

MAR 31 2015

From: Ellis, Jason <Jason.Ellis@huber.com>
Sent: Tuesday, March 31, 2015 3:39 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: Sommers, Robert
Subject: RIN 1219-AB72
Attachments: RIN 1219-AB72.pdf

To whom it may concern:

Please accept the attached comments for the proposed rule: RIN 1219-AB72. Feel free to contact me with any questions.

Sincerely,



HUBER ENGINEERED MATERIALS

Jason P. Ellis, CIH, CSP, CHMM | Director, EHS&S - Huber Carbonates, LLC
Huber Engineered Materials | 3100 Cumberland Blvd., Suite 600, Atlanta, GA 30339
Office: (678) 247-7133 | Mobile: (404) 450-0237
www.HuberMaterials.com | [Ground Calcium Carbonate](#)

AB72-Comm-77



A FAMILY OF SOLUTIONS

J.M. Huber Corporation

3100 Cumberland Blvd., Suite 600
Atlanta, GA 30339
United States

Phone : (678) 247-7133
e-mail: jason.ellis@huber.com

www.huber.com

March 31, 2015

MSHA, Office of Standards, Regulations, and Variances
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939

RE: RIN: 1219-AB72 - MSHA-2014-0009 – Civil Penalties Rulemaking

To Whom It May Concern:

Please accept this letter on behalf of J.M. Huber Corporation ("Huber") in response to the Mine Safety and Health Administration's proposed Civil Penalties rule, 30 CFR Part 100, RIN: 1219-AB72.

Huber 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. Huber, like many others in the industry, produces 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.

Huber operates mines across the United States with locations in Georgia, Illinois, Texas and Arkansas and employs over 300 employees in these mines. Huber is deeply committed to protecting each employee's health, safety and well being.

While we support the mission of MSHA, we believe the proposed rule extends well beyond its stated goals of increasing consistency and reducing potential areas for dispute. Notwithstanding these goals, a plain reading of the proposal uncovered several key points of confusion which will have the countervailing effect of creating more disputes rather than dispelling it.

As written, the proposed rule will likely result in dramatic increases in penalty assessments. Analyses of operator surveys comparing the penalty assessment for the same or similar citations have demonstrated that assessments will be between 50 and 80 percent higher under the proposed rule.

The proposed rule seeks changes to the scope of Part 100, such that it purports 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 appears beyond the scope of MSHA's authority and is likely subject to challenge on those grounds.

The proposed rule proposes changes to "Negligence," which will 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. Also, 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, concise and that does not create an impediment to an operator's ability to manage for safety and compliance. Furthermore, any such rule should be crafted in such a way as not to impose an undue economic burden on our industry, does not raise the cost of aggregate products needed for the built environment or limit the economic prosperity of the United States. Taking the rule as it now stands will unfortunately result in all of the above occurring.

Sincerely,



JM Huber Corporation
Huber Carbonates, LLC
Jason P. Ellis, CIH, CSP, CHMM
Director, EHS&S