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OSHA Docket Office  
Occupational Safety & Health Administration  
United States Department of Labor  
Room N-2625  
200 Constitution Avenue N.W.  
Washington, D.C. 20210

**Via Electronic Submission:** <http://www.regulations.gov>

**Re: Docket ID: OSHA–2012–0007  
Request for Comment on the Standards Improvement Project – Phase IV**

The American Petroleum Institute (API) appreciates the opportunity to provide comments on the Occupational Safety and Health Administration’s (OSHA) Standard Improvement Project (SIP) Phase IV Notice of Proposed Rulemaking (NPRM).

API is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry.

The proposed rule outlines eighteen (18) revisions to OSHA’s existing general industry, recordkeeping, construction and maritime standards. In general, the SIP proposals are meant to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA’s safety and health standards. While API is supportive of OSHA’s efforts to revise and streamline outdated safety and health standards, API strongly urges OSHA to take the following comments into consideration.

**I. Subpart C – Recording Forms and Recording Criteria, Recording Criteria for Cases Involving Occupational Hearing Loss in 29 CFR 1904.10**

The NPRM proposes to clarify the relationship between §§ 1904.10(b)(6) and 1904.5 in order to assist employers in complying with the occupational injury and illness recording requirement for hearing loss. *NPRM at 68505*. Section 1904.5 sets forth requirements employers must follow in determining whether a given injury or illness is work-related. Specifically, §1904.5(a) states that an injury or illness must be considered work-related if an event or exposure in the work environment caused or contributed to the injury or illness or significantly aggravated a pre-existing injury or illness. The current regulatory language in §1904.10(b)(6) states that hearing loss is not a recordable case on the OSHA 300 log if a physician or other

licensed health care professional determines that the hearing loss is not work related or has not been significantly aggravated by occupational noise exposure. *NPRM at 68505*. OSHA has proposed to align §§ 1904.10(b)(6) and 1904.5 by amending §1904.10(b)(6) with the following language: “*If a physician or other licensed health care professional determines, following the rules set out in § 1904.5, that the hearing loss is not work-related or that occupational noise exposure did not significantly aggravate the hearing loss, you do not have to consider the case work-related or record the case on the OSHA 300 Log.*” *NPRM at 68542*.

While API does not have any concerns with the proposed language changes to §§1904.10(b)(6), API is concerned with the language proposed for the accompanying compliance directive that states: “Physician or other licensed health care professional (PLHCP) must follow the rules set out in 1904.5 to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing loss, the PLHCP must consider the case to be work-related. It is not necessary for work to be the sole cause, or the predominant cause, or even a substantial cause of the hearing loss; any contribution from work makes the case work-related. The employer is responsible for ensuring that the PLHCP applies the analysis in Section 1904.5 when evaluating work-related hearing loss, if the employer chooses to rely on the PLHCP’s opinion in determining recordability.” *NPRM at 68506*.

OSHA’s proposed compliance directive language does not take into account outside contributing factors for hearing loss by stating: “It is not necessary for work to be the sole cause, or the predominant cause, or even a substantial cause of the hearing loss; any contribution from work makes the case work related.” The intent of OSHA’s recordkeeping system is to capture cases that are caused by conditions or exposures arising in the work environment. It is not designed to capture cases that have no relationship to the work environment.<sup>1</sup> Therefore, API urges OSHA to include language clarifying that occupational noise exposure must be the predominant cause of the hearing loss.

## **II. Subpart J of 1910—General Environmental Controls, Control of Hazardous Energy (Lockout/Tagout) in 29 CFR 1910.147**

Among the several regulatory revisions proposed as a part of the SIP Phase IV OSHA included a modification to the current lockout/tagout (LOTO) standard.

The current OSHA LOTO regulation requires employers to have safety systems to prevent injuries from machinery or equipment that starts operating unexpectedly. This OSHA proposal would eliminate the “unexpected” energization aspect of the standard from the current standard. As proposed, API does not support the changes OSHA is contemplating to the current LOTO standard for several reasons. First, API believes that the OSHA LOTO proposal would be a substantive change to the current regulation and therefore does not meet the SIP criteria or requirements as noted above.

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<sup>1</sup> 66 FR 5946-5962, Jan. 19, 2001

Second, it is API's position that the OSHA LOTO proposal is inconsistent with past court decisions on how to interpret "unexpected" energization of machines and equipment during servicing and maintenance activities. Therefore, proposing a LOTO regulatory revision through the SIP process is not procedurally correct.

If OSHA intends to move forward with this LOTO proposal, API requests that OSHA progress their LOTO proposal through the formal notice and comment process, as well as hold a public hearing on this matter. Similarly, if OSHA plans to move forward with this proposal, API supports OSHA's Spring 2016 Regulatory Agenda announcement whereby OSHA indicated that they were considering issuing a Request for Information or holding meetings with industry experts to gather more information regarding making changes to the current LOTO standard.

Lastly, API contends that this OSHA LOTO proposal could actually increase confusion within the regulated community, where none has existed for the last twenty years, based on previous court cases and interpretations.

### **III. Conclusion**

API believes that both of the OSHA proposals discussed above – occupational hearing loss and lockout/tagout – warrant further attention by OSHA, either through the normal notice and comment process or, at a minimum, further clarification, so that the regulated community has a clear understanding of the regulatory requirements. Both proposals seem to go beyond the SIP requirements, which are meant to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards.

API and its members appreciate the opportunity to provide these comments, and we value our shared commitment to worker health and safety. We look forward to an opportunity to discuss these issues further with OSHA.

Sincerely,



Heidi Keller  
*API, Policy Advisor*