August 23, 2021

To: Sherri Diana
National Institute for Occupational Safety and Health, NIOSH Docket Office,
1090 Tusculum Avenue, MS C-34,
Cincinnati, Ohio 45226-1998
Via email: ppeconcerns@cdc.gov.

Re: Request for Information, Needs and Challenges in Personal Protective Equipment (PPE) Use for Underserved User Populations, Docket No. 2021-13263

The Sikh Coalition submits this comment regarding the request for information on “Needs and Challenges in Personal Protective Equipment (“PPE”) Use for Underserved User Populations” issued by the National Institute for Occupational Safety and Health (“NIOSH”).

About the Sikh Coalition

The Sikh Coalition is the nation’s largest Sikh American legal and civil rights organization. The Sikh Coalition owes its existence in large part to the effort to combat bias against Sikh-Americans after September 11, 2001, including hate crimes, police profiling, employment discrimination, school harassment, and other forms of discrimination. Since its inception, the Sikh Coalition has worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh articles of faith in workplaces. We are headquartered in New York City and have staff around the nation, including Washington, D.C.

The Sikh Coalition is responding to this Notice as a result of inadequate research, policy, and accommodations for religious and racial minorities related to PPE. Too often Sikhs are wrongfully directed by workplaces to remove their religiously mandated articles of faith in order to don PPE, or risk termination. This issue affects not only Sikhs, but other historically underserved religious and racial minorities, and also affects workers beyond healthcare settings, including law enforcement, military, fire fighting, and the transportation industry, among others. Ultimately, these policies result in the exclusion of minority talent in fields requiring the use of certain types of PPE, and denies equitable access to employment for a number of groups.

The Sikh Coalition’s experiences related to PPE use, availability, accessibility, acceptability, and knowledge issues for underserved PPE user populations

Sikhism is the fifth largest world religion, with over 25 million followers, with approximately half a million residing within the United States. Many Sikhs in the United States have a South Asian heritage originating from Punjab, India. Observant Sikhs are required to wear a religious uniform consisting of certain articles of faith, including kesh [1] (uncut hair, including an unshorn beard), as well as covering their hair with a turban (most common amongst Sikh men, however some women also wear turbans. Sikhs wear their articles of faith as part of an external uniform to unify and bind them to the beliefs of the religion and to remind them of their commitment to Sikh teachings at all times. The articles of faith distinguish a Sikh and have deep spiritual significance.
Unfortunately, Sikhs in the United States have faced a number of discriminatory requests to abandon their articles of faith in order to comply with federal safety requirements related to PPE. Roles specific to law enforcement, military, and firefighting have used federal respirator guidelines as a basis to preclude accommodations for Sikhs and other religious minorities with facial hair observances to serve in uniformed positions. Healthcare workers have been similarly limited and/or threatened with termination because of stringent interpretation of these respirator rules. Additionally, federal regulations on NIOSH approved safety headwear have been inappropriately applied without regard to accommodation by worksites employing commercial transportation drivers [2], construction workers, and other professions by demanding the removal of Sikh religious headwear to comply with safety mandates. [3]

The Sikh Coalition has provided pro-bono legal assistance to Sikh Americans who have been impacted by the discriminatory application of workplace safety requirements for nearly twenty years. Our organization has worked with clients in nearly every U.S. military branch as well as with clients in first responder roles to develop appropriate accommodations for respirator PPE and protective headwear within governmental and private commercial industries. Unfortunately, we have seen an acceleration of discriminatory workplace safety requirements since the start of the COVID-19 pandemic. Since March of 2020, the Sikh Coalition has fielded dozens of requests for legal assistance from healthcare workers - primarily observant Sikhs, though we have also received requests from people other faiths – who were told to shave their religiously-mandated beards in order to comply with fit testing for N95 respirators and/or were denied religious accommodations.[4] These healthcare workers include physicians, medical and dental students, paramedics, occupational therapists, and hospital support staff. In an effort to bring clarity to this issue, we have engaged with the U.S. Equal Employment Opportunity Commission (“EEOC”), U.S. Department of Health and Human Services (“HHS”) of which the Centers for Disease Control and Prevention (“CDC”) is a part, and the U.S. Department of Labor (“DOL”) of which the Occupational Safety and Health Administration (OSHA) is a part, to reiterate the fact that a large number of bearded Sikhs work in the American healthcare industry, that there is no Sikh religious prohibition against wearing PPE, and that Sikhs are able to wear PPE safely without shaving or trimming their beards.

Due to the high cost of alternative respirators, we were able to secure a number of Powered Air-Purifying Respirators (“PAPR”) for Sikhs. Unfortunately, some workplaces have wrongfully prohibited the use of PAPRs as a reasonable accommodation. In one instance, a Sikh emergency medical technician’s employer cited safety concerns in relation to air exhaled from a PAPR. In other instances, employers refused to participate in OSHA’s Mini Respiratory Protection Program as it applies only to the healthcare industry. For example, many law enforcement agencies and correctional facilities have required their employees to use N95s or maintain a state of N95 readiness (i.e., be clean-shaven) during the pandemic. Several bearded employees in those sectors have required legal assistance before their employers were willing to provide religious or medical accommodations to maintain their facial hair. As the interim final OSHA Emergency Temporary Standard (ETS) does not apply to these industries, employees are left in a gray area wherein their employers believe they are subject only to strict OSHA guidelines and are not bound by statutory and constitutional provisions. Therefore, they are slow to provide and sometimes unwilling to provide accommodations. The Sikh Coalition has submitted public comments outlining these concerns in relation to OSHA’s interim final rule on ETS (Docket Number OSHA-2020-0004).
Deficiencies in research, service, and policy have exacerbated discrimination against Sikhs and other religious minority communities that have been historically underserved

The siloed nature of federal agencies overseeing respirator PPE has posed significant delay and opportunities to implement research, service, and policy changes to better serve minority communities. This has been a problem for religious and racial minorities for as long as respirators have existed.

Specifically, both the CDC and OSHA regulations require certain employees to be fitted for N95 and self-contained breathing apparatus (“SCBA”) respirators before donning them in the workplace. However, neither agency’s regulations allow individuals to be fit tested if they have any amount of facial hair. [5] The requirement to shave has had a detrimentally disparate impact on many minority workers who maintain beards consistent with their religious beliefs or have the medical condition Pseudofolliculitis Barbae (“PFB”), which causes an uncomfortable rash after shaving thereby requiring facial hair to be grown out and primarily affects those of Black and Hispanic descent Despite the availability of CDC and OSHA approved alternatives to the N95 and SCBA respirators - namely, PAPRs - many frontline workers are being denied accommodation requests by their employers. The discriminatory impact of these policies is even more concerning given the CDC’s recent declaration that racism is a serious public health crisis. [6]

The agency should advise PPE developers about the recurring problems faced by religious and ethnic minorities, thereby encouraging industry leaders to research and develop new PPE (or new manners of wear for currently available PPE), which can be tested and approved for use in various industries. Doing so should be a priority for the federal government since it has the ability to guide and encourage the types of new developments necessary to protect workers, who for a myriad of statutory and constitutionally protected reasons, simply cannot wear the N95 respirator or SCBA in fire fighting settings.

It is also imperative that government agencies that promulgate respirator requirements (whether for their own employees, government contractors, or the industry-employers they regulate) include specific provisions requiring that religious accommodations be made available. Doing so will ensure that neither the government nor industry-employers violate employees’ civil rights and will ensure equal access to employment for all Americans. While new technology is being created and new policies implemented, more must be done to permit the use of PAPRs by ensuring that OSHA’s Mini Respiratory Protection Program applies to industries outside of healthcare to ensure that no underserved communities are excluded from the workplace or to alternative to PPE. Finally, the federal government must do more to ensure that worksites are fully apprised on the latest technical guidance to prevent the wrongful denial of PAPR accommodations due to misinterpretations of federal guidance on respirators with exhalation valves.

Sincerely,

Amrith Kaur, Legal Director
Amrith@sikhcoalition.org

Sim J. Singh, Senior Policy & Advocacy Manager
Sim@sikhcoalition.org
Maintaining unshorn kesh is one of the primary means through which most Sikhs practice their faith. This religious mandate includes not only hair on the head, but all body hair for men and women. Maintaining kesh unshorn is rooted in the Sikh belief that hair is a divine gift; thus, maintaining it unshorn is considered living in harmony with the will of God. The Sikh religious code of conduct (the Rehat Maryada) explicitly forbids the removal or cutting of any hair, and doing so weakens a Sikh’s connection to God and to the Sikh religious community.

A disproportionately high number of Sikhs work in the American trucking industry, particularly in California and Indiana. As reported in The Economist, it is estimated that approximately 150,000 Sikhs work in the trucking industry, 90% of whom are drivers. In fact, more than 30,000 Sikh drivers joined the industry between 2016 and 2018, helping to meet the high demand of drivers needed and alleviating the stress of the shortage on American consumers and the economy. Given these facts, it is widely recognized that Sikhs are the new face of the American transportation industry.

Religiously-mandated turbans are permissible under Occupational Safety & Health Administration (“OSHA”) Directive 01-06-005. To be clear, this 1994 directive provides an exception from citations to employers of employees who, for religious reasons, object to wearing hard hats in the workplace. Therefore, “in most situations, OSHA does not require employees who object to wearing hard hats for reasons of personal religious convictions to wear them.”

The Sikh Coalition received so many requests for assistance that our attorneys drafted an open memorandum for the Sikh healthcare professionals providing them with guidance on requesting accommodations to N95 respirator requirements and, in April of 2021 our legal director testified before the U.S. Equal Employment Opportunity Commission about the impact of COVID-19 on observant Sikh bearded healthcare workers. See Memorandum from Sikh Coalition on Religious Accommodations by Hospitals for Respirators During the COVID-19 Outbreak. See also App. C, Amrith Kaur, Written Testimony of Amrith Kaur, Legal Director, Sikh Coalition, Testimony Before Equal Employment Opportunity Commission. As a result of this hearing and collaboration with the EEOC, the agency issued updated COVID-19 Technical Assistance to underscore the need for workplace PPE accommodations for religious, racial, and medical reasons.

It is important to note that there are many reasons why individuals may be unable to pass such a “fit test,” including having a narrow face shape which is most common for women; however, it is only individuals with facial hair who are not allowed to sit for the fit test at all, regardless if they may be able to form a seal with the N95 respirator and maintain the same level of protection as clean-shaven wearers.

The CDC acknowledged that both interpersonal and structural racism negatively affect “the mental and physical health of millions of people, preventing them from attaining their highest level of health, and consequently, affect[s] the health of our nation.” Thus, the impact of racism is felt in every aspect of one’s life, including in the workplace. The CDC further acknowledged that, “racism also deprives our nation and the scientific and medical community of the full breadth of talent, expertise, and perspectives needed to best address racial and ethnic health disparities. To build a healthier America for all, we must confront the systems and policies that have resulted in the generational injustice that has given rise to racial and ethnic health inequities.” Indeed, part of confronting this public health crisis must include addressing the increasing inequities experienced by minority employees as a result of the COVID-19 pandemic. The issue of respirator fit tests and employers’ general unwillingness to provide appropriate PPE for religious and racial minorities is just another way in which vulnerable communities, like Sikhs, are targeted by systemic issues within our policies, workplaces, and healthcare industry. Not only do these policies harm minority employees, but they also harm the general public, as they limit the access of talented minorities from entering or remaining within the profession.

See Under-mask beard cover (Singh Thattha technique) for donning respirator masks in COVID-19 patient care and Canada’s New Defense Minister Made His Own Gas Mask to Work With His Sikh Beard.