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Comment On: MSHA-2014-0009-0090
Criteria and Procedures for Assessment of Civil Penalties, Proposed rule; extension of comment period; close of record.

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Comment from Alan MacVicar, CEMEX Inc.

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General Comment

We are CEMEX and write to raise major concerns over the Mine Safety and Health Administrations proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

Our company is a member of the National Stone, Sand & Gravel Association, the world's largest mining association by product volume. NSSGA represents the crushed stone, sand and gravel industries and its member companies produce more than 90% of the crushed stone and 70% of the sand and gravel consumed annually in the United States, and the industry employs over 100,000 men and women. Our company, like many others in the industry, produces cement, ready mix concrete and aggregates utilized for critical infrastructure projects including highways, bridges and mass transit, as well as environmental applications such as wastewater treatment, sewage control and drinking water facilities.

CEMEX operates 11 cement plants and 63 active mining operations in the Unites States, as well as additional facilities in Puerto Rico. We employ roughly 10,000 people in the US operations alone and more than 43,000 people around the world. We are a global leader in health & safety

and have programs in place throughout the world to continuously improve our performance.

In general, the proposed rule doesnt meet its stated goals and in fact, contradicts them in many ways. MSHA has stated that the proposed rule will increase consistency and reduce potential areas for dispute, but there are several key points of confusion in the rule that would lead to more areas of dispute.

The proposed rule will likely result in a dramatic increase in penalty assessments. Much of the analysis NSSGA has completed, comparing the penalty assessment for the same or similar citations has consistently demonstrated that penalty assessments will be between 50 and 80 percent higher under the proposed rule. Depending on the profile of each companys MSHA performance, the resulting assessment under the current and proposed rule may vary, however, the new rule consistently produces a higher penalty.

The proposed rule seeks to broadly change the scope of Part 100, such that it may purport to apply to both the proposal of penalties by MSHA and the assessment of penalties by the Federal Mine Safety and Health Review Commission. Such a provision is well beyond the scope of MSHAs authority, and amounts to unsound policy.

The proposed rule suggests changes to Negligence, which may have an adverse effect on the issue of an inspectors designation of unwarrantable failure. Currently, an unwarrantable failure designation is accompanied by a negligence finding of either high or reckless disregard. The proposed rule would eliminate the high negligence designation, which would likely lead to an increase in reckless disregard findings in order to support an inspectors declaration of unwarrantable failure. An increase in reckless disregard will increase penalties, increase the number of violations potentially considered for flagrant status, and could have significant civil liability consequences.

The proposed rule does not include any provision for alternative dispute resolution such as merit-based conferencing.

The proposed rule does not address special assessments, which can be applied without any explanation or justification, and will again result in significantly increased penalties.

In closing, we urge MSHA to withdraw this proposed rule, and work with our industry and other stakeholders to craft a rule that is clear and that does not impede the operators ability to manage for safety and compliance, impose an undue economic burden on our industry, raise the cost of aggregate products needed for the built environment, or the limit the economic prosperity of the United States.

Sincerely,

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