

Fazio Brothers, Inc.

September 11th, 2023

S. Aromie Noe,
Director Office of Standards,
Regulations, and Variances Mine Safety and Health Administration (MSHA)
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5450

Re: RIN 1219-AB36, Docket Number: MSHA-2023-0001

Dear Director Noe:

Fazio Brothers, Inc. Opposes the new regulation, because it will not protect any miners in the Non – Metal Crushing Industry, it will however put an undue burden on a small company and make it hard to stay in business.

Fazio Brothers Inc. has been operating in Southwest Washington and has serviced major businesses for over 25 years. We are located in Vancouver, Washington and service all of Vancouver and Surrounding areas and travel as far as Sun Valley, ID. We deliver sand and gravel for: Golf Courses, Schools, Athletic Fields, and more. We service large projects for both Industrial & Commercial businesses. We are a locally owned family business and have very little turnover because we care about everyone's safety and health.

Fazio Brothers respectfully requests a 120-day extension to the comment period provided in MSHA's proposed RIN 1219-AB36, Lowering Miners' Exposure: Respirable Crystalline Silica and Improving Respiratory Protection, as published in the Federal Register on July 13, 2023. MSHA has requested comments in 43 specific areas within a 45-day comment period. That timeframe is insufficient to provide thoughtful and meaningful comments on all 43 sections.

Data revealed in the meeting with the Small Business Advocacy Roundtable showed that the MSHA Data Retrieval System only had twenty 7000-1 forms filed for Silicosis. Of those twenty, only a few showed that a doctor diagnosed Silicosis, and none of the cases listed showed symptoms. Our company feels this is a coal mining issue, not a Metal/Non-Metal MSHA problem. We care about our miners as many are family and friends, but we cannot bear the cost for something that isn't an issue in our mining sector. Lowering exposure levels will not change exposure when our people aren't exposed to life changing levels. We have been tested for Respirable dust several times with no dust found.

The company has been tested as follows:

Mine Name: Fazio Bros. Sand Co., Inc. ID # 45-02661:

10/10/2019 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

10/05/2016 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

01/08/2014 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

12/08/2009 Bulldozer Operator Respirable Dust <.1mg Concentration 0 PEL 0 Contractor NCW
12/03/2009 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0
04/24/2002 Front-end Loader Operator Respirable Dust <.1mg Concentration 0 PEL 0

Of the 20 years of dust and Silica testing, we will be spending loads of money chasing a ghost, where that money could be spent on enhancing safety.

The final rulemaking process will be better served by providing sufficient time to review each of the 43 sections to find out how our company will be affected by all these changes. Fazio Brothers, Inc. requests that MSHA extend the comment period for 120 days.

Initial Regulatory Flexibility Analysis

8. As summarized in Section X. Initial Regulatory Flexibility Analysis of this preamble, MSHA examined the impact of the proposed rule on small mines in accordance with the Regulatory Flexibility Act. MSHA estimated that small-entity controllers would be expected to incur, on average, additional regulatory costs equaling approximately 0.122 percent of their revenues (or \$1,220 for every \$1 million in revenues). MSHA is interested in how the proposed rule would affect small mines, including their ability to comply with the proposed requirements. Please provide information and data that supports your response. If you operate a small mine, please provide any projected impacts of the proposal on your mine, including the specific rationale supporting your projections.

It's been estimated that the cost of IH sampling (SEG Development, IH Plan) will cost \$7500.00.

Lab fees to run the Initial samples will be \$650.00 and \$1950.00 per year after that.

It costs \$1000.00 for one truck of water. Costs will increase significantly because the action level for silica is dropping dramatically which will require 4 times the water use today to stay below the .25 ug/m3 where at current levels one load a shift may be sufficient.

Cost per person for medical surveillance

Silica Exam = \$150.00

Silica Questionnaire = \$35.00

Spirometry Pulmonary function test = \$50.00

Fit testing = \$40.00

Chest x-ray/ "B" reader = \$100.00

Number of employees 20 x \$375.00 = \$7500.00

Average cost per hour for employees' wages x 8 hours.

Cabin Air filters Cost \$30.00 to \$80.00 dollars apiece depending on the machine. These filters will require replacement every 200 hours of running time to meet the new action level.

The company has:

- 2- Cat Loaders
- Water Truck
- Track mounted Screens.

Respirators will cost from \$37.00 to \$48.00 x 20 = +/- \$800.00 with tax with a possible replacement every year - two years. Cartridges will cost \$42.50 x 40 sets a year will cost about \$ 1700.00.

Air conditioning in machinery, which is usually considered more of a luxury, will be required to keep the cabs positive pressure.

Citations that have never been issued to this company for Silica or dust, but because the action level has been lowered 25 micrograms per cubic meter, our company will undoubtedly start to receive citations we have never been exposed to.

There are costs we haven't thought of as we have been given very little time to figure out all the way our company will be impacted. There is no evidence that this change in the standards will change anything in mining other than coal. We don't know anybody in our industry that has silicosis, or anything associated with it. The cost that our company will incur to prevent nothing is beyond ridiculous. We already take many steps to keep dust levels down to protect our miners and the environment.

We appreciate your thoughtful consideration of these comments.
Sincerely,

Fazio Brothers
Richard Fazio
President