

FEDERAL REGISTER: 56 FR 28442 (June 20, 1991)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 722, 723, 724, 843, 845, and 846

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is revising its Initial and Permanent Regulatory Program rules governing service of process to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty and individual civil penalty assessments.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Final Rule and Comments
- III. Procedural Matters

I. BACKGROUND

Section 521 of the Act provides authority to the Secretary of the Interior and his authorized representatives to issue citations for violations of the Act. The regulations governing the service of process for notices and orders are found at 30 CFR parts 722 and 843. Part 722 contains the Initial Program regulations which were promulgated on December 13, 1977 (*42 FR 62639*). Part 843 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (*44 FR 14902*), and subsequently revised on August 16, 1982 (*47 FR 35620*). The regulations governing service of process of proposed civil penalty assessments are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations which were first promulgated on December 13, 1977 (*42 FR 62639*) and subsequently revised on September 4, 1980 (*45 FR 58780*). Part 845 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (*44 FR 14902*) and subsequently revised on August 16, 1982 (*47 FR 35620*). The regulations governing service of process of proposed individual civil penalty assessments are found at 30 CFR parts 724 and 846. Parts 724 and 846 contain the Initial and Permanent Program regulations respectively which were promulgated on February 8, 1988 (*53 FR 3663*).

On September 27, 1990 (*55 FR 39580*), OSM proposed two sets of revisions to its rules. n1 The first set of revisions at 30 CFR 723.13(b)/845.13(b), 723.15(b)/845.15(b), and 843.14(a) were proposed in order to provide for consistent phraseology within each of the rules by replacing the term "permittee" with the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued".

n 1 For ease of reference, the respective Initial Program and Permanent Program sections are cited together in this preamble. For instance, references to 30 CFR 723.13(b) and 845.13(b) will be cited as 30 CFR 723.13(b)/845.13(b).

The second set of revisions at 30 CFR 722.14(a)/843.14(a), 723.17(b)/845.17(b) and 724.17(c)/846.17(c) were proposed in order to provide increased flexibility within each rule and uniformity among the rules regarding the methods of acceptable service of process. The previous versions of these rules all varied in the methods by which their service of process was performed. Sections 722.14/843.14 provided for service by personal delivery or by certified mail. Sections 723.17/845.17 provided for service by only certified mail. Sections 724.17/846.17 provided that service would be

sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedures for service of a summons and complaint (hereinafter Rule 4).

OSM solicited public comments on the proposed revisions. The comment period closed November 27, 1990 with three commenters responding. No request was received for a public hearing and none was held.

After careful review of the comments received, OSM has decided to withdraw from this rulemaking the first set of proposed revisions relating to consistent phraseology. OSM is adopting as final rules both the second set of proposed revisions relating to methods for service of process as well as conforming changes to the service rules relating to refusal of service. These conforming changes will be discussed below at II.B.1.

II. DISCUSSION OF FINAL RULE AND COMMENTS

A. WITHDRAWAL OF PROPOSED REVISIONS TO SECTIONS 723.13(b)(3)(ii)(B)/845.13(b)(3)(ii)(B), 723.15(b)(2)/845.15(b)(2), and 843.14(a)(2)(2) -- CONSISTENT PHRASEOLOGY

OSM proposed revisions to these sections which would have changed the term "permittee" to either "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued." The intent of such changes was to make consistent the phraseology within each section and to more accurately identify those parties with actual on-site capacity to prevent or abate violations.

Each of the three commenters expressed concerns over the proposed revisions. The fundamental concern of two commenters was that the proposed rule improperly expanded the class of persons who may be assessed civil penalties beyond permittees to include operators as well as any other person to whom a notice or order might be issued. One of these commenters stated that such assessments would be contrary to both: (a) The provisions of Section 518(a) of the Act which limits civil penalties to violations committed by permittees, and (b) the principle that civil penalties cannot be assessed against a class of individuals not already subject to enforcement under Section 521(a) which speaks only of permittee violations of permit conditions or the Act.

A related concern was that civil penalty assessments against permittees, operators, and other mine-site parties would allow for "double recover" of penalties, for which no statutory authority was seen to exist.

The same commenter also asserted that OSM had cited no credible evidence of the need for the rulemaking and had failed to document any specific enforcement problem arising from the implementation of the current regulations. The commenter stated that if the purpose of the rule was to ensnare "wildcat" or "contract" operators, OSM had failed to provide any analysis to show why the term "permittee," as defined by 30 CFR 701.5, had not proven sufficiently broad to implement the provisions of Section 518 effectively.

Conversely, another commenter stated that the proposed revisions would appear to authorize a violation or civil penalty assessment not to be issued against a permittee, thereby conflicting with section 521(a) of the Act which holds permittees ultimately responsible for violations on surface coal mining operations.

The final commenter was concerned that the proposed revisions would adversely affect the individual civil penalty protections provided by section 518(f) of the Act and "refine(d)" by the decisions in *United States v. Dix Fork Coal Co.*, 692 F.2d 436 (6th Cir. 1982), and *United States v. Daugherty*, 599 F. Supp. 671 (1984).

In response to the comment that no compelling regulatory need was presented in the proposed rulemaking for replacing the term "permittee" with either the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) is issued," OSM would stress that these revisions were only intended to make consistent the phraseology within the affected sections and to more accurately identify those parties with actual on-site capacity to prevent or correct violations. Nonetheless, because of the commenter concerns engendered by the proposed revisions, OSM has decided to withdraw them from the current rulemaking. The longstanding references to "permittee" in the cited sections will remain as they were.

OSM wishes to make clear that the withdrawn revisions were never intended as a means of changing the scope of the agency's enforcement authority. The scope of that authority is established by the enforcement provisions of section 521

of the Act and its implementing regulations at 30 CFR parts 722/843, and not the penalty provisions of section 518 of the Act and its implementing regulations at 30 CFR parts 723/845. It is section 521 and 30 CFR parts 722/843, not section 518 and parts 723/845, which define the class of persons against whom enforcement actions could be taken and, therefore, those who would be subject to civil penalties. Accordingly, the withdrawn revisions to 30 CFR parts 723/845 would have neither limited nor expanded the class of affected persons as asserted by commenters. The withdrawn revisions to 30 CFR part 843 dealt with alternative service of process and would also have neither limited nor expanded the class of persons subject to civil penalty assessments.

With regard to OSM's enforcement scheme, OSM will continue to issue notices of violation under 30 CFR 722.11-.12/843.12 to the permittee and any other persons responsible for compliance with performance standards applicable to the operation. As it has in the past, OSM will cite operators when they are deemed responsible for operations. Such has always been the case, for example, with "wildcat" operations and those operations abusing the two-acre exemption. In those instances when both a permittee and an operator are cited for a single violation, it is the longstanding policy of OSM that both parties are jointly and severally liable for the penalty amount associated with that violation. Under such a policy, there would not be a "double recovery" of the penalty amount.

OSM also wishes to make clear that the withdrawn revisions were never intended to adversely affect the individual civil penalty provisions established by section 518(f) of the Act. The individual civil penalty provisions of section 518(f) are implemented at 30 CFR parts 724/846. Proposed revisions to 30 CFR part 843 and 30 CFR parts 723/845 would not, therefore, have affected those provisions. Neither would the revisions have conflicted with the court decisions cited by the commenter.

B. SECTIONS 722.14/843.14, 723.17/845.17 and 724.17/846.17

1. SERVICE OF PROCESS

Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 are adopted as proposed to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty assessments. Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 combine all of the methods of service of the previous rules to allow service under each section by either personal delivery, certified mail, or any other alternative means consistent with Rule 4 of the Federal Rules of Civil Procedure for service of summons and complaint. As will be discussed below, these final rules also include conforming changes to their provisions governing refusal of service.

Three commenters submitted comments on the proposed rule. One commenter stated that the proposed revision to 30 CFR 843.14(a)(2) allowing for alternative service on "any person" did not guarantee that the permittee would be notified in time to correct the violation or request administrative review before the Department of the Interior (emphasis added).

OSM does not agree with this conclusion. The revision to 30 CFR 843.14(a)(2) does not allow for alternative service on any person, but rather on "the person to whom it [the notice or order] is issued or his or her designated agent." Such language is consistent both with that of 30 CFR 843.14(a)(1) and with its Initial Program counterpart at 30 CFR 722.14(a)(2). Moreover, 30 CFR 722.14(a)/843.14(a) both require that citations be served "promptly"; and under 43 CFR 4.1162(a), a permittee's time for requesting administrative review does not begin to run until service has been effected. Thus, the commenter's concern about delay in service is unfounded.

Another commenter questioned whether the use of "regular" mail without a record of receipt might prove problematic in demonstrating proof of service. Presumably the commenter is referring to the service by first-class mail allowed by Section (c)(1)(C)(ii) of Rule 4, since the other service by mail prescribed in this rulemaking is by certified mail.

The use of first-class mail will not create a problem in demonstrating proof of service. Section (c)(2)(C)(ii) of Rule 4 requires that an acknowledgment form shall be sent with the service of process. This acknowledgment form is to be returned within 20 days after the date of mailing. If no acknowledgment of service is received by the sender within 20 days after the date of mailing, the above-referenced section specifies that service shall be by the personal delivery provisions of subsections (d)(1) and (d)(3) of Rule 4.

A commenter asserted that service of process prescribed under the proposed rules should be limited to methods available under Rule 4 so as to both prevent duplication between the "personal service" provided by the prior rules and the "personal service" of Rule 4 and to avoid confusion as to the limits of permissible service.

OSM does not agree with the commenter's proposal. Its effect would be to limit the service of process in final 30 CFR parts 722/843, 723/845, and 724/846 to Rule 4 procedures previously provided only in part 724/846. Such reliance upon Rule 4 procedures would have foreclosed both service certified mail and the personal service previously provided by the parts 722/843 and 723/845.

The personal service provided by the prior rules is not duplicative of Rule 4 personal service as asserted by the commenter. For example, under the procedures previously employed by OSM under 30 CFR 722.14(a)(2), and 843.14(a)(2), the personal service of a notice or order issued to a corporate permittee was considered complete, for instance, upon tender of such notice or order to a secretary working in the office of the permittee. Under section (d)(3) of Rule 4, personal service to a corporate permittee would be complete upon tender of the notice or order to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of process. The commenter's proposal limiting service to Rule 4 procedures would have required, therefore, the elimination of the personal and certified mail methods of service of process available under prior rules. Such a result works against the flexibility of service intended by this rulemaking.

OSM disagrees with the commenter's contention that this rulemaking will cause confusion as to the limits of permissible service because it allows for service of process by either personal service, certified mail or any other alternative method consistent with Rule 4. Each of these methods of service is taken from a prior rule with established limits of permissible service. Methods of service which individually did not prove confusing should not prove confusing when provided for in the alternative.

2. REFUSAL OF SERVICE

In the process of reviewing the proposed rules and comments thereto, OSM determined that conforming changes were also needed to the provisions dealing with refusal of service to provide both consistency within and uniformity among the respective service rules.

Three sets of rules are involved in these conforming changes. Two sets, at 30 CFR 722.14(a)(2)/843.14(a)(2) and 723.17(b)/845.17(b)(1), already have provisions governing the refusal of tendered service documents. These are longstanding provisions of both the Initial and Permanent Program rules and are consistent with the line of cases, including *U.S. v. Pryor Bolton*, 781 F.2d 528 (6th Cir. 1985), which held adequate service to exist even where there was refusal to accept delivery. Conforming changes are needed to the refusal provisions of these two sets of rules to reflect the previously discussed changes made to their methods of service of process. The third set of rules at 30 CFR 724.17(c)/846.17(c) did not have provisions governing the refusal of tendered service documents. Refusal provisions are needed to conform these rules to the other service rules which do contain such provisions.

The last sentence of both previous and proposed 30 CFR 722.14(a)(2)/843.14(a)(2) provided that "[s]ervice shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept." Under this final rule, it will read "[s]ervice shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept." (Emphasis added.) The underlined word "certified" is added not as a substantive change but rather to conform the quoted passage to other provisions of both prior and proposed Sections 722.14(a)(2)/843.14(a)(2) which provided that service shall be by "certified mail". Under both these rules, refusal of tendered mail constituted service. The "certified" qualifier in the final rules will also serve to distinguish that type of mail service from the First Class mail service now allowed under final Sections 723.14(a)(2)/845.14(a)(2) through alternative Rule 4 procedures. The refusal of First Class mail is not covered by the final rule.

Previous 30 CFR 723.17(b)/845.17(b)(1) provided that "[i]f the mail is tendered * * * and he or she refuses to accept delivery of or to collect such mail, the requirement of this paragraph shall be deemed to have been complied with upon such tender." Final 723.17(b)/845.17(b)(1) will provide that "[i]f a copy of the proposed assessment and work sheet or certified mail is tendered * * * and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender." (Emphasis added.) The underlined

phrase "a copy of the proposed assessment and work sheet or certified mail" is added to conform the quoted passage to other provisions of proposed and final 30 CFR 724.17(b) and 845.17(b) which provide that "[t]he Office shall serve a copy of the proposed assessment and of the work sheet * * * on the person to whom the notice or order was issued, by certified mail, or by an alternative means consistent with * * * Rule 4 of the Federal Rules of Civil Procedure * * *." Service of the copy of the proposed assessment and worksheet was not expressly provided for in the refusal of tender sections of the previous rules.

The "certified" qualifier will again serve to distinguish that type of mail service comprehended by the refusal of service provisions of Sections 723.17(b) and 845.17(b)(1) from the First Class mail service also allowed by the final rules under alternative Rule 4 procedures. The word "documents" replaces the word "mail" found in both the proposed and final rules and reflects that either a copy of the proposed assessment and work sheet or the certified mail containing the assessment documents may be tendered under specified circumstances to complete service of process.

The last sentence of proposed 30 CFR 724.17(c)/846.17(c) will also be revised in the final rule to more precisely conform to the refusal provisions of the other service rules. The previous version of 30 CFR 724.17(c)/846.17(c) did not contain a refusal of service provision. Proposed 724.17(c)/846.17(c) provided that "[i]f the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender." This passage depicts a scenario not found in the other service rules. Final 724.17(c)/846.17(c) will instead state that "[s]ervice shall be complete upon tender of the notice of proposed assessment and included information or the certified mail and shall not be deemed incomplete because of refusal to accept." This language is modeled on the refusal of service provisions of final 30 CFR 722.14(a)(2)/843.14(a)(2). It is consistent with the refusal of service provisions of final 30 CFR 723.17(b) and 843.17(b)(1), and will contribute to increased uniformity of language among the service rules. Tender of the documents at a person's dwelling or usual place of abode to a person of suitable age and discretion then residing therein will still suffice where such service is authorized by Rule 4(d)(1).

III. PROCEDURAL MATTERS

Effect of the Rule in Federal Program States and on Indian Lands

The rule will apply, through cross-referencing, to the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. No comments were received concerning unique conditions in any of these States or on Indian lands which would require changes to the national rules as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and the Federal regulations at 30 CFR 840.13(c) require approved State programs to contain procedures the same or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843, 845, and 846. States which desire more flexibility in their method of service of documents may desire to amend their programs but are not bound to do so.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under *44 U.S.C. 3501* et seq.

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the rule will not have a significant economic impact on a substantial number of small entities. The rule merely allows for greater flexibility of service of documents.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208-2550 (Commercial) or 268-2550 (FTS).

LIST OF SUBJECTS

30 CFR Part 722

Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedures, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Accordingly, 30 CFR parts 722, 723, 724, 843, 845, and 846 are amended as set forth below:

Dated: May 14, 1991.

Dave O'Neal, Assistant Secretary, Land and Minerals Management.

SUBCHAPTER B -- INITIAL PROGRAM REGULATIONS

PART 722 -- ENFORCEMENT PROCEDURES

1. The authority citation for Part 722 continues to read as follows:

Authority: Sections 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201*).

2. Section 722.14 is amended by revising paragraph (a)(2) to read as follows:

SECTION 722.14 - SERVICE OF NOTICES OF VIOLATION, CESSATION ORDERS, AND ORDERS TO SHOW CAUSE.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil

Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

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PART 723 -- CIVIL PENALTIES

3. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, Sections 201, 501, 518 (*30 U.S.C. 1211, 1251, 1268*) and Pub. L. 100-34.

3a. Section 723.17 is amended by revising paragraph (b) to read as follows:

SECTION 723.17 - PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * * * *

PART 724 -- INDIVIDUAL CIVIL PENALTIES

4. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*); and Pub. L. 100-34.

5. Section 724.17 is amended by revising paragraph (c) to read as follows:

SECTION 724.17 - PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY.

* * * * *

(c) Service . For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

**SUBCHAPTER L -- PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES
PART 843 -- FEDERAL ENFORCEMENT**

6. The authority citation for part 843 continues to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended; and Pub. L. 100-34.

7. Section 843.14 is amended by revising paragraph (a)(2) to read as follows:

SECTION 843.14 - SERVICE OF NOTICES OF VIOLATION, CESSATION ORDERS, AND SHOW CAUSE ORDERS.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

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PART 845 -- CIVIL PENALTIES

8. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq., Pub. L. 100-202, and Pub. L. 100-446.

9. Section 845.17 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

SECTION 845.17 - PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

(b)(1) If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * * * *

PART 846 -- INDIVIDUAL CIVIL PENALTIES

10. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201* et seq.); Pub. L. 100-34.

11. Section 846.17 is amended by revising paragraph (c) to read as follows:

SECTION 846.17 - PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY.

* * * * *

(c) Service. For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

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