

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 21, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

HOOPERS CREEK STONE, LLC,

Docket No. SE 2025-0153
A.C. No. 31-02108-623964

BEFORE: Rajkovich, Chair; Jordan, and Baker, Commissioners

ORDER

BY: THE COMMISSION

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On January 15, 2026, the Commission received from Hoopers Creek Stone, LLC, “(Hoopers Creek”) a motion which we construe as a motion to reopen a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On November 14, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to Hoopers Creek’s perceived failure to answer the Secretary of Labor’s August 4, 2025 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 15, 2025, when it appeared that the operator had not filed an answer within 30 days.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge’s order here has become a final decision of the Commission.

In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *Jim Walter Res., Inc.*,

15 FMSHRC 782, 786-89 (May 1993). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

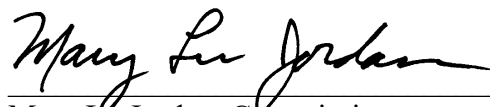
On January 15, 2026, the Commission received a document which appeared to be the operator's late-filed Answer. While its response could also be construed as a motion to reopen the final order, the motion does not assert good cause for the operator's failure to timely file. The Secretary opposes the operator's motion and requests that the Commission deny the motion without prejudice.

An operator seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief. In addition to providing all known details, including relevant dates and persons involved, the operator must provide a clear explanation that accounts for the operator's failure to timely file. *See Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010).

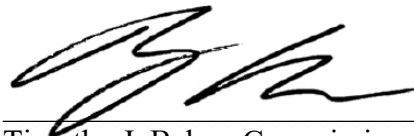
Because Hoopers Creek's request for relief does not explain the company's failure to respond to the Judge's show cause order, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice. *See FKZ Coal Inc.*, 29 FMSHRC 177, 178 (Apr. 2007). The words "without prejudice" mean that Hooper's Creek may submit another request to reopen the assessment.¹



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

¹ If Hoopers Creek submits another request to reopen, it must establish good cause for not responding to the Judge's November 14, 2025 Order to Show Cause. Under Rule 60(b) of the Federal Rules of Civil Procedure, the existence of "good cause" may be shown by a number of different factors including mistake, inadvertence, surprise, or excusable neglect on the part of the party seeking relief, or the discovery of new evidence, or fraud, misrepresentation, or other misconduct by the adverse party. Fed. R. Civ. P. 60(b). Hoopers Creek should include a full description of the facts supporting its claim of "good cause," including how the mistake or other problem prevented it from responding within the time limits provided in the Judge's order, as part of its request to reopen. Hoopers Creek should also submit copies of supporting documents with its request to reopen.

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