
From: Patrick Jacomet <patj@oaima.org>
Sent: Friday, March 27, 2015 1:20 PM
To: zzMSHA-Standards - Comments to Fed Reg Growth **MAR 27 2015**
Cc: Pat Jacomet
Subject: Docket No. MSHA-2014-009
Attachments: MSHA-2014-0009.pdf

Importance: High

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2015 OAIMA Golf Outing July 20th at the New Albany Golf Club

"It is hard to fail, but it is worse never to have tried to succeed."
— Theodore Roosevelt

If it Can't Be Grown, It has to be Mined!
Visit: www.oaima.org



OHIO AGGREGATES & INDUSTRIAL MINERALS ASSOCIATION

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Date: March 27, 2015

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Mail:

U.S. Mine Safety and Health Administration
Office of Standards & Regulations
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209

30 CFR Part 100
RIN: 1219-AB72

Federal E-rulemaking portal:

<http://www.regulations.gov>, follow instructions for submitting for docket number MSHA-2014-0009.

Email: zzMSHA-comments@dol.gov

To Whom It May Concern:

On behalf of the nearly 200 member companies of the Ohio Aggregates & Industrial Minerals Association (OAIMA) we write to raise major concerns over the Mine Safety and Health Administration's proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

The OAIMA represents not only the producers of sand, gravel, limestone and other construction materials but also the companies that provide goods, equipment and services to those producers. Some facts about the members and products provided by OAIMA members include:

- The industry employs nearly 5,000 people with an average wage exceeding \$44,000.
- Another 40,000 people are employed indirectly in Ohio's mineral industry as truck drivers, electricians, mechanics and other supporting professions.
- Over half of all aggregate is paid for by tax dollars. Major users are the state, counties, townships and municipalities in their road and infrastructure programs.
- Ohio's non-fuel raw mineral production is valued at over \$1 billion.
- Construction of an average size school or hospital requires 15,000 tons of aggregates.
- Aggregates make up 95% of asphalt and 85% of concrete.
- Each Ohioan on average, utilizes nearly 11 tons of aggregate mined by our members each year.

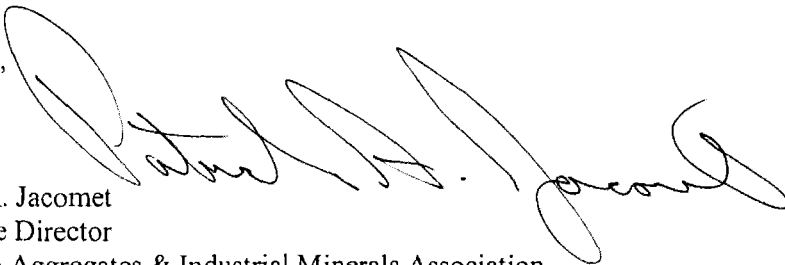
Our member companies, like many others in the industry, produce aggregates utilized for critical infrastructure projects including highways, bridges and mass transit, as well as environmental applications such as wastewater treatment, sewage control and drinking water facilities.

MSHA has stated that the proposed rule will increase consistency and reduce potential areas for dispute, but the proposal contains several key points of confusion that this rule would lead to more areas of dispute.

- The proposed rule will likely result in dramatic increases in penalty assessments. Analyses comparing the penalty assessment for the same or similar citations have consistently demonstrated that penalty assessments will be between 50 and 80 percent higher under the proposed rule.
- The proposed rule seeks to 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 beyond the scope of MSHA's authority, and amounts to unsound policy.
- The proposed rule proposes changes to "Negligence," which may have an adverse effect on the issue of an inspector's 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 inspector's 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 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 explanation, and result in significantly increased penalties.

In closing, on behalf of the nearly 200 member companies of the OAIMA, we urge MSHA to withdraw this proposed rule, and work with our industry and other stakeholders to draft a rule that is clear and that does not impede the operator's ability to manage for safety and compliance, impose an undue economic burden on our industry, raise the cost of aggregate products needed for our deteriorating infrastructure and impede the economic recovery of the state of Ohio.

Sincerely,


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