



December 5, 2016

**Submission of Comments RE: regarding the Occupational Health and Safety Administration's (OSHA) proposed rule Standards Improvement Project-Phase IV: Proposed Rule (29 CFR 1910.147).**

**Department of Labor – Docket # (OSHA - 2012-0007)**

Dear Sirs:

The Food Processing Suppliers Association (FPSA), is a global trade association, in existence for decades, serving suppliers in the food and beverage industries. The Association's programs and services support member's success by providing assistance in marketing their products and services, overall improvement in key business practices and many opportunities to network among industry colleagues. Programs and services to achieve these objectives include PROCESS EXPO (industry leading trade show), electronic media marketing, education, market intelligence, research, and advocacy of critical industry issues such as food safety, sanitary design of equipment, and global trade. FPSA members are organized in vertical industry councils which focus on specific needs and concerns that are unique to each industry sector. FPSA councils currently represent the [Bakery](#), [Beverage](#), [Dairy](#), [Prepared Foods](#) and [Meat](#) sectors.

I am filing comments on behalf of FPSA membership pertaining to the above stated proposed rule. These comments are focused on the proposal to alter lockout/tagout (LOTO) general industry standards. Specifically, FPSA opposes the removal of "unexpected" from the term "unexpected energization." Further, FPSA believes OSHA should withdraw the proposed rulemaking.

This proposed rule would adversely impact our member company's ability to utilize certain and proven advances in technology such as automated controls that can eliminate the potential for unexpected energization and therefore eliminate the need for LOTO. Additionally, the proposed rule contradicts recent legal precedent set in *Reich v. General Motors Corp., Delco Chassis Div., GMC Delco*. In removing the ability of employers to demonstrate the absence of exposure to unexpected energization, lockout would become a requirement for all energy sources.

OSHA's proposed rules impact our members and as such we submit that:

- The emphasis on "unexpected" energization is clear in the plain language of 29 CFR 1910.147 and its Preamble. OSHA should not expand the scope and requirements to other hazards by inappropriately attempting to overwrite the original intent, which was consistent with the industry consensus standard on which it was based. (ANSI Z244.1 (1982) American national standard for personnel protection - Lockout/tagout of energy sources - Minimum safety requirements)
- Eliminating "unexpected" would be a substantive change to 29 CFR 1910.147, subject to the rulemaking process required under the OSHA Act. Clearly, "unexpected" does not mean "any."

- Per the National Technology and Transfer Advancement Act (NTTAA) of 1995, OSHA must adopt voluntary consensus standards, domestic and international, "unless use of such standards would be inconsistent with applicable law or otherwise impractical."
- OSHA should not dismiss the findings of the Occupational Safety and Health Review Commission (OSHRC) and the court in the *GMC Delco case*. The entire eight-to-twelve-step process was reviewed, and deemed adequate to not qualify as an "unexpected" energization and the full process, as an alternative method, was deemed to provide sufficient protection for workers. It was held that the LOTO standard does not apply to a worker servicing equipment if the startup procedure provides a warning that the machine is about to start.
- While at times regulatory guidance helpful, the proposed rulemaking fails to recognize and to take into account that not every machine is the same, and that a singular generic fix applied to all equipment is misguided and not an adequate nor acceptable solution.
- Requiring that only a lockout method be used will have significant negative economic impact to employers and will result in decreased worker safety, increase operational costs and reduce the global competitiveness of US industries.
- OSHA's proposal greatly restricts the ability of employers to make use of alternative methods using current technology and advancement to control hazardous energy.
- OSHA's proposal ignores the explicit checks and balances put in place by Congress to ensure fair treatment for employees and employers.

We appreciate the opportunity to communicate our concerns regarding OSHA's proposed rule, Standards Improvement Project-Phase IV. Based on the numerous concerns we have raised, we believe it is clear that OSHA should not pursue this proposed regulatory change.

We appreciate the opportunity to provide input on these proposed rule and for your consideration of our comments.



David R. Seckman  
 President/CEO  
 Food Processing Suppliers Association  
 dseckman@fpsa.org