

## §9.10

## 36 CFR Ch. I (7-1-04 Edition)

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

(1) Notify the operator that he has approved or rejected the plan of operations; or

(2) Notify the operator of any changes in, or additions to the plan of operations which are necessary before such plan will be approved; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional 30 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, etc., for inspection shall not be included when computing either this time period, or that in paragraph (b) of this section; or

(4) Notify the operator that the plan cannot be considered for approval until forty-five (45) days after a final environmental impact statement, if required, has been prepared and filed with the Council on Environmental Quality.

(c) Failure of the Regional Director to act on a proposed plan of operations and related permits within the time period specified shall constitute approval of the plan and related permits for a period of three (3) years.

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

(1) An examination of the environmental report filed by the operator;

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(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 to cover estimated reclamation costs;

(4) An evaluation of the need for any additional requirements in access permit; and

(5) A determination regarding the impact of this operation and the cumulative impact of all operations on the management of the unit.

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

(1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance. Failure to comply with this requirement shall constitute a violation of the Antiquities Act (16 U.S.C. 431-433) (see 43 CFR part 3).

(2) The operator shall immediately bring to the attention of the Superintendent any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such val-

ues that are discovered during operations will be that of the operator, where the claim is unpatented.

(f) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations, and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such mining operations.

(g) Pending approval of the plan of operations, the Regional Director may approve, on a temporary basis, the continuation of existing operations if necessary to enable timely compliance with these regulations and with Federal, State, or local laws, or if a halt to existing operations would result in an unreasonable economic burden or injury to the operator. Such work must be conducted in accordance with all applicable laws, and in a manner prescribed by the Regional Director and designed to minimize or prevent significant environmental effects.

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

### §9.11 Reclamation requirements.

(a) As contemporaneously as possible with the operations, but in no case later than six (6) months after completion of operations and within the time specified in an approved mining reclamation plan, unless a longer period is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the claim was patented without surface use restriction, the operator shall at a minimum:

(i) Remove all above ground structures, equipment, and other manmade debris used for operations; 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.

(2) On any claim which was patented with surface use restrictions or is unpatented, each operator must take