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OSWER Docket, EPA Docket Center,
Mail Code 2822-1T,
Environmental Protection Agency,
1200 Pennsylvania Avenue NW.,
Washington, DC 20460,
Attention Docket ID No. EPA-HQ-OEM-2014-0328

Comments of the American Exploration & Production Council (AXPC) and the Independent Petroleum Association of America (IPAA) on EPA Docket No. 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 Docket Clerk:

On 31 July 2014, in response to Executive Order 13650, the U.S Environmental Protection Agency (EPA) published a request for information (RFI) related to potential revisions to its Risk Management Program (RMP) standard. In this RFI, EPA asks for information and data on specific rulemaking and policy options, and the hazards they address. The following reflect the response of the American Exploration & Production Council (AXPC) and the Independent Petroleum Association of America (IPAA), collectively referred to as the "Associations".

The American Exploration and Production Council (AXPC) is a national trade association representing 32 of America's largest and most active independent natural gas and crude oil exploration and production companies. AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

The Independent Petroleum Association of America (IPAA) is a national trade association representing thousands of independent oil and natural gas exploration and production companies as well as the service and supply industries that support them. Independents drill roughly 95 percent of the nation's oil and natural gas wells, producing 54 percent of America's oil and 85 percent of America's natural gas.

The Associations' comments apply broadly to the oil and natural gas industry and our member companies, including the following types of facilities:

- 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

The Associations' member companies fully share EPA's commitment to chemical facility safety and support its' efforts to identify revisions to its standards which are "*necessary to meet the goal of preventing major chemical accidents*". Their facilities, well sites and other US land work locations are subject to the RMP and could be affected by potential revisions/updates to the standard. However, EPA currently excludes "naturally occurring hydrocarbon mixtures prior to entry into a natural gas processing plant or a petroleum refining process unit" (40 CFR Part 68.115(b)(2)(iii)), from the required RMP threshold determination. Although EPA has not sought input regarding this exemption, the Associations' member companies strongly encourage EPA to continue to exempt these mixtures. Mixtures of condensate, crude oil, field gas and produced water are all specifically listed in the definition of naturally occurring hydrocarbons and are typically encountered during well drilling and production. This exemption is crucial to the upstream oil and gas industry and its tens of thousands low-risk and often remote and unmanned facilities.

Furthermore, the Associations' member companies remind EPA that enforcement options continue to be available via the general duty clause within the Clean Air Act. EPA has utilized the provisions of the general duty clause to gain access to facilities and incident information allowing agency investigation and noncompliance action as appropriate. Additional regulation to address perceived gaps in coverage is not required. EPA should focus effort and limited resources on compliance outreach initiatives and performance issues.

The Associations' member companies believe that (1) the RMP program, as well as OSHA's PSM standard, have been effective at preventing major accident hazards posed by the manufacture of chemicals, including oil and gas; (2) the RMP program is adequately structured in its current form, with three levels of facility risk and commensurate controls; (3) EPA and OSHA should continue to harmonize the RMP and PSM standards to ensure minimum duplicative/conflicting requirements; and (4) any revisions/improvements to the RMP program should be carefully vetted with stakeholders to ensure they provide the intended benefit, are not too burdensome and create no unintentional hazards.

The Associations appreciate EPA's efforts to provide an opportunity to engage in dialogue regarding the RMP RFI scope, issues, and options. The Associations strongly encourage EPA to provide stakeholders additional opportunities to discuss the results of the RMP RFI written comments, lessons, and anticipated conclusions, prior to EPA issuing an Advanced Notice of Proposed Rulemaking or a Notice of Proposed Rulemaking regarding the RMP 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.

Sincerely,

V. Bruce Thompson
President
American Exploration & Production Council

Lee Fuller
Vice President of Government Relations
Independent Petroleum Association of America

In the RFI, EPA requested detailed responses to the following questions. The Associations are providing responses to those questions applicable to our member's activities and operations. The lettering and numbering included below correspond to the Federal Register notice.

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

1. Update the List of Regulated Substances

a. Adding Other Toxic or Flammable Substances

i. What other chemical lists or other sources of information should be reviewed to identify acutely toxic or flammable chemicals meeting the RMP listing criteria?

Response: The Associations do not believe that additional chemicals need to be added to the RMP list nor any threshold quantities (TQs) need to be changed. However, if EPA demonstrates via sound scientific analysis that specific chemicals should be added to the list, they should be proposed on their individual merits.

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

In the 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 CAAA criteria. There is no suggestion in EPA's RFI of any significant deficiency. The Associations' members believe that non-scientifically-based additions/changes to the list/TQs may not improve the overall effectiveness of the RMP rule.

Moreover, any HHC 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 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.

ii. What chemicals, if any, should EPA add to the RMP list of regulated toxic and flammable substances? Please provide references to the acute toxicity studies, sources of flammability information or summary results of such studies, information showing that the chemical meets the listing criteria or examples of incidents related to the hazards associated with the chemicals.

Response: The Associations do not have any suggestions for new substances. However, if EPA chooses to consider new substances, the Associations believe 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, and finally (c) be based upon sound science.

iii. Please provide any information on the annual amount of the individual substance manufactured, imported or used, the extent of its availability in commerce and the types of U.S. industries that manufacture, import, or use the substance.

Response: See response above.

iv. What would be the economic impacts of adding other toxic or flammable chemicals to the RMP list of substances? Are there any special circumstances involving small entities that EPA should consider with respect to adding such chemicals to the RMP list of substances?

Response: See response above.

b. Adding High and/or Low Explosives

i. Should EPA reconsider listing explosives on the RMP list? What are the safety gaps in current regulations and practice (e.g., EPCRA, other federal programs, state programs, and industry efforts) that can best be filled by expansion of the RMP? Are there other approaches for filling any such safety gaps? What type of explosive materials should be covered and why? How many facilities manufacture, store or use explosives and what are the typical quantities stored on-site by type of facility or industry? What TQs should be established, and what should be the basis for the TQs? If EPA were to list explosives and establish a TQ at 5,000 pounds (the same TQ that was established for explosives in the 1994 list rule), how many facilities would exceed that TQ and potentially be regulated?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ii. Are there other incidents involving the manufacture and processing of explosive materials that should be reviewed to determine if covering these operations under the RMP would decrease the risk of an accidental explosion affecting an off-site community? Does the presence of explosives impose unique risks on rural, disadvantaged, or otherwise environmentally burdened communities?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iii. Should the RMP regulation apply to manufacturers of explosives, end users, and/or explosive recyclers?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iv. If the RMP regulation is amended to cover explosives, should EPA consider establishing requirements for safe separation distances between explosive materials and public receptors similar to those required by ATF and OSHA (see section II.D.4 of this RFI for additional discussion of stationary source location requirements)? What other requirements should EPA consider? Which if any of these requirements could have prevented or minimized the impacts of specific historical accidents?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

v. What would be the economic impacts of adding explosives to the RMP list of substances? Are there any special circumstances involving small entities that EPA should consider with respect to adding explosives to the RMP list of substances?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vi. 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?

Response: The Associations' members believe that closer coordination and better communication with local emergency response organizations and other governmental and industry associations would be able to address any perceived safety gaps. The Associations member companies have integrated these groups into emergency planning and conduct routine training and drills to ensure competency is maintained.

c. Adding Ammonium Nitrate

i. Are there safety gaps in the current regulations for AN that could be addressed using regulations under CAA section 112(r)? Should EPA regulate AN under CAA section 112(r) authority to improve chemical safety practices at facilities handling AN? What types of AN and AN facilities should be subject to the RMP regulations to prevent chemical accidents involving AN that could have adverse effects, such as blast overpressure, on the public, environment and off-site property? Should EPA consider safety regulations to cover the storage and handling of AN fertilizer only and continue to rely on ATF regulations and OSHA standards to cover AN in explosives and blasting agents? What role should voluntary industry programs (such as the one undertaken by IME for high explosives) have in a decision on whether safety gaps exist that warrant regulation under the RMP? Please discuss the economic impacts associated with the potential regulation of AN under CAA section 112(r), including any special circumstances involving small entities that EPA should consider.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ii. Should EPA amend the RMP requirements to address the hazard posed by AN? If so, what specific requirements would be appropriate for AN? Alternatively, should EPA use its regulatory authority under CAA 112(r)(7)(A) to require more tailored safety steps for facilities handling AN and list AN at a high threshold to better focus these requirements on fewer holders of large quantities that pose the greatest risk? What would be the benefits

of regulating AN under the RMP regulations as opposed to only maintaining the current SDS and hazardous chemical inventory reporting already required under EPCRA?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iii. If EPA were to regulate AN under 40 CFR part 68, what quantity of AN poses a sufficient hazard to be covered? What would be the basis for establishing this TQ?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iv. Does your facility store, handle, or manage AN? If so, in what form (e.g., solid, liquid) and in what grade (e.g., high density, low density)? If you are not a manufacturer of AN, how does your facility process or use AN? What quantities of AN are typically stored at your facility at one time?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

v. Are there any other standards, including consensus standards, applicable to AN storage, handling, and management that your facility follows? If so, which ones?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vi. Please provide any data or information on accidents involving the storage, handling, and management of AN that affected people or property.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vii. Please provide data on the population surrounding AN sites, including socio-economic information and other environmental burdens on surrounding communities.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

viii. If EPA were to regulate AN under CAA Section 112(r), should EPA exempt farmers who store AN for use as a fertilizer? How many farmers would be eligible for such an exemption? Should there be any limits on such an exemption, such as maximum quantity on-site at any given time? Please provide the reasoning and any available data supporting your views.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

d. Adding Reactive Substances and Reactivity Hazards

i. What are the best criteria to use in classifying reactive hazards? How do you identify a reactive chemical or a reactive mixture?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ii. Should EPA add reactive chemicals to the list of RMP-covered chemicals in 40 CFR 68.130? If so, which chemicals? What criteria should EPA consider using to establish TQs for reactive chemicals? Should EPA add only specific chemicals, or groups of chemicals defined by particular chemical characteristics?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iii. Should EPA list additional chlorosilanes as toxic substances on the RMP list due to their reactive hazard due to formation of hydrochloric acid when a chlorosilane is accidentally released into the air and reacts with moisture?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iv. If your facility is covered by the New Jersey TCPA, have those requirements been effective in protecting human health and the environment from reactive hazards? Please describe any economic impacts associated with TCPA coverage (e.g., costs and benefits, cost savings, shifts in usage of reactive chemicals, special circumstances involving small entities, etc.).

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

v. Should EPA revise the RMP regulation to use chemical functional groups similar to those in the TCPA to define hazardous reactive mixtures? If so, which chemical functional groups should EPA use?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vi. Does your facility follow NFPA 400 for reactive hazards? If so, please describe the economic impacts associated with following NFPA 400 (e.g., cost of additional equipment, cost of additional training, benefits of quality management, special circumstances involving small entities, etc.). Is following NFPA 400 an effective way of protecting human health and the environment from reactive hazards? Please explain.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vii. Has your facility implemented a reactive-hazards management program other than a program specified by the TCPA and NFPA 400? If so, please describe your facility's program, whether it protects human health and the environment more or less than the TCPA and NFPA 400, whether it is voluntary or mandatory and, if the latter, under what authority, any economic impacts associated with the program, and any special circumstances involving small entities.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

viii. What alternative regulatory approach to TCPA or NFPA 400, if any, should EPA consider using to address reactive hazards? What would be the economic impacts of this approach and would there be any special circumstances involving small entities? Are there specific requirements that EPA should consider adding to the RMP regulations to ensure that owners and operators adequately manage reactive hazards?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ix. Please provide any data or information on accidents, near misses, or other safety-related incidents involving reactive hazards not covered under the existing RMP regulation. What reactive-hazards management requirements might have prevented these incidents if they had been included in the RMP regulation?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

e. Adding Other Categories of Substances

i. Should EPA consider adding organic peroxides, oxidizers, combustible dusts, flammable solids, or other additional types of chemicals to the RMP list? Are there any particular chemicals belonging to these or other classes which present a high hazard that could cause adverse effects beyond a facility's fence line in the event of an accidental release?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ii. If a particular new category of chemicals should be considered for inclusion on the RMP list, what criteria should be used to prioritize the hazard(s) and determine which chemicals should be listed?

Response: The Associations do not have any suggestions for new categories and substances. However, if EPA chooses to consider new categories/substances, the Associations believe 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, and finally (c) be based upon sound science.

iii. If EPA were to add combustible dusts to the lists of covered chemicals, are there categories of dusts, such as agricultural dusts (e.g., grain dust, pesticide dust, etc.), that should be excluded? What factors, such as existing handling practices, accident history, and potential risk to surrounding communities should EPA consider in evaluating potential exclusions?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

f. Removing Certain Substances From the List or Raising Their Threshold Quantity

i. 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?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

ii. 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.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iii. If it is not appropriate to delete TDI because it is a sensitizer, should EPA continue to list TDI on the RMP list but with a lower TQ because of its unique toxicity, and if so, what should be the basis for setting a lowered TQ?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

iv. Are there other listed substances that should have a higher TQ? If so, which ones, what are the appropriate TQs, and why?

Response: The Associations have no information on whether any listed substance should have a higher TQ.

v. Should EPA delete from the RMP list any of the six substances for which the Agency has not received any RMP report if the Agency believes that they are not widespread in commerce or only stored in quantities well below the RMP TQ? EPA requests any available information about the extent of these six chemicals' manufacture and use in commerce, including any annual amounts manufactured, imported or used in the U.S.

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

vi. 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?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

g. Lowering the Threshold Quantity for Substances Currently on the List

i. Are the current TQs protective of human health and the environment, or are there certain substances for which the TQ is too high? If so, which substances? For such substances, what TQ should EPA establish and what would it be based on?

Response: The Associations have no information on whether any listed substance should have a lower TQ.

ii. What would be the economic impacts of any lowering of the TQ which might be warranted? Are there any special circumstances involving small entities that EPA should consider with respect to lowering of a TQ?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

2. Additional Risk Management Program Elements

a. 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.

Response: There are many models which outline the basic components of a safety management system. Within the oil and gas exploration & production industry these include regulatory models such as BSEE "Safety & Environmental Management System" as well as models developed by various standards organizations (such as ANSI, ISO and IMO) and industry trade associations such as the American Petroleum Institute and the International Association of Oil & Gas Producers. Additionally, the Center for Chemical Process Safety "Guidelines for Risk Based Process Safety" provides guidance on their management system models. Typically, oil and gas exploration and production companies consider these models when developing internal health and safety management systems to meet their business needs.

OSHA is developing a rule requiring employers to implement an "Injury and Illness Prevention Program" (I2P2). It appears that this rule may be based on the management system models

such as American National Standards Institute/American Industrial Hygiene Association Z10 and Occupational Health and Safety Assessment Series 18001.

OSHA's efforts to expand PSM to include additional elements and develop a separate safety management system under the I2P2 effort will likely lead to management systems which - while similar in intent – include different elements. This will create confusion and increase efforts/costs associated with compliance. For example, a company involved in oil and gas production operations may have to develop separate management systems to comply with both OSHA PSM and OSHA I2P2 regulations (as well as other management system models – for example BSEE SEMS).

Prior to the addition of elements to the RMP regulations – the Associations' member companies believe efforts should be directed at defining the elements of the management system being developed under the I2P2 effort and, ideally, assuring consistency of the elements between these two OSHA standards, the RMP regulation, as well as the other regulatory mandated or accepted industry management system models.

b. 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?

Response: No – See response to Question 2.a. Many Associations' member companies have already implemented additional management system elements similar to those described above.

c. 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?

Response: The safety management system models developed by various standards organizations (such as ANSI, ISO and IMO) and industry trade associations such as the American Petroleum Institute and the International Association of Oil & Gas Producers each address the use of metrics as a means to drive safety performance. For example, Chapter 20 of the Center for Chemical Process Safety "Guidelines for Risk Based Process Safety" includes a chapter entitled "Measurement and Metrics" which describes the process to be used to develop useful leading indicators. Ultimately, the most effective leading indicators are those which directly influence performance and are reflective of proactive actions undertaken.

The Associations' member companies track and report metrics to encourage managers to focus additional emphasis and resources on obtaining goals set by management. Metrics would include process upsets, accidental releases, near miss incidents as well as many other parameters of interest. Many of these metrics are intended to reduce the severity and frequency of incidents.

d. 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?

Response: The Associations' member companies do not believe that mandatory safety culture assessments would provide any benefit over existing programs that have been implemented and continuously improved for many years. Many of the various assessments that are already being conducted either by regulation or voluntarily provide insight into a facility's safety culture.

e. 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?

Response: The Associations' member companies have programs in place which address stop work authority. As outlined in our response to Question 2.a., the Associations believe EPA should direct its efforts towards assuring consistency of the elements between the various regulatory mandated or accepted industry safety management system models. Adopting only certain aspects of one management system model into another will not lead to consistency.

f. 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.

Response: The Associations' member companies recognize the importance of "learning from experience" and as such have programs in place to assure that incidents are adequately investigated, key findings are communicated, and "lessons learned" shared.

As outlined in our response to Question 2.a., the Associations believe EPA should direct its efforts towards assuring consistency of the elements between the various regulatory mandated or accepted industry safety management system models. Adopting only certain aspects of one management system model into another will not lead to consistency.

g. 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?

Response: This request is overly broad and one which the Associations' member companies cannot effectively respond. The Associations requests that EPA provide additional definition on the management system elements of interest. Once the additional clarification is provided, the Associations will circulate a request to its members to solicit input.

h. 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?

Response: Many of these elements may have already been implemented by the Associations' member companies. The Associations do not believe there would be an undue burden to implement the additional management system elements discussed above.

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

a. 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?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

b. 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?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

c. 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?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

d. 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?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

e. 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?

Response: The Associations do 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, impractical to implement, with no corresponding risk reduction. Further, current RMP requirements already ensure that employers consider pertinent safety updates applicable to RAGAGEP.

f. 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?

Response: The Associations strongly urge 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.

4. Extend Mechanical Integrity Requirements To Cover Any Safety-Critical Equipment

a. Should EPA amend the mechanical integrity provisions of the RMP rule to explicitly cover all safety critical process equipment? If so, what type(s) of equipment? Did you identify safety-critical equipment not explicitly covered under § 68.73? If so, how did your facility determine that the equipment was safety-critical, and does your facility treat the equipment as if it were RMP-covered for safety or other reasons? Did you identify the equipment as safety-critical through an RMP process hazard analysis?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

b. Please provide any data or information on accidental releases, near misses, or other safety-related incidents related to the mechanical integrity of safety-critical equipment not explicitly covered under § 68.73.

Response: The Associations have no data or information on accidental releases, near misses, or other safety-related incidents related to the mechanical integrity of safety-critical equipment.

c. Would expanding the scope of § 68.73 to explicitly cover the integrity of all equipment critical to process safety make it more likely to prevent accidental releases?

Response: The Associations believe 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 EPA 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.

The Associations' members have implemented mechanical integrity programs to ensure equipment is maintained appropriately. There are existing industry standards/recommended practices on mechanical integrity thus the RMP scope/list does not need to be expanded.

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.

d. Should EPA add additional requirements to the mechanical integrity provisions, or clarify any existing provisions? For example, should the Agency require that certain types of covered facilities install emergency shutdown systems, such as redundant power supplies, emergency flares, vents, or scrubbers, etc., in order to prevent accidental releases resulting from uncontrolled emergency shutdowns?

Response: Currently OSHA 1910.119(j) provides a well-defined scope of equipment whose mechanical integrity is essential to prevent loss of primary containment.

Expanding this well-defined scope by adding a performance requirement to include all equipment identified as "critical to process safety" without formally defining this term could result in significant economic impacts without a corresponding reduction in risk.

EPA should align their efforts on this issue with OSHA.

e. Are there any other provisions of this section that should be enhanced or clarified? Does labeling § 68.73 as "Mechanical Integrity" cause owners and operators to disregard or neglect the maintenance, functionality, or integrity of process components that would not typically be considered "mechanical" components, such as electrical and computer systems?

Response: The Associations' members believe that labeling § 68.73 as "Mechanical Integrity" would cause no confusion. The Associations' members apply mechanical integrity to non-mechanical components.

f. What would be the economic impacts of revising the mechanical integrity provisions as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to revising the mechanical integrity provisions of the RMP?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

5. Require Owners and Operators To Manage Organizational Changes

a. What do you consider to be an organizational change within the context of process safety management practices? For example, would you consider the following, or similar, changes to be organizational changes: Reducing the number of operators in a shift; changing from 5-day to 7-day operations; changing from 8-hour to 12-hour operator shifts; replacing a unit manager; reducing the facility operations or maintenance budget; relocating a technical group to a remote corporate location; changing a supervisory or compensation structure; or hiring contractors to do work formerly performed by employees of the regulated facility? Are there other examples of organizational changes that may be relevant to safety management practices?

Response: In the context of the RMP standard – only organizational changes which have a direct and well defined health and safety impact to the covered process should be considered within the context of the standard.

b. If your facility has established and implemented written procedures for management of organizational changes, please describe any economic impacts associated with the procedures. Please note any implementation challenges that may be associated with requiring that such procedures be developed and followed.

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

c. Would clarifying § 68.75 with an explicit requirement that employers manage organizational changes prevent accidental releases? What would be the economic impact of such a clarification? Are there any special circumstances involving small entities that EPA should consider with respect to this option?

Response: The RMP standard includes a number of specific considerations for managing changes. All of these considerations are not appropriate for managing organizational changes. The Associations believe it would be inappropriate to expand the current RMP management of change regulations (which were intended to require written procedures for managing physical changes) to include the wide scope of management practices listed above.

d. Please describe any organizational changes made in your facility that have had the potential to affect process operations. Were management-of-change procedures followed before making the changes?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

e. What do you consider to be the best safety practices concerning management of organizational change?

Response: The Associations consider the best practice is to manage organizational changes through established HR practices which are independent of the RMP management of change process.

f. Please provide any data or information on accidents, near misses, or other safety-related incidents involving the failure to manage organizational change. Would following management-of-change procedures under § 68.75 have prevented these incidents?

Response: The Associations have no data or information on such accidents.

6. Require Third-Party Compliance Audits

a. Does your facility use a third-party for conducting compliance audits under § 68.58 and § 68.79 for safety or other reasons? What was the basis for that decision? How has it affected the overall safety record of your facility?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

b. Please provide any data or information on accidents, near misses, or other safety-related incidents that could have been prevented by conducting more effective compliance audits for operations covered under § 68.58 and § 68.79. What were the deficiencies in those audits? Were the audits in question conducted by in-house staff or a third party?

Response: The Associations have no data or information on such accidents.

c. Would revising § 68.58 and § 68.79 to require owners and operators of RMP-regulated facilities to use a third-party for compliance audits help prevent accidental releases? What would be the economic impacts of revising § 68.58 and § 68.79 in this way (e.g., typical consultant fees, additional work hours required, special circumstances involving small entities, etc.)?

Response: The Associations oppose requiring the mandatory use of third 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 third party. EPA has not provided supporting evidence that RMP auditing failures are related to RMP performance and that the use of third party auditors would result in safety improvements. While some companies choose to use independent third-party auditors to conduct or participate in some of their RMP audits, a mandate to require the use of third party auditors would impose significant costs on companies and is not justified by industry safety performance data. The Associations suggest 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, 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 third 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.

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

In summary, the Associations believe that EPA should not mandate the use of third 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, second party and/or third party auditors.

d. Should EPA revise § 68.58 and § 68.79 to require owners and operators to use compliance auditors (internal or third-party) with certain minimum credentials or certifications? If so, what minimum credentials or certifications should the Agency require?

Response: No, credentials and certifications do not always indicate competency. The Associations' member companies believe it is up to the regulated facility to determine how best to conduct the audit and with what resources.

e. How should owners/operators of RMP-regulated facilities address the findings of the third-party auditor? Should EPA amend the RMP rule to require owners/operators to document how they addressed each of the findings of the third-party auditor? Should a timeframe for addressing those findings be included in the RMP regulation? Should EPA include a procedure for how an owner/operator may appeal the findings of the third-party auditor?

Response: The Associations believe that each finding is unique and carries a certain level of complexity. Therefore, mandating a timeframe for addressing these findings will tend to corrupt the process. Simple findings should be, and are, addressed immediately. While more complex findings, for example, those requiring detailed engineering design, procurement, etc., should be allowed ample time for completion.

f. Should EPA require facilities that have incidents or near misses to conduct a full compliance audit under § 68.58 or § 68.79, as appropriate? Would such a requirement create a perverse incentive to underreport incidents or near misses?

Response: Yes, EPA would not want to inadvertently create an underreporting incentive. The Associations' members have developed a process to report all and investigate incidents and near misses based on their severity. This investigation process naturally leads to additional

scrutiny, which would be better focused than a full compliance audit and better targeted at preventing recurrence.

g. During compliance inspections at multiple-process sources, EPA inspectors have noted that some owners or operators have audited only a subset of covered processes at the source. Should EPA clarify § 68.58 and § 68.79 to explicitly indicate that all covered processes must receive a full compliance audit at least every three years?

Response: The Associations' members typically do not operate multiple-process sources; however the Associations oppose changing the required compliance audit frequency of once every three years. Companies conduct more frequent periodic assessments of RMP 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.

h. Does the identity of the auditor (e.g., in-house, contractor, professionally-certified, party licensed by EPA) affect the credibility of the audit for potentially impacted communities?

Response: Regardless of the perceived credibility of the auditor, impacted communities are typically unaware of internal or regulatory audits. Communities are only aware of these types of issues once a failure leading to an impact has occurred. Better use of limited resources would be gained by focusing more attention on quality design, construction and maintenance programs.

7. Effects of OSHA PSM Coverage on RMP Applicability

a. Do you currently operate a facility with Program 2 covered processes? Please indicate what type of Program 2 process your facility operates. Do you implement accident prevention measures that go beyond RMP Program 2 for this process? If so, why? What additional prevention elements do you use? Do you believe Program 2 requirements are necessary for the safe operation of this process? Do you have any Program 2 processes that may be adequately managed under Program 1? Please explain the basis for your views.

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

b. Do you operate a water or wastewater treatment plant that is subject to the RMP regulation? If so, what level of accident prevention requirements do you believe are warranted for such facilities? If you operate a Program 2 process at a water or wastewater treatment plant, how much additional burden would be involved in implementing the additional RMP elements required for Program 3 processes?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

c. Should RMP-covered municipal water and wastewater plants that are not eligible for Program 1 always be subject to RMP Program 3, regardless of whether or not they are located in a state with a Federally-delegated OSHA program? Why or why not?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

d. If OSHA restricts its retail exemption to facilities selling regulated substances in small containers, should EPA eliminate RMP Program level 2 entirely or alternatively, modify Program 2 prevention elements or otherwise change the eligibility criteria for Program 2? If so, why?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

e. Would eliminating Program level 2 simplify rule compliance for the regulated universe and improve human and environmental health and safety, or does the current three-tiered prevention program framework under the RMP provide an appropriate level of protection?

Response: Although this issue does not affect the Associations' members, the Associations believe that in most instances "simpler is better". Based on EPA's own analysis, it may be better to eliminate Program level 2 altogether and move the affected facilities to Program level 3.

The Associations encourage EPA to continue its alignment between Program level 3 and OHSA's PSM standard. And, although EPA's and OSHA's missions are different, the regulated entity, regardless of industry, should have one place to go to in regards to the prevention of major chemical hazards.

f. What would be the economic impacts of modifying or eliminating Program level 2? Are there any special circumstances involving small entities that EPA should consider with respect to modifying or eliminating Program 2?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

D. Additional Items for Which EPA Requests Information

1. Safer Technology and Alternatives Analysis

a. Should EPA require a safer alternatives options analysis either as a new prevention program element, as part of the existing PHA/Hazard Review element, or as a separate new requirement under CAA section 112(r)?

Response: The Associations believe that requiring a safer alternatives options analysis is unwarranted and burdensome. The existing PHA/Hazard Review element will naturally

include a discussion of operational hazards and identify additional mitigating options, if the hazard is determined to be unacceptable. This is where a safer alternatives options analysis should occur, however, there is no need for EPA to specifically require the analysis.

b. How should safer alternatives be defined if it were to be a requirement under CAA section 112(r) regulations? What specifically should a safer alternatives analysis require and how would this differ from what is already required under other provisions of the RMP?

Response: In order to allow for the utmost benefit from an open discussion during the PHA/Hazard Review, EPA should refrain from defining "safer alternatives". Each hazard scenario should be discussed and evaluated as to acceptability. The process is fairly complex now and there is no need to complicate it further.

c. How should industries determine if a safer alternative exists for their particular process? What safer alternative chemicals are available for the listed RMP chemicals and for ammonium nitrate?

Response: Again, the Associations believe that the PHA/Hazard Review naturally addresses the availability of safer alternatives, including safer alternative chemicals. There is no need for EPA to require specific actions regarding this issue.

Ammonium nitrate is not a chemical of concern for the Associations' members.

d. What should facilities consider when determining if such technologies, when identified, are effective, available, and economically justified for their particular process or facility? Can the RMP national database, Lessons Learned Information System or other federal databases be structured to promote the exchange of information both within industry and with other stakeholders on potentially safer technologies?

Response: The Associations encourage EPA to continue to search for methods to promote the exchange of information both within industry and with other stakeholders. However, the Associations have no specific recommendations regarding this issue.

e. If EPA were to require facilities to undertake an evaluation of the potential to incorporate safer alternatives, what minimum criteria should this evaluation be required to meet? How would the evaluation determine if a particular alternative is feasible, cost effective and results in less risk? What requirements or incentives, if any, should there be for implementation of identified safer alternatives? How should any such requirements be structured and enforced?

Response: If EPA were to require facilities to undertake an evaluation of safer alternatives, that evaluation should be required as part of the PHA/Hazard Review since that is the method for addressing operational risks on a routine basis and with an informed team including subject matter experts. There should be no minimum criteria established for how this evaluation should be completed and the expertise of the team should be leveraged and relied on to determine what safer alternatives are available, if any, and if that alternative is feasible, cost effective and results in less risk.

f. Should EPA require facilities to use a safer alternatives evaluation method such as the CCPS Inherently Safer Technology Checklist?

Response: The Associations believe that there is no need for EPA to require the use of specific safer alternatives evaluation methods. However, it is recommended that EPA develop "guidance" on how to conduct a safer alternatives evaluation that could be utilized by the team performing a PHA/Hazard Review, if needed. This guidance could include the CCPS Inherently Safer Technology Checklist, as well as other sources.

g. How should EPA and facilities address the risk tradeoffs that could result when changing a process to incorporate safer alternatives?

Response: Changing a well-understood process that may have been in place for many years creates a hazard. Facility personnel, who have specialized expertise and operational history, are the only legitimate source to recommend a change to a safer alternative. EPA should not mandate any requirements specifying as to when and how a safer alternative is adopted.

h. Should EPA consider requirements similar to those used by the State of New Jersey or Contra Costa County, California, and if so, why? What have been the benefits of such programs in risk reduction or process safety for the facilities covered under these requirements? What have been the limitations or drawbacks of these programs?

Response: The Associations do not have specific information regarding the requirements implemented by the State of New Jersey or Contra Costa County, California.

i. If EPA were to develop regulatory requirements for safer alternatives, which facilities should be subject to those requirements? Should all RMP facilities be subject to such requirements, or only "high risk" facilities, such as refineries and large chemical plants? How would "high risk" be defined? Are there particular processes or chemicals that should be targeted or prioritized for implementation of such requirements?

Response: The Associations recommend EPA does "not" develop regulatory requirements for safer alternatives and continue to allow facilities the flexibility to implement safer alternatives when they determine it is appropriate to do so. However, if EPA were to develop regulatory requirements, they should only apply to those facilities that are Program 3 under the current RMP standard.

j. What barriers exist for industry to adopt safer alternatives? What incentives can be used by government to have facilities implement safer alternatives? Should the Agency provide special recognition to companies that implement safer alternatives?

Response: The two most obvious barriers to adopting safer alternatives are the unintended hazards associated with making a change in the process and the economic hurdle involved with making the change. It would be difficult for EPA to incentivize this analysis. Tax incentives may be one option worth evaluating.

k. What are other options (other than regulatory requirements) exist to encourage facilities to investigate, develop or implement safer alternatives and how can EPA further these efforts?

Response: It is likely only economic incentives, for example lower tax burden, would be the only viable option for EPA to investigate further.

l. If RMP facilities are required to perform safer alternative options analyses and implementation plans, should EPA require that the analyses and/or implementation plans be submitted to the Agency? Should EPA have any role in approving such analyses or plans? In lieu of an approval, can EPA promote safer alternatives through reporting and the dissemination of information on potentially applicable practices?

Response: Any required submittal to EPA and/or approval would create an unnecessary burden and provide no additional benefit to safer operations. However, EPA should continue to promote safer alternatives by disseminating information on potentially applicable practices. EPA should already have access to and knowledge of this information.

m. If RMP facilities are required to consider safer alternative options, what role should local communities have in these analyses? Should facilities be required to disclose these analyses or recommendations resulting from such analyses to local authorities or the public prior to the selection of options? Are there any other disclosure options that will ensure that decisions on implementing safer technologies are made with transparency? Are there any means of oversight other than disclosure that would ensure that safer alternatives analyses are thorough and implementation decisions are appropriate?

Response: The Associations' members continue to communicate and coordinate with local communities regarding facility hazards and mitigation/response. Specific analyses, such as this, would not likely provide any benefit to the local authorities or the public.

n. What would be the economic impacts of requiring facilities to analyze safer alternative options? Are there any special circumstances involving small entities that EPA should consider?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

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

a. 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?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

b. 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?

Response: Exercising the Emergency Response Plan (ERP) is vital to ensuring there is understanding of the plan by employees and that all of the processes in place work as necessary. At some frequency all elements of the ERP may be exercised, however it is not necessary to exercise all elements during one drill. Drills or exercises may include functional deployment of resources or "table top" exercises. Agencies that are identified in the ERP should at some frequency be involved in a drill to ensure familiarity and understanding of the facility and their roll.

c. How frequently should drills/exercises be performed?

Response: The Associations recommend that a drill/exercise frequency is not specified. This allows the facility to determine the frequency based on the risks posed by their facility, proximity of community and environmental receptors and potential impacts, and the availability and competency of local responders. Drills and exercises should be at a frequency to ensure employees are familiar with their roll and/or action during an event.

d. 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?

Response: Management teams usually fill many sections of the Incident Command System (ICS) structure. ICS drills may be conducted to ensure rolls and responsibilities are understood for the ICS positions. Contractors assigned to a roll in the response plan may be included at some frequency to ensure they understand the ERP. Contractors that are located at the facility should be informed prior to entry to the facility of their responsibility in case of emergencies. Agencies and other stakeholders identified in the ERP as having a roll should be invited to participate based on the exercise scenario.

e. 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?

Response: Many facilities already perform exercises/drills to ensure employees are familiar with the Emergency Response Plan (ERP) whether the ERP was required by RMP or not. Many

facilities incorporate responding agencies into drills on some frequency to educate and familiarize those agencies to their roll in a response.

f. 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?

Response: Many facilities document the drill/response to ensure that lessons learned are corrected to improve the response process. Initial debriefing may occur as soon as all parties involved are available to debrief the drill or incident. Corrective actions may, depending on resources required, take substantial time to put in place. Record retention may currently be directed by other regulations depending on the incident/drill.

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

Response: Corrective action reports may be used to improve or develop safety, property and environmental protection strategies. This may be tracked in many forms utilized by different companies.

h. 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?

Response: Reporting exercises to EPA would not add any value to the RMP process.

i. 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?

Response: Reporting of exercises/drills would not add any value to the process of emergency preparedness of the facility but instead burden the facility with unnecessary paper work requirements.

3. Automated Detection and Monitoring for Releases of Regulated Substances

a. Should facilities be required to install monitoring equipment or sensors to detect releases of RMP regulated substances, or the conditions that could lead to such a release? Should the systems provide for continuous detection and monitoring? How should any such requirements be crafted to provide appropriate site-specific flexibility?

Response: No comment. The Association as a trade association representing multiple companies cannot respond to a facility specific question.

b. Are there specific issues that need to be considered for unmanned and/or remote facilities?

Response: The Associations' member companies operate many thousands of small, low-risk, unmanned, remote facilities (only a very few may be RMP Program 1, and fewer still Program

3 facilities). Requiring monitoring equipment/sensors for release detection at these facilities would be unnecessary and prohibitively expensive. Any new requirements for additional monitoring and detection equipment should be risk-based.

c. Should an automated mechanism to notify, alert and warn the local responders and surrounding public of an incident be considered as part of any detection and monitoring system requirement? If so, how should the potential for false alarms be addressed within such a requirement?

Response: Section 68.10(b)(3) and 68.12(b)(3) of the RMP rule requires owner/operators of a stationary source to ensure the response actions are coordinated with the emergency planning and response agencies. The Associations' members have established that communication. Stationary sources are for the most part located in rural settings with limited or no public in the immediate area. The emergency response organizations in these areas for the most part are ill equipped and trained to respond to incidents in our facilities. Their major contribution will be helping to limit access to the area. The Association believes additional automated notification for the purpose of warning the public and local responders would not contribute to the safety of the public or the emergency responders.

d. How can a requirement for automated detection and monitoring systems be best coordinated with the community emergency response plan? What are the advantages/disadvantages between continuous monitoring conducted by automated systems in contrast to third-party alarm agencies?

Response: See question 3c.

e. How would a requirement for appropriate detection thresholds be best established for activating alarms and/or alerts?

Response: As E&P organizations, Association members usually only have flammables and/or H2S (hydrogen sulfide) present in threshold quantities. Association members follow limits established by OSHA or ACGIH, whichever are more stringent, for our detection systems.

f. How would the significance and appropriate protective response action of the alarms/alerts be best communicated to responders and the public (including shelter-in-place and evacuations)?

Response: See question 3c.

g. What involvement should LEPCs and SERCs have in the development of the emergency response plan, particularly with respect to what actions are to be taken in the event of an incident where and alarm/alert is activated?

Response: See question 3c and 3e.

h. How frequently should monitoring equipment or sensors to detect releases of RMP-regulated substances be tested? How should these tests be documented? How long should records of

such tests be maintained? Should automated monitoring records for periods of normal operations be maintained, so that past records may serve as an aid in determining what may have gone wrong prior to an accident (e.g., a gradual increase in emissions)? Should EPA specify requirements in this area, or are these aspects of program implementation best left to the facility?

Response: Monitoring equipment and sensors testing frequencies should be set using the manufacturer's recommendations and the experienced reliability of the equipment and sensors. Testing documentation format should be determined by the owner/operator. Records should be maintained for as long as the owner operator derives value from their maintenance. These decisions are best left in the hands of the owner/operator of the stationary source. The Associations do not support EPA issuance of specific requirements in this area.

i. Leak detection and repair programs are common under the CAA's routine emission programs. Can these programs be integrated with the accidental release prevention program to reduce accidental releases and to simplify requirements for stationary sources subject to both the RMP and these other programs? Are there jurisdictional issues that prevent integration?

Response: Many of the E&P facilities are remote and unmanned. Specifying a leak detection and repair program similar to those under the CAA would be extremely difficult to implement and maintain. A few facilities are RMP Program 3 and some of those facilities comply with 40 CFR 60, Subpart KKK – Standards of Performance for Equipment Leaks of VOC for Onshore Natural Gas Processing Plants. We see no benefit from integration of the two programs.

j. What would be the economic impacts of specifying additional monitoring and detection requirements in the RMP? Are there any special circumstances involving small entities that EPA should consider with respect to such monitoring and detection requirements?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

4. Additional Stationary Source Location Requirements

a. Would additional specifics on stationary source siting and occupancy siting under the RMP minimize the impacts of chemical accidents to local communities? How should RMP stationary source siting requirements relate to OSHA PSM and other industry standards?

Response: There currently exist several authoritative documents intended to provide guidance for siting new stationary sources and/or new processes within existing stationary sources. The Center for Chemical Process Safety "Facility Siting and Layout" book is one such reference that is broadly utilized for ensuring community impacts from the siting of new process facilities are minimized. Additionally, for risk to employees and on-site workers, API Recommended Practice 752 – "Management of Hazards Associated with Location of Process Plant Permanent Buildings" and API Recommended Practice 753 – "Management of Hazards

Associated with Location of Process Plant Portable Buildings" are additional resources. EPA should encourage the use of these documents, and others, to address stationary source siting and occupancy siting. Additionally, only RMP Program 3 facilities should be required to follow specific siting requirements.

b. What guidance should EPA consider in the development of stationary source siting requirements?

Response: See the references mentioned in the previous response.

c. What information should EPA consider in the development of stationary source buffer or setback zones for different risks? How should EPA address siting when limited space is available?

Response: See the references mentioned in the previous response.

d. What administrative processes and controls should be incorporated into stationary source siting requirements?

Response: See the references mentioned in the previous response.

e. What safety and process devices, instruments and controls should be incorporated into stationary source siting requirements?

Response: See the references mentioned in the previous response.

f. What criteria are appropriate for siting of occupancies (such as offices, control rooms, cafeterias, etc.) near an RMP-regulated process?

Response: See the references mentioned in the previous response.

g. How often should stationary source siting be evaluated for effectiveness? What criteria should be used?

Response: Due to the expense involved with "re-siting" a facility or moving processes and buildings within a facility, there should be no requirements for evaluating the stationary source siting analysis. Additionally, the PHA/Hazard Review process would naturally include a review of recent incidents and a discussion of the feasibility of options for preventing incident recurrence, including limiting or preventing building occupancy.

h. What documentation should be required for evaluating stationary source siting determinations?

Response: EPA could require RMP Program 3 facilities to document the siting determination to include the reference(s) utilized to conduct the analysis and the outcome of the analysis

including any corrective actions and their resolution. This documentation would be available on-site but not required to be submitted to any authority.

i. Is it appropriate to reflect the environmental burden of the surrounding community in siting criteria for either new facilities or expansions within an existing site? Is it appropriate to consider chronic burdens or only burdens associated with accidental releases?

Response: EPA's RMP standard is not intended to prevent "environmental burden of the surrounding community" or "chronic burdens". EPA and OSHA have other regulations and standards that adequately address these issues. There should be no consideration within the facility siting analysis for either issue.

j. What challenges would the agency face in specifying uniform siting requirements for the wide variety of covered sites? What site specific factors would need to be addressed?

Response: Due to the diverse nature of processes, their locations and potential hazards, EPA would struggle at trying to specify uniform siting requirements. It would be better to simply refer to the existing guidance resources available and require a documented siting analysis for those facilities that pose the greatest risk, perhaps RMP Program 3 facilities.

k. If EPA mandated siting criteria, how should EPA account for local zoning codes when establishing such criteria? Would setting federal requirements overstep into the normal state and local zoning process, or would it act as a supplemental measure ensuring minimal safety standards across the country?

Response: Again, the Associations do not believe that EPA should mandate any siting criteria and if they do, there will be additional confusion created as these criteria will most likely conflict with any local zoning codes – as evidenced from incidents similar to the West, Texas explosion.

l. What would be the economic impacts of specifying additional siting requirements? Are there any special circumstances involving small entities that EPA should consider with respect to siting requirements?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

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

a. Do you own or operate an RMP-regulated facility that relies on public authorities to respond to accidental releases of regulated substances at the facility? What steps do you take to ensure that public responders are prepared to properly respond to accidental releases at your facility? Should EPA clarify what steps RMP facilities should take in order to properly coordinate their emergency response plan with the community emergency response plan?

Response: Many of the Associations' member companies may be required by OSHA and EPA to have an Emergency Response Program (ERP), develop interagency interaction plans as part of an ERP. Resources and response organizations are identified and incorporated into the ERP program. Reporting of Environmental and Safety hazards to the responding agencies are completed through Emergency Planning and Community Right-to-Know Act (EPCRA) which provides information on hazardous and toxic chemicals. Additionally, routine drills may be conducted involving local responding agencies to aid in the coordination during a response. Current regulations already adequately define what is required in an ERP.

b. If your facility uses its own employees or response contractors provided by the facility to respond to emergencies, what factors led to your decision to use your own employees or contractors to conduct emergency response operations? What steps have you taken to coordinate with local responders on emergency response planning?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to a facility specific question.

c. Are you a member of an LEPC, municipal fire department or municipal hazardous materials response team? If so, do you believe that "non-responding" RMP facilities in your jurisdiction have generally provided the appropriate information and support to your organization to ensure an appropriate response to hazardous substance emergencies at those facilities? Is your organization capable of responding appropriately to such events at RMP facilities? How often do you visit RMP facilities in your jurisdiction? Do you conduct emergency drills at RMP facilities? Do you believe that RMP facilities should generally respond to emergencies using their own employees, or rely on public responders? Should EPA clarify what is necessary for RMP facilities to adequately coordinate their emergency response plan with the community emergency response plan? Would new regulations in this area significantly improve emergency response planning in your area?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to response capabilities and membership in a local responding agency.

d. Are there certain substances or types of facilities that present particular response challenges for local authorities? If so, which substances or types of facilities? Should such facilities be required to prepare and implement comprehensive emergency response programs instead of relying primarily on public responders? Do public responders in your area have adequate existing authority to require this now?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to an emergency response organization question.

e. If public responders are not capable of responding to a particular type of chemical or release event at an RMP-regulated facility, should the owner or operator of the facility be required to provide for an effective response, either with the facility's own employees, response contractors, a mutual aid agreement with nearby facilities, or some other means?

Response: The Associations' member companies, through ERPs identify needs and responding agencies/contractors to aid in the mitigation of an accidental release.

f. What would be the economic impacts of expanding the emergency response requirements as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to modifying emergency response requirements?

Response: The Associations' member companies, through ERPs identify needs and responding agency/contractor capabilities. Many companies provide funding and training opportunities for local responding agencies. To require facilities to have their own responding capabilities would create a burden of capital outlay, staffing, training requirements, and program and equipment maintenance.

6. Incident Investigation and Accident History Requirements

a. Are the RMP incident investigation requirements too narrowly focused? Would identifying a broader range of incidents requiring investigation (e.g., near misses) help prevent additional accidental releases? Please provide specific examples where possible. EPA requests information on alternative definitions or incident classifications that could be included within the rule's incident investigation requirements.

Response: The Associations' member companies do not believe that broadening the investigation requirements would reduce the frequency of accidental releases. These types of events are currently tracked and investigated as determined by the company that is involved in the event.

b. Are there any data or information on process upsets, near misses or other incidents that were not required to be investigated, but where an investigation and resulting changes in management systems might prevent accidental releases?

Response: The Associations' member companies do not have any data regarding this inquiry.

c. Does your facility routinely investigate incidents not required to be investigated under part 68? If so, please describe the types of incidents investigated, and the effects these investigations have had on facility operations.

Response: The Associations' member companies do not have any examples of these.

d. Would a specific time frame for incident investigations to be completed benefit overall safety? What should be the basis for establishing an appropriate timeframe requirement for an incident investigation to be completed? What are the challenges and limitations to completing an incident investigation within a specified timeframe?

Response: The Associations' member companies agree that the current time frame requirement is adequate.

e. Are there benefits from requiring that investigations must be performed even in cases where the owner/operator elects to decommission the process involved, where the process is destroyed in the incident, or where a facility determines there were no actual or potential off-site consequences? Would such a requirement provide a disincentive to decommission potentially risky processes?

Response: The Associations' member companies agree that this would be beneficial.

f. Would a modification of the definition of "catastrophic release" assist in addressing the concerns regarding the appropriate scope of incidents that require investigation?

Response: The Associations' member companies agree that this would be beneficial.

g. Would a modification of the accident history reporting requirements to reflect a broader range of incidents being investigated assist in disseminating lessons learned across industry?

Response: The Associations' member companies agree that this would be beneficial.

h. Should EPA require facilities that have incidents or near misses to conduct a full compliance audit under § 68.58 and § 68.79?

Response: The Associations' member companies disagree that this would provide any improved benefit outside of current investigation and corrective action measures taken to prevent incidents.

i. Is it appropriate for facilities to share the results of accident investigations with the local community or alternatively a summary of the accident, and its root cause? Is there an appropriate role for the local community in conducting investigations?

Response: The Associations' member companies do not believe that this would provide any improved benefit of preventing events as these processes are complex and an understanding of such processes is needed.

j. What would be the economic impact of broadening the RMP incident investigation requirements to require root cause investigations of near misses? Are there any special circumstances involving small entities that EPA should consider? Would small businesses have the capacity to investigate near miss incidents?

Response: The Associations' member companies currently conduct root cause investigations as determined by the companies' ranking system of that event, whether that is an actual incident or a near miss. Root cause investigations do have an economic impact due to the resources required to conduct this type of investigation.

The Associations' member companies do not have a comment on special circumstances involving small entities that the EPA should consider.

The Associations' member companies do not have a comment on whether small businesses have the capacity to investigate near miss incidents.

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

a. 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?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

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

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

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

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

d. In situations where numerous small containers are stored together, are there any kinds of protective barriers or other methods of storage that would reduce the likelihood of a release from one container causing additional releases from adjacent or nearby containers? Should such barriers or storage methods be incorporated into the rule's worst case scenario requirements, and if so, how? Would revising § 68.25(b) cause any type of additional burden on facilities where large amounts of chemicals are stored together?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

e. If EPA were to revise § 68.25(b) to take into account numerous small vessels being stored together, what types/kinds of vessels should be covered? Should there be any limits on the size of containers subject to the aggregation requirement? What would such limits be based on? Similarly, should there be a specific distance between vessels established in order to consider them as grouped together for purposes of worst case scenario calculations? What would that distance be based on?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations.

f. 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?

Response: Due to the many confidentiality, security and legal issues involved with this question, the most EPA could potentially require would be for the owner/operator to communicate the results of their release scenario analysis to the adjacent facility, specifically where the impacts have been modeled to affect these adjacent facilities.

g. What would be the economic impacts of modifying the worst case scenario analysis requirements as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to worst case scenario analysis?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

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

a. Should EPA amend the RMP regulation to require RMP-regulated facilities to post chemical hazard-related information on their Web sites (if they have one) such as RMP chemical names, chemical quantities, executive summaries, links to LEPCs, community emergency plans, Safety Data Sheets (SDS) for hazardous chemicals present on site, EPCRA Tier 2 reports, release notification reports, accident history and cause and other similar information? What requirements should be considered for facilities that do not have a Web site?

Response: Much of the information the EPA requests is already available on websites, such as SDS. Other information such as chemical name, quantity, incident history are already available in the RMP, which should be a controlled environment and not available without proper dissemination of this data. Facilities have no control over community emergency plans, thus local communities should provide these where requested.

b. Would requiring facilities to make this information available on the company Web site promote improved regulatory compliance? What additional economic burden would be associated with such a requirement?

Response: 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 competent enforcement. Any further publication of the risk/hazard data could pose additional security risk.

c. Do RMP-regulated facility owners/operators have any safety or security concerns with posting the executive summary from the RMP, or linking to EPCRA reports and community

response plans on the company Web sites? Please explain any concerns regarding specific elements of this information.

Response: It is unlikely that posting the executive summary from the RMP plan on a company web site provides any useful information at all to the general public. The executive summary, as intended, is written at too high a level to allow viewers to discern the risks posed by the operation.

Community response plans, if available, as well as Regional and National Contingency Plans are linked from company websites for emergency response training and drills. These plans are readily available to the public and it is unlikely an additional link from a company website would be beneficial.

d. Would posting the RMP executive summary on a Web site cause facility owner/operators to remove important information from the executive summary? Does EPA need to better define the contents of an executive summary in order to allay security concerns?

Response: Security of member company facilities is always a prime concern, even more so in today's environment. Any information regarding the nature of facility inventories, locations and operations would provide an unnecessary risk that is unwarranted. Most Associations' member companies proactively engage the public routinely and if concerns are expressed, they are addressed during these engagements. Additional posting of sensitive information to the general public, and indeed, the world, is unwise.

e. Is there other information (web-based or otherwise) that would assist local communities, emergency planners, and responders in understanding facility risks that should be made publicly available? For example, would disclosure of the facility's PHA or compliance audit to local authorities such as the LEPC result in improved safety?

Response: In regards to 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 the burden to these organizations is not a good allocation of these resources.

f. Does your facility interact with community groups (e.g., a citizen advisory panel)? If so, what information do you provide to such groups?

Response: In other matters of community outreach, considerations must be made to safeguard critical information that may show facility vulnerabilities and responses to incidents. Social media is ever-changing thus it would not be an appropriate medium to share any information.

g. Are there other activities or measures that RMP-facility owner/operators can use to ensure that communities, planners, and responders have access to appropriate information?

Response: As addressed above, member companies make this information available on an "as-requested" basis. That allows them to gauge the sincerity and security risk posed by the requestor.

h. Can the use of social media or other forms of community outreach be incorporated into hazard assessment, prevention, and response to leverage community involvement in oversight? For example, would increased public disclosure of RMP-related information, such as accidental releases, near misses, and subsequent safety enhancements, or increased community involvement in facility emergency response planning, lead to improvements in facility safety? Please identify aspects of the RMP rule where there are opportunities for community involvement.

Response: The Associations do not believe that increased use of social media for this issue would result in improved safety.

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

a. Would revising the RMP rule to incorporate AEGL-2 and ERPG-2 values (when an AEGL is not available), as the basis for TQs and toxic endpoints make the RMP rule more protective of human health and the environment? Would it result in significant changes to the universe of RMP-regulated facilities due to potential changes in TQs? If so, what number and types of facilities would be most affected and what changes would occur?

Response: The AEGL-2 and EPRG-2 appear to be more rigorous as criteria for assessment. However, any impact on protection of human health may be debatable. Hypothetically, if the AEGL is not exceeded off-site, then switching to AEGL makes no difference. In a situation where source and target are outside of effective control - say a high-H_2S well and an encroachment which we cannot prevent, control or influence – then a change in the criteria would again not improve safety. Where it may impact, both in terms of impact to facilities and impact on the public, are those scenarios where a potential target location is close to the toxic endpoint. Then, a change in criteria may introduce new drivers for additional protective measures – liaison with local emergency services, evacuation / shelter-in-place arrangements, source control.

For E&P facilities, this may not be an issue.

b. The IDLH values used for setting the existing TQs are based on an exposure period of 30 minutes. If the IDLH was not available, the acute toxicity data used to determine the equivalent IDLH varied depending on the chemical and actual study, and these numbers typically ranged from 1 to 8 hours. The ERPG-2 values used for the toxic endpoints represent an exposure period of 1 hour. Given that AEGLs are established with five different exposure periods (10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours), which exposure time should be used if the AEGL is used to determine the TQs and/or toxic endpoints?

Response: In terms of assessment, the AEGLs could be used as they are – with different concentrations for different durations. If the exposure occurs for 30 minutes or less then use of the AEGL may be appropriate.

c. What should be the hierarchy for developing an alternative or equivalent LOC when an AEGL value has not been established for a toxic substance? Should ERPG values be used instead if they exist? If no ERPG value exists, should an LOC based on the IDLH value be used instead if it exists? If there is no IDLH value, how should the LOC be calculated for either the TQ or toxic endpoint? Is there an alternate method for establishing an equivalent LOC for those chemicals not having an AEGL or ERPG that will result in an appropriate TQ?

Response: It would appear reasonable to use ERPG values if no AEGLs are available, but this is not an issue of concern for oil and gas operations and the Associations' are unable to provide further input.

d. Currently, RMP worst-cast scenarios can be based on 10-minute or 60-minute release times. Because many AEGL-2 values are established for 1-hour, 4-hour and 8-hour exposure periods, should requirements for determining the worst-case and alternative release scenarios also incorporate four and eight hour release times using the 4-hour and 8-hour AEGL-2 values for a particular toxic chemical?

Response: The same quantity, released over a 4- or 8-hour period, will result in a smaller plume at a given concentration. The Associations question whether there would be sufficient gain in information to justify the additional effort.

e. Should EPA consider using AEGL-1 rather than AEGL-2 values for calculating reporting thresholds and toxic endpoints in order to address acute effects that are transient and reversible (such as discomfort and irritation)?

Response: What is the benefit to be gained from making this change? What response is triggered, or expected to be triggered by the irritation-level impact? Is the intent, or the attainment, little more than increasing the radius of the facility 'footprint'?

f. What would be the economic impacts of recalculating TQs as discussed above? Are there any special circumstances involving small entities that EPA should consider with respect to recalculating TQs?

Response: There will be some economic impacts, such as an increase in required modeling effort to accommodate the suggestion of multiple worst-case endpoints, or if greater emergency response intervention is required by the change in end-point to irritating events rather than those potentially causing long-term injury.

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

a. Should industry sectors represented in RMP data as those with the most accidental releases be used to update and replace the existing set of Program 3 NAICS codes with a new set?

Response: No Comment – not applicable to oil and gas exploration and production activities and operations. No Association member does work subject to the NAICS codes listed in 40 CFR 68.10(d)(1).

b. How can the RMP accident history data best be used to update the current list of NAICS codes that trigger Program 3 requirements? Should the agency take into account the number of sources in each sector, or the severity of reported accidents, or other factors, in selecting updated Program 3 NAICS codes? Is the methodology used to develop the SIC/NAICS code list applicable to the RMP accident history database?

Response: The Associations' member companies typically have no facilities covered by the NAICS codes listed in 40 CFR 68.10(d)(1). The few facilities owned by Associations' members that are Program 3 are not Program 3 due to accident history. They are program 3 because of their proximity to public receptors. The Associations' fail to recognize value derived from changes to the list of NAICS codes or how these codes are used in the RMP rule.

c. Would limiting the data analysis or the selection of NAICS codes to only those industry sectors represented in the RMP data provide a complete and accurate picture of high risk industry sectors?

Response: The Association's member companies have no facilities covered by the NAICS codes listed in 40 CFR 68.10(d)(1). The facilities owned by the Association's members are engaged in the exploration and production of gas and oil. These activities have a lower associated risk than the activities listed in 40 CFR 68.10(d)(1). The Association's member companies and industry groups such as American Petroleum Institute (API) do a good job of analyzing such data for our industry. The Associations fail to recognize value derived from additional data analysis.

d. Should an analysis of the RMP data be combined with an analysis of other current accident history databases to inform any revisions/updates? If so, what other databases should be used? How much weight should be given to the RMP data set in comparison to other sources?

Response: The Association's member companies have no facilities covered by the NAICS codes listed in 40 CFR 68.10(d)(1). The facilities owned by the Association's members are engaged in the exploration and production of gas and oil. These activities have a lower associated risk than the activities listed in 40 CFR 68.10(d)(1). The Association's member companies and industry groups such as American Petroleum Institute (API) do a good job of analyzing such data for our industry. The Association members fail to recognize value derived from additional data analysis.

e. Should the original NAICS codes continue to be included? Would not including the NAICS codes historically identified under Program 3 cause increase risks to those industry sectors by having them no longer subject to the more stringent measures?

Response: The Associations have no members involved in the activities associated with the NAICS codes listed in 40 CFR 68.10(d)(1). We lack the necessary information to comment on this issue.

f. Should an analysis of accident history data be limited to a specific time frame?

Response: The Associations have no members involved in the activities associated with the NAICS codes listed in 40 CFR 68.10(d)(1). We lack the necessary information to comment on this issue.

g. Would it cause confusion within the regulated community to change the list of NAICS codes for which Program 3 is required?

Response: The Associations have no members involved in the activities associated with the NAICS codes listed in 40 CFR 68.10(d)(1). We lack the necessary information to comment on this issue.

h. What would be the economic impacts of modifying the list of NAICS codes for which Program 3 is required? Are there any special circumstances involving small entities that EPA should consider with respect to modifying the list of covered NAICS codes?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

11. The "Safety Case" Regulatory Model

a. If you own or operate any RMP or PSM-covered facilities and also own or operate facilities in countries that use a safety case regulatory regime, please describe the process of developing and obtaining approval for your safety case. How long does development and approval of a safety case take for a large petroleum refinery or chemical processing facility? What are the advantages and disadvantages of the safety case approach in comparison to the existing U.S. regulatory regime for chemical process safety? Is there any evidence that the safety case approach reduces the frequency and severity of accidental releases and near misses? If so, please provide any information, data, or studies to EPA that demonstrates these effects. How expensive is it for facility owners to implement the safety case approach in comparison to implementing RMP or PSM? Do you already incorporate aspects of the safety case approach in your risk management program?

Response: No comment. The Associations - as trade associations representing multiple companies - cannot respond to specific questions related to development and approval, advantages and disadvantages, or expenses associated with safety cases.

b. The CSB Draft Regulatory Report on the Chevron Richmond Refinery Pipe Rupture and Fire highlights the NRC as a U.S. regulator that has established a safety case approach for licensing and oversight of commercial nuclear power plants in the United States. The NRC

oversees approximately 100 nuclear reactor and 3000 nuclear materials facilities in the U.S.; the NRC has nearly 4000 employees and an annual budget of over $1 billion. What additional resources would be required by EPA and OSHA in order to establish and oversee a safety case regulatory regime for RMP and PSM-covered facilities?

Response: Neither EPA nor OSHA currently has the manpower, either number of or required competency, to oversee a safety case program within the United States. The specialized manpower needed to successfully manage this kind of program is not currently available within the United States. If such a program was undertaken, it would have to be on a very limited basis – for example, just the facilities with the potential for the highest level of risks, comparable to nuclear power plants.

c. Is the safety case approach suitable for all RMP and PSM covered facilities, or, if adopted, should it be limited to only the most high-risk facilities, such as petroleum refineries and other high-risk chemical processing facilities?

Response: The Associations do not support requirements for the development and submission of safety cases. There is no performance evidence that shows that lack of having aspects of a safety case were material causes to the occurrence of industry incidents. The imposition of safety case regulations in any form would unlikely solve any existing regulatory compliance problem 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 whether the industry accident rate is any better 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 loss of small businesses, with no statistical incident rate improvement.

d. What would be the economic impacts of moving to a safety case based regulatory regime for chemical facility safety? Are there any special circumstances involving small entities that EPA should consider with respect to safety case based approach?

Response: The Associations have not anticipated this change to the RMP rule and therefore do not have the requested data or information. The Associations remind EPA that it is its responsibility to understand the economic impact of regulatory changes on industry and would recommend that EPA not move forward with any changes to the RMP rule until the economic impacts are quantified and the public is afforded an opportunity to comment.

12. Streamlining RMP Requirements

a. Are there steps that EPA could take to simplify the process of determining whether the RMP rule applies to particular facilities? Are there other potential revisions to the rule that would make it easier for regulated entities to comply with its provisions?

Response: Determination of facility coverage by the RMP rule is well defined in sections 68.10 and 68.115. Simplification of the process is not needed.

b. Are there steps that EPA could take to simplify the RMP submission process? For example, are there advances in electronic reporting or information technology that EPA could use in order to make RMP submissions easier?

Response: The Associations do not have data to support a position on this topic. However, the rollout of the 2009 electronic submission and resubmit process was a great improvement over the previous CD mail-in process and is simple for users including certification. It is not necessary to simplify the current process.

c. 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?

Response: The Associations do not support changes to the RMP certification requirements. The current certification process allows for companies to certify by senior officials, or delegate through written approval of another person which equally establishes accountability and awareness; no changes recommended.

d. 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?

Response: The Associations support the three-tiered program level structure and it is adequate for the risks posed by oil and gas facilities.

e. Are the accident prevention program elements clearly defined? Should EPA further clarify any of the existing elements?

Response: The Associations find that the accident prevention program elements are clearly defined by 40 CFR 68.48 and 68.65 with no need for additional clarification.

f. Are the regulatory terms and definitions contained in section 68.3 sufficiently clear? Are there additional terms that EPA should define in this section?

Response: The Associations find the list of terms and definitions contained in section 68.3 to be complete and sufficiently easy to understand.