

**MAR 31 2015**

# PUBLIC SUBMISSION

<b>As of:</b> 4/1/15 9:19 AM
<b>Received:</b> March 31, 2015
<b>Status:</b> Posted
<b>Posted:</b> April 01, 2015
<b>Tracking No.</b> 1jz-8i15-fnru
<b>Comments Due:</b> March 31, 2015
<b>Submission Type:</b> Web

**Docket:** MSHA-2014-0009

Criteria and Procedures for Assessment of Civil Penalties, 30 CFR Part 100

**Comment On:** MSHA-2014-0009-0090

Criteria and Procedures for Assessment of Civil Penalties, Proposed rule; extension of comment period; close of record.

**Document:** MSHA-2014-0009-0111

Comment from Jasper Stem, Jr., North Carolina Aggregates Association

---

## Submitter Information

**Name:** Jasper Stem, Jr.

**Organization:** North Carolina Aggregates Association

---

## General Comment

March 31, 2015

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

Reference: MSHA-2014-0009-0090 (Proposed Civil Penalties Rule)

To Whom It May Concern:

The North Carolina Aggregates Association is writing to raise major concerns over the Mine Safety and Health Administrations proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

**AB72-COMM-68**

North Carolina. Our members, like many others in the industry, produce aggregates that are utilized in critical infrastructure projects, such as - highways, bridges, mass transit, and water and wastewater treatment facilities.

The North Carolina Aggregates Associations members have over 120 locations that provide aggregates for public and private construction projects throughout our state. Our member companies and their employees are dedicated to ensuring that every miner is operating in a safe environment and in compliance with MSHA standards and procedures.

The proposed rule doesn't meet its stated goals. 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 will lead to more contestments.

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 % higher under the proposed rule.

The proposed rule seeks to change the scope of Part 100, such that its intention is to apply the change 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.

The proposed rule intends to change Negligence, which may have an adverse effect on the 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 civil liability consequences.

The proposed rule does not include any provision for alternative dispute resolution such as merit-based conferencing or the consideration of mitigating circumstances.

The proposed rule does not address special assessments, which can be applied without explanation, and 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 does not impede the operators ability to manage for safety and compliance, impose an undue economic burden on our industry, and raise the cost of aggregate products that are needed in rebuilding our nations infrastructure.

Sincerely,

Jasper G. Stem, Jr., P.E.  
Executive Director

NC Aggregates Association

3700 National Drive Suite 210  
Raleigh, NC 27612  
[ncaa@ncaggregates.org](mailto:ncaa@ncaggregates.org)  
(919) 782-7055