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Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

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Comments on EPA Docket ID No. EPA–HQ–OEM–2014–0328, Federal Register, Vol. 79, No. 147, 44604-44633, Request for Information, FRL–9911–62–OSWER, RIN 2050–ZA07, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), July 31, 2014

Dear Mr. Stanislaus:

Thank you for the opportunity to provide comments on the Environmental Protection Agency’s (EPA) Request for Information (RFI) on Accidental Release Prevention Requirements: Risk Management (RMP) Programs Under the Clean Air Act, Section 112(r)(7). The American Petroleum Institute (API) represents more than 600 companies involved in all aspects of the oil and natural gas industry including exploration, production, refining, marketing, pipeline, and marine transporters, as well as service and supply companies that support all segments of the industry. As such, API and our members are significantly affected by the EPA RMP rule. API and its member companies support performance-based RMP regulations that are reasonable and written, applied, and enforced in a manner that is consistent with the applicable statutory scope.

API’s comments apply broadly to the oil and natural gas industry and our member companies, including, without limitation, the following types of facilities:

- NAICS Code 324110 – Petroleum Refineries
- NAICS Code 324199 – All Other Petroleum and Coal Products Manufacturing
- NAICS Code 211111 – Oil and Gas Extraction
- NAICS Code 213111 – Drilling Oil and Gas Wells
- NAICS Code 213112 – Support Activities for Oil and Gas Operations
- NAICS Code 211112 – Natural Gas Liquid Extraction
- NAICS Code 42471 – Petroleum Bulk Stations and Terminals

- NAICS Code 447110 - Gasoline Stations with Convenience Stores
- NAICS Code 447190 - Other Gasoline Stations

Both the OSHA Process Safety Management (PSM) and EPA RMP regulations have been successful in incident prevention over the past several decades. Going forward, API recommends that EPA focus on prevention of and mitigation of catastrophic releases that could have significant offsite effects and not address issues that are mostly worker protection issues which are the primary focus of OSHA. In addition, API believes where incidents have occurred, it is not a failure of the current regulatory structure and therefore does not believe evidence has been adequately presented to demonstrate new regulation is needed. To best serve the public and regulated community, API recommends to EPA the following approach in making any changes to the existing RMP regulations:

- First, identify those substances EPA believes should be included in RMP lists of flammables and/or toxic materials to be regulated, with the supporting scientific and industry-wide performance evidence, and publish in an Advanced Notice of Proposed Rulemaking.
- Defer changes to Prevention Program RMP requirements to OSHA, recognizing workplace safety and health regulation should be led by the OSHA rulemaking process.
- Work with OSHA to evaluate and develop scientific and industry-wide performance data to support any new or revised regulatory requirements.
- Following any finalization of changes to OSHA's safety and health regulations, issue harmonized RMP Prevention Program rules.

API appreciates EPA's efforts to provide an opportunity to engage in dialogue regarding the RMP RFI scope, issues, and options. API strongly encourages EPA to provide stakeholders additional opportunities to discuss the results of the RMP RFI written comments and anticipated conclusions, prior to EPA issuing an Advanced Notice of Proposed Rulemaking regarding the RMP standard. Such transparency will help ensure a better overall strategy for process safety performance improvement and ensure the opportunity for a better understanding and alignment of the conclusions and path forward by all stakeholders.

API hopes that EPA will find these comments and contributions helpful. Should you have any questions about the API comments, please contact me at 202/682-8176 or by email at Chittim@api.org. Thank you for the opportunity to provide input on these important topics.

Sincerely,



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API

Comments of the American Petroleum Institute (API)

on Docket ID No. EPA-HQ-OEM-2014-0328

Request for Information on Accidental Release Prevention

Requirements:

Risk Management Programs Under the Clean Air Act, Section 112(r)(7)

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Comments of the American Petroleum Institute (API)
on Docket ID No. EPA-HQ-OEM-2014-0328
Request for Information on Accidental Release Prevention Requirements:
Risk Management Programs Under the Clean Air Act, Section 112(r)(7)

I. General Comments

1. API does not believe sufficient supporting data, evidence and scientific basis has been presented to demonstrate additional regulations are required or are reasonable.
2. API recommends that EPA focus on the primary purpose of its statutory scope –prevention of and mitigation of catastrophic releases that could have significant offsite effects – and not address issues that are mostly worker protection issues. Several of the issues common to OSHA’s PSM RFI topics have little to do with prevention of accidents with the potential for significant offsite effects. Moreover, OSHA has primacy and we think that EPA should let OSHA address these issues first before considering further action. API recommends that EPA defer these issues to OSHA because OSHA has the statutory jurisdiction for workplace safety and has already collected RFI comments on these topics. In addition, EPA and OSHA should consider entering into a memorandum of understanding concerning the agencies’ respective enforcement jurisdiction.
3. We agree with EPA focusing its regulatory requirements on higher priority issues that are related solely to the statutory focus of the RMP regulation. EPA has committed to an aggressive regulatory schedule and API supports EPA dealing first with issues that pose a greater safety need or risk reduction potential than others (i.e., those requiring less time or effort to amend; those with more effective risk reduction potential; or other reasons).
4. The current RMP regulations have a number of exemptions that are particularly important to API member companies including: naturally occurring hydrocarbons; gasoline; pipeline transportation and storage incident to transportation. API believes that these exemptions all have valid technical bases for not requiring that associated entities be subject to the RMP requirements. API strongly believes that these exemptions should be retained and not perturbed as a result of any RMP coverage changes that it considers.
5. API believes that the issues that EPA is considering are extremely important to the upstream and downstream hydrocarbon industry, as well as others. As such, if EPA intends to make adjustments to its rule that will either significantly change RMP coverage or change the work required by the RMP requirements, then the resulting rules would have a significant impact to API members and to others. Thus, API strongly recommends that EPA consider this RMP rulemaking to be a "significant" rulemaking that requires an economic impact analysis be performed as required by the Small Business Regulatory Enforcement Act (SBREFA). API members look forward to participating in the future SBREFA process.

II. General PSM and RMP Comments

1. Effectiveness of the RMP Rule and the Process for Considering Potential Changes

API believes the PSM standard and the RMP Rule have been effective in improving process safety in the oil and natural gas industry. This is largely because the regulations have focused on significant hazards/risks and provided flexibility to the regulated industry for compliance using performance-based language that allows companies and sites to select the most appropriate manner to achieve compliance.

API suggests that EPA consider using a broad stakeholder discussion approach to evaluate and use the results of its RMP RFI process. Specifically, API volunteers to be a part of a broad, but reasonable in size, stakeholder work group to evaluate and discuss the merits and issues coming from the RFI written comments. The stakeholder group could then work with EPA to make specific proposals on RMP regulatory changes, as needed.

API also suggests that, if amendments to the RMP rule are contemplated, EPA publish an advance notice of proposed rulemaking (ANPR) instead of proceeding directly to a notice of proposed rulemaking (NPR). API believes this step would be needed due the extensive and broad range of options contained in EPA's RMP RFI and the detailed data requested on needs, evidence, solution options, anticipated costs and benefits, and the tight timeline that EPA has committed to in the Executive Order (EO) Working Group report to the President for revising the RMP rule. Before undertaking regulatory revisions, API suggests first focusing on the application and enforcement of the existing regulations and programs.

2. Incident Data to Support the Basis for Changing the RMP Standard Is Sparse

Significant chemical industry incidents do not occur frequently but when they do, companies evaluate their root causes and implement corrective actions to prevent recurrence. For major incidents, organizations like the U.S. Chemical Safety Board and others, along with the site, undertake root cause and/or compliance investigations. Having stated that, the number of incidents and root causes that would indicate significant regulatory deficiencies is very small. In addition, proposed changes to the RMP rule should not be developed to address isolated incidents. Proposals should address actual industry performance problems based on identification of root causes of problems and supported by data.

API believes that nearly all of the EPA RMP RFI major incidents that have occurred since the creation of process safety regulations in the U.S. relate to existing elements in the RMP prevention program elements and OSHA's PSM Standard and not because there are major "gaps" in the existing requirements. API believes that there is little supporting evidence to show that changes to the RMP rule are needed to correct regulatory deficiencies that could otherwise be addressed through improved enforcement of the RMP and/or PSM standard.

To continue to improve safety performance, API respectfully suggests that the focus should be on improving compliance assistance, education, enforcement and incident investigation programs.

API supports agency efforts to identify “outlier” companies, rather than increasing regulatory obligations for sites/companies that may already be in compliance. Lastly, API encourages EPA and the other agencies to improve collaboration with State and local agencies to more effectively enforce existing laws and regulations.

3. EPA’s Burden of Proof for Regulatory “Modernization”

EPA has the burden to show additional regulations are “reasonably necessary” and address a “significant risk of harm.” If EPA determines that it has sufficient industry performance evidence to support change to the RMP rule, API recommends any proposed regulatory proposals be based upon the following criteria:

- Be risk-based and performance-based (not prescriptive)
- Be supported by scientific data
- Address root causes of significant industry-wide performance issues and incidents
- Be done only in conjunction with enforcement improvement
- Undergo rigorous cost-benefit analysis to clearly demonstrate that benefits to society exceed overall costs
- Provide adequate time and certainty for implementation
- Provide appropriate structure for compliance and enforcement

Broad regulatory expansion to cover areas that either cannot be reasonably shown to be a significant risk/hazard or are already addressed under other regulations may dilute agency and company resources away from higher risk areas.

4. EPA and OSHA Coordination on Potential Prevention Program and PSM Standard Changes

EPA’s RMP RFI contains issues that are related to, if not identical to, OSHA’s PSM standard RFI. As a result of the 1990 Clean Air Act Amendments, EPA and OSHA are obligated to harmonize and avoid adopting and enforcing duplicative and/or conflicting regulatory requirements. As noted earlier, API recommends that EPA should focus on and not stray from its statutory scope – potential significant offsite environmental effects – and not venture into workplace safety. Several of the issues common to OSHA’s PSM RFI topics have little to do with prevention of accidents with the potential for offsite effects. These issues are more appropriately addressed by OSHA. API recommends that EPA defer these issues to OSHA since OSHA has already collected RFI comments on these topics.

Based on the original language in the 1990 Clean Air Act Amendments, statutory limitations were placed on EPA to consult with and defer authority to OSHA by law. Multiple citations in the Act emphasized the role of the Secretary of Labor in leading regulatory development for workplace safety, including the following:

Sec. 112(r)(7)(B)(i) “...The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations...”

Sec. 112 (r)(7)(D) “In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation...”

Sec. 112 (r)(7)(G) “In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.”

API believes the statutory requirements would cover those workplace safety and health requirements currently included in RMP Prevention Program requirements.

Whether EPA or OSHA initiates the effort, API strongly supports EPA and OSHA closely coordinating any proposed changes to their respective regulatory requirements and entering into a Memorandum of Understanding concerning which agency is the lead enforcement agency for the elements so they are consistent and not conflicting or burdensome. In addition, API notes that EPA has on its action list and RFI topic list, several technical issues that appear on the surface to be more closely associated with worker safety issues. API recommends that in those cases EPA defer to OSHA on possible regulatory changes.

5. EPA Should Consider and Communicate Potential Changes to the RMP List First before Considering Changes to the RMP Element Requirements

In its RMP RFI, EPA has proposed several changes that would significantly affect the applicability of RMP to industry. It is difficult for an industry to get fully engaged in the rulemaking process without knowing with certainty whether its processes and facilities will be covered by RMP. Once industry understands this coverage, only then will they be able to comment on the necessity and practicality of the applicable RMP requirements.

Therefore, API recommends that EPA consider using a 2-step approach to the RMP rulemaking: Consider and finalize coverage changes first; then consider and finalize program requirement changes, as appropriate. This was the approach that EPA used in 1994 when it first produced its RMP list rule prior to producing the RMP requirements. In addition, because of potential impacts of PSM coverage changes on RMP program level coverage, it would allow those two issues to be decided prior to completing any potential revisions to the RMP work requirements. Moreover, using a 2-step approach like this – coverage first and then requirements – is the only effective way to get accurate input from any SBREFA process, since the small business “targets” would have to be known before potential impacts can be assessed.

6. EPA Should Preserve Existing RMP Coverage Exemptions

The current RMP regulations have a number of exemptions, some of which are particularly important for API member companies:

- Naturally occurring hydrocarbon exemption
- Gasoline exemption
- Pipeline transportation
- Storage incident to transportation

API believes that these exemptions all have valid technical bases for not requiring that associated entities be subject to the RMP requirements. For example, the RMP gasoline exemption states that:

“Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, are not currently covered under the RMP regulation.”

This gasoline exemption exists for sound technical reasons. Gasoline is classified as a category 3 flammable liquid by the National Fire Protection Association (NFPA) not an NFPA category 4 flammable vapor. The flammability of a substance is an inherent property measured by physical parameters such as the flashpoint, vapor pressure and the difference between the lower and upper flammability limits (LFL and UFL). While gasoline is flammable, it does not have either a sufficiently high vapor pressure or a broad flammability range that are associated with the more hazardous category 4 materials, such as propane, ethyl ether or acetaldehyde.

As stated in the September 2008 report ***Risks Associated with Gasoline Storage Sites***, the fire and explosion risks associated with flammable materials having an NFPA rating of 4 are materially greater than those rated 1, 2 or 3. This is precisely why the EPA exempted all flammables with an NFPA Hazard Rating less than 4 in its RMP regulations. EPA regulates chemicals/substances that have an NFPA rating of 4 as they have a higher likelihood of generating a vapor cloud explosion that can harm the community surrounding a facility. Although gasoline can readily burn, it does not readily volatilize. Except in the presence of exceedingly unlikely circumstances, gasoline will not form a vapor cloud capable of creating a vapor cloud explosion. In the United States, compliance with other existing regulations (e.g., 29 CFR 1910.106) and safe operating practices further mitigate the possibility of such conditions occurring.

API understands that EPA’s review of the RMP regulations is mandated by Executive Order 13650 *Improving Chemical Facility Safety and Security* in order to focus on areas that improve the safety of plant operations. The current RMP exemptions (such as the gasoline and naturally occurring hydrocarbon exemptions) are not areas addressed by the EO WG report and should not be included as part of EPA’s RMP review.

III. Items in OSHA's PSM RFI Relevant to EPA's RMP Regulation

1. Update the List of Regulated Substances

EPA is requesting information on whether the Agency should:

- Add other toxic or flammable substances
- Add high and/or low explosives
- Add ammonium nitrate
- Add reactive substances and reactivity hazards
- Add other categories of substances
- Remove certain substances from the list or raising their TQ
- Lower the TQ for substances currently on the list

API is providing comments for only a few of these topics that affect API member companies.

In general, API does not believe that additional chemicals need to be added to the RMP list and that no threshold quantities (TQs) need to be changed. However, if EPA demonstrates via sound scientific analysis with supporting data that specific chemicals should be added to the Subpart E list, such chemicals should be proposed on their individual merits.

For the few regulated substances (RSs) most often used in API member facilities, API believes the existing TQs are effective in focusing attention on prevention of catastrophic releases that could have public or environmental impacts.

In the RMP RFI, EPA has not provided sufficient description to support the need for updating the RMP list except for the elimination of certain regulated substances. EPA points out the existing list of regulated substances were derived from a broad range of comprehensive and well-established sources using the 1990 Clean Air Act Amendments (CAAA) criteria. There is no suggestion in EPA's RMP RFI of any significant deficiency. API members believe that non-scientific-based additions/changes to the list/TQs would not improve the overall effectiveness of the RMP rule.

Moreover, any RS list or TQ changes or "harmonization" with the lists/TQs of other rules (e.g., PSM, CFATS) that EPA considers should respect the differences between statutory mandates and the purpose/focus of the rules and industry accident experience. In this way, the integrity of the rationale for listing each chemical in each regulatory regime will be maintained.

- Add other toxic or flammable substances

API does not have any suggestions for new substances. However, if EPA chooses to consider new substances, API believes that EPA should: (a) be consistent with the listing criteria established in the CAAA of 1990; (b) focus on the purpose/intent of the RMP rule, which is to prevent/mitigate catastrophic releases that could create serious endangerment to the public and the environment; (c) be based upon sound science; and (d) be done using the formal notice and comment rulemaking process.

i. **As an alternative to expanding the scope of the RMP, would expanded use of EPCRA information (such as better integration of information on explosive hazards into local emergency plans) and other governmental and industry programs (including voluntary programs) be able to address safety gaps? What are the advantages and disadvantages of such an approach relative to expansion of the RMP?**

API supports EPA efforts to use existing regulations such as EPCRA to address any perceived and technical supportable regulatory improvement needs instead of expanding the scope or work requirements of the RMP rule.

- **Add reactive substances and reactivity hazards**

EPA should defer any decision to regulate additional reactive chemicals to OSHA, unless EPA can provide a scientific basis that specific chemical reactive hazards from the additional reactive chemicals could reasonably result in offsite catastrophic incidents.

API believes the methodology for determining coverage of chemical reactivity hazards must be performance based. For example, industry can utilize the following guidance resources by EPA and OSHA respectively:

<http://www.epa.gov/swercepp/web/docs/chem/flowchart.pdf>

<https://www.osha.gov/SLTC/reactivechemicals/hazards.html>

With scientifically supported, peer-reviewed documentation, API could support listing of certain substances based on their individual reactivity characteristics (e.g., NFPA 4 reactivity rating). API could also support the coverage of inadvertent mixing or off-normal process condition situations based upon a practical reactive chemical hazard evaluation of already-covered processes/chemicals. Any reactive chemical hazard solution or measure should be risk and/or performance-based that allows the facility to determine the best approach for evaluation.

- **Add other categories of substances**

API does not support the addition of any more categories of regulated substances. If EPA does add additional categories or substances, it should use the CAA RS criteria, be based upon sound science using a risk-based approach, and propose the candidate RSs and their technical bases via rulemaking.

API does not have any suggestions for new categories and substances. However, if EPA chooses to consider new categories/substances, API believes that EPA should (a) be consistent with the listing criteria established in the CAAA of 1990, (b) focus on the purpose/intent of the RMP rule, which is to prevent/mitigate catastrophic releases that could create serious endangerment to the public and the environment, (c) be based upon sound science, and finally (d) be done via formal notice and comment rulemaking.

- **Remove certain substances from the list or raising their TQ**

There are six RMP chemicals (four toxic, two flammable) for which EPA has never received a RMP report. The four toxic chemicals are arsenous trichloride (CASRN 7784–34–1), cyanogen chloride (CASRN 506–77–4), sulfur tetrafluoride (CASRN 7783–60–0), and tetramethyl lead (CASRN 75–74–1). The two flammable chemicals are: chlorine monoxide (CASRN 7791–21–1) and ethyl nitrite (CASRN 109–95–5). EPA’s 2012 Chemical Data Reporting (CDR). Currently the TQ for all three TDI listings is 10,000 pounds. EPA is considering whether the TQ for TDI EPA is requesting information on whether the methodology for assigning TQs should be changed to account for the much lower vapor pressure of TDI, and if so, information on a rationale for how it should be done.

- Would it be appropriate for EPA to delete TDI (a substance mandated by Congress to be included on the initial RMP list) from the RMP toxic substances list because its vapor pressure does not meet the vapor pressure listing criteria established by EPA?**

API believes that the technical basis of having any substance on the RMP list should be based on sound science. As such, EPA should delete TDI from the RMP toxics substances list as TDI clearly does not meet the listing criteria established by the CAAA of 1990 and the way EPA has implemented it using its mixture criteria (i.e., partial pressure minimum of 10 mmHg).

- If it is not appropriate to delete TDI, would it be appropriate for EPA to continue to list TDI on the RMP list but with a higher TQ for RMP reporting? Should the methodology for assigning TQs account for the much lower vapor pressure of TDI, and if so, how should this be done? Currently, the TQ for all three TDI listings is 10,000 pounds.**

No, it is not appropriate to continue to list TDI at a higher TQ. The extremely low partial pressure of TDI precludes its release and transport in the environment in such a manner so as to create a catastrophic release.

- Is there any reason that EPA should not delete 1, 3-pentadiene from the RMP list as it does not meet the listing criteria for flammable substances and was erroneously listed? Are there any other RMP substances that are known to be listed based on erroneous data?**

Yes, API agrees that EPA should correct any known errors in its RMP list.

- **Lower the TQ for substances currently on the list**

API does not support the lowering of any currently listed regulated substances TQs.

Moreover, the current RMP regulations have a number of exemptions that are particularly important for API member companies: naturally occurring hydrocarbons; gasoline; pipeline transportation; and storage incident to transportation. API believes that these exemptions all have valid technical bases for not requiring that associated entities be subject to the RMP requirements. API strongly believes that these exemptions should be retained and not perturbed as a result of any RMP coverage changes that it considers.

2. Additional Risk Management Program Elements

EPA is requesting comments on whether requirements for the following management system elements should be included in the RMP Prevention Program:

- **Measurements and Metrics**
- **Management Review and Continuous Improvement**
- **Process Safety Competency**
- **Stop Work Authority**
- **Ultimate Work Authority**
- **Conduct of Operations**
- **Process Safety Culture**
- **Job Safety Analysis**
- **Whether existing management system elements should be modified, clarified or strengthened:**
 - **Contractor safety requirements**
 - **Types of failure scenarios or damage mechanisms that must be considered during PHAs and hazard reviews**
 - **More specific PHA update/revalidation requirements and frequency**
 - **Expanding the use of PSSR**

API believes that the practices involved with the above elements are best left for companies to implement as a part of their pursuit of continuous improvement via implementing evolving industry management practices. The existing RMP Prevention Program elements are effective in driving industry performance and should be supported by proper site implementation and effective enforcement. Furthermore, EPA has not presented sufficient data or evidence to show that adding the new elements and activities to the RMP rule as specified in the RFI will improve safety performance. If EPA is able to show through industry performance data that the proposed new elements are necessary and effective, then API recommends that EPA work with OSHA and industry to propose only non-prescriptive, risk-based, performance-oriented requirements that are consistent between OSHA's PSM and EPA's RMP rules and while allowing the appropriate flexibility for companies to address local needs and conditions.

If EPA were to create regulatory requirements based upon evolving, continuously maturing industry "best practices", it could serve to stifle, hamper, or freeze development of standards or effective practice guidelines. In general, industry effective practice guidelines are meant to be applied based upon the hazards/complexity, risk and performance experience of a facility/company that allows a company to have a fit for purpose prevention program. Not all new ideas mean that previous approaches were not sufficient or protective to meet the need. Any prescriptive requirements that specify actions would likely be inappropriate based upon the unique needs of the site.

i. **Does your facility follow any management-system elements not required under Part 68 for RMP regulated operations? If so, please describe the additional management system elements, the safety benefits, any economic impacts associated with following the elements, and any special circumstances involving small entities.**

- **Measurements and Metrics** – API has developed and published **Recommended Practice (RP) 754 - Process Safety Performance Indicators for the Refining and Petrochemical Industries**. API members and many other companies use this and other relevant industry guidance (e.g., CCPS) to development and implement appropriate site-specific and company-wide process safety metrics. Metrics are best developed and implemented on a site-by-site basis. Any prescriptive requirements that specify metrics and action levels would likely be ineffective because they would not recognize site specific needs.
- **Management Review and Continuous Improvement** – API members follow the general industry practices involving management systems approaches that have evolved from ISO 9000 and 14000 which have directed the continuous improvement of health, safety and environmental management systems. Moreover, API members, as a part of continuous performance improvement efforts, review and implement activities taken from other published industry effective practice guidelines (e.g., CCPS's **Guidelines for Risk Based Process Safety**).
- **Process Safety Competency** – Many API companies already address process safety competency issues via the development of competency matrixes for safety critical positions to support the definition and implementation of training programs. API does not believe there is a need to establish redundant requirements to address process safety competency through regulations.
- **Stop Work Authority and Ultimate Work Authority** - In the RMP RFI, EPA has suggested that management system elements from the Bureau of Safety and Environmental Enforcement (BSEE) should be adopted. One element being considered by EPA from the BSEE system would create a stop work authority, an ultimate work authority and an employee participation plan. API notes that employees already have the right to refuse work in light of a hazardous condition that could cause serious bodily injury or death (78 Fed. Reg. 73760). In addition, employers already have a statutory duty to maintain a safe workplace, which is the ultimate work authority (See 29 USC §654(a)(1)). Moreover, the RMP prevention program already includes a requirement for a written employee participation plan. Finally, unlike BSEE regulations recently developed for offshore production, PSM and RMP have long-standing regulatory requirements to clearly identify operators qualified to execute safe and timely process shutdowns [see 40 CFR 68.69(a)(1)(iv) and 29 CFR 1910.119(f)(1)(D)]. Therefore, given that these elements are already covered in existing regulations, API does not support adding these elements to the existing RMP rule.
- **Conduct of Operations** – API member companies pursue operational excellence via evolving industry practices that encourage and require personnel to follow established procedures and practices. API believes that the operational discipline that adherence to these

practices achieves is a result of companies pursuing appropriate continuous performance improvement strategies. API does not believe that the concept of a “Conduct of Operations” element is sufficiently mature and recognized across industry to be considered for inclusion in a regulation.

- Process Safety Culture – API member companies do many things to assess and nurture individual and organizational culture in companies and facilities to support improving and sustaining process safety performance. API believes that culture improvements must be made by companies/sites as a part of a continuous improvement process and cannot be “manufactured” by executive leadership, nor is it proper to mandate it by regulation. There are a wide variety of approaches and methods for considering safety culture, therefore, API does not believe that the concept and approaches for a “Process Safety Culture” element are sufficiently mature and recognized across industry to be considered for inclusion in a regulation, in spite of efforts to do so in California.
- Job Safety Analysis (JSA) – JSA is a standard safety management and hazard/risk analysis practice that companies have been implementing for years, normally in conjunction with the development/implementation of safe work practices. JSA practices are codified in many industry practice documents. API believes that its members implement JSA practices and since companies are already required to develop and implement Safe Work Practices, it is not necessary for EPA to create a redundant JSA requirement. Many of these practices are already required by other regulations and adding this to the RMP prevention program would be duplicative and potentially confusing (29 CFR 1910.1200, 1910.146, 1910.147 and 1910.252).

ii. Whether existing management system elements should be modified, clarified or strengthened:

- a. Contractor safety requirements**
- b. Types of failure scenarios or damage mechanisms that must be considered during PHAs and hazard reviews**
- c. More specific PHA update/revalidation requirements and frequency**
- d. Expanding the use of PSSR**

API believes that the existing requirements for these elements are sufficient to establish minimum expectations for these issues. There are sufficient industry recommended practices and guidelines that companies can use to adapt and continuously improve these respective issue practices as needed. Therefore, API does not support expanding requirements for these elements/activities.

For example, damage mechanisms hazard review (DMHR) is already required as a part of a company ensuring and documenting fitness for duty of equipment. Companies presently must either (1) design equipment to RAGAGEP and document those standards or (2) perform a fitness for duty evaluation for equipment where the standards are not known. In either case, DMHR is conducted and documented by virtue of either referencing the appropriate standards or performing the fitness for duty evaluation.

- iii. **Would expanding the scope of the RMP regulation to require additional management-system elements, or expanding the scope of existing RMP management-system elements, improve the protection of human health and the environment? Should EPA require safety culture assessments, job safety analyses, or any of the other new management system elements described above? If so, please describe the elements, the safety benefits, any economic impacts associated with expanding the scope of the RMP regulation in this way, and any special circumstances involving small entities that EPA should consider. Would current staff at a facility be able to implement these additional elements or would new staff need to be hired?**

API believes that the practices involved with the above element names are best left for companies to implement as a part of their industry management practices. The existing RMP Prevention Program elements are effective in driving industry performance and should be supported by proper site implementation and effective enforcement. Furthermore, EPA has not presented sufficient data or evidence to show that adding the new elements and activities to the RMP rule as specified in the RFI are necessary to improve safety performance. If EPA is able to show through industry performance data that the proposed new elements are necessary, then API recommends that EPA work with OSHA and industry to propose only non-prescriptive, risk-based, performance-oriented requirements that are consistent between OSHA's PSM and EPA's RMP rules while allowing the appropriate flexibility for companies to address local needs and conditions.

- iv. **In systems using management and metrics, how do facilities develop useful leading indicators? Do you track the frequency of events such as process upsets, accidental releases, and "near miss" incidents? Does tracking such events allow managers and employees to make changes that prevent accidental releases? What other metrics and indicators do you use, and how do they help prevent releases?**

API has developed and published **Recommended Practice (RP) 754 - Process Safety Performance Indicators for the Refining and Petrochemical Industries**. API members and many other companies use this and other relevant industry guidance (e.g., CCPS, OGP) to develop and implement appropriate site-specific and company-wide process safety metrics. API member companies monitor their site-specific metrics and take action to correct negative trends. CCPS has recently published survey results that have elicited the most frequently used leading indicators. Many companies use of leading indicators to drive action are best left for site-by-site interpretation and implementation. It is not appropriate to require the use of specific leading indicators because they may not be relevant across the wide variety of RMP-regulated facilities.

- v. **Would requiring RMP facilities to conduct periodic safety culture assessments meaningfully strengthen the safety culture incentives that already exist, such as avoidance of deaths, injuries, property and environmental damage, production loss, community impacts, damage to company reputation, etc., that may result from accidents?**

API member companies take many steps to assess and nurture individual and organizational culture in companies and facilities to support improving and sustaining process safety performance. API believes that the culture improvements must be made by companies as a part of a continuous improvement process and cannot be "manufactured" by executive leadership, nor mandated by

regulation. API does not believe that the concept and approaches for a “Process Safety Culture” element are sufficiently mature and recognized across industry to be considered for inclusion in a regulation.

Having said that, API recognizes that certain municipalities and states are considering regulatory requirements for process safety culture. Because of the somewhat “immature” or evolving nature of culture practices, if EPA does decide to move forward with such requirements, they necessarily must be very high-level and performance-based. In addition, EPA should proceed in close coordination with OSHA to promote consistency.

Finally, requiring covered facilities to conduct a “safety cultural assessment” could place an undue burden on small entities. For example, smaller sites having fewer employees (e.g., 20) will have an informal understanding of the site’s safety culture without any need for a formal assessment. The assessment would place an additional costly administrative burden on the site with no risk reduction benefit.

vi. Would expansion of the RMP employee participation provision to include requirements such as the SEMS II stop-work authority, or other efforts to involve employees in all management system elements, enhance protection of human health and the environment?

API notes that employees already have the right to refuse work in light of a hazardous condition that could cause serious bodily injury or death (78 Fed. Reg. 73760). In addition, employers already have a statutory duty to maintain a safe workplace, which is ultimate work authority (See 29 USC §654(a)(1)). Moreover, the RMP prevention program already includes a requirement for a written employee participation plan. Finally, unlike BSEE regulations recently developed for offshore production, PSM and RMP have long-standing regulatory requirements to clearly identify operators qualified to execute safe and timely process shutdowns [see 40 CFR 68.69(a)(1)(iv) and 29 CFR 1910.119(f)(1)(D)]. Therefore, given that these elements are already covered in existing regulations, API does not support adding these elements to the existing RMP rule.

vii. Are there any other management system elements in the existing RMP regulation that EPA should expand or clarify (e.g., a new requirement that facilities perform a root-cause analysis for incidents under §68.81, clarify PHA and hazard review requirements, require more frequent PHA and hazard review updates, strengthen contractor requirements, or require pre-startup reviews prior to all process startups)? If so, please describe the additional requirements, the safety benefits, any economic impacts associated with expanding the RMP regulation in this way, and any special circumstances involving small entities that EPA should consider.

API does not believe that these issues need further regulatory detail. Changing any elements could result in large increases in cost with no added risk reduction. For example, at large refineries and chemical plant facilities, PHAs are activities costing these industries hundreds of millions of dollars annually. Should the frequency increase, the annual cost would as well with little to no added benefit. In fact, requiring more frequent PHAs could be counterproductive, encouraging covered sites to streamline the activity.

viii. Are there any data or information on accidents, near misses, or other safety-related incidents that the facility could have prevented by following management-system elements not currently required under the RMP regulation?

API supports the use of actual incident root cause trends to determine where improvements may be most effective. In the absence of such compelling data, API does not support EPA creating “aspirational” requirements that some may believe are “good ideas”, but are not supported by actual performance data.

ix. What would be the paperwork burden associated with the revisions to management-system elements discussed above? What special skills or training would employees need to implement these elements, including associated reporting and recordkeeping requirements? What would be the costs of additional reporting and recordkeeping requirements, including costs for worker training and any required data management system upgrades?

The economic cost and paperwork burden would be dependent upon the level of detail of each element requirement. Once EPA decides on the specific elements and any regulatory solutions, API can provide input of the cost experience of implementing such requirements. However, EPA should understand that any new single regulatory requirement/element could easily result in hundreds of millions of dollars in additional costs to industry, therefore any new or revised elements must be demonstrated as being reasonable, including evidence process safety performance will be improved.

3. Define and Require Evaluation of Updates to Applicable Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)

i. What does your facility use as a definition for RAGAGEP? Would adding a definition for RAGAGEP to the RMP rule improve understanding of RMP requirements and prevent accidental releases? If so, what specific definition for RAGAGEP should EPA add to the RMP rule? What would be the economic impacts of adding such a definition?

ii. From what sources (e.g., codes, standards, published technical reports, guidelines, etc.) does your facility select applicable RAGAGEP for operations covered under the PSM standard?

API does not support the development of a RAGAGEP definition. To best protect public safety and the environment, “recognized and generally accepted good engineering practices” (RAGAGEPs) should remain a flexible concept that allows employers to tailor RMP Prevention Program activities to the hazard and complexities of their particular facilities. RAGAGEP cannot be a single document, code, standard, or practice. In addition, EPA should demonstrate examples of what is not RAGAGEP. RAGAGEP must include both industry consensus guidance and appropriate internal standards that have been evaluated and adopted by employers.

API does not believe that EPA has established sufficient evidence that industry safety performance has been inadequate relating to RAGAGEP such that the current RMP (& PSM) standard is

insufficient and that a definition of RAGAGEP is needed. Any performance issues relating to RAGAGEP-based enforcement citations indicate that there may be issues with compliance and not the standard.

API believes that the company/site can determine its own RAGAGEPs based on its assessment of factors including:

- Type of specific hazard
- Complexity
- Local circumstances
- Industry documents or site developed documents based on operating experience and engineering judgment

Company guidelines were part of the original basis for consideration of what went into industry codes and standards. Therefore, EPA should allow companies to include their own internal standards as a part of RAGAGEP. API does not agree with California proposed PSM standards that RAGAGEP include only PUBLISHED items and excludes internal standards.

iii. Does your facility evaluate updates to its selected RAGAGEP? If so, how does your facility monitor any updates, and how often do you evaluate them?

This practice varies across API member companies. Some have designated personnel that act as subject matter experts (SMEs) for a standards organization, group of standards, or a single industry standard. Some companies place personnel on standards, recommended practices, and guidelines development teams and part of their job is to monitor progress and changes. Many companies assess the available recognized industry practices and develop their own internal guidelines. These guidelines are updated as needed.

iv. Please provide any data or information on accidents, near misses, or other safety-related incidents involving failure to evaluate and/or implement updates to applicable RAGAGEP for RMP-covered processes. Would requiring employers to evaluate and/or implement updates to applicable RAGAGEP prevent such accidental releases?

API has no specific data to submit, but believes that instances where a failure to update RAGAGEPs contributed to an incident would be very unlikely.

v. Should owners or operators covered by the applicable provisions of the RMP regulation be required to evaluate updates to applicable RAGAGEP? Should owners and operators be required to comply with new RAGAGEP requirements that occur after the owner or operator's initial compliance with the applicable provision of the RMP regulation? How would such updates or new requirements be identified? What would be an appropriate time period in which to conduct this evaluation and/or to comply with updated RAGAGEP? What would be the economic impacts of this change?

Companies/sites, not agencies, determine the RAGAGEPs that apply to their facilities, which can be both internal company standards as well as industry standards. Companies then evaluate the updates to those applicable RAGAGEPs during on-going activities such as PHAs, RMP audits, MOCs, etc.

Moreover, API does not support EPA action to revise the RMP rule to specifically require employers to evaluate updates to applicable RAGAGEP. This requirement would be extremely costly and impractical to implement, with no corresponding risk reduction (i.e., an administrative burden with no benefit). Further, current RMP requirements already ensure that employers consider pertinent safety updates applicable to RAGAGEP.

API also believes that RAGAGEP should be limited to equipment issues only (as was originally intended) and not expanded. Employers have an existing obligation to ensure that equipment is designed and operated in a safe manner, regardless of the code/standard originally used or the availability of more recent editions. The issuance of an updated edition of an industry document (i.e., RAGAGEP) does not mean a previous version was necessarily unsafe or inadequate or that the process/equipment covered by the RMP regulation has become less safe because it was designed to a previous version of an industry standard at the time of installation. API believes that current EPA regulations adequately protect public safety and the environment and already ensure that companies examine all pertinent safety updates applicable to RAGAGEP. A mandate to evaluate codes and standards updates would be costly and impractical, with likely little to no corresponding risk reduction.

Not all consensus standards are free to the public and subscriptions to all potentially applicable standards publications represent a significant cost, especially to small businesses. In addition, the task of evaluating all standards updates would be extremely time-consuming for any sized company, and unjustifiably expensive for smaller enterprises.

RAGAGEP must continue to recognize the use of internal company standards as has been the practice for over 20 years. Defining RAGAGEP could potentially remove the flexibility industry needs to maintain a performance-based approach.

vi. Would a requirement to evaluate updates to applicable RAGAGEP be more appropriate in another paragraph of the RMP rule? For example, should such a requirement become part of the Process Hazard Analysis revalidation requirements at §68.67(f), or the management of change requirements at §68.75? How would EPA incorporate such a requirement for Program 2 processes?

EPA should not create a RAGAGEP evaluation requirement in either the PHA or MOC elements. In the case of PHAs, these studies are typically spread out over a five-year period in a refinery. If one were to evaluate RAGAGEP during one study, and then require it in subsequent studies, it would lead to a tremendous amount of overwork (i.e., performing RAGAGEP review every quarter for 5 years in a row).

For Management of Change (MOC), a similar situation occurs except that many MOCs occur each week and there would be either tremendous overlap of MOC-induced RAGAGEP reviews or there

could even be gaps because there may not be sufficient MOCs of all types done during a “RAGAGEP review period.”

Therefore, API does not support the creation of a RAGAGEP requirement beyond what is already in the Prevention Program and strongly opposes including any such expansion in the PHA or MOC elements.

4. Extend Mechanical Integrity (MI) Requirements to Cover Any Safety-Critical Equipment

Whether to expand Program 3 MI and Program 2 Maintenance requirements to cover:

- **Types of safety-critical equipment (SCE)**
- **Method for identifying SCE**
- **Additional MI work requirements for SCE**

API believes that the six categories of equipment covered in Paragraph (j) of the PSM Standard appropriately cover mechanical integrity of equipment. The term “safety critical” is not currently defined in OSHA regulations and introducing this new term would be fraught with challenges. The intent should be that the mechanical integrity of equipment is maintained and that a subset of that equipment receives greater management oversight due to its role in protecting people and the environment.

API members have implemented mechanical integrity programs to ensure equipment is maintained appropriately. There are existing industry standards/recommended practices on mechanical integrity thus the PSM scope/list does not need to be expanded. API believes that safety critical equipment integrity is adequately managed by companies implementing RAGAGEP though existing MI prevention program requirements.

In addition, EPA has not provided sufficient evidence that industry safety performance is deficient in the area of recognizing and managing safety systems or that any such deficiencies would prompt expanding the scope of the mechanical integrity element. Additionally, there is a potential unintended consequence in introducing the term “safety critical” in that it can detract attention from maintaining other equipment and, if overused, becomes meaningless.

API cannot estimate the economic impact of such a requirement, but believes that it would be a large cost and the future costs could be even greater.

5. Require Owners and Operators to Manage Organizational Changes

EPA has not established significant risk of harm of the current approach and has not demonstrated that there are sufficient industry safety performance problems that would justify inclusion of organizational changes in the MOC element. If EPA has additional data based on RMP-related inspection results or incidents suggesting otherwise, EPA should share that data publically. API believes the current RMP prevention program MOC requirements and industry documents such as

the CCPS Guidelines address RMP coverage of management of change and reopening the RMP rule prevention program to address organizational changes is not warranted.

6. Require Third-Party Compliance Audits

EPA seeks information on whether to require:

- **Use of a third-party for compliance audits**
- **Credentials for auditors**
- **Increased frequency of audits**
- **Deadlines for corrective actions for audit findings**

API opposes requiring the mandatory use of 3rd-party auditors to conduct RMP Prevention Program compliance audits. Rather, each operator should have the ability to use the best auditor available, regardless of whether internal or a 3rd-party. EPA has not provided supporting evidence that RMP/PSM auditing failures are related to PSM performance and that the use of 3rd party auditors would result in safety improvements. While some companies chose to use independent third-parties to conduct or participate in some of their RMP/PSM audits, a mandate to require the use of 3rd parties would impose significant costs on companies and is not justified by industry safety performance data. API suggests that it is more important for EPA to focus on the audit program/requirements and the quality and competency of the auditors, regardless of their affiliation.

Additionally, 2nd-party and self-audits have many safety benefits that are lost with 3rd-party audits. Company-led audits can be far more effective in addressing issues uncovered during an audit, due to the company auditor's intimate knowledge the process technology, and of the organization, including how it functions. Also, company-led audits facilitate sharing learnings across the company.

The use of 3rd-party auditors also introduces concerns with protection of intellectual property, confidential business information as well as site security concerns (i.e., TWIC, background checks, need for escorts, etc.). These concerns are not present with the use of internal auditors.

In addition, API opposes changing the required compliance audit frequency of once every three years. Companies conduct more frequent periodic assessments of PSM performance. Audits every three years also allow companies to evaluate how well the prevention program is being implemented and monitor progress on continuous improvement efforts. Requiring more frequent compliance audits would strain available resources and result in fewer resources to support other verification and compliance reviews.

API also has concern regarding the availability of competent 3rd party auditors. The experience in response to the BSEE SEMS 3rd-party audit requirement has been that there are not sufficient competent resources to fill this role.

In summary, API believes that EPA should not mandate the use of 3rd-party auditors but rather leave the sites with the discretion to design audit programs that best meet the needs of their facility. Ultimately, it is the responsibility of the company/site to determine how to verify compliance with the RMP regulations through the use of internal, 2nd-party and/or 3rd-party auditors.

7. Effects of OSHA PSM Coverage on RMP Applicability

EPA has stated in its RFI that RMP Program 2 applies to about 5,360 facilities, with about 4,000 (75 percent) being bulk agricultural chemical distributors. Of the remaining (i.e., non-agricultural) Program 2 processes, over 70 percent are water or wastewater treatment facilities located in states without federally-delegated, state-run occupational safety and health programs. Of the remaining 400 facilities, EPA believes that approximately half are either non-agricultural bulk chemical distributors that would also become Program 3 in the event that OSHA were to restrict eligibility for its PSM retail exemption, or processes that incorrectly reported as Program 2 in their RMP (i.e., processes that are actually already subject to Program 3). In summary, if OSHA were to restrict eligibility for its retail exemption to facilities selling small containers, packages, or allotments to the general public, and EPA were to require all RMP-covered water and wastewater treatment plants not eligible for Program 1 to comply with Program 3, EPA believes that there would be approximately 200 RMP-covered processes nationwide that would remain eligible for Program 2. EPA wants to know whether it should change its Prevention Program Level 2/3 criteria or simply eliminate Program Level 2.

API members have oil and natural gas facilities covered by the RMP rule that are not covered by OSHA PSM (due to various PSM exemptions). These facilities are not in any of the 10 targeted NAICS codes. If EPA were to eliminate RMP Program Level 2, then these facilities would have to implement a Program Level 3 Prevention Program which would be inappropriate and a poor use of resources since there is no indication that there is a safety gap at these facilities that needs to be addressed or that such a step would improve existing safety performance. Additionally, many of the potentially affected oil and natural gas facilities are small and located in remote areas. For these reasons, API opposes elimination of Program Level 2 for use at qualifying oil and natural gas facilities.

If EPA wants to cover other types of facilities under Program Level 3 due to poor accident prevention performance or because of being in a state without a state-delegated PSM program, then EPA should add additional NAICS codes or other criteria to its targeted list associated with those facility types. If this action is pursued, API strongly urges EPA conduct appropriate economic analyses of the impact of such a change, as required by applicable Executive Orders and statutes, before OSHA or EPA seeks to propose any amendments to effect this change.

IV. Additional Items for which EPA Requests Information

This section discusses items that were not previously raised in the OSHA RFI. Each item discussion is followed by specific questions to collect data, information, and comments on each issue.

1. Safer Technology and Alternatives Analysis

EPA is planning the following steps to advance safer technologies and alternatives:

- **Publishing a joint alert with OSHA illustrating the concepts, principles and examples of safer technology and alternatives to make industry more aware of this information, while providing sources of information for further investigation and review,**
- **Publishing a voluntary guidance document with OSHA for operators on how to reduce risks by employing safer technology and alternatives, by offering a more thorough examination of alternative measures and safety techniques, including examples of safer technology and alternatives or practices**

Based on the evaluation of feedback from the alert, guidance, and this RFI, EPA would consider proposing an amendment to the RMP regulations that requires:

- **An analysis and documentation of safer technologies and alternatives**
- **Integration of the safer technologies and alternatives analysis into the PHA**
- **Implementation of safer technologies and alternatives where feasible; EPA would not make any determination regarding the specific analysis, technology, design, or process selection by chemical facility owners or operators**

Inherently Safety Technology (IST) decisions are extremely complex and unique to site-specific processes and systems and cannot and should not be determined by any governmental agency. The potential for creating unintended consequences is high, and EPA has long held that IST requirements would not produce additional benefits beyond those that already exist in the current Risk Management Plan (RMP) program structure. (Federal Register Volume 61, Number 120, FR Doc o: 96-14957 (Thursday, June 20, 1996): Pages 31668-31730, <http://www.gpo.gov/fdsys/pkg/FR-1996-06-20/html/96-14597.htm>).

Inherently safer approaches to manufacturing processes have been and will continue to be considered by facilities as a matter of course and the facility operators—not the government—is in the best position to understand the full ramifications of implementing IST. No one regulatory program or government agency can properly address the broad range of factors such as risk shifting, technical efficacy, cost, and product quality that a facility must consider and address when choosing appropriate safety and security measures, much less all of the different site-specific scenarios for the approximately 12,000 facilities that could be impacted by an IST requirement under the RMP.

In addition, decisions by government officials to require alternatives could impose new risks, such as more hazardous materials in transportation, if facilities must reduce inventories of certain substances.

Operators need to take an all-inclusive approach when looking at the safety profile of a facility, and they must factor in the requirements of the numerous overlapping regulatory programs that help shape this approach. EPA, OSHA, the U.S. Department of Transportation, the U.S. Department of Homeland Security (DHS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives all have existing regulatory programs that require operators to examine their operations and make them as safe and secure as possible. To attempt to overlay an IST requirement would negatively impact all of these various safety and security programs and create an impossible bureaucratic burden.

The current performance-based regulations in place today and in the marketplace itself already provide strong incentives for companies to consider and adopt “safer alternatives.” These programs allow facility operators to use all of the risk management tools and options at their disposal, while considering the complexities of their unique operating environment. Adding a new regulatory requirement focused on IST is not only unwarranted but potentially detrimental. At a minimum, it would divert scarce federal agency resources away from the primary objective of the Executive Order (EO) —namely, to identify and engage “outlier” facilities. At worst, IST would overwhelm federal agencies with thousands of complex evaluations, without requisite staff expertise to properly review the submissions. One EPA official has already said such an approach would be “monumentally difficult” for the Agency to accomplish. (Larry Stanton, Director of EPA's Office of Emergency Management, as quoted by Dave Reynolds, “EPA Looks To New Jersey Program As Possible Model for IST Requirements,” Inside EPA (December 2, 2013), <http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-12/03/2013/epa-looks-to-new-jersey-program-as-possible-model-for-ist-requirements/menu-id-1098.html>).

The EO Interagency Work Group can help create a safer and more secure regulatory environment by addressing shortfalls through options that will improve coordination between government agencies and enhance outreach, while recognizing opportunities to better implement existing regulatory programs. Pursuing options related specifically to IST would ultimately jeopardize the success of the EO by both distracting attention from much needed improvements and threatening to create unnecessary and duplicative regulatory requirements that would not contribute to enhancing safety and security.

Finally, API does not believe any information related to the RMP regulations should be submitted to EPA for “approval.” Under the 1990 CAAA, Congress included the following language in subsection Sec. 112(r) as follow:

(7)(F) Notwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.

This paragraph is interpreted that Congress did not intend the requirements of subsection (r) to become a permitting program. Where suggestions to submit certain documents for “approval” (such as a safety alternative analysis), this implies a permission would be granted by EPA, thus

being a permit-like activity. API believes that development of a new permit program for safer alternatives analysis, or any other regulations resulting from subsection (r) is not warranted.

Lastly, EPA has not presented sufficient data or evidence to show that adding the new elements and activities to the RMP rule as specified in the RFI are necessary to improve safety performance. The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. It is common industry practice during the project review process to conduct a risk/hazards analysis. This is also viewed as an inherent part of the PHA process for projects and revalidation of existing sites.

2. Emergency Drills to Test a Source's Emergency Response Program or Plan

EPA is considering requiring RMP-regulated facilities to perform exercises or drills as an element of the emergency response program identified under Subpart E of the RMP regulation: frequency, scope of activities, extent of external involvement, and documentation of lessons learned.

The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Information on how to develop an effective ERP is already addressed in Chapter 8 (Emergency Response Program) of the EPA's "GENERAL GUIDANCE ON RISK MANAGEMENT PROGRAMS FOR CHEMICAL ACCIDENT PREVENTION (40 CFR PART 68) - EPA 555-B-04-001".

Refined products facilities that are covered by process safety regulations already have requirements in place for periodic drills, specifically OPA 90. This drill plan establishes frequency, scope and drill participants. In regards to actual spills, facilities follow OPA 90 requirements on drill critique and lessons learned.

In response to information involving recent drills being reported in the RMP, this is not only a significant burden, but also a potential security threat. This potential threat is too great for a facility's potential vulnerabilities and company response plans to be posted in a public forum. Further, the EPA's protection of this vital information is lacking, as is evident in the completely insecure data found on the website <http://rtknet.org/rmp>. This website is operated by the Center for Effective Government and mirrors facility RMP information, with almost 100% accuracy to current RMP data. Its existence is questionable and shows how these data are currently uncontrolled.

i. Are RMP-regulated facilities currently exercising their emergency response plans? If so, are they doing these exercises to comply with other federal, state or local regulatory requirements? What references or guidelines were used to develop the exercise program?

API members regularly conduct emergency response drills, typically on an annual basis. For those facilities that are part of a mutual aid group (e.g., Channel Industries Mutual Aid, CIMA, in Houston) joint exercises are also conducted. API member companies use existing government guidance and industry recommend practices when developing an exercise program. API believes that the emergency response drill requirements necessary to ensure protection of the public and the environment should be based upon the specifics of each regulated facility within the domain of an

LEPC/emergency response agency. Specifying the drill requirements for all types of facilities without regard to local needs and circumstances is not appropriate.

- ii. **What should be the scope of an exercise/drill program? Should the exercise/drill program include internal (emergency response, notifications, and evacuation) and external elements (involving community and federal and state responders, as appropriate)? What elements should be exercised as part of the drill/exercise program? For example, should the program include communications, coordination, logistics, and evacuations/accounting for personnel, etc.? What response scenarios should be considered for the exercise/drill program?**

The scope of a drill should mirror the testing objectives. Internal drills are typically conducted more frequently than external-joint drills. Eventually, all aspects of an emergency response framework should be tested and evaluated although a “complete, full-scope” drill may only occur every few years. Pre-drill planning should determine the types of scenarios that are used in the drills.

- iii. **How frequently should drills/exercises be performed?**

It depends on whether it is internal, external, and the number of participating entities. In general, short, narrowly focused internal drills may be appropriate on a quarterly or annual basis. Extensive external-party drills may be scheduled every few years.

- iv. **Who should be involved in the exercise program? How should the management team be engaged as part of the drills/exercises? How should contractors be included in the exercise/drill planning and when conducting exercises/drills? Who should be the designated official responsible for coordinating the exercises and drills conducted at the RMP facility? How should other federal, state and local agencies be included in the exercise/drill program?**

For external drills, all significant parties needed to deal with an emergency should be a partner. The use of contractors should be considered, since they are an ever present component of plant operations. The designated official should be decided upon by the facilities involved in cooperation with external emergency responders.

- v. **Should all RMP facilities be required to participate in some type of exercise/drill program or only those who are required to develop an emergency response program? Should Program 1 facilities (and Program 2/Program 3 facilities that do not respond to accidental releases with their own employees) be required to conduct external exercises with community responders and test notification procedures? Should Program 2 and Program 3 facilities whose employees respond to accidental releases conduct both internal and external exercises?**

If EPA were to create an explicit drill requirement, only those required to develop an emergency response plan (ERP) should be covered. Program level 1 facilities should not be included.

vi. **How should lessons learned and recommendations be documented and addressed? What timeframe should be considered for completing such records? How long should records of exercises/drills be maintained?**

Companies that do internal drills typically create after action reports and a list of lessons and action items. These are considered as a part of a facility's performance management review process and action items are typically tracked to completion using file memos.

vii. **Should stationary source operators be required to document and address lessons learned and recommendations when they respond to an actual accidental release?**

Companies typically already do such evaluations. No additional requirement is needed.

viii. **Should information such as the date of the most recent exercise involving the emergency response plan be required to be reported to EPA in the facility's RMP?**

If EPA were to expand its ERP requirements to include periodic drills, it would make sense that this additional data element be added to the electronic RMP submittal.

ix. **What would be the economic impacts and paperwork burden of requiring an exercise/drill program for all or a subset of RMP facilities? Would such a requirement substantially improve preparedness for dealing with emergency situations? Are there any special circumstances involving small entities that EPA should consider with respect to an exercise/drill program?**

The cost of conducting large external drills is not small and there is also a cost to the community and which can vary according to the size, complexity, and capabilities of the community emergency response agencies. If done efficiently, conducting drills on a reasonable frequency can be beneficial.

3. Automated Detection and Monitoring for Releases of Regulated Substances

EPA is considering expanding requirements for automated detection and monitoring systems that would supplement either the existing process hazard analysis and/or emergency response requirements. Specifically, EPA requests information on whether:

- **Facilities be required to install monitoring equipment or sensors to detect releases of RMP regulated substances**
- **To include an automated mechanism to notify, alert and warn the local responders and surrounding public of an incident**
- **Level of involvement of LEPCs and SERCs in the development of emergency response plans**
- **Frequency for testing the monitoring equipment or sensors**

The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Automated

notification of alarms/sensor activation could inadvertently cause numerous false alarms and responses and take away resources from where they may be needed in the event of a real emergency. The mechanical integrity program already covers inspection, testing and maintenance of detection/alarm systems. Regarding paragraph vii above, the involvement of LEPCs is already covered in Section 8.6 (Coordination with Local Planning Entities) of EPA's "GENERAL GUIDANCE ON RISK MANAGEMENT PROGRAMS FOR CHEMICAL ACCIDENT PREVENTION (40 CFR PART 68) - EPA 555-B-04-001".

Detection of flammable materials would not be a significant burden, and is a level of safety found in many facilities. It would be a potential issue for many regulated substances that do not have an approved method of sampling, or regulatory limits to guide alarm level determination.

There would be significant issues related to alarm set-point and levels of notification. Individual companies may have significantly different levels at which they respond to a potentially catastrophic release. Would alarm levels be based on employee exposure protection or community protection? These levels could be drastically different. From the local responders' standpoint, they should determine their response by their own risk-based decision process. For instance, a remote facility with a significant release may have less severe community impact compared to a facility with a moderate release that is in the heart of the community. It is not clear how EPA would provide latitude to the relationship between the facility and local responders.

Requiring an automated means of notification would be an issue when false alarms are received by local responders. It is well documented that many of a municipal department's responses are due to false alarms from either direct communication or third party communication. A requirement to automate the process of alerting the local responders may tax their limited resources, especially where the responders are volunteer based departments. Further, communicating "appropriate protective response action" is not the responsibility of facilities, but rather the local responders. Further, response action depends on community receptor locations, meteorological and process conditions. The level of response would change not only between facilities, but also by individual release events.

In addition, numerous false alarms communicated to local response organizations and perhaps the public could result in a lack of response when actually needed. For example, if an automated public response system were constantly tripping, members of the local response community and the public may not respond when they are really required, believing the alarm to be "another false trip." Until more is understood regarding the technologies available and their reliability, EPA should not include automated notifications in RMP regulations. And there are risks associated with "automatic response/evacuation" when such actions may not be warranted.

Testing of monitoring equipment generally falls under industry practices and RAGAGEP, which is generally an annual requirement. This testing is conducted in conjunction with emergency shutdown procedures to test their effectiveness. Monitoring records are the burden of the company to produce, as are other process safety records. It is not certain how the EPA would provide guidance on how a company would review records for trending, especially when meteorological and process conditions could affect this review.

Leak Detection and Repair programs (LDAR) are a separate requirement under the EPA and has merit standing on its own. Integrating LDAR with process safety regulations would not reduce or eliminate the potential for catastrophic releases. LDAR programs focus on very low release volumes, meant to protect the environmental quality and long-term, chronic hazards. Finally, mandating any monitoring equipment begins to philosophically shift RMP and PSM requirements from a performance-based nature to more of a prescriptive approach. The original regulations were intended to be flexible, allowing employers to make risk-based decisions to implement the best solution for a very broad array of covered processes. The addition of detailed, prescriptive requirements to require monitoring devices or other detection systems to be installed is unreasonable, as the cost to covered industries could be extraordinary with no evidence these devices and systems would result in the reduction of future incidents.

4. Additional Stationary Source Location Requirements

Both the siting of processes within a stationary source and the siting of the stationary source itself can affect the impact of an accidental release. Siting within a stationary source can impact the surrounding community not only by the proximity of the accidental release to off-site receptors adjacent to the facility boundary (e.g., people, infrastructure, environmental resources) but also by increasing the likelihood of a secondary “knock-on” release through compromising nearby processes.

EPA is considering changes to include more specific siting requirements as part of the PHA by, for example, establishing buffer or setback zone requirements for new covered stationary sources, or by establishing safety criteria for siting of occupancies inside the facility.

On-site facility siting is adequately covered by RAGAGEP (API RP 752 & 753) and in PSM facility siting and RMP PHA stationary source siting requirements within the PHA process. Off-site impacts are already covered in RMP (e.g., ACS and WCS).

API considers this to be a very significant item in the RFI as its impact would limit new facilities and existing facility expansions. Even if the EPA were to limit siting based on the existing criteria for worst case scenarios, this would severely cripple our industry.

Facility siting in the PSM regulation allows for minimizing risk at the source of the hazard. If, during the PHA process, a facility can document that the level of risk is less than a desired amount (for example, 1 in 100,000 chances is often cited by agencies), then siting requirements should fall on existing industry standards and practices. Where the risk is greater than an acceptable level, additional layers of protection should be implemented. It should be noted though, that it would be impossible for the EPA to incorporate specific safety devices into regulation, because of facility variability. This should be left to the facility to determine.

Furthermore, EPA cannot simply mandate property owners to sell their property to regulated sites. If EPA attempted to mandate green spaces or buffer areas, the very existence of the regulation could create inflated property values. The result of any type of buffer zone mandate would be an extreme cost to the regulated community, costing industry perhaps into the billions of dollars with little incident prevention risk reduction.

In addition, there may be state or local fire codes/ordinances that constrain the types of new facilities that may be placed within a community. There is no need for EPA to specify external siting or zoning requirements based upon RMP coverage. The EPA should not be involved with zoning issues, which are the purview of local, state or tribal organizations.

Regarding onsite siting requirements, the EPA is outside its jurisdiction and should default to OSHA's PSM regulation. Any siting review should be conducted and reviewed in conjunction with the PHA process. This is current practice and is done at least every five years during PHA revalidation or when a significant change requires a PHA.

The EPA should not consider chronic burden to communities in the RMP regulation, as there are other successful EPA regulations that cover chronic burdens. The 1990 CAAA emphasized one of the criteria for listing substances was "*the severity of any acute adverse health effects associated with accidental releases of the substance*" [1990 CAAA Sec. 112(r)(4)(A)(i)], signaling Congress never intended for this section of the Act to be applied to chronic health.

Finally, EPA should not be involved in the specification of how onsite occupancies should be placed; these issues are already addressed by OSHA's PSM PHA Facility Siting requirement. API members already address these issues via conformance with API RP 752 and RP 753.

5. Compliance with Emergency Response Program Requirements in Coordination with Local Responders

EPA has found that the majority of RMP facilities claim to be "non-responding" facilities. However, during facility inspections, EPA has often found that facilities are either not included in the community emergency plan or have not properly coordinated response actions with local authorities. This problem occurs with both responding and non-responding facilities, but it is particularly troublesome for non-responding facilities, because if the facility itself does not maintain the capability to respond to emergencies, and local authorities are not able to respond, then a proper response to an accidental release at the facility may not occur or may be significantly delayed. EPA requests comment on whether this problem could be addressed through better enforcement of existing requirements, and if so, how best to do this.

Facilities should coordinate emergency response activities with the local responders in both situations where employee respond or don't respond directly to accidental releases. For example, this can be achieved through a fire safety analysis conducted by the facility and shared with local responders. Similarly, when facilities response strategies are designed for employees to not respond directly, this strategy is communicated to local responders. In the case when a written fire plan is developed, this is typically communicated to the local fire department or industry mutual aid group. This should address any gaps in coverage and what to do in those events. Often the facility offers to add to the responding group's equipment, or in the instance where the local responders do not have the resources, the facility has contracts in place with outside organizations to respond.

The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Community

emergency response plan requirements are already addressed in Sections 8.1 & 9.4 of the EPA's "GENERAL GUIDANCE ON RISK MANAGEMENT PROGRAMS FOR CHEMICAL ACCIDENT PREVENTION (40 CFR PART 68) - EPA 555-B-04-001".

6. Incident Investigation and Accident History Requirements

EPA is considering expanding the incident investigation requirements:

- **Broadening the incident investigation and accident history requirements to include clear requirements to investigate near misses and determine root causes of accidents, near misses, and process upsets**
- **Establishing specific time frames for incident investigations to be completed**
- **Modifying the definition of "catastrophic release" assist in addressing the concerns regarding the appropriate scope of incidents that require investigation**
- **Requiring facilities that have incidents or near misses to conduct a full compliance audit**
- **Sharing the results of accident investigations with the local community or alternatively a summary of the accident, and its root cause**
- **Whether there an appropriate role for the local community in conducting investigations**

Industry practice is to investigate all incidents and any near miss events that could have resulted in a "catastrophic release." While action items associated with the investigations are tracked to completion, API does not believe that setting specific time frames to conduct and completes investigations would not help the process. It should be noted that often, for complicated investigations, outside assistance (e.g., metallurgical analysis) can take significant time to complete.

Root cause analysis (RCA) should not be required for near misses or process upsets for the following reasons:

- Investigation of "incidents that could reasonably have resulted in a catastrophic release" is already required – no need to introduce a new term of "near miss" or to broaden the scope of incident investigation requirements
- Process upsets vary across a wide range from product quality/efficiency issues to ones that represent near-miss situations;
- There is no standard definition of a process upset;
- Learning from process upset events that do potentially challenge process safety systems can be accomplished via other means;
- Including all process upsets would overburden the RCA/investigation resources within a facility.

Regarding sharing investigation results, they are often shared with local communities and/ or outside agencies. Agencies sometimes participate in the investigative process, but local communities would only participate if, during the response activities, an incident occurred that could impact the responders.

The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Incident investigation procedures are well established in the industry and the investigation process addresses root causes to minimize the probability of recurrence. API believes the incident investigation requirements are adequate as they exist. For example, the amount of time needed to properly investigate an incident varies a lot based on circumstances. It is unreasonable to set an overall timeline and/or deadline.

Moreover, incident investigations pursue the root causes of the incidents, which by definition means that they will determine the management system failures that contributed to the occurrence of the accident. Companies take lessons from an investigation and apply them across the facility and company, and typically communicate the lessons across industry.

API believes it is totally inappropriate to involve community members in internal incident investigations. They are ill-equipped to be participants in the investigation, they may be subject to safety risks, the company could be exposed to liability issues, and among other concerns.

Companies already update their five-year accident history on the RMP which is available to the public. Companies that have Community Advisory Panels (CAPs) typically provide information on incidents that could affect the community during CAP meetings.

7. Worst Case Release Scenario Quantity Requirements for Processes Involving Numerous Small Vessels Stored Together

EPA seeks information on whether to revise section 68.25(b) of the RMP regulation to better account for processes involving numerous small vessels stored together, such as on pallets, cylinder racks, and in groups. EPA is looking for information on whether including the entire quantity in one location or one process, instead of just the single largest vessel or pipe, would better represent the true worst case scenario quantity, and thereby increase protection to human health and the environment and help prevent future accidents from occurring. EPA also requests comment on whether there are ways of grouping vessels or pipes short of including all the vessels or pipes at a facility that would be appropriate for worst case scenario analysis. EPA is also interested in receiving information on whether worst-case scenario requirements should account for the potential cascading effects of separate facilities that are interconnected (e.g., a manufacturer that provides product to an adjacent source through an interconnecting pipeline).

The Worst Case Scenario (WCS) has always been an overestimation of the actual results in the unrealistic instantaneous release of the largest vessel's contents with an ignition. Further, the RMP Comp tables overestimate the results compared to a more realistic modeling approach. The proposed summation of multiple vessels is even further removed from a truly representative scenario and would only result in extending boundaries for the worst case scenario.

EPA's question regarding barriers or spacing is already answered in numerous other industry standards and practices. Where proper controls and siting have been implemented, the effects of exposure from one vessel to the next have been minimized.

Regarding facilities linked by pipelines, it is not demonstrated that such facilities pose additional threat to other facilities. Pipelines do not cascade effects such as heat or ignition from one facility to the next.

EPA has not presented sufficient data or evidence to show that adding the new elements and activities to the RMP rule as specified in the RFI are necessary to improve safety performance. The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Threshold quantity requirements for co-located vessels are covered by RAGAGEP, for example Section 1.5 & Exhibit 1-2 of the EPA's "GENERAL GUIDANCE ON RISK MANAGEMENT PROGRAMS FOR CHEMICAL ACCIDENT PREVENTION (40 CFR PART 68) - EPA 555-B-04-001".

i. Should EPA revise §68.25(b) to require the owner or operator of any regulated process involving numerous small containers stored together to consider as the worst case release quantity the sum of the quantity of all containers in the process, or a subset of such containers, or the containers within one storage area of the process?

API opposes this change. Small container incidents are already managed by other means (e.g., local/state fire code requirements), including basic fire barriers, separation, tank/vessel design practices, etc.

ii. Would revising the worst case scenario quantity determination requirement in this manner better represent the true worst case scenario for such processes?

The WCS is already defined to be a nearly impossible set of circumstances. API does not believe that this change would better define the credible worst case scenario.

iii. Would this change promote stronger process safety controls and help prevent accidents?

No. It would have the opposite effect of possibly diverting prevention resources away from higher-risk needs.

iv. Should EPA revise §68.25 to require the owner or operator of a regulated process to consider the potential for worst case release scenarios to involve adjacent facilities or other nearby facilities that are interconnected through pipelines? Would this change raise any confidentiality or security issues? How would EPA adjust its worst case scenario modeling requirements to account for such a change?

RMP requirements should be limited to considering WCSs from a single stationary source. If EPA wants to address this issue, then it should amend the data pick list in the off-site consequence analysis (OCA) data elements to include possible effects involving other nearby facilities.

8. Public Disclosure of Information to Promote Regulatory Compliance and Improve Community Understanding of Chemical Risks

EPA is seeking public comment on whether there are additional steps the Agency could take to improve compliance through increased information disclosure to the public and local authorities. For example, would requiring RMP-covered facilities to post on a company website unrestricted (i.e., non-off-site consequence analysis) RMP information, such as the facility's RMP executive summary, emergency contact information, identity of the LEPC, or links to the local emergency response plan and/or the facility's most recent EPCRA Tier II report, lead to improvements in facility safety and better regulatory compliance? Would disclosing a summary of the facility's compliance audit, PHA, or incident investigation reports to the LEPC result in improvements in emergency planning and response? Would such disclosures raise any concerns regarding facility security or proprietary business information?

Much of the information the EPA requests is already available on websites, such as Safety Data Sheets. Other information such as chemical name, quantity, incident history is already available in the RMP. Facilities have no control over community emergency plans, thus local communities should provide these plans where requested.

Regarding PHA or compliance audit information, facilities already have a regulatory obligation to close any action items associated with these activities. Local authorities are already stressed for resources and putting additional information management burdens on these organizations is not a good use of these resources.

In other matters of community outreach, consideration must be given to safeguarding critical, safety-sensitive information that may show facility vulnerabilities and potential response plans to incidents.

Social media is ever-changing thus it would not be an appropriate medium to share any information.

Company websites have become convenient mechanisms for larger companies to broadly share information such as SDSs, site overviews, etc. This sharing should remain at the discretion of each company, as smaller companies may not be staffed to manage updates to websites. Additionally, even larger companies would have to significantly increase staffing to continuously update the information EPA is suggesting should be posted on websites in its RFI. Furthermore, there still exists a concern regarding regulatory required posting of security sensitive information on websites.

An impact to the local response organization community would be the added time and expertise required to receive and understand the vast volume of data submitted in a PHA or compliance audit. For example, a single PHA document could be 200 – 1500 pages in length, depending on the size and complexity of the covered process. If local authorities were required to receive these documents, it is not practical to expect these organizations (many of which are already resource limited) to comprehensively review the highly technical documents. Furthermore, there still exists a concern regarding the release of proprietary information and security sensitive information. Any

additional requirement to release this type of information outside of the regulated site increases the opportunity for sensitive information to be shared inadvertently with those wishing to cause harm.

Lastly, EPA has not presented sufficient data or evidence to show that adding the new elements and activities to the RMP rule as specified in the RFI are necessary to improve safety performance. The existing RMP Prevention Program elements are effective in driving industry performance, and should be supported by proper site implementation and effective enforcement. Any further publication of the risk/hazard data could pose additional security risk.

9. Threshold Quantities and Off-site Consequence Analysis Endpoints for Regulated Substances Based on Acute Exposure Guideline Level Toxicity Values

EPA is considering the use of Acute Exposure Guideline Levels (AEGLs) developed by the National Advisory Committee (NAC) for AEGLs for Hazardous Substances (NAC/AEGL Committee) to:

- **Recalculate RMP reporting thresholds**
- **Require use of AEGLs as toxic endpoints for off-site consequence analyses in order to better reflect the potential for adverse effects of an accidental release upon a community**

API does not support the use of AEGLs (1) to recalculate existing threshold quantities (TQs) or (2) to use as Levels of Concern to recalculate endpoint distances for Worst Case Scenario (WCS) or Alternative Release Scenario (ARS) vulnerability zones. With respect to the use of AEGLs for TQ recalculation, API does not believe that EPA has shown that there is a legitimate need for reducing TQs and increasing RMP coverage based upon this method. Specifically, EPA should demonstrate and report the industry performance (offsite impact incidents) from facilities NOT already covered by RMP that should/could have been prevented had the facilities been covered due to lower TQs. Unless EPA is able to make a compelling case that this situation exists, then causing additional facilities to be RMP covered without a commensurate reduction in RMP-related accidents would not be an effective use of this nation's accident prevention and risk management resources.

In addition, API does not support using AEGLs as replacements for ERPGs in the calculation of WCS/ARS endpoint distances. AEGLs are a result of a relatively short-term government research program that ended in 2010. ERPGs are a long-term program established by the American Industrial Hygiene Association (AIHA). ERPGs are formed, reviewed periodically, and updated using a weight of evidence approach. AEGLs are typically based more on the results of a single key study. Both approaches use sound scientific methods with peer review and in many cases, the ERPG -2 and AEGL -2 values (based on a 60-minute duration) are reasonably similar. If EPA chooses to adopt AEGLs, then AEGL selection should be compatible with/consistent with ERPG-2 in effect and duration (e.g., 1 hour exposure duration). API recommends that EPA continue to use ERPG values to calculate WCS/ARS endpoint distances as they are the most effective values for addressing RMP accident prevention activities such as emergency response planning. Moreover, tying the WCS/ARS vulnerability zone calculations to an Acute Exposure Guideline Level (AEGL) would be an overly conservative approach to offsite consequence analysis.

10. Program 3 NAICS Codes Based on RMP Accident History Data

API has no comment on this topic.

11. The “Safety Case” Regulatory Model

EPA is considering some requirements that could mirror international safety case requirements:

- **Completely replacing the current RMP regulation (and PSM standard) with a safety case approach**
- **Requiring owners and operators to submit a PHA or a similar document for Agency approval, possibly only for selected categories of high-risk facilities, such as petroleum refineries**
- **Other safety case aspects**

API does not support adding requirements for the development and submission of safety cases. There is no safety performance evidence that shows that lack of having aspects of a safety case were material causes in the occurrence of industry incidents. The imposition of safety case regulations in any form would be unlikely to solve any existing regulatory compliance problems or aid the Federal agencies in collaboration efforts with other Federal agencies or State partners.

There is insufficient evidence from countries that have established safety case regimes that the industry accident rate is any lower than in the U.S. under the existing performance-based management system requirements contained in the OSHA PSM standard and the EPA RMP rule. Imposition of a safety case regulatory regime would be a huge cost burden to the industry, including the possible loss of small businesses, with no proven incident rate improvements.

Additionally, the cost to EPA and/or OSHA to administer such as complex and broad technical regulatory program would be enormous. In the RFI FR notice (Vol. 79, No. 147, page 44632) EPA compared the U.S. nuclear regulatory regime to a potential “Safety Case” model for RMP covered facilities. In its comparison, EPA noted the U.S. Nuclear Regulatory Commission (NRC) “oversees approximately 100 nuclear reactor and 3000 nuclear materials facilities in the U.S. EPA further added that to accomplish this, the NRC has approximately “4000 employees and an annual budget of over \$1 billion.” Since many RMP locations are comprised of multiple process units (e.g., a refinery could have many process units with different technologies), it is conceivable the annual cost to administer a similar program in the U.S. for RMP or PSM covered units would be at least 3 to 4 times the NRC budget.

Finally, as previously noted, API believes the 1990 CAAA never meant to create any type of permit-like requirement for those facilities falling under any regulation promulgated under Sec. 112(r). Given the safety case model is essentially an operating permit program, API believes Congressional action would be required to impose such a regulatory regime.

For API to comment in further detail, EPA needs to define better what the components of a safety case regime are and the potential responsibilities of the regulated community, EPA and others.

12. Streamlining RMP Requirements

In addition to the items listed above, EPA is interested in gathering information on any other areas within part 68 that should be modernized, strengthened, or clarified. In particular, EPA invites comment on any potential revisions to the RMP rule that would make it easier for regulated sources to comply with its requirements.

- **Are there steps that EPA could take to simplify the RMP submission process?**
- **Should EPA require that RMP submissions be certified by a senior corporate official, such as the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, or the equivalent to ensure corporate-wide awareness and accountability in the RMP submission?**
- **Is the three-tiered program level structure of the RMP regulation appropriate, or should EPA consider simplifying the rule to make only two program tiers, or only a single prevention program applicable to all facilities?**
- **Are the accident prevention program elements clearly defined?**
- **Should EPA further clarify any of the existing elements?**
- **Are the regulatory terms and definitions contained in section 68.3 sufficiently clear?**
- **Are there additional terms that EPA should define in this section?**

Regarding RMP submissions, upper management often does not have oversight of daily operations at facilities. Similarly, requiring a senior corporate official to submit each RMP would be an administrative and logistic burden to execute. The current language under 40 CFR § 68.15(c) already requires facilities to clearly outline responsibilities for addressing RMP elements. This, in addition to basic laws in the U.S. governing how companies and corporations are structured and operate, adequately detail how authorities are to be delegated and how corporate oversight is to be applied. Therefore, it would not be an advantage to have a senior corporate official certify RMP submissions.