



September 15, 2017

Mr. Thomas Galassi
Occupational Safety and Health Administration
Acting Deputy Assistant Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

**Re: Docket No. OSHA-2017-0009
Request for Comment on the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Program**

The American Fuel & Petrochemical Manufacturers (AFPM)¹ and the American Petroleum Institute (API)² respectfully submit these comments in response to the Occupational Safety and Health Administration's (OSHA) request for comment on OSHA's Voluntary Protection Program (VPP). AFPM and API members operate refineries and petrochemical facilities, many of which either participate in VPP or strive to be a part of the program. Our membership supports the VPP program and its mission to improve workplace safety. AFPM and API appreciate the opportunity to comment and commend OSHA on the positive aspects of the program, as outlined below. AFPM and API have also identified several ways that OSHA can improve its program moving forward.

AFPM and API recognize the following principles of the VPP program:

1. Safety is a Core Value

A strong culture of safety is the foundation of successful occupational and process safety programs. VPP builds a strong foundation of commitment and partnership between employees and management in which a culture of safety and continuous improvement can be achieved in the long-term. VPP is a prestigious program which recognizes work places that have demonstrated the successful implementation of an exemplary safety and health management system. Establishing a constructive culture of safety with management commitment and employee involvement is a critical element of such recognition. This in turn, results in fewer lost workday injuries, fewer recordable injuries, and fewer minor non-recordable injuries. This drastically reduces workers' compensation costs and ultimately increases overall productivity.

2. Safety is not Proprietary

VPP's mentoring program complements the industry sharing programs provided by AFPM and API by facilitating cross-company learning opportunities, which provide proven tangible benefits to our members. VPP mentors help to improve a site's practices and procedures, assist less experienced sites in preparing for an OSHA on-site inspection, and broadly strengthen the foundation of a company's safety management program.

3. Safety is Proactive, not Reactive

¹ AFPM is a national trade association representing approximately 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity.

² API is a national trade association representing 660 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry.



Long-term workplace safety can best be achieved through a strong cultural foundation, sound practices and procedures, and a solid partnership between employees and management. When everyone cares about safety, everyone stays safe. VPP helps sites establish these elements and supports these efforts through periodic evaluations. OSHA programs, like VPP, drive proactive improvements in safety.

AFPM and API Members are Committed to Advancing Safety

Our members invest significant resources in their safety programs, which is evident from our industry’s total recordable incident rate being 84% lower than the average rate across all manufacturing sectors. As the chart below illustrates, the total recordable incident rate for all manufacturing sectors, including petrochemical sites is 3.8 per 100 workers in 2015, while the total rates for petroleum refiners and petrochemical manufacturing are 0.6 and 0.2, respectively.³ Since 1998, the petroleum refining industry has reduced its Total Recordable Incident Rate (TRIR) by over 68%; objective evidence of the industry’s unwavering commitment to continuous safety and health improvements. Such an improvement affords the petroleum industry unique insight into what it takes to have continuous sustainable workplace safety programs. While not all of our members are VPP certified, all of our members have strong safety programs.

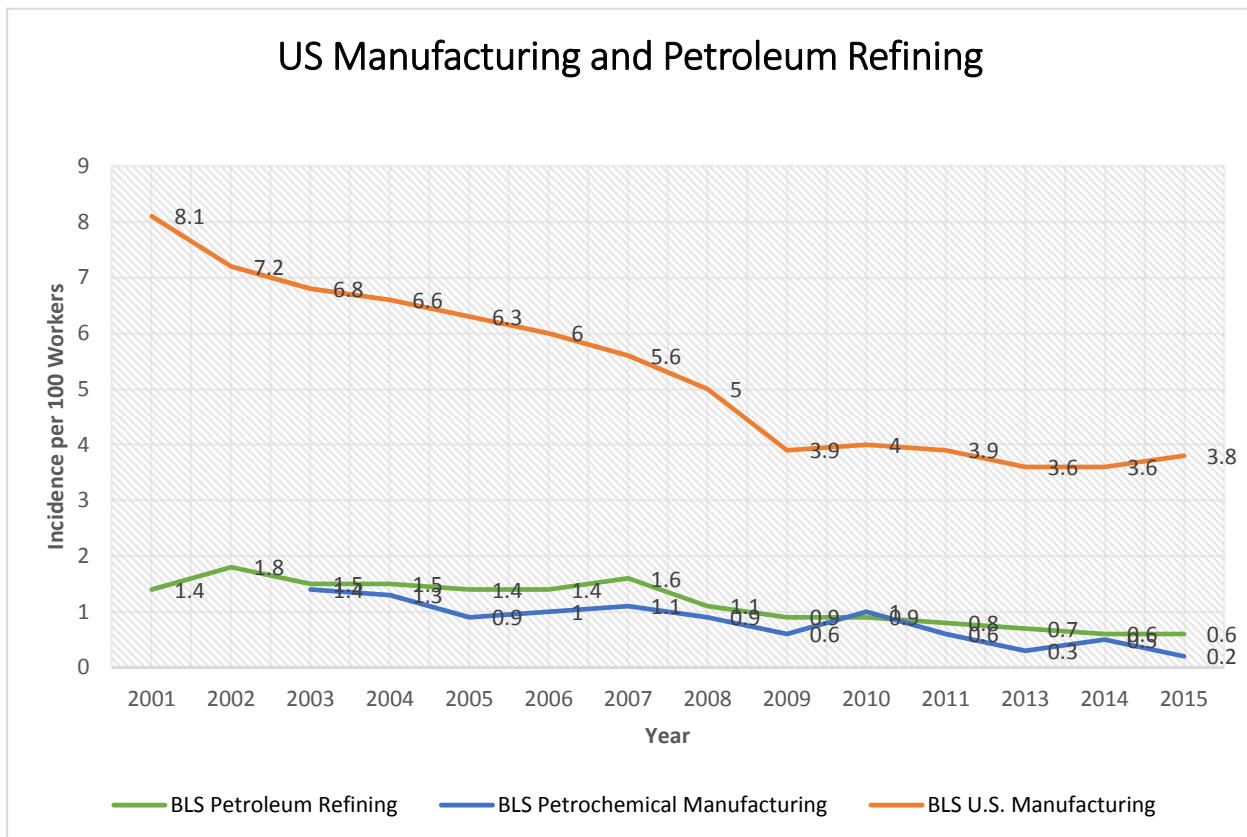


Figure 1. Bureau of Labor Statistics: Injury & Illness Rates for U.S. Manufacturing & Petroleum Refining

The following are AFPM and API’s responses to the questions raised by OSHA during the July 17, 2017 public stakeholder meeting:

³ <https://www.bls.gov/iif/oshwc/osh/os/ostb4732.pdf>



1. *What can the agency do to enhance and encourage the efforts of employers, workers, and unions to identify and address workplace hazards through VPP?*

a. Improve Communication and Recognition of VPP Sites

Although it is a significant accomplishment for a site to achieve VPP certification and requires a significant commitment to safety, OSHA provides little recognition when a worksite achieves such safety success. In order to build the VPP program, OSHA should do much more to publicly acknowledge VPP achievement.

According to the current VPP policy outlined in OSHA Instruction CSP-03-01-003 (the “VPP Instruction”), the regions are “strongly encouraged” to issue a press release when a site is approved for VPP participation. OSHA should consider making the press release mandatory and should consider giving these press releases more recognition on the main OSHA webpage. In addition, after a worksite becomes VPP certified, OSHA should highlight significant accomplishments throughout the year via press releases and other announcements. This would serve to incentivize other current and/or aspiring VPP participants to continue their aggressive hazard identification and mitigation efforts. Providing this publicity should provide worksites with additional incentives to continue improving safety even after they have been granted VPP status.

In providing this additional publicity, OSHA should also consider the following opportunities to publicly recognize sites that are making safety a priority:

- Send letters of recognition from the regional or national OSHA offices to the appropriate Governors, congressional representatives, local officials, and/or local newspaper(s).
- Highlight the VPP sites within the OSHA 300A database.
- Issue periodic reports to highlight significant efforts undertaken by the highest performing VPP sites and to recognize all VPP sites.

b. Improve VPP Staffing

Currently, OSHA’s does not employ VPP support staff. The program would benefit from dedicated program staff that could be a first point of contact at OSHA for VPP sites. The OSHA enforcement staff currently available to VPP sites is not able to help sites with improvements, as their role is focused solely on identifying regulatory violations. Establishing even a small group of dedicated VPP program staff could dramatically increase the quality and scope of the efforts of VPP sites. That dedicated program staff could also help to ensure that all interested sites have an opportunity to achieve VPP status.

Further, additional dedicated VPP staff will improve the compliance assistance consultation process. The process currently exists, but doesn’t necessarily have the resources to be broadly utilized by VPP participants. This collaborative approach between OSHA and the VPP sites helps the sites take steps to be in regulatory compliance and therefore, it is win-win for both OSHA and industry.

Lastly, additional staff will shorten the time it takes to approve new VPP applications.



c. Expand the Mentoring Special Government Employee (SGE) Program

The mentoring program provides considerable value to company sites in need of guidance. As such, OSHA should ensure that there are enough resources available to mentor sites with less established programs, as well as those sites that are new to VPP. Additional comments on the SGE program are included in Section 5 below.

2. *How can the agency support increased participation in VPP while operating with available resources and maintaining the integrity of the program?*

a. Recognize the Effectiveness of VPP and Provide Consistent, Necessary Support

With the perceived instability of the program, AFPM and API members have had reservations over the years about investing in VPP. OSHA should consistently provide support for VPP and establish and reward workplace cultures where safety is achieved through such proactive programs. While OSHA will always need an effective enforcement program to address unsafe working conditions, investing consistently in promoting proactive safety culture through VPP will also provide significant benefits to employees at workplaces that participate in VPP and even those that are working toward gaining VPP status.

As noted in 1.b., in order to effectively manage the program and maintain its integrity, proper staffing is needed. OSHA currently has open VPP Coordinator positions in Regions 4, 5, and 6 that need to be filled. OSHA also has a backlog of VPP certifications and re-certifications. Proper staffing will help to ensure that sites actively working on improving their safety programs receive the support and necessary resources to be successful.

3. *How can the agency modify VPP to enhance the efforts and engagement of long-term VPP participants?*

a. Refrain from using the threat of revoking VPP status as a tool for advancing new policies or as leverage when a VPP worksite is cited for alleged violations.

Over the past several years, OSHA has attempted to use VPP and the threat of revoking VPP status as a tool to advocate for new policies or initiatives. Here, OSHA attempted to impose new safety requirements while bypassing the rulemaking process. VPP sites were essentially forced to accept the loss of their VPP status or comply with a new requirement that was imposed without a proper notice and comment rulemaking process, which may not have been based on sound science, or that might have costs that far exceed the safety benefits. Examples include: 1) forcing changes in incentive programs without affording participants notice and the opportunity to comment and; 2) mandating that employers use certain RAGAGEP⁴ rather than choosing the most appropriate RAGAGEP for their operations which is in direct conflict with OSHA's underlying policy/regulations. This in turn, required employers to use a method for performing engineering evaluations for pressure relief systems that OSHA issued in an informal memo, and effectively eliminated due process for VPP sites during enforcement proceedings. As a result of this approach by OSHA, many companies considered withdrawing from the VPP program.

For the reasons listed above, we request that OSHA consider the following comments on memos listed below and refrain from using VPP status as leverage to advance an OSHA policy agenda.

⁴ Recognized and Generally Accepted Engineering Practices (RAGAGEP)



- **Fairfax Memo #5 (8/14/14), Employer Safety Incentive and Disincentive Policies and Practices (3/12/2012)⁵ and its inclusion in the Final Rule to Improve Tracking of Workplace Injuries and Illnesses (OSHA-2013-0023)**
 - o In the 2014 Fairfax Memo #5, OSHA effectively imposed requirements on VPP participants a year or two before those requirements actually were promulgated. During that time, numerous member companies were threatened by OSHA that their VPP status would be revoked, and in some cases the status was actually revoked. This caused significant concern among our members, even beyond those members whose VPP status was threatened. We understand that OSHA has recently sent out a revised version of this memo to clarify that rate-based incentive programs are permissible under certain circumstances, though it appears that the revised memo has not yet been published on OSHA’s website. While the revised memo does revoke the blanket ban on the use of injury and illness rates for incentive programs, we request that OSHA ensure that the implementation of this revised memo is consistent and clear and that OSHA personnel provide VPP participants with helpful feedback on the incentive programs that participants have in place. It would be useful for OSHA to issue further guidance about what precautions would be sufficient to ensure that the incentive program does not discourage injury reporting.

- **VPP Policy Memorandum #7: Further Improvements to VPP (5/29/2013)⁶**
 - o In this memo, OSHA announced that any VPP site that received a Willful citation or suffered a fatality would be automatically removed from VPP. For these employers, their option of remaining in VPP disappeared, but when the agency later withdrew or reclassified those citations, those employers were not automatically welcomed back as VPP sites. Instead, they lost their VPP status even though the allegations that were initially made were later withdrawn.
 - o In a related matter, there were cases where the OSHA Certified Safety and Health Officials (CSHOs) discouraged VPP sites from exercising their right to contest alleged violations. VPP employers disagreeing with the conclusions a CSHO reached in support of a citation, were frequently asked to leave VPP because they were not fully “cooperating” with the agency. These participants were forced to choose which of their rights they wanted to exercise (contesting citations vs. participating in VPP). Many employers were forced to leave VPP in order to preserve their legal right to contest OSHA’s allegations. Therefore, we request that OSHA revoke memo #7.

- **Guidance: Addressing Pressure Relief System (PRS) Deficiencies Observed During VPP Site Reapproval Evaluations⁷ (7/15/2014)**
 - o Through this memo, OSHA attempted to enforce specific RAGAGEP on VPP participants with PSM programs and threatened to remove them from

⁵ <https://www.osha.gov/as/opa/whistleblowermemo.html>

⁶ https://www.osha.gov/dcsp/vpp/policy_memo7.html

⁷ <https://www.osha.gov/dcsp/vpp/pressure.pdf>



VPP if they did not comply. This topic was central to citations issued by OSHA and the subsequent administrative decision in 2013 involving BP Products North America, Inc. and BP Husky Refining, LLC for the alleged failure to document compliance with RAGAGEP. The specific citations related to pressure relief valves and RAGAGEP were vacated. This case is currently pending at the Occupational Safety and Health Review Commission. OSHA further tried to codify its position in the June 3, 2015 letter of interpretation on RAGAGEP that was later revoked and replaced by a version that was the result of a settlement agreement between AFPM, API, ACC and OSHA. For these reasons, we request that OSHA revoke the memo on PRS Deficiencies.

b. Evolve the VPP Program to Recognize Long-term Participants

Our members believe in and continuously raising the bar with respect to safety performance. This also applies to AFPM's Safety recognitions and to the VPP program structure. There are many sites that have achieved VPP certification since the inception of the program. As the requirements for VPP certification and revalidation are strengthened, OSHA should consider a tiered system that will recognize those sites that have achieved sustained workplace safety over a specified number of years. This is another opportunity for OSHA to publicly recognize those employees and sites that have successfully maintained a safe workplace. Further, for those sites that have proven the long-term sustainability of their safety programs, OSHA should address the challenge for those sites in demonstrating "continuous improvement." In the past, OSHA often relied on injury and illness rates as the measure for continuous improvement, but at some point, a site's TRIR is so low that it no longer serves as a valuable metric to measure improvements or the health of the safety management system. A site can still be improving while their TRIR number might remain flat, particularly when the TRIR is very low. We encourage OSHA to assess the overall strength of the management system and look for incremental improvements to that system as indicators of continuous improvement rather than focusing exclusively on the injury and illness rate. If OSHA chooses to create a formal, additional way to measure the strength of the management system, we strongly encourage them to do so with the help of VPP participants so that the process is meaningful across many industries.

c. Simplify the Annual Submission Requirement

Members report that the annual submissions required to continue in VPP are incredibly time-consuming. Our members would suggest to OSHA that a smaller bi-annual requirement may reduce this burden on members. Additionally, the required information and submission format could be streamlined and simplified to reduce the burden on participants. OSHA should take the time to review this form and process to ensure that they are requiring the most important elements that actually reflect a site's safety performance, versus questions and information that do not measure facility safety performance .

4. How might the agency modify Corporate VPP for greater leverage and effectiveness?

- a. OSHA should allow sites to submit a single VPP application whether or not a single onsite evaluation can be conducted that outlines the corporate safety programs. Such an approach would simplify the application process and prevent inconsistent determinations where one site receives an acceptable determination while another site within the same safety and health management systems receives an unacceptable determination despite the fact that the safety



programs are identical between the two. This would not require OSHA to admit all worksites into VPP, but it would allow for consistent determinations on the question of which worksites will be admitted into VPP.

- b. For companies that have multiple worksites in VPP, OSHA should identify criteria that will allow companies, once the corporate entity has met the criteria, to apply through a simplified or expedited application for VPP status. Such criteria might include a combination of the number or percentage of worksites already in VPP and the inspection/accident history at the company's non-VPP site.
 - c. OSHA should partner with states, where applicable, in an effort to identify practices and policies that could enhance the federal VPP program. Applying the same criteria across states (and regions) and allowing multi-state employers to reap the benefits of VPP in all states will help drive future participation in VPP.
5. *How can the agency further leverage participant resources such as Special Government Employees (SGE)?*
- a. Increase focus on establishing strong partnerships between OSHA and companies.
 - b. Continue to stress to companies the importance of participation in the SGE program. OSHA should consider setting a recommended SGE number dependent upon the size of the site/company. (e.g. 1-150 employee = 1 SGE; 151-250 employees = 2 SGEs.)
 - c. Require that all reports for initial site region audits must be sent to the national OSHA office within 45 days of completion of the onsite audit or 45 days after completion of 90-day contingency items.
 - d. Promote smart cross-pollination of appropriate expertise. Consider diversifying the SGE teams by pulling SGEs from a wide range of VPP participant sites, in order to bring different and helpful perspectives to a worksite. For example, OSHA could send Department of Energy SGEs to Chemical Manufacturing Sites and vice versa. Such cross-pollination would allow different industries to learn from one another, especially where the industries may be addressing the same problems.
 - e. Ensure that SGEs have the right skill sets. OSHA should consider creating a mentoring program for experienced SGEs and non-experienced SGEs. This should help to ensure that all SGEs meet at least a minimum set of requirements and are always seeking to improve.
 - f. Advertise and advocate for more SGE participants.
 - g. Utilize SGEs to review annual submission submitted by the VPP participants, lead on-site re-approval audits, and review new applicant documentation.
 - h. Consider engaging with professional associations, such as the American Society of Safety Engineers, to explore opportunities for securing additional personnel resources in an appropriate manner.
 - i. Consider sponsoring or organizing bi-annual or quarterly area/regional Special Government Employee (SGE) meetings to enhance collaboration and help to improve competencies. Such meetings could also coincide with possible SGE mentoring for non-VPP sites, or for providing a VPP database with lessons learned.



We thank OSHA for the opportunity to submit these important comments. The VPP program is important to our membership and we want to see it continue to grow and succeed in the future. This program has been effective in improving workplace safety and therefore, saving lives --a common goal for both our members and OSHA. Please feel free to contact Danny Forest, dforest@afpm.org, 202-457-0480 with AFPM or Heidi Keller, kellerh@api.org, 202-682-8060 at API with additional questions.

Sincerely,

Danny Forest
Manager, Safety Programs
American Fuel & Petrochemical
Manufacturers
1667 K Street NW, Suite 700
Washington, D.C. 20005

Heidi Keller
Policy Advisor
American Petroleum Institute
1220 L Street NW
Suite 900
Washington, D.C. 20005