

federal register

THURSDAY, JANUARY 27, 1977

PART IV



DEPARTMENT OF THE INTERIOR

Bureau of Land Management



MINING CLAIMS

**Recordation, Filing of Assessment Work
and Notice of Intent To Hold Mining
Claims**

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2419]

PART 3830—LOCATION OF MINING CLAIMS

Recordation of Mining Claims and Filing Evidence of Annual Assessment Work or Notice of Intention to Hold Mining Claims

On December 10, 1976, the Department of the Interior/Bureau of Land Management published in the FEDERAL REGISTER (41 FR 54084) a notice and text of a proposed rulemaking that would add a new subpart to Part 3830 of Title 43, Code of Federal Regulations. The purpose of the proposed rulemaking is to implement section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (hereinafter called the Act) which requires that within specified periods of time unpatented mining claims be recorded and information concerning assessment work or a notice of intention to hold a claim be filed with the Bureau of Land Management. The proposed rulemaking also implements the general regulatory authority of the Department under the mining law of 1872 (30 U.S.C. 22) providing that the exploration, occupation and purchase of valuable mineral deposits shall be "under regulations prescribed by law." Another purpose of the proposed rulemaking is to coordinate the implementation of section 8 of the Act of September 28, 1976 (16 U.S.C. 1901), which requires the recordation of unpatented mining claims located within the boundaries of the National Park System before September 27, 1977, with the implementation of section 314. The proposed rulemaking applies to both existing and future mining claims located under the Mining Law of 1872 (30 U.S.C. 21-54), as amended.

Interested persons were given 30 days, until January 10, 1977, to submit comments, suggestions, or objections to the proposed rulemaking. More than 160 comments were received and given careful consideration as part of the final rulemaking process.

There were a large number of comments that objected to the proposed rulemaking in general and stated that the Department has exceeded the authority given it by the Congress in section 314 of the Act. We disagree with this contention and feel that the proposed rulemaking in those sections of the regulations which are intended to implement the Act is a careful effort to meet the Congressional purpose of section 314 without unduly burdening the mining community. However, many of these comments objected to sections of the regulations which were issued pursuant to the regulatory authority of the Department under the Mining Law of 1872, *supra*. Therefore, comments objecting to the regulations as beyond the intent of the Act address the wrong issue and are not accepted. We also received objections to specific sections of the pro-

posed rulemaking as being beyond the authority granted the Department in section 314 of the Act. We will answer each of those objections when we deal with the specific sections of the proposed rulemaking.

We received a number of comments supporting the purpose of the proposed rulemaking and recommending some changes that would improve them. Many comments recognized that the proposed rulemaking was required by the Congress and accepted them in that light.

Another general comment was that only the minimum period was given the public to comment on the proposed rulemaking and the comment period occurred during the Christmas and New Year holiday period. We recognize the problems caused by the short comment period and the impact that the holidays had on the number of working days actually available for making comments, but we did not extend the comment period because of the 90-day limit placed on the recording of claims located after the approval of the Act by the Congress. We felt that we had an obligation to the public to have final regulations in effect as soon as possible so that the public would know the procedures they must follow to record their claims.

Even though the Department is publishing this final rulemaking, we recognize the short period of time allowed to analyze the process outlined in the final rulemaking. Therefore, we will carefully observe the practical effects of the implementation of this final rulemaking over the next several months and will make any additional revisions we find necessary to improve the recordation operation mandated by the Congress as amendments to the final rulemaking.

Even though we received no comments on the index to the proposed regulations, we made several changes in the index so that it would agree with changes made in the sections.

We received a few comments on the purpose of the proposed rulemaking. One comment recommended the deletion of the last sentence of the purpose because it exceeded the authority granted in section 314. We were unable to accept this comment because we feel that the Secretary has the authority under the provision of Mining Law of 1872 to require notification of transfer of interest in unpatented mining claims.

We did make a change in the purpose section of the proposed rulemaking by deleting the word "proof" and inserting in lieu thereof the word "evidence". This is a more accurate description of what is furnished in connection with assessment.

One comment objected to the use of the phrase "cloud on the title" in the objectives section of the proposed rulemaking. We did not accept this comment because that phrase is taken directly from the legislative history of the section and is properly used. It was decided that a change was needed in the objectives section to make it clear that this rulemaking was not intended to super-

sede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). This amendment makes it clear that there are instances where changes in State law are made by the Act and the proposed rulemaking carries out those changes. An example of a change in State law that is mandated by the Act is the filing requirement that is set on a date certain by the Act but conflicts with some existing State laws.

Comments on the authority section challenged the requirement for filing of the required documents with the Bureau of Land Management, on the basis that this filing superseded the counties as the offices of record for mining claims. These comments were not accepted because their adoption would make the Act meaningless. What was the purpose of Congress if it did not intend what it clearly states in the Act. recordation with the Bureau of Land Management of all unpatented mining claims located on the public lands? Further, neither the Act nor the proposed rulemaking make any change in the requirements of the local jurisdictions, but simply require a second place of recording so that the Government can know the location of unpatented mining claims and can use that information in planning use of its lands.

Comments were made that the authority cited in subsection (c) of § 3833.0-3 of the proposed rulemaking was superfluous and not needed. We disagree and have used the authority cited in subsection (c) as the basis of requiring the recording of transfers of interest and other sections of the regulations not intended to implement the Act. The authority cited in subsection (d) of this section of the regulations is also needed because section 314 of the Act does not provide authority to issue regulations. Such general authority for the Act is contained in section 310 of the Act.

In connection with the definitions section of the proposed rulemaking, a very complicated comment suggested that the use of the term "location" or "located" inferred that acceptance of a certificate of location of a claim by the BLM validated the claim. We found this comment unacceptable because the language of section 314 of the Act specifically states that the recordation of a claim under its provisions in and of itself does not validate the claim.

A comment properly pointed out that the definition of "owner" used in the proposed rulemaking could be read to require the listing of all stockholders of a corporation that owned an interest in a mining claim. We agree that the definition could be misconstrued and have amended it by adding words that make it clear that we are talking about owners of record. Several comments noted the printing error in subsection (f) of the definition sections. We have changed the date from 1972 to 1872.

Some comments suggested that the District Offices of the Bureau of Land Management be made the proper office for purposes of recording of mining

claims. We did not accept that suggestion because the State Offices are the location of the master plats and our central records. The District Offices can obtain information from the State Office as it is needed. We did make a minor amendment to subsection (g) of § 3833.0-5 to make it clear that the State Office is the proper office for recordation of mining claims.

Even though we received no comments on subsection (h) of the definition section, we amended it to clarify the term "date of location". We think that the amendment will be helpful to those recording.

We received comments on subsection (i) of the definition section to the effect that what was required as part of the official record was excessive and the subsection should be changed. After careful consideration of those comments, we made a change in subsection (i) that we believe will satisfy most of the objections of those commenting on this subsection.

One point of clarification in subsection (i) was a change requiring that only the documents accompanying the certificate of location at the time it was filed with the State would be required when the claim or site is being recorded with the Bureau. We do not want other documents, such as liens, wills, earlier transfers, etc., filed for record in the local jurisdiction subsequent to the filing of the certification of location. We only want the claimant to file those amendments to the certificate that change the location of the claim. We are not interested in any of the other papers of record.

No comments were received in connection with section 3833.1-1 of the proposed rulemaking, but we amended the section to make it clear that those recording claims located within the boundaries of the National Park System must comply with the provisions of the final rulemaking published by the National Park Service covering recordation of mining claims in the parks.

Almost every substantive comment made on the proposed rulemaking made direct reference to § 3833.1-2, with special emphasis on the requirements imposed and on the fee imposed in connection with the recordation. There also were other comments made about this section. As a result of the heavy volume of comments on this section, the section was exhaustively reviewed and a number of changes were made in the section.

Comments on subsection (a) of § 3833.1-2 were directed at the need it imposed to meet the requirements of subsection (c) of the section. We have amended subsection (c) and feel that the amendment to subsection (c) resolve the objections made to subsection (a).

Some comments objected to the requirement for recordation within 90 days of a location of a claim imposed in subsection (b). That requirement cannot be changed because it is set by the provisions of section 314 of the Act. We have amended subsection (b) to make it clear that the time of filing set out in subsection (b) will be the time the documents required are received and time stamped

in the proper BLM office, not the date of mailing of said documents. This clarification will require the mining claimant to take into consideration the required mailing time when he files his recordation papers.

A large number of strong comments were made about subsection (c) of § 3833.1-2 of the proposed rulemaking. Many of those making comments read the subsection as requiring a survey in order to meet the requirements contained therein. It was not intended that the proposed rulemaking require any mining claimant to go to the expense of a survey to record his claim. It was believed that the requirements of subsection (c) could be met without accomplishment of a survey. As a result of our re-examination of this subsection, it was decided that there was in fact, no need for several of the requirements in the proposed rules. Subsection (c) has, therefore, been amended to eliminate a number of the requirements originally imposed. The amendments will satisfy most of the objections raised in the comments submitted on this subsection and will, at the same time, furnish the Government with sufficient information to meet its need to locate the mining claim site. We believe that the requirements in this final rulemaking can be legally required by the Department, either under the provisions of section 314 of the Federal Land Policy and Management Act of 1976, or the provisions of the Mining Law of 1872.

One area of special concern to those commenting on subsection (c) was the requirement for a map. We have continued to require a map, but have reduced the requirements in connection with the map. As an example, we have changed the scale of the map to one that is generally available from nearly all U.S. Government offices, including BLM offices. We have also changed the subsection so that all that is required on the map is a general location of the claim or site or group of contiguous claims or sites in a quarter of a section. We believe that this new, broader map requirement is in keeping with our precise statement that the claimant is not expected to hire a professional surveyor or engineer.

Because of the numerous comments received on this point, a careful analysis was made of the requirements for a fee imposed by subsection (d) of § 3833.1-2. Although the recordation of mining claims is of direct benefit to the claimant, the Government and the public also receive a benefit from the recordation of mining claims. After carefully weighing these corresponding benefits it was decided that about half of the \$10 cost of handling the recordation of a mining claim could be attributed to the public. The service fee has been reduced to \$5.00.

No comments were received on § 3833.1-3 and no amendments have been made to that section.

Reconsideration of the sections of the proposed rulemaking dealing with the required assessment work disclosed the fact that the use of the word "proof" was inaccurate. The word "evidence" has been

substituted for the word "proof" in those instances where it is used in conjunction with the word "assessment." This rewording more accurately describes what is being required.

Comments on subsection (a) of § 3833.2-1 pointed out that the Mining Law of 1872 did not require evidence of assessment in the first calendar year following the recordation of the location of the claim. We agree with that comment and find that the proposed rulemaking provides for that eventuality. In that case, a notice of intent will be required in that first calendar year after recordation if the claim is not to be deemed abandoned. We also added language making it clear that the filing requirements of this subsection do not cover claims or sites located in the National Park System.

Comments on § 3833.2-2 questioned the reasons for requiring evidence of assessment work that went beyond the affidavit of assessment that is required by the States. Following a review of § 3833.2-2 the section has been amended to call for the filing of a certified copy of the affidavit required by State law. We believe this section, coupled with § 3833.2-3, requires the filing of a notice of intent in those States that do not require an affidavit of assessment work. In addition, the requirement for filing of the residence address of claimants has been deleted as was done in other sections of the proposed rules.

Comments on § 3833.2-3 objected to the definition of what constitutes a notice of intent. We feel that this comment is without merit because the term, which was introduced into the mining law for the first time by section 314 of the Act, needs to be defined so that everyone understands exactly what it is. The definition, therefore, remains in the final rulemaking. It is the document that is to be filed by a claimant when he cannot file one of the other documents set forth in the Act. This section has also been amended to include sites. Comments pointed out that section 3833.2-4 was incorrect in that tunnel sites cannot be patented. The section has been amended to delete tunnel sites.

A large number of comments on section 3833.3 challenged the Department's authority to require the filing of a notice of transfer under the provision of section 314 of the Federal Land Policy and Management Act of 1976, and suggested that the section should be deleted from the proposed rulemaking. Other comments suggested that the requirement to file notices of transfer made the Bureau of Land Management, instead of the local jurisdictions, the depository of documents affecting the title of mining claims. First, the authority to require the filing of notices of transfers is derived from the authority granted the Department by the Mining Law of 1872 which has never been exercised. Up until the requirement for the recordation of mining claims was imposed, there was no reason to have claimants file a notice of transfer with the Government. With this new recordation requirement and

the necessity of keeping records it imposed, we feel that it is appropriate to exercise this authority and it is being retained in the final rulemaking. Further, the requirements of the rulemaking do not extend to documents other than notices of transfer so do not make the Bureau of Land Management a title repository for mining claims located on public lands, but leaves that function with the local jurisdictions, where we think it logically belongs. While requiring the filing of a notice of transfer, we believe that the final rulemaking now requires the filing of a minimum amount of information.

Several comments suggested that the thirty day time limitation imposed by § 3833.2-4 was too short and should be extended. That recommendation has been accepted and the time limits imposed in the section have been extended to 60 days.

We also accepted the comments that questioned our need for a description of the interest conveyed in the notice of transfer and deleted that requirement.

Finally, because of the large number of comments on the subject, we examined the basis for the imposition of a \$10 service fee in connection with the filing of a notice of transfer. The requirement for payment of this fee has been deleted in its entirety because the public, and not the claimant, receives the benefit of the filing.

A large number of comments suggested that section 3833.4 should be changed to make a failure to file prima facie evidence of abandonment rather than conclusive proof of abandonment. We cannot accept these comments because section 314 of the Act provides that failure to comply with the provisions of the Act will be conclusive evidence of abandonment and the claim or site will be void as a matter of law.

A few general comments were made with reference to section 3833.5 to the effect that we should not require recording of mining claims with both the Federal Government and the local jurisdictions. We understand the problem that mining claimants may have with the double recordation but point out that section 314 of the Act requires both filings. We must comply with the Act's provisions.

Our review of § 3833.5 leads us to the conclusion that subsection (d) was not clear as to the action the Government would take in notifying owners of claims or sites who had failed to record or file a notice of transfer. We have redrafted the subsection to clarify it.

Further, we feel that the failure to include language in the proposed rulemaking that deals with actual notice of claims or sites that have not been recorded pursuant to section 314 of the Act could lead to the conclusion that such actual notice implies that the claimant did not have to comply with the requirement to record under the Act. To make it clear that regardless of its form, actual notice of the existence of a claim or site to the Bureau of Land Management does not free a claimant from the recording

requirement, we have added subsection (e) to § 3833.5.

We appreciate the interest expressed in the proposed rulemaking and the comments made on them. We found the comments helpful in our effort to promulgate rulemaking that will carry out the responsibilities given us by the Congress and at the same time assist the mining interests in meeting their day-to-day responsibilities.

Accordingly, 43 CFR Part 3830 is adopted with the changes discussed herein.

Effective date: January 20, 1977.

Signed at Washington, D.C. on January 19, 1977.

CHRIS FARRAND,
Deputy Assistant
Secretary of the Interior.

Part 3830 is amended by adding Subpart 3833 to read:

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims

Sec.	
3833.0-1	Purpose.
3833.0-2	Objectives.
3833.0-3	Authority.
3833.0-5	Definitions.
3833.1	Recordation of mining claims.
3833.1-1	Manner of recordation—National Park System.
3833.1-2	Manner of recordation—other Federal lands.
3833.1-3	When recordation not required.
3833.2	Evidence of assessment work/notice of intention to hold claim.
3833.2-1	When filing required.
3833.2-2	Form—evidence of assessment work.
3833.2-3	Form—notice of intention to hold claim.
3833.2-4	When evidence or notice not required.
3833.3	Notice of transfer of interest.
3833.4	Failure to file.
3833.5	Effect of recording and filing.

§ 3833.0-1 Purpose.

One purpose of these regulations is to establish procedures for the recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands, and for the filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim. Another purpose is to notify the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites or tunnel sites.

§ 3833.0-2 Objectives.

An objective of these regulations is to determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands to assist in the management of those lands and the mineral resources therein. Other objectives are to remove the cloud on the title to these lands because they are subject to mining claims that may have been abandoned and to keep the BLM abreast of transfers of interest in unpatented mining claims, mill sites or tunnel sites. These regulations are not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provi-

sions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the BLM office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

§ 3833.0-3 Authority.

(a) Subsections (a) and (b) of section 314 of the Act require the recordation of unpatented mining claims and the filing of information concerning annual assessment work performed or a notice of intention to hold such a claim in the proper BLM office within specified time periods. Subsection (c) sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) Section 8 of the Act of September 28, 1976 (16 U.S.C. 1901-1912), requires that all unpatented mining claims within the boundaries of the National Park System shall be recorded with the Secretary within one year after the date of the Act and provides penalties for failure to record.

(c) Section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Secretary has general responsibility and authority concerning public lands under 43 U.S.C. 2 and section 310 of the Act.

§ 3833.0-5 Definitions.

As used in this Subpart:

(a) "The Act" means the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 90 Stat. 2743).

(b) "Unpatented mining claim" means a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and 34 CFR 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means any person who holds a recorded possessory interest in all or any part of an unpatented lode or placer mining claim, mill site, or tunnel site whether such interest was obtained by location, purchase, gift, inheritance, or other means recognized under law for transfer of the right of possession and enjoyment recognized in the holder of the claim or claims under the General Mining Law of 1872, as amended, *supra*.

(f) "Federal lands" means any land or interest in land owned by the United States as defined by subparagraph (e) of section 103 of the Act and any other land or interest in land owned by the United States which is subject to location and purchase under the General Mining Law of 1872, *supra*, and 43 CFR Subpart 3811 including, but not limited to, those lands within units of the National Park System, forest reservations within the National

Forest System and wildlife refuges within the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management State Office having jurisdiction over the area in which the lands subject to the regulations are located. (See 43 CFR 1821.2-1 for office location and area of jurisdiction.)

(h) "Date of location" means the date indicated on the notice of location or discovery posted on an unpatented mining claim, mill site, or tunnel site under state law, or, if state law does not require the posting of a notice of location or discovery for unpatented mining claims or tunnel sites the date that the notice of location of the claim was posted in accordance with 43 CFR Parts 3830 and 3840 or if state law does not require the posting of a notice for mill sites, the date that the person who located the site began using or occupying the site for mining or milling purposes.

(i) "Official record of the notice or certificate of location" means the official document of recordation and all accompanying maps, papers or other documents filed for record with the recorder or other officer now authorized to record such instruments under state law in the local jurisdiction where the unpatented mining claim, mill site, or tunnel site is located and any amendments thereof which may change or alter the location of the claim or site.

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Manner of recordation—National Park System.

The owner of an unpatented mining claim, mill site, or tunnel site located within the boundaries of units of the National Park System must comply with the requirements of the Notice of October 13, 1976, entitled "Claimants of Mining Claims," published on October 20, 1976, at 41 FR 46357, and the requirements of Park Service regulations concerning recordation in 36 CFR Part 9, and copies of all material received by the National Park Service pursuant to that Notice will be given by the Park Service to the proper BLM office. Compliance with the requirements of that Notice will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims, mill sites, or tunnel sites within the boundaries of any unit of the National Park System.

§ 3833.1-2 Manner of recordation—other Federal lands.

(a) The owner of an unpatented mining claim, mill site, or tunnel site located on or before October 21, 1976, on Federal land, excluding land within units of the National Park System, shall file (file shall mean being received and date stamped by the proper BLM office), before October 22, 1979, in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law, or, if state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of loca-

tion containing the information in paragraph (c) of this section.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

- (1) The name or number of the claim, or both, if the claim has both;
- (2) A reference by book and page or other identification number to the county or other local public record of the notice or certificate and, if amended, of the last recorded amendment thereof;
- (3) The name, and current mailing address, if known, of the owner or owners of the claim;
- (4) The type of claim or site;
- (5) The date of location;
- (6) For all claims or sites located on surveyed or unsurveyed lands, a legal description shall be furnished. This description shall recite the approximate location of all or any part of the claim or site with a 160 acre quadrant of a section (quarter section) or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and state obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(7) A map with a scale of not less than 1/4 inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified;

(8) If the individual claim or site or group of claims or sites are located on unsurveyed land and it is not a part of or included in the notice or certificate, there shall also be furnished either a narrative or a sketch describing the individual claim or site or group of claims or sites in reference to some topographic, hydrographic or man-made feature. Such narrative description or sketch shall set forth the boundaries and position of the individual claim or site or group of claims or sites with such accuracy as will permit the authorized officer of the agency administering the surface of the lands to identify and locate the claimed lands on the ground;

(9) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer; and

(10) For claims on O & C lands located pursuant to 43 CFR subpart 3821 and claims located pursuant to Public Law 359, 43 CFR Part 3730, the notice or certificate shall be so marked.

(d) Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable.

§ 3833.1-3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which complies with 43 CFR Part 3860, except the requirements for publication and payment of purchase price (43 CFR 3862.4), or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, shall file in the proper BLM office an application for a mineral patent, as described above, before October 22, 1979, the filing of the application will be deemed full compliance with the recordation requirements of section 314 of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1.

§ 3833.2 Evidence of assessment work/notice of intention to hold claim.

§ 3833.2-1 When filing required.

(a) (1) The owner of an unpatented mining claim located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording pursuant to this subpart, in the proper BLM office a notice of intention to hold the mill or tunnel site.

(3) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 36 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance.

(b) (1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the pre-

ceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such mill or tunnel site was located, file in the proper BLM office a notice of intention to hold the mill or tunnel site.

§ 3833.2-2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either:

(a) An official copy of the affidavit of assessment work performed filed in the local jurisdiction of the State where the claim or group of contiguous claims are located setting forth the following information:

(1) The serial number assigned to each claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location or patent application in the proper BLM office;

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An official copy of the detailed report concerning geological, geochemical, and geophysical surveys filed in the office of the local jurisdiction in which the claim is located pursuant to the Act of September 2, 1958 (30 U.S.C. 28-1), setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

§ 3833.2-3 Form—notice of intention to hold claim.

A notice of intention to hold a mining claim or group of mining claims or mill or tunnel sites shall be in the form of a letter signed by the owner or owners of such claim or site or their agent setting forth the following information:

(a) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(b) Any change in the mailing address, if known, of the owner or owners of the claim;

(c) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(d) A statement that the owner(s) intend to continue diligent exploration or development of the claim;

(e) The reasons that physical, legal, or other impediments, beyond the control of the owner(s), have prevented his

filing an affidavit of assessment work performed or a detailed report of geological, geochemical, and geophysical survey under 43 CFR 3833.2-2 (such impediments may include, but are not limited to, deferment of annual assessment work, in which case the notice must be accompanied by a copy of petition for deferment and the order or decision disposing of such petition); and

(f) As required by section 314(a)(1) of the Act, the date on which a copy of the notice of intention to hold the mining claim, was filed in the office of the local jurisdiction in which the claim is located.

§ 3833.2-4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR Part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2-1.

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1-2, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office; and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

§ 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws per-

mitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28), and compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 and with laws and regulations issued by any State or other authority.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or any other Federal agency will not excuse the filings required by this subpart and filings under this subpart will not excuse the filing of instruments pertaining to mining claims under any other Federal law, except for filing a notice or certificate of location under this subpart which is marked by the owner as required by section 3833.1-2(c) (10) hereof, which filing shall satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Public Law 359 lands under 43 CFR Part 3730.

(d) In the case of any action or contest affecting an unpatented mining claim, mill site or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 or filed a notice of transfer of interest pursuant to § 3833.3, will be considered by the United States as the record owners of such claim or site and will be personally notified of such action or contest. Owners who have not recorded a claim or site or filed a notice of transfer will not be personally served but will be put on notice only by publication and will be bound by any contest proceeding even though they have not been personally served. Diligent search and inquiry for the purposes of contesting the validity of a mining claim under this Title shall only require a search of the records of the proper BLM office and shall not require any other search or inquiry.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

[FR Doc.77-2315 Filed 1-19-77; 3:49 pm]