July 8, 2016

Submitted via email to Brian Lincoln, U.S. OSHA

Mr. Robert Burt
Chair, Small Business Advocacy Review Panel
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210


Dear Mr. Burt:

Perry’s Ice Cream Company (“Perry’s”) and the International Dairy Foods Association (“IDFA”) submit these comments in conjunction with the comments that were made at the recent Small Business Advocacy Review (“SBAR”) panel outreach meeting on June 22, 2016.

Perry’s, Akron, N.Y., is a small business entity that manufactures and distributes high quality frozen desserts including ice cream, sherbet, frozen yogurt, light ice cream, non-fat and no sugar added light ice cream, and novelties. Started in 1918, Perry’s is a fourth generation, family owned business that sells its ice cream and other products in New York, Western Pennsylvania, New England, and Ohio.

IDFA, Washington, D.C., represents the nation’s dairy manufacturing and marketing industries and their suppliers with a membership of 550 companies within a $125-billion a year industry. IDFA is composed of three constituent organizations: the Milk Industry Foundation, the National Cheese Institute, and the International Ice Cream Association. IDFA’s nearly 200 dairy processing members run 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85 percent of milk, cultured products, cheese, ice cream, and frozen desserts produced and marketed in the United States.

Perry’s and IDFA appreciate the opportunity to provide these comments to the Occupational Safety and Health Administration (“OSHA” or “Agency”) regarding the possible changes to the Process Safety Management (“PSM”) regulation. Both Perry’s and IDFA are strong supporters of the current PSM standard and share the goal of preventing or minimizing employee exposure
to hazards related to the uncontrolled release of regulated chemicals. We question the necessity of many of these changes as the revisions would negatively and disproportionately impact the dairy industry’s small businesses without supporting the goals and the purposes of the rule. Accordingly, we recommend that OSHA reconsider several portions of these changes prior to publishing a proposed rule.

I. Perry’s and IDFA Have Several General Concerns Regarding the Possible Changes to the PSM Standard.

Perry’s and many of IDFA’s members must comply with the PSM standard because their facilities have over 10,000 pounds of anhydrous ammonia in refrigeration systems. These refrigeration systems are relatively simple, closed circuit systems that do not involve the manufacturing of chemicals. Additionally, some of IDFA’s members are also regulated because of the presence of chlorine at their wastewater treatment facilities.

To date, OSHA has presented no evidence that the current PSM regulation is deficient. OSHA has a statutory duty to ensure that its standards are “reasonably necessary or appropriate to provide safe or healthful employment and places of employment,” 29 U.S.C. § 652(8), which courts have interpreted to mean that the agency must put forth “substantial evidence” to support why the regulation addresses a significant risk of harm presented from a workplace or employment. Tex. Indep. Ginners Ass’n v. Marshall, 630 F.2d 398, 400 (5th Cir. 1980) (citing Indust. Union Dept., AFL-CIO v. Am. Petroleum Inst., 448 U.S. 607 (1980)). Until OSHA is able to provide clear evidence how these changes to the PSM standard will address known hazards and a significant risk of harm, the Agency should reconsider changing a standard that is highly effective and protects employees at facilities. We believe that when properly implemented and enforced, the current PSM rule is effective in reducing the risk of chemical accidents, resulting in a safer workplace for employees and adequately protecting communities and the environment.

We also feel it is worthy to note that the majority of IDFA member facilities regulated by PSM also have obligations under several other regulatory programs administered by various agencies including the Environmental Protection Agency (“EPA”) and the Department of Homeland Security (“DHS”). In light of the various regulations addressing the same process and chemicals at a facility, IDFA urges OSHA to reconsider several of its proposals. Imposing many of the considered obligations for PSM regulated facilities will result in added costs, confusion, and inefficiencies with minimal or no improvement in safety or security at facilities. OSHA should make a concerted effort to understand how the PSM regulation operates alongside other federal process safety and security programs. Specifically, OSHA must avoid unnecessary overlap and inconsistency with EPA’s Risk Management Plan (“RMP”) regulation. The PSM and RMP programs, as created in the 1990s, are intended to be complementary, with PSM focusing on the safety of workers at facilities and RMP focusing on offsite impacts to the public health and environment. It is essential that OSHA work in conjunction with its federal cohorts to ensure that the regulations continue to be complementary and not present contradictory or conflicting requirements.
II. OSHA Should Not Regulate Sodium Hydroxide under the PSM standard.

OSHA proposes to amend Appendix A of the PSM standard to include several new chemicals including sodium hydroxide. Perry’s and IDFA object to the inclusion of sodium hydroxide as it does not present the requisite risk necessary for regulation under the PSM standard.

Many dairy food processors hold sodium hydroxide at their facilities for use as a cleaning agent in their sanitation systems, more commonly called clean-in-place (“CIP”). A CIP is a mechanical system that allows for cleaning of food production equipment without dismantling the system by running cleaning solution through the pipes and tanks used to convey and process the food, followed by a clean water flush to remove the residual solution.¹ These systems are important to ensure safe foods reach consumers and are an integral component within a facility’s broader food safety plan that helps ensure compliance with the Food Safety Modernization Act.

When diluted in water or as part of a formulated detergent, sodium hydroxide is an alkaline compound used in CIP systems because it is extremely effective in removing fats from food production equipment. Sodium hydroxide is generally used at 0.5–2% concentration by weight for most foods, but higher concentrations can be used for other foods.² When necessary, the sodium hydroxide is run through the closed circuit CIP system and only exits the system at a drain. Due to the nature of these food production lines and CIP systems, we feel it is inappropriate to regulate sodium hydroxide under the PSM standard for this use.

Additionally, sodium hydroxide does not present the requisite hazard for regulation under the PSM standard. In accordance with the Clean Air Act Amendments of 1990, OSHA established the PSM standard to prevent or minimize “the consequences of the catastrophic releases of toxic, reactive, flammable, or explosive chemicals,” as these releases can result in toxic, fire or explosion hazards. 29 C.F.R. § 1910.119 (emphasis added). Thus, unless a chemical presents a clear hazard of toxicity, reactivity, fire, or explosion it cannot be subject to regulation under the PSM standard.

Various regulatory agencies including the U.S. Coast Guard, U.S. Department of Transportation, and New Jersey Department of Health, consider sodium hydroxide a caustic chemical, but do not regulate it as toxic, reactive, flammable or explosive. While sodium hydroxide presents some safety concerns for employees, especially through dermal and ocular exposure, these risks are adequately addressed under OSHA general safety standards and its standard for permissible exposure limits.

In the Agency provided documents, OSHA has provided no rationale or data to justify why sodium hydroxide should be added to Appendix A. We feel that the Agency must provide specific details as to why sodium hydroxide is being considered for listing and what threshold

quantity and concentration it proposes to regulate. Until this occurs, dairy food processors are unable to determine how and if a PSM program would be necessary to cover sodium hydroxide used in their CIP systems.

III. Employee Participation Is Essential to Ensuring a Safe Working Environment, But the Stop Work Authority Requirement Needs to Be Reconsidered.

OSHA proposes to amend Paragraph (c) of the PSM standard to require enhanced employee participation with the PSM program and establish a stop work authority (“SWA”) program for both employees and contractors. Perry’s and IDFA agree that employee participation is vital to ensuring a safe working environment and encourage our employees to communicate if they feel unsafe or identify hazards in the workplace.

Many dairy facilities have employee safety engagement programs which can include the creation of employee workplace safety committees. These committees provide a place for employees to participate in and discuss all safety standards and not just focus specifically upon the PSM program. Generally, these committees, which meet regularly, are composed of management and non-management personnel at a facility to ensure that all level of employees’ safety concerns are heard and addressed. Additionally, dairy facilities train employees on the various aspects of the PSM program for their covered processes to enhance employee awareness of the hazards that could be present at the facility. The current employee engagement requirements under the standard adequately allow for employee participation within the PSM program.

We feel that under the current general OSHA standards, all workers have the right to stop work if they feel that the work they are doing is unsafe. If OSHA determines that employers should establish a SWA program under the PSM standard, the Agency must put forth evidence as to why requiring SWA under the general OSHA standards is not appropriate or that the current standards are inadequate. We feel that employers should not be required to create SWA programs for each individual specific OSHA standard, like PSM, when OSHA could merely amend the general standards if necessary. This would allow employers to manage one SWA program instead of multiple. This is also a preferred approach as SWA can be valuable for safety at all facilities even if a facility is not regulated under PSM.

Additionally, we have some concerns about the proposed scope of the PSM SWA program. OSHA indicated that SWA would be given to not just employees to recommend when a process should be shut down based on safety concerns, but would also grant this authority to the employees of contractors. Providing the authority to stop all work at a facility due to health or safety concerns seems reasonable, but parameters on this authority and requirement must be carefully crafted to avoid the potential for misuse by contractor employees. We hope that OSHA will provide guidance as to how employers should handle these situations if it chooses to grant SWA authority to this broad base of individuals.
IV. We Have Concerns Regarding the Proposal to Require Employers to Update RAGAGEP as Part of the Process Hazard Analysis Requirements.

OSHA is considering changing Paragraph (d) of the standard to require facilities to review the Recognized and Generally Accepted Good Engineering Practices (“RAGAGEP”) applicable to a covered process and implement those updates. While this proposal seems sensible, it presents a massive burden for small businesses.

Based upon the information provided, the Agency suggests that Perry’s and IDFA’s other members must stay abreast of the relevant published codes from numerous organizations such as those from the American National Standards Institute, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, International Institute of Ammonia Refrigeration, and National Fire Protection Association. The costs to review these codes would be disproportionate to possible safety benefits and drive resources away from addressing other process safety issues as not all code updates result in enhanced safety for process equipment. This extremely broad mandate will be very difficult to manage as several different standards can be applicable to a single process. Additionally, many of these published codes cover a variety of industries and do not address the unique aspects of a dairy facility’s covered processes. This will require dairy facilities to conduct an in-depth analysis to ensure that changes to standards are adequately addressed and work for their facility and processes.

Further, OSHA does not identify how often employers must monitor the applicable RAGAGEPs and make changes to their processes. Due to this vagueness, OSHA places a duty on employers to constantly monitor the chosen RAGAGEPs, which will be nearly impossible as several standards could apply to certain equipment on a given process. We believe that adopting this provision is premature without a clear definition for RAGAGEP. As discussed below, OSHA must adopt a definition for RAGAGEP before the PSM scope can be expanded to require an evaluation or updated to applicable RAGAGEPs. If OSHA proceeds with this provision prior to adopting a definition, the Agency should provide a standard time when facilities must periodically review their chosen RAGAGEPs such as when a facility revalidates and updates its Process Hazard Analysis (“PHA”).

V. OSHA Should Define RAGAGEP to Clarify the PSM standard.

OSHA is considering clarifying the PSM standard by providing a definition for RAGAGEP. Perry’s and IDFA agree that adding a definition for RAGAGEP will be useful to help facility owners better understand the requirements of the PSM standard. It will additionally help OSHA inspectors understand what RAGAGEPs could apply to process equipment, including internal standards, and not attempt to apply inapplicable standards. However, we have some concerns regarding the practices OSHA considers RAGAGEP.

OSHA has indicated that it plans to adopt a definition of RAGAGEP similar to the one the Agency outlined in its May 11, 2016 Standard of Interpretation entitled “RAGAGEP in Process Safety Management.” This Standard of Interpretation outlines OSHA’s current enforcement policy for the PSM standard’s RAGAGEP requirements and is used by OSHA investigators when conducting inspections at PSM regulated facilities. In the letter, OSHA recognizes that
RAGAGEPs can come from several sources including widely adopted codes, consensus documents, non-consensus documents, and internal standards. While this letter has a broad view of RAGAGEP, we have some concerns with the emphasis that OSHA places on published standards in place of the use of internal standards that may adequately address hazards at a facility.

In order to maintain the performance based characteristics of the PSM standard, OSHA should avoid any definition of RAGAGEP that places emphasis on the adoption and use of published standards as it limits the flexibility built into the existing standard. OSHA should continue to defer to an employer’s choice of RAGAGEP as long as that RAGAGEP is applicable to the specific process equipment and full abates the hazard for that process equipment.

VI. Prior to Proposing, OSHA Should Clarify the Safer Technology Requirement.

OSHA is considering requiring employers to identify and evaluate applicable safer technologies and alternatives when employers identify hazards as part of its PHA that is above an employer-specified level of risk. During this analysis, employers would only be required to consider the hierarchy of controls to determine the appropriate safeguards to address the identified hazard and document when and why safeguards at the top of the hierarchy of controls cannot be implemented.

When conducting a PHA under the current PSM standard, Perry’s and IDFA’s other members consider risk reduction or elimination as part of its PHA process to ensure a safe working environment for their employees. However, based on the information provided by OSHA, we have some concerns with this proposal. First, OSHA does not state how often this review must occur which would result in an employer continually conducting a safer technology analysis on their covered processes resulting in a substantial burden to small businesses. If this consideration is proposed, OSHA should clarify that this must only occur every five years when the PHA is updated and revalidated.

Finally, we are concerned that this portion of the standard will become burdensome and extremely costly for small business employers because of its vagueness. The provision is very ambiguous which allows for varying inspector interpretations as to what control should have been adopted by a given facility. This could result in an inspector second guessing a facility’s decision to adopt a specific hazard abatement method and require the adoption of a technology that is not feasible or economical for a given process and may not reduce the risk presented. If OSHA moves forward with this portion of the proposal, the Agency should make it explicitly clear that it does not require an employer to adopt any specific technology under this requirement or require retrofitting of a process if the hazard can be adequately addressed in another manner.

VII. OSHA Should Not Add the Term “Safety Critical Equipment” to the PSM Standard Without Further Clarification.

OSHA has stated that it intends to expand the scope of Paragraph (j) of the PSM standard to cover the mechanical integrity of any “safety critical equipment.” As provided without a definition or further explanation, the term “safety critical equipment” is vague and ambiguous.
This requirement is subject to a great deal of uncertainty and discrepancy between two different facilities or between an inspector and a specific facility. If OSHA is aware of an existing hazard with a certain piece of equipment the Agency deems safety critical and has supporting data it is safety critical, these should be specified in the proposed rule to avoid these discrepancies.

Many of IDFA members currently maintain mechanical integrity programs for any equipment that they deem critical to the safe operations of the processes. But without a clear definition, Perry’s and IDFA cannot support adding the term “safety critical equipment” to the standard.

VIII. The Contemplated Emergency Response and Coordination Requirements Require Revision.

IDFA and Perry’s have some concerns regarding changes to the PSM emergency response and coordination provisions which may include annual meetings with local responders, emergency drills, and evaluation of local emergency response capabilities. The dairy processing industry has historically coordinated with local emergency planning authorities. However, there are not enough local emergency planning resources in all areas to allow this to become a regulatory requirement.

Depending on the sophistication, resources, and existence of Local Emergency Planning Committees (“LEPCs”) or local emergency responders, IDFA members have had various experiences when attempting to conduct coordination under other regulations. It is not uncommon for a dairy plant to extend an offer for such authorities to coordinate only to have the offer respectfully declined or go unanswered. This generally occurs due to LEPCs and local emergency responders lacking resources, financial or otherwise, and time to respond to every facility’s attempt to coordinate. Additionally, not all communities have LEPCs and the additional burden of coordinating falls on local emergency responders, which in many locations, especially rural ones, consist of volunteer services. These problems will only be compounded if OSHA requires emergency drills or that facilities evaluate local emergency response capabilities.

Further, we have concerns about the potential requirement that facilities evaluate local emergency response capabilities. During the SBAR conference calls, OSHA indicated that facilities would not be required to conduct an audit of local emergency response capabilities. If that is the Agency’s intention, OSHA should make this clear in any proposal and clarify what it means by evaluation.

OSHA is also considering requiring facilities provide local emergency responders with more information about the chemicals present at regulated facilities. IDFA and Perry’s are concerned that requiring facilities to increase disclosure to various public entities could create security risks. While there may be value in additional information being shared with government entities, wide public dissemination could result in decreased safety and security at regulated facilities. In light of these risks, OSHA should be extremely careful requiring the disclosure of information from facilities that could be used in the furtherance of terrorist or criminal acts.

While OSHA has given examples of some additional information facilities may be required to provide local emergency responders, the Superfund Amendments and Reauthorization Act Tier
II reports (“SARA Tier II reports”) already contain much of the information that OSHA wants facilities to provide such as chemical names, quantities held in a process, and location in the facility. In IDFA members’ experience, LEPCs and emergency responders are interested in general knowledge about chemicals present in their communities to assist in planning purposes and not specific facility information.

While some of IDFA’s member facilities have had problems engaging with local emergency responders, others are located in areas with very active LECPs and local emergency responders and have been able to incorporate drills to test their emergency response plans. Based on the information provided, we find that OSHA underestimates the cost for the emergency drills. Specifically, as part of its planning and training, Perry’s conducts an emergency drill approximately once every five years. Perry’s most recently conducted an emergency response drill in October 2015. These drills are a good opportunity for Perry’s to evaluate its emergency response plan and coordinate with its local responders, but it should be noted that these exercises are time and resource intensive for both Perry’s and local emergency responders.

Based on Perry’s experience, planning and running a full emergency drill for a release at an ammonia refrigeration system can cost at least $72,250. In order to conduct its 2015 emergency drill, it took Perry’s employees 171.25 labor hours. Perry’s actively engaged local responders in the planning process and emergency responders expended approximately 147.25 labor hours during planning. Perry’s estimates that labor costs for planning the drill only for their employees were approximately $8,563. The local responders volunteered their time and were not reimbursed for their time, but some LEPCs and local responders charge an hourly fee to offset use of their time and resources. Perry’s estimates that for pre-planning work, if the local responders would have charged their hourly rate including their employees’ costs, it would have cost approximately $16,000 total.

On the day of the emergency drill, approximately 75 people participated from both Perry’s and the local responding agencies. Assuming that each individual is billed at $50 per hour and the drill lasts 7 hours, which includes set up, running the drill, cleaning up following the drill, and debriefing, day-of-drill costs would be at least $56,250. The above cost estimate does not account for Perry’s actual cost to conduct the drill and to hold planning meetings because participants expect to be fed as many of the planning meetings are held after normal work hours. Therefore, at the planning meetings and on the day of the drill Perry’s also paid to feed about 75 people. Based on Perry’s experience, OSHA underestimates the cost to conduct an emergency drill for a small facility with a single PSM regulated process.

To reduce the cost associated with planning annual mock emergency drills that requires full staff participation, we suggest that OSHA either eliminate this provision, limit the drill requirement to a once every five years, or in the alternative require facilities to host a tour for local emergency responders. The tour will allow interested LEPC members and local emergency responders to become familiar with the regulated processes at a facility and understand where regulated chemicals are stored and used at the facility. This tour will also allow local emergency responders to ask questions regarding the information provided by facilities in the SARA Tier II reports and address other concerns the responders may have about chemicals present at the facility and the facility’s safety features such as the presence of a sprinkler system. We would
like to note that tours for food facilities may take more time and resources as these facilities must follow strict food safety and food defense regulations prior to allowing individuals in the food facility.

The emergency response coordination and drill requirement represents an area where OSHA can and should coordinate with EPA as EPA is considering similar requirements under its RMP standard. See Accidental Release Prevention Requirements: Risk Management Plan under the Clean Air Act (“RMP proposed rule”), 48 Fed. Reg. 13638, 13658 (March 14, 2016). Having additional or conflicting requirements on top of what EPA is considering in the RMP proposed rule will significantly increase the cost of this provision of the PSM rule for small businesses.

IX. **OSHA’s Contemplated Management Sign-Off Is Merely an Enforcement Tool.**

OSHA is contemplating amending Paragraph (e)(5) of the PSM standard to require management sign-off on actions taken, or not taken, based upon recommendations of the PHA team to address identified hazards. As required by the standard, all facilities must either eliminate or reduce any risks associated with hazards identified through the PHA process. Generally, this requires the involvement of facility management to review the recommendations made by the PHA team and determine how those hazards will be addressed including any capital investments that need to be made. The management sign-off requirement raises concerns about potential liability for a facility if the chosen abatement for the hazard results in an incident at a facility. While management may not implement all PHA recommendations based upon the feasibility or suitability for a specific process, an operator will not run an unsafe process if a PHA team determines that a change must be made. Instead of actually increasing safety at a facility, this tool will allow OSHA to point to a signature on a document and claim the facility knew of a hazard and did not adequately address it even though the facility manager could have adopted and implemented the recommendations from the PHA team. Instead of increasing facility and process safety, this requirement is merely a tool that allows OSHA to increase its ability to impose fines and increase leverage over facilities in enforcement actions.

X. **Root Cause Analysis Is a Useful Part of Incident Investigations, But Requires Some Explanation.**

OSHA is contemplating amending Paragraph (m) of the PSM standard to require root cause analysis as part of incident investigations. When conducting an incident investigation, Perry’s and most of IDFA’s members already conduct a root cause analysis. This is done because facilities deem it necessary to determine the fundamental, underlying reason the release occurred in order to avoid a repeat accident from the same or similar cause.

While we are supportive of the use of root cause analysis as it is standard industry practice, we question the necessity of OSHA including it in the standard. We suggest that if OSHA decides to propose an amendment to the PSM standard, the Agency should provide evidence and data that shows current incident investigation practices used by facilities are inadequate to determine the underlying cause of the accident. This is important as conducting a root cause analysis increases the time needed to conduct an incident investigation which results in increased costs to small businesses.
Additionally, for clarity, OSHA should make it clear that the Agency is not mandating a facility use a specific root cause methodology when conducting its investigations. This is important to allow the PSM regulation to maintain its status as a performance standard and allow facility owners the flexibility to choose which methodology is most appropriate for a specific incident.

XI. OSHA Should Reconsider Requiring Third Party Audits.

IDFA and Perry’s have some concerns regarding the potential revisions to Paragraph (o) of the PSM standard to required third party audits every three years. We understand the value audits provide to facility operators and federal agencies, but we are concerned that the proposal will fail to provide safety benefits. OSHA’s proposal seems to be based on the premise that third party auditors are more capable, credible, and objective than a facility’s own audit conducted under the current PSM regulations.3

We do not agree with this contention. In Perry’s and IDFA members’ experiences, a facility’s employees are the real experts on the processes, equipment, and hazards present at the facility. Employees are essential to any auditing process as they have familiarity with the covered processes and the greatest interest in identifying safety issues. Given the unique aspects of ammonia refrigeration systems, inspections conducted solely by an auditor without familiarity of the system could result in mistakes and errors that could have been avoided through the use of either an audit conducted by both a third party auditor and employees, or self-audits by an auditor with a deep understanding of the facility, the process, and its operation.

In the provided materials, OSHA did not provide a proposed definition for a third party auditor or who would qualify as a third party auditor for the purpose of this requirement. Generally, when selecting an auditor, whether in-house or third party, small businesses seek an auditor that is knowledgeable in the requirements of PSM, has experience with the facility type and process and the applicable RAGAGEPs to that process, and is trained or certified in proper auditing techniques. When crafting the definition for a third party auditor, we suggest that OSHA avoid any proscriptive training, certification, or independence requirements, such as requiring a professional engineer or an auditor with no past relationships with the facility. Those requirements would unduly restrict the universe of potentially qualified auditors, especially when there are already a limited number of qualified auditors for ammonia refrigeration systems, which results in increased costs to small businesses with little safety benefit.

This possible revision of the PSM standard is an area where OSHA should collaborate with EPA to ensure that the requirements of PSM and RMP do not contradict one another and do not impose duplicative auditing requirements resulting in significant costs to small businesses. In EPA’s recently published RMP proposed rule, the agency also proposed a third party audit

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3 OSHA appears to concede this point in its background materials on the possible changes to the PSM standard that third party audits might not even improve a facility’s workplace safety, stating that “[a]udits done by independent third parties may be more effective.” OSHA, Process Safety Management Issue PowerPoint Slide # 15 (emphasis added). Merely, stating that third party audits may be more effective than the self-audits currently allowed under the standard does not present substantial evidence required by the Occupational Safety and Health Act. See Section I above for more information.
requirement with extremely restrictive auditor qualifications. There, EPA proposed that certain regulated facilities conduct independent third-party compliance audits in two situations (1) when there has been an accidental release meeting the five-year accident history criteria or (2) when an implementing agency determines an audit is needed based on non-compliance, including when a previous third-party audit fails to meet the competency, independence, or impartiality criteria proposed. If both agencies proceed with their respective changes, regulated small businesses will face substantially higher costs to conduct multiple third party audits upon the same system for different, but commentary standards.

Perry’s and some of IDFA’s other small business members use third party auditors for several reasons which include lacking the in-house resources to conduct a full audit and desiring a fresh set of impartial eyes to review the regulated processes and programs. Perry’s has chosen to conduct its audits and revalidation for its PHA with the assistance of third party consultants. Generally, the audit team consists of three consultants and four Perry’s employees. Perry’s consultant and lead facilitator has ten years of experience in the environmental field and is a member of the American Society of Safety Engineers and the Refrigerating Engineers and Technicians Association (“RETA”). Most notably, Perry’s PSM and RMP consultant is the former Assistant Area Director of the OSHA Buffalo Area Office who oversaw implementation and enforcement of the PSM program. He also has 40 years of experience with OSHA and holds OSHA certifications for PSM and Industrial Hygiene. Perry’s also hires a mechanical contractor for the audits who holds a degree in mechanical engineering. The mechanical contractor also provides a certified service technician with knowledge of Perry’s ammonia refrigeration system. Perry’s own employees have 60 years of combined experience in PSM and RMP or ammonia refrigeration systems, three hold RETA certifications for ammonia refrigeration operation, and three are hazmat technicians. In Perry’s experience, being able to combine third party auditors and its own employees on the audit team provides a robust auditing and PHA revalidation process for the facility.

Further, we believe that OSHA has underestimated the cost of conducting a third party audit for the food and beverage sector. On average, these audits cost Perry’s and IDFA’s small business members approximately $7,000 per inspection when using a third party auditor already familiar with their ammonia refrigeration system.

Overall, IDFA and Perry’s understand the value of third party audits, but question their necessity as a part of the PSM standard, especially as they represent a substantial cost to small businesses. At a minimum, if OSHA proceeds with this portion of the proposal, the Agency should either allow third party auditors to lead the audit team or only require third party audits following a specific triggering event, such as an RMP reportable event, to avoid duplication of third party audits by other standards and the burden of the requirement on small businesses.
Perry’s and IDFA appreciate the opportunity to assist OSHA in evaluating the impact of this regulation on small businesses. We feel that if OSHA continues to keep PSM a performance based standard, allow for greater flexibility within the rule, and recognizes the unique aspects of dairy processing facilities, the regulation would still protect the employees from workplace hazards associated with the use of regulated chemicals. Please do not hesitate to contact us if we may be of further assistance.

Respectfully submitted,

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cc: Cortney Higgins, Office of Information and Regulatory Affairs, Office of Management and Budget
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