

UNITED STATES DEPARTMENT HEALTH & HUMAN SERVICES

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY & HEALTH
CENTERS FOR DISEASE CONTROL, PUBLIC HEALTH SERVICE

EDISON ELECTRIC INSTITUTE COMMENTS ON
REVISION OF TESTS AND REQUIREMENTS FOR CERTIFICATION OF
PERMISSIBILITY OF RESPIRATORY PROTECTIVE DEVICES
USED IN MINES & MINING

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The Edison Electric Institute ("EEI") is the association of electric companies. Its members serve 97 percent of all customers serviced by the investor-owned segment of the industry. They generate approximately 76 percent of all the electricity in the country and serve 73 percent of all ultimate customers in the nation.

EEI appreciates the opportunity to comment on NIOSH's proposal for Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining.

EEI's concern over this proposal is, of course, premised on the interest of its members, who are among the large community of users of respiratory protection devices. This includes EEI members in their capacity as electric utilities, and several members who are engaged directly, or through related corporate entities, in mining.

As a general matter, EEI members require that the respiratory protection devices they purchase satisfy three basic criteria:

1. The device must perform, at a minimum, at the known level of protection;

2. The device must be comfortable enough to provide reasonable worker acceptance; and

3. The device must be available at a cost which is commensurate with the benefit provided by its use.

As users of these devices, it is difficult for EEI members to evaluate with precision how the proposed changes in certification requirements would affect the manufacture and availability of respirators, and whether the resulting devices would satisfy these basic criteria. However, from our review of the rulemaking record to date, we have seen enough to suggest to NIOSH that the proposal appears seriously flawed, and should be reconsidered.

Thus, the proposal has been criticized on a number of key substantive issues by both the concerned manufacturing community, as well as OSHA and MSHA in a joint submission. Without endorsing or rejecting specific points asserted in these submissions, it does appear to EEI that these comments represent an unusual and notable convergence of diverse interests and expertise, which have made several cogent, substantive points about the proposal which NIOSH cannot ignore.

EEI does specifically endorse the point, however, that NIOSH's failure to publish its proposed field testing protocol in time for comment by interested parties both in advance of, and at, the hearing in this proceeding is a plain violation of the notice-and-comment requirements of administrative law. EEI also suggests that inasmuch as OSHA and MSHA standards incorporate NIOSH respirator certification regulations by reference, NIOSH's proposal is, in essence, a proposal to modify OSHA and MSHA standards, and therefore must satisfy the legal requirements applicable to rulemaking by those agencies. The proposal does not appear to acknowledge this point, or to satisfy those requirements.

EEI also has some concerns with two additional points. First, some of the minimum assigned protection factors appear to have been based upon data which was generated while testing different respirators. Second, field testing requirements for respirators may be premature until NIOSH has established parameters for control testing to show correlations with field test results.

NIOSH's proposal does contain some attractive concepts. These positive features include: the concept for allowing respirators to be certified at higher than minimum performance levels, and that filter testing under the

proposal may improve the effectiveness of respirators in protecting the workers in a variety of circumstances.

However, as a representative of users of respiratory protective equipment, EEI must be concerned that the NIOSH proposal has attracted the kind of criticism that it has prompted from such a diverse group of interested commenters. Coupled with the plain legal flaw we perceive in the proposal, EEI feels constrained to join in the suggestion that NIOSH withdraw and reconsider this proposal, and not proceed to final rulemaking.