes of mineral extraction*. Land will be considered significantly disturbed for purposes of mineral extraction when there has been surface extraction of commercial amounts of a mineral, or significant amounts of overburden or spoil have been displaced due to the extraction of commercial amounts of a mineral. Extraction of commercial amounts is defined as the removal of ore from a claim in the normal course of business of extraction for processing or marketing. It does not encompass the removal of ore for purposes of testing, experimentation, examination or preproduction activities.

(m) *Designated roads*. Those existing roads determined by the Superintendent in accordance with 36 CFR 1.5 to be open for the use of the public or an operator.

(n) *Production*. Number of tons of a marketable mineral extracted from a given operation.

[42 FR 4835, Jan. 26, 1977, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997]

### § 9.3 Access permits.

(a) All special use or other permits dealing with access to and from claims within any unit are automatically revoked 120 days after January 26, 1977. All operators seeking new or continued access to and from a claim after that date must file for new access permits in accordance with these regulations, unless access to a mining claim is by pack animal or foot. (See § 9.7 for restrictions on assessment work and § 9.9(d) and § 9.10(g) for extensions of permits.)

(b) Prior to the issuance of a permit for access to any claim or claims, the operator must file with the Superintendent a plan of operations pursuant to § 9.9. No permit shall be issued until the plan of operations has been approved in accordance with § 9.10.

(c) No access to claims outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using such roads for access to such claims must comply with the terms of § 9.15 where applicable.

(d) In units of the National Park System in Alaska, regulations at 43 CFR part 36 govern access to claims, and the provisions of 36 CFR 9.3 (a), (b) and (c) are inapplicable.

[42 FR 4835, Jan. 26, 1977, as amended at 53 FR 25162, July 5, 1988]

### § 9.4 Surface disturbance moratorium.

(a) For a period of four years after September 28, 1976, no operator of a claim located within the boundaries of Death Valley National Monument, Mount McKinley National Park, or Organ Pipe Cactus National Monument (see also claims subject to § 9.10(a)(3)) shall disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February

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29, 1976, except as provided in this section. However, where a claim is subject, for a period of four years after September 28, 1976, to this section solely by virtue of § 9.10(a)(3), the date before which there must have been significant disturbance for purposes of mineral extraction is January 26, 1977.

(b) An operator of a claim in one of these units seeking to enlarge an existing excavation or otherwise disturb the surface for purposes of mineral exploration or development shall file with the Superintendent an application stating his need to disturb additional surface in order to maintain production at an annual rate not to exceed an average annual production level of said operations for the three calendar years 1973, 1974, and 1975. Accompanying the application shall be a plan of operations which complies with § 9.9 and verified copies of production records for the years 1973, 1974, and 1975.

(c) If the Regional Director finds that the submitted plan of operations complies with § 9.9, that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, and that the plan of operations meets the applicable standard of approval of § 9.10(a)(1), he shall issue a permit allowing the disturbance of the surface of the lands contiguous to the existing excavation to the minimum extent necessary to effect such enlargement. For the purpose of this section "lands contiguous to the existing excavation" shall include land which actually adjoins the existing excavation or which could logically become an extension of the excavation; for example, drilling to determine the extent and direction to which the existing excavation should be extended may be permitted at a site which does not actually adjoin the excavating.

(d) The appropriate reclamation standard to be applied will be determined by the nature of the claim. (See §§ 9.11(a)(1) and (a)(2).)

(e) Operations conducted under a permit pursuant to this section shall be

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subject to all the limitations imposed by this part.

(f) For the purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

### § 9.5 Recordation.

(a) Any unpatented mining claim in a unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 as promulgated on January 26, 1977, is, pursuant to section 8 of the Act, conclusively presumed to be abandoned and shall be void.

(b) Any unpatented mining claim in a unit established after September 28, 1976, or in an area added to an existing unit after that date, shall be recorded with the Bureau of Land Management in accordance with the provisions of section 314 of the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2769, 43 U.S.C. 1744, and regulations implementing it (43 CFR 3833.1).

(c) A claimant of an unpatented mining claim in any unit must file annually with the Bureau of Land Management a notice of intention to hold a claim or evidence of annual assessment work required by section 314 of FLPMA, as implemented by 43 CFR 3833.2. A copy of each such filing will be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(d) The effect of failure to file the instruments required by paragraphs (b) and (c) of this section shall be controlled by 43 CFR 3833.4. Recordation or filing under this section shall not render any claim valid which would not otherwise be valid under applicable law and shall not give the claimant any rights to which he is not otherwise entitled by law.

(Act of September 28, 1976 (16 U.S.C. 1901 *et seq.*), Act of August 25, 1916 (16 U.S.C. 1 and 2-4) and 245 DM (42 FR 12931), as amended)

[44 FR 20427, Apr. 5, 1979]

### § 9.6 Transfers of interest.

(a) Whenever a claimant who has recorded his unpatented claim(s) with