

**§ 3712.2-7****§ 3712.2-7 Service of copies; failure to comply.**

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the Act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

**§ 3712.3 Failure of claimant to file verified statement.**

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3712.2-4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3712.2-7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

**Subpart 3713—Hearings**

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

**§ 3713.1 Hearing procedures.**

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

**§ 3713.2 Hearing: Time and place.**

If any verified statement shall be filed by a mining claimant then the administrative law judge or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment. The administrative law judge shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

**§ 3713.3 Stipulation between parties.**

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the Act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such

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notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

### § 3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the Act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

### Subpart 3714—Rights of Mining Claimants

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

#### § 3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the Act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and

shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

- (1) The date of location;
- (2) The book and page of the recordation of the notice or certificate of location; and
- (3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

#### § 3714.2 Waiver of rights by mining claimants.

Section 6 of the Act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this Act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

#### § 3714.3 Protection of existing rights; exclusion of reservation in patents.

The Act in section 7 provides as follows:

Nothing in this Act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as