

## § 9.5

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

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the Superintendent pursuant to the requirements of §9.5 sells, assigns, bequeaths, or otherwise conveys all or any part of his interest in his claim(s), the Superintendent shall be notified within 60 days after completion of the transfer of: The name of the claim(s) involved; the name and legal address of the person to whom an interest has been sold, assigned, bequeathed, or otherwise transferred; and a description of the interest conveyed or received. Copies of the transfer documents will be provided by the Superintendent to the Bureau of Land Management. Failure to so notify the Superintendent shall render any existing access permit void.

(b) If the transfer occurs within the period of 12 months from the effective date of the Act and the prior owner has not recorded the unpatented claim with the Superintendent in accordance with these regulations, the holder by transfer shall have the remainder of the 12-month period to record the unpatented claim. Failure to record shall be governed by the provisions of §9.5(c).

### §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