

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 29, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

POKEY’S MATERIALS, LLC

Docket No. CENT 2026-0118
A.C. No. 16-01385-623745

Docket No. CENT 2026-0119
A.C. No. 16-01385-625790

Docket No. CENT 2026-0120
A.C. No. 16-01385-621709

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

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On March 18, 2026, the Commission received from Pokey’s Materials, LLC (“Pokey’s”) a motion seeking to reopen three penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Nos. CENT 2026-0118, CENT 2026-0119, and CENT 2026-0120, involving similar procedural issues. 29 C.F.R. § 2700.12.

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”); *JWR*, 15 FMSHRC at 787. 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 permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that in CENT 2026-0118 the proposed assessment was delivered on July 23, 2025, and became a final order of the Commission on August 22, 2025. In CENT 2026-0119, the proposed assessment was delivered on September 12, 2025, and became a final order of the Commission on October 13, 2025. In CENT 2026-0120, the proposed assessment was delivered on June 16, 2025, and became a final order of the Commission on July 16, 2025.

Pokey’s asserts it is “unsure exactly how these orders progressed to this stage.” MTR at 1. The operator only notes that it was in the process of training new personnel to handle contests during the relevant time period. *Id.* The Secretary opposes the request to reopen and notes that delinquency notices were mailed to the operator on November 17, 2025, December 23, 2025, and September 2, 2025, and a scofflaw letter was sent to the operator on January 29, 2026 addressing the unpaid penalties in CENT 2026-0118 and CENT 2026-0120.²

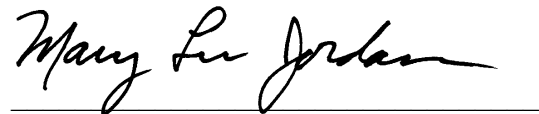
An operator seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief. In addition to providing all known details, including relevant dates and persons involved, the operator must provide a clear explanation that accounts for the operator’s failure to timely contest the assessment. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Here, Pokey’s has not explained why its contest was not timely. No time frames were provided, the operator’s normal process for contesting penalties was not discussed, and there is no explanation of how the training of an employee would result in the failure to contest citations for four months. Moreover, Pokey’s has failed to explain why it did not respond to the delinquency notices and only responded to the Secretary upon receiving a scofflaw letter on January 29, 2026. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request).

² Pokey’s paid the penalties in CENT 2026-0119 in full on December 23, 2025. Sec’y Attachment H.

In the absence of a sufficient explanation, we conclude that Pokey's has failed to establish good cause for reopening the proposed penalty assessments and deny its motion to reopen with prejudice. Accordingly, these cases are dismissed.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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