



March 31, 2014

Mr. David Michaels  
Assistant Secretary of Labor  
Occupational Safety and Health Administration  
OSHA Docket Office, Docket No. OSHA-2013-0020  
Technical Data Center, Room N-2625  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

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

**Comments on OSHA Docket No. OSHA-2013-0020, RIN 1218-AC82, 78 Fed. Reg. 73756-73768, Request for Information, Process Safety Management and Prevention of Major Chemical Accidents (December 9, 2013)**

Dear Dr. Michaels:

Thank you for the opportunity to provide comments on the OSHA Request for Information (RFI) on Process Safety Management and Prevention of Major Chemical Accidents. API represents more than 580 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 OSHA Process Safety Management (PSM) standard. API and its member companies support effective, performance-based regulatory compliance and improvements in the safety and security of its member company facilities.

API's comments apply broadly to the oil and natural gas industry and our 580 member companies, including 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

API is providing comments on most of the requested RFI topic areas; however, API chooses not to provide comments on the following areas:

- ***RFI Item 13. Expanding the Requirements of Sec. 1910.109 to Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics***
- ***RFI Item 15. Updating the Regulations Addressing the Storage, Handling, and Management of Ammonium Nitrate***

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

API hopes that OSHA 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](mailto:Chittim@api.org). Thank you for the opportunity to provide input on these important topics.

Sincerely,



Senior Policy Advisor  
API

## **General Comments**

### ***1. Effectiveness of the PSM Standard and Process for Considering Changes***

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

In addition, the original PSM standard was created collaboratively with industry, starting with the original PSM recommendations provided by industry experts via an Organizational Resources Counselors (ORC) committee. This allowed OSHA to start with a practical, industry-tested template for many of its proposed PSM elements and requirements.

API suggests that OSHA consider using a similar approach to evaluate and use the results of its PSM 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 comment docket. The stakeholder group could then work with OSHA to make specific proposals on PSM regulatory changes.

API also suggests that, if amendments to the PSM standard are contemplated, OSHA 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 OSHA's RFI and the detailed data requested on needs, evidence, solution options, anticipated costs and benefits.

The PSM rules have represented a consistent and well-understood framework that has been consistently used by manufacturing facilities for many years. Before undertaking regulatory revisions, API suggests first focusing on improving existing regulatory compliance efforts and programs.

### ***2. Incident Data to Support the Basis for Changing the PSM 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 inventory of incidents and root causes that would indicate significant regulatory deficiencies is small. In addition, proposed changes to the PSM standard should not developed to address "one-off" incidents. Proposals should address actual industry performance problems based on identification of root causes of problems and supported by data.

Publicly available incident investigation results suggest that more effective enforcement of existing regulations would improve safety performance. API believes that nearly all of the

major incidents that have occurred since the creation of process safety regulations in the U.S. relate to existing elements in the PSM Standard and not because there are major “gaps” in the existing PSM standard. API believes that there is little supporting evidence that changes to the PSM standard are needed to correct deficiencies that could otherwise be addressed through improved enforcement of the 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, the Federal government should do a better job of collaborating with State and local agencies to more effectively enforce existing laws and regulations.

### **3. OSHA’s Burden of Proof for Regulatory Modernization**

OSHA has the burden to show additional regulations are “reasonably necessary” and address a “significant risk of harm.” If OSHA determines that it has sufficient industry performance evidence to support change to the PSM standard, 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 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. OSHA’s Jurisdiction Over Outer Continental Shelf (OCS) Facilities**

OSHA is correct in not asserting or implying jurisdiction over OCS facilities. In that regard, the RFI is consistent with the February 2, 1993 (corrected on 2/11/2003) OSHA interpretation letter which concludes:

*Therefore, pursuant to 4(b)(1) of the OSH Act and 21(d) of OCSLA, OSHA cannot enforce its regulations if the working conditions are already regulated by another agency. The Department of the Interior regulates working conditions directly related to production platform activities and equipment, and the U.S. Coast Guard regulates production platform working conditions for safe access/egress, personal protective equipment,*

*housekeeping, guarding of deck areas, lockout/tagout, lifesaving devices and equipment, lifeboats, firefighting equipment, fire extinguishers and systems, first-aid kits, emergency communications equipment, and commercial diving.*

We concur with OSHA's position that Section 21(d) of the OCS Lands Act precludes OSHA from imposing its authority on activities already regulated by other agencies, in this case BSEE and the USCG. These agencies, most notably BSEE and its predecessor agencies, have been regulating drilling and production safety on OCS facilities for 60 years.

## **Specific Comments on PSM RFI Options**

### **5. RFI Item 1. Clarifying the PSM Exemption for Atmospheric Storage Tanks**

API supports preserving the exemption for atmospheric storage tanks (AST) which pose a low risk for catastrophic release and are already regulated under OSHA's flammable liquids standard as the correct approach. In addition, many states have AST regulations so additional regulations under the PSM standard would be redundant and inefficient.

Safety incidents related to flammable liquids in ASTs are infrequent and there is insufficient industry performance evidence provided by OSHA to indicate that the current regulations are insufficient to protect workers in covered sites. Rather, OSHA should enforce existing regulations such as Sections 1910.106, 107, and 252 - compliance with these requirements is sufficiently protective of worker safety. In addition, API believes that the issue of including flammable liquids in ASTs within or connected to processes covered by the PSM standard has already been addressed via the "Meer Decision" and other avenues and no further action is needed.

The economic impacts of developing and implementing PSM programs for a very large number of atmospheric storage tanks at field production facilities will be substantial. More specifically, API believes the following activities with ASTs should be exempted from the PSM standard:

- 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 42471 – Petroleum Bulk Stations and Terminals

API suggests that OSHA define the term "storage tank" using the definition found in NFPA 30 for atmospheric storage tanks. The confusion between "storage" and "process" tank is created by the PSM definition for "process", which includes any "storage of a highly hazardous chemical." OSHA should revise the definition for "process" to specifically exclude "storage within an atmospheric storage tank as defined within NFPA 30."

Flammable liquids stored in atmospheric storage tanks are already regulated by OSHA's flammable liquids standard. API members concur with OSHA efforts to review and – if justified based on the criteria outlined above – update the flammable liquids standard.

More emphasis on proper application of OSHA's existing standards such as for hot work, confined space and energy isolation requirements would likely prove more effective in reducing risk than additional regulations. These standards provide a great deal of worker protections as they relate to the PSM standard's application to ASTs. Additional emphasis on the existing standards could include training, education, etc.

API recommends that OSHA utilize existing regulations, guidance, and enforcement to support enhanced oil and gas production facility storage tank safety and worker protection. The U.S. oil and gas industry operates approximately 300,000 atmospheric pressure storage tanks. Also, OSHA should clarify that PSM does not apply to atmospheric oil and gas storage tanks connected to typical wellbores, treatment, and storage.

#### **6. RFI Item 2. Oil- and Gas-Well Drilling and Servicing**

API opposes the elimination of the PSM exemption for oil and gas well drilling and servicing. Since oil and gas well drilling or servicing operations are transient (temporary), are inherently variable (to address the unique factors associated with each well) and are not “processes” that typically handle covered substances, they are **not** the type of operations intended to be regulated under the PSM standard.

More specifically, API believes that NAICS Codes 211111 Oil and Gas Extraction, 213111 Drilling Oil and Gas Wells, and 213112 Support Activities for Oil and Gas Operations should continue to be exempted from the PSM standard. Removing the exemption would result in incident prevention efforts and resources being diverted towards compliance with any PSM regulation.

In addition, OSHA has not provided sufficient data or evidence that onshore exploration facilities and related servicing activities have experienced a significant number of catastrophic releases of the type that the PSM standard is meant to address. There is little performance data showing there is a safety problem at these facilities. The risk level is not high and the safety incidents are not process safety but are more occupational safety and thus are covered by other regulations. API believes that these low risk operations do not warrant a new regulatory program overlaid onto these sites and that the benefits of a PSM program for these operations would not justify the costs of such a program.

Note that there are numerous other federal and state regulations, industry codes and standards and recommended practices which already effectively address the hazards posed by oil and gas well drilling or servicing operations.

If OSHA develops a sufficient technical basis to show that regulating oil and gas well drilling and servicing activities is warranted beyond the benefits already possible under existing regulations,

then API recommends that OSHA initially utilize existing regulations to develop drilling and servicing sector-specific process safety performance and enforcement guidelines. OSHA should conduct a thorough evaluation of the operating safety benefits, and compliance and cost burdens, of full extension of process safety regulations to this sector. This assessment should be conducted in cooperation with the oil and gas well drilling and servicing industry, oil and gas operators, and other affected stakeholders.

Some states have unique standards that cover Oil and Gas Well Drilling, Servicing, Special Servicing and Anchor Tester Requirements. Federal OSHA does not have specific standards for this industry. If OSHA is able to create a compelling case for pursuing process safety rulemaking for oil and gas well drilling and servicing, then API recommends that OSHA complete a thorough survey of the existing relevant, effective state regulations and existing industry practices as input to its rulemaking efforts. OSHA should review whether other rules and standards (both state and federal) are sufficiently addressing the risks. Any proposal should be harmonized with existing requirements to avoid duplication or conflicts.

### **7. RFI Item 3. Oil- and Gas-Production Facilities**

API opposes OSHA lifting the enforcement policy position exempting oil and gas production facilities from compliance with the PSM standard and rather recommends that oil and gas production be explicitly included in the oil and gas well drilling and servicing PSM exemption. API's position on oil and gas production coverage was well-defined in our 2000 letter to OSHA. Most production operations conducted by API members are not covered by the PSM standard because these operations fall within one of the well-established and appropriate exemptions defined in 1910.119(a)(1)(ii)(B) (atmospheric storage of flammable liquids), 1910.119(a)(2)(ii) (oil or gas well drilling or servicing operations) or 1910.119(a)(2)(iii) (normally unoccupied remote facilities). In addition, there are numerous federal and/or state regulations which, as OSHA has recognized previously, adequately address oil and gas production operations.

API believes that existing data demonstrate that process safety risk in production facilities is low. We also believe that an economic analysis of applying the PSM Standard to production facilities would show that the costs far exceed the benefits, in part because many production facilities are already covered by existing exemptions. Lastly, by enforcing the PSM Standard on low-risk production facilities, OSHA would divert scarce federal resources away from higher priority hazard enforcement.

API recommends that OSHA utilize existing regulations, enforcement actions, safety alerts, operator education, etc. to support enhanced oil and gas production facility sector-specific safety performance. Enhanced industry recommended practice development should include cooperation with the API, AESC, IADC, and others with oil and gas production expertise.

**8. RFI Item 4. Expanding PSM Coverage and Requirements for Reactivity Hazards**

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.

**9. RFI Item 5. Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard**

API does not believe that additional chemicals need to be added to the PSM list nor any threshold quantities (TQs) need to be changed. However, if OSHA demonstrates via sound scientific analysis that specific chemicals should be added to Appendix A, they should be proposed on their individual merits.

For the few highly hazardous chemicals (HHC) most often used in API member facilities, API believes the existing TQs are effective in focusing attention on prevention of catastrophic releases that could create serious dangers to worker safety.

In the RFI, OSHA has not provided sufficient description to support the need for updating Appendix A. OSHA points out the existing list of chemicals in Appendix A were derived from a broad range of comprehensive and well-established sources. There is no suggestion in OSHA's RFI of any significant deficiency. API members believe that non-scientific-based additions/changes to the list/TQs may not improve the overall effectiveness of the PSM standard.

Moreover, any HHC list or TQ changes or "harmonization" with the lists/TQs of other rules (e.g., RMP, CFATS) that OSHA considers should respect the differences between statutory mandate, 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.

**10. RFI Item 6. Revising the PSM Standard to Require Additional Management-System Elements**

In the RFI, OSHA has suggested a management system from the Bureau of Safety and Environmental Enforcement (BSEE) should be adopted. This 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 ultimate work authority (See 29 USC § 654(a)(1)). Moreover, the PSM Standard already includes a requirement for a

written employee participation plan. Therefore, given that these elements are already covered in existing regulations, API does not support adding these three elements to the existing PSM standard.

OSHA has not presented sufficient data or evidence to show that adding the new elements and activities to the PSM standard as specified in the RFI are necessary to improve safety performance. The existing 14 PSM elements are effective in driving industry performance, and should be supported by proper site implementation and competent enforcement. If OSHA is able to show through industry performance data that the proposed new elements are necessary, then API recommends that OSHA work with industry to propose only non-prescriptive, performance-oriented requirements allowing the appropriate flexibility for companies to address local needs and conditions.

***11. RFI Item 7. Amending Paragraph (d) of the PSM Standard to Require Evaluation of Updates to Applicable Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)***

API does not support OSHA action to revise the PSM standard to specifically require employers to evaluate updates to applicable RAGAGEP. This requirement would be extremely costly, impractical to implement, with no corresponding risk reduction. Further, current PSM 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, as has been done in recent years by OSHA enforcement actions. Employers have an existing obligation to ensure that equipment is designed and operated in a safe manner, regardless of 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 PSM 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 OSHA regulations adequately protect worker safety and already ensure that employees 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.

OSHA clarified in a Letter of Interpretation that after the employer makes a baseline safety determination (with corresponding documentation of the determination) under 29 C.F.R. § 1910.119(d)(3)(iii), other PSM elements address continuing safety: “Generally speaking, OSHA intended for the employer determination and documentation required by 29 CFR

1910.119(d)(3)(iii) to be completed prior to the implementation of the original PHA or startup of a PSM-covered process. Therefore, once an employer is in compliance with this requirement, there is no additional requirement per 29 CFR 1910.119(d)(3)(iii) for future determinations/documentation simply because a code or standard related to the covered equipment has been revised.”

API notes that companies, 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, PSM audits, MOCs, etc.

If OSHA decides to pursue this issue in future rulemaking, API strongly urges the agency to carefully limit any RAGAGEP update evaluation provision by simply requiring that an employer “have a process for evaluating updates.” If the employer has an update evaluation process in place and there is evidence that reviews of RAGAGEP that the employer deems applicable are, in fact, being performed from time to time, that should constitute compliance.

#### ***12. RFI Item 8. Clarifying the PSM Standard by Adding a Definition for RAGAGEP***

API does not support the development of a RAGAGEP definition. To best protect workplace safety, “recognized and generally accepted good engineering practices” (RAGAGEPs) should remain a flexible concept that allows employers to tailor PSM activities to the hazard and complexities of their particular facilities. RAGAGEP cannot be a single document, code, standard, or practice. In addition, OSHA 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 OSHA has established sufficient evidence that industry safety performance has been inadequate relating to RAGAGEP such that the current 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

RAGAGEP must continue to recognize the use of internal company standards as was contemplated per the original Preamble to the final PSM regulation. Defining RAGAGEP could potentially remove the flexibility industry needs to maintain a performance-based approach.

***13. RFI Item 9. Expanding the Scope of Paragraph (j) of the PSM Standard to Cover the Mechanical Integrity of Any Safety-Critical Equipment***

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 challenge. 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.

OSHA 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.

***14. RFI Item 10. Clarifying Paragraph (l) of the PSM Standard with an Explicit Requirement that Employers Manage Organizational Changes***

API supports Management of Change (MOC) coverage of process safety-related organizational changes as currently addressed in the PSM standard. However, the types of changes that should be addressed should be better defined than the way that OSHA has described them in its subject interpretation letter (March 31, 2009). The current MOC provisions of the PSM standard apply to changes that impact process safety in PSM-covered processes. This might include such organizational changes as those resulting from mergers, acquisitions, reorganizations, staffing changes, or budget revisions. Additionally, OSHA should clarify that organizational change is not intended to mean personnel change – which is a potential misunderstanding.

In addition to the above, OSHA 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 beyond the language and interpretation letter that already exists. If OSHA has additional data based on PSM-related inspection results or incidents suggesting otherwise, OSHA should share that data publically. API believes the current OSHA standards and other information address PSM

coverage of management of change and reopening the PSM standard to address organizational changes is not warranted.

**15. RFI Item 11. Revising Paragraph (n) of the PSM Standard to Require Coordination of Emergency Planning with Local Emergency-Response Authorities**

API believes that the requirement for coordination with local emergency responders is adequately addressed in multiple existing interconnected standards and regulations, as follows:

- OSHA (29 C.F.R. § 1910.38, stating that an emergency action plan must include at a minimum “[p]rocedures for reporting a fire or other emergency,” 29 C.F.R. § 1910.120, and 29 C.F.R. § 1910.1200);
- EPA (40 C.F.R. § 68.95(c));
- DHS (6 C.F.R. Part 27) and
- DOT (29 C.F.R. § Part 172 Subpart H) regulations.

Adding a requirement to the PSM standard will add one more layer to the already difficult-to-navigate suite of federal requirements that Executive Order 13650 was intended to address and clarify.

API members provide information to various agencies and organizations as required by other regulatory requirements such as EPA’s Risk Management Plan (RMP) and Emergency Planning and Community Right-To-Know Act (EPCRA), and Department of Homeland Security’s Chemical Facility Anti-Terrorism System (CFATS). API supports OSHA working with other government agencies and state/local organizations to access this information. Additional requirements to provide emergency response planning information should be harmonized between regulatory agencies. Therefore, API recommends that OSHA focus its resources on using or enhancing emergency response coordination activities already required under other existing regulations and not expand such requirements beyond those already included in the PSM standard. API members typically coordinate site emergency planning with local emergency-responders.

Current regulations are effective and should be enforced. Coordination with local emergency responders is addressed adequately by CERCLA and SARA. API encourages OSHA to work with local responders and evaluate the additional costs and burdens that might be imposed on local responders, in addition to the costs and burdens to employers, from any expansion of PSM.

**16. RFI Item 12. Revising Paragraph (o) of the PSM Standard to Require Third-Party Compliance Audits**

API opposes requiring the mandatory use of 3<sup>rd</sup> party auditors to conduct PSM compliance audits. Rather, each operator should have the ability to use the best auditor available, regardless of whether internal or a 3<sup>rd</sup> party. OSHA has not provided supporting evidence that PSM auditing failures are related to PSM performance and that the use of 3<sup>rd</sup> party auditors would result in safety improvements. While some companies chose to use independent third-

parties to conduct or participate in some of their PSM audits, a mandate to require the use of 3<sup>rd</sup> parties would impose significant costs on companies and is not justified by industry safety performance data. API suggests that it is more important for OSHA to focus on the audit program/requirements and the quality and competency of the auditors, regardless of their affiliation.

Additionally, second-party and self-audits have many safety benefits that are lost with third-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 of the organization and how it functions. Also, company-led audits facilitate sharing learnings across the company.

The use of 3<sup>rd</sup> 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 PSM 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 3<sup>rd</sup> party auditors. The experience in response to the BSEE SEMS 3<sup>rd</sup> party audit requirement has been that there are not sufficient competent resources to fill this role.

In summary, API believes that OSHA should not mandate the use of 3<sup>rd</sup> 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 PSM regulations through the use of internal, 2<sup>nd</sup> party and/or 3<sup>rd</sup> party auditors.

***17. RFI Item 14. Updating Sec. Sec. 1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards***

API supports the updating of 29 CFR 1910.106 and 1910.107 based upon recognized and generally accepted good engineering practices and relevant standards such as API and NFPA documents. In particular, API would support updating 106 to align with NFPA 30 as long as OSHA evaluates both documents and concludes that their substantive differences in the requirements and also reasons for proposed changes. Proposed changes should undergo the typical notice and comment rulemaking process.

***18. RFI Item 16. Changing Enforcement Policy of the PSM Exemption for Retail Facilities***

API does not support changing the enforcement policy for the PSM exemption for retail facilities. Changing enforcement policies without addressing the regulatory wording, would result in new requirements via enforcement without providing stakeholders an opportunity for notice and comment on the proposed changes (i.e., regulation by enforcement). Rather, such proposed changes should show that retail facilities present a significant risk of harm based on risk analyses and other technical inputs. API agrees with clarifying that the retail exemption should apply explicitly to NAICS Codes 447110 (Gasoline Stations with Convenience Stores) and 447190 (Other Gasoline Stations).

Additionally, gasoline service stations are already highly regulated with regards to potential safety hazards by state regulations such as those enforced by state fire marshals.

***19. RFI Item 17. Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard without Specific Concentrations***

API believes that OSHA should base any proposed changes to Appendix A on sound science and data and demonstrate that any resulting change in enforcement policy would improve worker safety. API supports the use of defined terms in regulatory language that adds clarity and reduces uncertainty. However, any move to “adopt” the RMP mixture rule or similar provisions should take into account the differences in the statutory focus for the subject regulations.