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The Role of Democracy in Public Policy Making by Private Groups: A Case Study of the American Petroleum Institute (API)

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Executive Summary

The American Petroleum Institute (API) is a private oil and gas industry trade group that makes public policy in the form of voluntary compliance standards, many of which are ultimately written into federal law. These standards have an impact on everything from the safety of working conditions for laborers and the impacts of exploration and drilling on the natural environment, to the efficiency with which fuel can be supplied to the American and global economies and the end-user cost of oil and gas. This paper explores API's history, its multiple functions within the industry, and its connections to government. It focuses on policy-making processes and the level of democratic procedure employed in creating standards. A comparison is made between API and the Australian Gas Association to differentiate between the role of private groups in public policymaking in the United States, where such groups are more prevalent, and the international arena. API's connections to other standard-making bodies and international associations are discussed in order to determine who API's stakeholders are, whom the organization is ultimately accountable to, and from where it derives legitimacy in its ability to develop policies that its members, as well as the greater international oil and gas industry, voluntarily abide by. The study also attempts to support a hypothesis on the impact of government involvement in standard-setting on the number of viewpoints involved in API's policymaking process.

The American Petroleum Institute (API) is the primary trade association, as well as the foremost technical and public policy organization, for the oil and gas industry in the United States. The organization is headquartered in Washington, D.C. and has offices in 33 state capitals. API represents roughly 400 corporations, including ExxonMobil, Chevron, BP, ConocoPhillips, and Halliburton Company. While API engages in lobbying activities to advance

its interests in Washington, it also produces research and, perhaps most importantly, generates industry policy. Some of its policies are strictly self-governing, but others are adopted by the government and have very public effects on everything from environmental standards to worker safety and, ultimately, the cost of producing (and the price of consuming) oil and gas. The membership base is made up entirely of industry operators. API is funded through a system of tiered membership dues and also earns income from the sale of its publications. API's stakeholders, aside from its members, are the government (including agencies and committees, as well as contractors like NASA and NOA), non-member industry suppliers and service companies, NGOs, and interest groups in areas such as the environment and agriculture, chemical associations, and industrial energy users.

API was initially formed to fill a regulatory void. After World War I, then Secretary of Commerce Herbert Hoover convened a group of industry insiders to address the issue of how to better supply fuel to the economy. The war had resulted in shortages, and equipment couldn't be moved from site to site as needed to expedite the production process, because the parts used in drilling operations in one location often did not match those used in another. There was no such thing as "standard industry equipment" in place at the time, so it fell to API to find a way to make machinery interchangeable in order to streamline the industry's services. The industry needed to know that wherever it operated, equipment would be available that was up to standard and functioned in tandem with existing machinery.[1]

Today, API's primary role at the state and federal levels is industry advocacy, or lobbying. It also develops certification programs and continues to write consensus policies and standards. Most of the 550 standards API maintains are voluntary, with companies compelled to comply to maintain a good standing within the industry, reduce liability, and avoid government

scrutiny. Of course, API also touts the tangible benefits of standardization, which include reduced operating costs, increased efficiency from equipment interchangeability, improved environmental performance and safety, increased reliability, and improved product quality. Another benefit is that the cost savings from standardization can be passed on to consumers, ideally resulting in the development of greater public trust.

For manufacturers, a failure to comply with API standards leads to the natural consequence of reduced demand for products, as operators will seek to buy API-certified equipment. When it comes to the API policies that are adopted as laws by the government, the consequences of noncompliance become more formal, with fines being a common penalty. Perhaps the greatest reason for compliance, however, is not that there are consequences for going it alone, but the idea that API's member companies can work together to set their own standards, and that their collaboration will result in the development of more favorable regulations than would otherwise be imposed by government committees. For this reason, API advocates deregulation in areas such as the environmental standards impacting the industry in favor of creating a voluntary emissions code and self-generated standards.

API's members feel that the government is not an effective regulator, and they are often frustrated by government regulations, such as the prevention of industry access to domestic energy resources or mandatory carbon dioxide emissions reductions. The industry often fears the economic impacts of government regulations and the impractical operating procedures that would result from outsiders making policies that failed to reflect real world conditions. Standardization thus saves the industry the time and money that would otherwise be spent trying to interpret vague government regulations, and it saves the government the time and money it would take to develop regulatory schemes for the industry.[2]

The Standardization Process

API's procedure for developing standards and methods of certification varies, but the ultimate authority is the Executive Committee on Standardization (ECS), which is made up of officers and members. ECS creates subcommittees to develop standards. Subcommittees then form task groups and work groups as needed to investigate items under consideration and draft standards, which are then submitted to the greater subcommittee for a vote. Only members can serve on subcommittees, but task groups and work groups can include outsiders with specialized knowledge. API has no public members, but anyone can petition to sit on a task or work group provided they have a material interest in the outcome of a decision-making process, and anyone can suggest that a standard be developed or revised. Ultimate authority for writing a standard into law rests with ECS once a standard has been approved by a subcommittee.

API's members choose which committees to serve on based on their interests, and send teams of experts to help craft the standards that will eventually be submitted to a vote. API's written procedures for standards development lays out the requirements for due process: "Participation in API standards activities is open to all parties (persons and organizations) that have a direct and material interest in the subject of a standard. Consideration shall be given to the written views and objections of all participants and the right to appeal shall be made available to adversely affected parties."[3] It is unclear how the organization defines a "direct and material interest," or what the "consideration" of views entails. The main point is that technically anyone can submit an idea for a standard to an API Standard Associate for consideration at the next meeting of the appropriate subcommittee, and API claims to seek broad input into its activities. In attempting to define the types of parties that might have an interest, the organization states that, at minimum, it will give consideration to operator-users, manufacturers, and those with a

general interest. In some cases, other interest categories, such as government, academia, and consultant/practitioner, may be established to make sure there are adequate levels of representation.[4] However, there are limits on the number of people that can be involved without jeopardizing the efficiency of the process. Voting remains open only to members, and API restricts participation in the development of certain "industry-operating standards" that are deemed not to be of concern to any party outside the organization's membership base.[5]

When a proposal for a standard is accepted, it is assigned to a task group within a subcommittee, which then forms work groups of interested industry experts to revise or develop new content for the standard. Once a consensus has been reached within the work group, it must be approved by the task group before coming to a vote in the subcommittee. The task group can send standards that it does not approve back to the work group for further development. Once the standard comes before the subcommittee, members vote yes or no and are free to include comments in support of their position. "Any comments received must be resolved to the satisfaction of the commenter, and in some cases the resolutions require the item to be balloted again."[6] Once a standard is approved by a majority of eligible voters and at least 2/3 of actual voters, excluding abstentions, it is either published as a new or revised API standard.

API annually submits a list of its planned standards activities for publication in the *Federal Register* and makes provision for notifying "known interested parties" of its meetings, intent to develop or make changes to standards, available drafts of standards, comment resolutions, and letter ballot approval procedures for standards through use of appropriate media or notices.[7] It writes standards with the expectation that the government may choose to adopt any of them into law, though in reality certain standards have a greater likelihood of being referenced than others.

An example of outside cooperation in the standard-making process is the engine oil licensing and certification system (EOLCS), which is an ongoing API program. The requirements for marketers to be able to use API Engine Oil Quality Marks on their products were supported by the International Lubricant Standardization and Approval Committee (an independent organization composed of automotive industry representatives Ford, GM, DaimlerChrysler, and the Japan Automobile Manufacturers Association), and the Engine Manufacturers Association. In addition, technical societies, such as the Society of Automotive Engineers and the American Society for Testing and Materials, as well as industry associations like the American Chemistry Council, weighed in on establishing oil performance requirements and testing methods.[8] A 2005 draft of its "Organization and Procedures for Standardization of Oilfield Equipment and Materials" makes it clear that "it is the policy of the API to cooperate with international standardization bodies such as International Standard for Organization (ISO), the Energy Institute (EI) and the International Lubricant Standardization and Approval Committee (ILSAC). This requires adequate representation by users, manufacturers, and API staff, and close coordination of related API, ISO and other standards developing organizations efforts."[9]

API's Role in a Democracy

API is not a "democratic" institution in the true sense of the word, because it does not have traditional public representation. In order to be involved in writing or voting on standards, API requires a certain expertise that the general public does not have. However, API's processes are for the most part open to scrutiny by anyone who wishes to inquire. Detailed notes of subcommittee meetings are not kept, but brochures about the organization and directions on how

to participate are available online, and all standards are eventually published and offered for sale on API's website.

There are several factors that limit public access to information from API. One of these is the cost of obtaining copies of standards or other relevant publications. API's information group, API EnCompass, has held the responsibility for abstracting and indexing API services and making them available in print and online versions to anyone who wishes to inquire. Over the years, they have offered broad coverage of the available technical and patent literature on the petroleum industry and controlled the databases through which information on published standards can be purchased. When API first began to sell information, it took a cautious approach, as previously this literature had been viewed as a benefit of membership in the organization and not as a way to generate additional revenue. So initially, access was offered on a subscription basis, with non-subscribers limited to two hours of database usage per year and subscribers offered unlimited access and nearly 50% discounts off the purchase price of available literature. The subscription fees were high enough to eliminate casual inquiries by the general public, so only those with a direct connection to the industry were likely to pay.[10] While API has softened its stance on the availability of information since EnCompass' first foray into selling information on the web, there still remains a distinction between the prices paid by subscribers and those paid by members of the general public, who are charged upwards of $75 per standard. Thus, while technically anyone is free to comment on the organization's standards, as with many private groups, API does not work to inform the public of this option, and even those who know about it are unlikely to pay the purchase price of a published standard. This method of operation has not been challenged, because average citizens are usually unaware that API exists, let alone that it is making policies for the oil and gas industry that might affect the quality of the

environment or petroleum prices in their neighborhoods. Unless someone is an industry insider or has a vested interest in API's operations, they are not aware that they could or should weigh in on the standard-making process during comment resolution periods, or that they could track standards on API's committee websites as they go through a series of revisions.

API also cannot be said to be an entirely unbiased organization. Its members have a vested interest in encouraging greater exploration and production of oil and natural gas, even if it means opening up controversial lands such as the Arctic National Wildlife Refuge. API defends the soaring profits of oil companies in the face of nation-wide concern over the rising price of gas, and lobbies the government to stay out of the regulation business to the greatest extent possible. For example, in 1996, API called proposed oil and gas taxes "the greatest long term threat to our industry" at its annual meeting and attempted to convince the government not to implement this policy tool.[11] At the time, the U.S. had agreed to targets for reducing greenhouse gasses in accordance with the UN Framework Convention on Climate Change, which API felt would be tantamount to forcing deep cuts in the use of energy that would have dire economic consequences. API's chairman, Lee Raymond, made the statement that "scientific evidence remains inconclusive as to whether human activities affect global climate...[and] it's a long and dangerous leap to conclude that we should therefore cut fossil fuel use."[12] Looking back, it appears doubtful that API truly had the best interest of the nation and the future of the environment in mind when it made fighting global climate change regulations the number one item on its agenda. However, API's lobbying activities have always remained quite separate from its standards-making procedures, which are the more democratic and subsequently less overtly biased of API's activities. Even so, though some of its standards-making committees encourage participation by outsiders such as academics, who would seem to be fairly neutral

parties, these outsiders are often working on research funded by organizations that have a vested interest in the outcome. So it seems fair to at least call into question the motives behind the writing of certain standards and whether or not all sides of an issue are given a fair hearing during the committee process.

Whether or not all of API's interests are in the best interest of average Americans depends on your point of view, but API makes the claim that the standards-making process is rarely ever accused of being biased, because it lies largely outside the lobbying world and is subject to international standards and regulations. API spokesperson Tim Sampson explains that there is no bias when it comes to the technical research involved. He says that the organization does not take a "knee-jerk" reaction to its research findings but relies only on sound science and looks at all discoveries with a critical eye. However, just like arguments over religion, there will always be differences of opinion when it comes to certain principles, which may explain some of the more prevalent criticisms of API.[13]

Whether or not its research or standard-making processes are biased, API does appear to exhibit bias when weighing the interests of its own membership base in determining its agenda. Members dealing with "downstream" issues, which involve refining and the use of petroleum products, generally find more support within API than members dealing with "upstream" issues, such as exploration and extraction of petroleum. In cases where a regulation may be good for downstream companies and unwelcome for upstream companies, API will support its downstream members, in part because they comprise the organization's largest financial sponsors. An example of this preference is the 2005 Energy Policy Act, which took six years to pass in Congress. Upstream members loved this bill and had worked hard to make sure it addressed their concerns. Downstream members, on the other hand, wanted to see the bill

scrapped. API's press statements on the bill were universally negative and focused on the concerns of the downstream members, while ignoring the valuable progress that had been made on the upstream side. On this occasion, upstream companies came very close to breaking ranks with API.[14] One downstream company in particular, ExxonMobil, usually appears to be given priority over all other members, which may be due to the fact that it is API's largest sponsor.[15]

Aside from occasionally ignoring the concerns of a segment of its own membership base, API is also not directly accountable to the American people. On the continuum of public accountability, API falls under the category of a private organization with no oversight, and though the government can make suggestions to API, the organization has no duty to accept them. This could change quickly if API consistently refused to cooperate with the government, in which case the industry would likely face greater regulation by government agencies. For now though, its commitment to working in tandem with regulators has greatly reduced the threat of formal oversight. While those affiliated with the organization say API cares deeply about being a good corporate citizen and tries to put people and safety first in everything it does, the bottom line is that it succeeds or fails based on the satisfaction of its members. One former API lobbyist said that, at the end of the day, he ultimately felt he was accountable to himself in that he needed to feel he was doing the right thing. But he was also accountable to his boss and to the clients he worked for in the upstream (exploration and production) sector of the industry.

An Issue of Legitimacy

API receives its legitimacy from the fact that it was originally formed with government consent in order to fill a regulatory void, and to this day, the government adopts many of its standards. For instance, the Department of the Interior's Minerals Management Committee references over 80 API standards in its laws.[16] The government often proposes API standards as

well, with its greatest interest in standards affecting safety, equipment (for pollution prevention), and measurement (to better keep track of its assets and expected royalties from the amount of production taking place). Yet API is not entirely beholden to the government's wishes. Roughly 50% of the time a new or revised standard is proposed by an agency or government committee, API disagrees with the need for change and attempts to convince the government to stick with the status quo.[17]

There are also laws that lend legitimacy to organizations like API. Put in place during the Carter administration, presidential directives found in OMB Circular A-119, governing the rule-making process, require government agencies to use industry standards where they exist rather than write their own. [18]Also, the National Technology Transfer and Advancement Act "encourages use of industry consensus standards by government regulators, giving API standards committees a more direct role in this vital part of standardization."[19] Yet it could also be argued that API has earned its legitimacy over the years through a proven track record of its members' commitment to work together, operate with integrity, and serve the industry, the government, and (in a wider sense) the greater public. API's employees are given ethical guidelines in the form of policy statements that they must sign each year, and in the opinion of one of its former lobbyists, API has a very capable, solid staff whose conduct and standards-writing procedures stand up to scrutiny.[20] Members' compliance with standards lends an air of legitimacy, as does the fact that many of the major oil companies who make up API's backbone and provide most of its funding often go above and beyond published standards to maintain their service commitments to their respective communities.[21]

Of course, ultimately API's legitimacy is in the eye of the beholder. Certainly, it is seen as a legitimate lobbying group for the oil & gas industry, but not everyone trusts its policy-

making process or the motives of its members and staff. In his documentary, "An Inconvenient Truth," Al Gore notes that an API advocate named Philip Cooney, who was hired by the Bush administration to be the Chief of Staff on the President's Council on Environmental Quality, was eventually forced to resign after some unfavorable edits he had made to statements on global warming became public. This particular gentleman was a lawyer by training and had no scientific expertise, yet he had crossed out most of the damaging evidence cited by reputable scientists to prove the existence of this phenomenon. Once he left the administration, he immediately went to work for an API member company, ExxonMobil. While this is just one example and may not be representative of API and its lobbyists, it illustrates why certain members of the government question the oil & gas industry's ethics and commitment to sound science.

API has been accredited by the American National Standards Institute (ANSI), a private not-for-profit organization that "coordinates the development and use of voluntary consensus standards in the United States and represents the needs and views of U.S. stakeholders in standardization forums around the globe."[22] API must meet ANSI's criteria for consensus, balance, and due process, which were developed by the coalition of government agencies, companies, organizations, academic and international bodies, and individuals that make up ANSI's membership. In part because ANSI is the U.S. representative to the International Organization for Standardization, API's standards are recognized overseas. In fact, API is seen as the leader in standard-making amongst the international oil and gas community. In 2004, API became the Principal United Nations Standard Products and Services Code Representative of the Oil and Natural Gas Industry, which gave it the authority to develop voluntary global classification standards for the UN Development Program.[23]

API's Role in a Global Marketplace

API has no true counterpart in the international arena, though its members engage in global exploration and energy production. For such a large industry, having more than one main source of standards would be inefficient and confusing. The standards created by API are thus largely accepted worldwide. API runs the secretariat for a group called the International Standards Organization (ISO), whose members represent a variety of countries. The ISO's standard-writing committee adopts many of API's standards, rather than asking each country to develop its own.[24] An example of another country using API's blueprint is China. The China Petroleum Technology and Development Corporation (CPTDC) has recently announced its cooperation with API in the production of promotional and educational materials for Chinese groups interested in adopting API's standards and certification programs. An understanding of API's framework is important for CPTDC, because they are a foreign trade company that manufactures petroleum and petrochemical equipment and technology. In order to effectively engage in export and operate transnationally, they need to follow API standards to ensure the safety of their products and reduce negative environmental impacts. Similarly, API works with an international organization, the International Lubricant Standardization and Approval Committee (whose members consist of foreign and domestic automakers), to develop and enforce quality and performance requirements for engine oil.[25]

There are organizations overseas that have accrediting programs similar to API's but which don't engage as heavily in the policy-making arena. One example is the Australian Gas Association, which forms part of the Australian regulatory scheme for natural gas. The AGA is a non-profit body involved in making standards jointly with Standards Australia (the main non-government standards developing body in Australia, which represents 72 members who develop

standards for their respective industries), and they work with Australian regulators to develop certification programs for gas appliances and components that will be used within the country to ensure that they are meeting regulatory standards. Like API, the AGA is also a private membership-based organization, with industry members represented in the development of its business practices and certification programs.[26] The main difference between the Australian system and the American system is that in Australia, AGA works to certify that equipment meets safety standards developed by government regulatory bodies, whereas in the U.S., API certifies that equipment meets its own independently-developed standards, many of which are later referenced by the government in its code of laws. Both organizations work with their respective government regulators on a daily basis, but while the government is AGA's biggest stakeholder, it is not API's. API is ultimately accountable to its membership base above all others, though its current and former employees attest that it also tries to be a good corporate citizen that works to address the concerns of the general public.[27]

The AGA's involvement with regulators is institutionalized in the form of its membership in the Gas Technical Regulators Committee (GTRC), whose mission is "to provide benefits to Australian and New Zealand Governments, industry and the public by striving for a consistent regulatory environment for gas activities, for the purpose of achieving acceptable performance levels of gas safety, supply quality for transmission, distribution and retailing and end use application."[28] The committee works to ensure that AGA is applying its certification schemes consistently throughout Australia and New Zealand, and works to improve the certification process and solve problems with products and the use of new technology. It also advocates for its policies to the general public, as well as industry and government. In addition to AGA, GTRC also works with other relevant private organizations, such as the Australian Liquid

Petroleum Gas Association, the Gas Association of New Zealand, and the Gas Appliance Manufacturers Association of Australia. In contrast, API is not involved with a larger umbrella organization affiliated with the government. Instead, its involvement with regulators is usually facilitated through government agencies or congressional committees.

Hypothesis

API anticipates the potential incorporation of its standards into federal regulations, and roughly one quarter of API's policies are eventually adopted by the government, making compliance mandatory. Some of the standards written into law are also initially proposed by the government, while others are proposed and developed entirely by API with the government deciding after the fact to update their laws, perhaps because of lobbying efforts or because the government is required to use existing standards in lieu of writing their own. In examining the fluctuation in the democratic process of writing and revising standards, (with the level of "democracy" being determined by the number and variety of participants involved) and then voting them into recommended practice, a hypothesis can be made. This study will concentrate on attempting to confirm that government-proposed standards or standard revisions involve a more democratic decision-making process on API's part than those that are proposed by non-government actors. The null hypothesis is that government-proposed standards do not involve a more democratic decision-making process.

There may of course be factors besides government involvement that determine how democratic a process is. These might include whether a standard is new or merely a revision of an existing policy, or whether a standard is more suited to being a "best practice" than a government mandate. Tim Sampson of API claims the process for creating or revising standards does not change whether that standard was proposed by the government or by an API member,

though the level of participation may change based on member interest in the proposal at hand. Member interest is driven in part by the significance of the issue in terms of how controversial it is, how difficult or burdensome a change may be, and the expected aftereffects on the industry. There may also be a correlation between the significance of a standard when it comes to the effects on worker safety or the environment and its chance of being either initially suggested by, or eventually referenced by, the government. This means that the level of democracy present may bear a greater relation to the importance of the standard being considered than whether or not the standard is simply likely to be referenced by law. It is beyond the scope of this study to account for the "significance" of each standard in order to truly discern whether or not government involvement plays a role in the level of democracy present or if perhaps the "arrow goes the other way" and the level of democracy (due to the type of standard proposed) is what plays a role in the government's participation. This task is perhaps best left for future research.

One of the best ways to measure the level of democracy inherent in the standards-making procedure for a number of different standards would be to look at the number of organizations represented in the subcommittee rule-making process, as well as the comment period following the formulation or revision of a policy; yet this is not information that API will readily divulge. It does not even make its committee membership lists or specific rule-making rosters available to its own members, which is perhaps its least democratic feature. This makes it more difficult to gauge whether there is bias inherent in the standards-making procedures, or what the motives might be behind efforts to revise or create policies.

Though it is not possible to physically count the number of organizations involved in setting each individual API standard, there are other ways to glean insight into the process and the differences between the standards proposed by government and those proposed by API's

membership base. For this study, instances of increases or decreases in the democratic process relevant to the proposal of standards by the government have been interpreted through data from interviews with industry insiders and API staff, as well as accounts of the standard-adoption process found in news articles, journals, or in electronic format on API's website and various government websites (such as that of the Department of the Interior). Working from the knowledge that most standards are made without input from non-members, any evidence of outsider participation can be considered an instance of an increase in democracy. In a 2004 paper on recent and upcoming changes to standards, John Lieb of Tank Industry Consultants confirms that task groups are usually made up of subcommittee members (which consist of API members), suggesting that outside involvement is the exception, rather than the rule.[29]

Methodology

As an example of this general lack of outside participation, it is helpful to look at the number of organizations involved in a typical comment period for a standard up for review. All of API's standards are subject to review at least once every five years, and a new draft of the 21st edition of API S1, on the Organization and Procedures for Standardization of Oilfield Equipment and Materials was circulated in December 2005. Remarks from the open comment period were available to API staff in late June 2006, and a copy was obtained from Mr. Tim Sampson, a spokesman for API. Eighteen comments were made by a total of five people representing only three member companies, ExxonMobil, BP, and Frank's Casing Crew & Rental Tools. For an organization of over 400 members, this appears to be a poor turnout. However, it should be noted that the policy is one that was already in existence and any changes made from prior editions may have been insubstantial, thus not warranting a lot of discussion. This standard was

created solely to govern API's standards-setting process and was not referenced by government.[30]

An instance where government intervention occurred was in the aftermath of the 2005 hurricane season when API was approached about taking action to prevent oil rigs from moving in the water and dragging across and damaging pipelines. API agreed this was a big problem with the potential to not only lead to supply shortages, but also damage the environment; so industry representatives met with Secretary of the Interior Gail Norton and ended up creating three new regulations. The involvement of Secretary Norton was an anomaly in the creation of standards proposed by API, and this outreach certainly represented an increase in the level of democratic participation present. Aside from Norton's involvement, the "Gulf of Mexico Jackup Operations for Hurricane Season-Interim Recommendations" (API Recommended Practice 95 J, First Edition) released in June 2006 was "developed with guidance from and in cooperation with the International Association of Drilling Contractors' (IADC) Jackup Rig Committee and the Offshore Operators Committee's (OOC) Drilling Technical Subcommittee. Additionally, the Minerals Management Service (MMS) and the U.S. Coast Guard (USCG) provided general guidance and assistance..."[31] Part of the reason for the vast outreach involved in developing this standard may have been urgency, since the 2006 hurricane season was fast approaching. An indicator that this may play a role is the fact that API made this standard available on its website, free of charge, when the vast majority of its standards cost upwards of $75 for non-subscribers. Without further data, it is impossible to pinpoint whether government proposal, urgency, a combination of the two factors, or some unknown factor led to increased participation in this instance. However, it is interesting to note that another standard regarding hurricanes that was published free of charge on API's website does not reference any collaboration with outside

groups in the process of its development. The first edition of "Interim Guidance for Gulf of Mexico MODU Mooring Practice-2006 Hurricane Season" (API Recommended Practice 95F) was released in May 2006, with sole credit for its construction going to API's Upstream Executive Committee on Drilling and Production Operations.[32] This indicates that government proposal of hurricane-related standards may have led to the increase in democratic procedure in some instances, but not others. This would support the null hypothesis that government proposal of standards does not increase the level of democracy in standard-making.

In comparison, another instance of a standard being proposed by the government is illustrated in a brochure developed by API on the benefits of standardization. The brochure cites the development of the Safety and Environmental Management Program (SEMP) by the Minerals Management Service as an example of an instance when an API standard was adopted by the government in lieu of creating new regulations for offshore operations. API gathered offshore operators to write Recommended Practice 75, *Safety and Environmental Management Programs* and convinced the government that its members would voluntarily comply. The SEMP standard developed by API went on to win the 1994 Safety in Seas award.[33] This was a case in which a program was proposed by the public sector, and a private group took control and worked with Minerals Management and independent operating parties to devise a mutually acceptable industry response to government concerns. There is no indication that an overriding sense of urgency was involved, indicating that government involvement may have had a role in increasing the number of participants (minerals management staff) involved in developing this standard.

Another example concerns emissions requirements proposed by Louisiana and California regulators in relation to slotted guide poles in aboveground storage tanks. In order to avoid over

$97 million in compliance costs for the industry, API's brought a committee together along with the industry and regulators to update their standards to deal with the issue.[34]The involvement of multiple regulatory bodies in addressing both offshore operating procedures and emissions represented a more cooperative policymaking procedure than is found in API's normal standards-making process, which are more likely to involve federal than state authorities due to the national and international nature of the standards being created. By adding federal departments in the one case and state governments in the other, the process became more democratic, because it took more viewpoints into consideration and ensured that citizens had a representative voice working on their behalf.

A recent instance of government involvement in developing API standards was released to the public on June 30, 2006 by the U.S. Chemical Safety and Hazard Investigation Board (CSB). In March 2005, an explosion at a BP Products, North America Inc. refinery in Texas City killed 15 workers and injured 170 around 44 different trailers located in the vicinity, resulting in a fine of $21.36 million paid to OSHA. The trailers where the fatalities occurred were located 121 to 136 feet from the isomerization unit that exploded, while injuries occurred in trailers up to 479 feet away. In October 2005, CSB noted that API 752, a standard laying out facility site requirements, provided no minimum safe distance for the location of trailers near refineries or chemical facilities, preferring to let member companies develop their own risk criteria. CSB made two urgent recommendations to API to develop standards on minimum safe distances from these units to ensure worker safety in the event of future fires or explosions.[35] In November, API formed a task force to work on the issue. The group has since met several times and has received the cooperation of CSB, which continues to share its findings to expedite the process. Similarly, the National Petrochemical and Refiners Association (NPRA) has been

involved in developing a new regulation at CSB's behest, further increasing the number of participants involved. CSB hopes a new standard will be ready within the year.[36]

These few examples of government intervention in proposing the development of standards for API seem to show that the government does not back away from the creation of a rule once it has suggested that a change needs to be made. Rather, API engages in active cooperation with regulators and government agency experts, as well as its members and industry representatives, to fashion a standard that will be acceptable to all parties. Though not enough samples have been collected to prove that government involvement usually leads to a more democratic procedure, and no definitive count of the number of outsiders involved has been made in cases where the government has or has not been involved, the data collected appear to support the hypothesis that there is a positive correlation between government propositions and increased democratic procedure in the sense that more regulators are likely to get involved. However, this is not to say that there are not other factors at work in determining the number of outside participants involved in standard-making, or that government-proposed standards are always the most democratically-developed rules API makes.

An example of an instance where the government was not involved in proposing a standard, but the standard was still devised in a highly democratic matter occurred in December, 2003, when API announced its cooperation with the International Petroleum Industry Environmental Conservation Association and the International Association of Oil and Gas Producers in the development of global guidelines for companies' estimation and reporting of greenhouse gas emissions. While API held the primary responsibility for developing the common language to measure emissions, the announcement was made at the United Nations Framework Convention on Climate Change.[37] This standard was more democratic in its

development than other API standards in that it involved collaboration with two major external associations. While certainly these other groups have many corporate members in common with API, collaboration would increase the number of experts involved as well as the number of foreign participants. Most of API's standards are globally accepted, but individual countries may also use their own standards within their borders. Since the emissions reporting methodology standard was written specifically to create a common language to be applied worldwide, it had to be approved even by companies that may not have any business in the U.S., thus increasing the cooperation and consensus needed for it to pass a vote. This particular case would not on its own disconfirm the hypotheses that government involvement in the creation of standards increases the democratic process, but it does show that there may be other factors at work in determining the level of democracy present. In this case, those factors included the interest of a body like the U.N. (which certainly has features of global governance if not being a "government" in the strictest sense of the word) as well as international associations. In other words, API does not just collaborate with more decision-makers in cases where it is aware of government interest. Yet perhaps, if the government had played a role in developing this standard, even more collaborators would have gotten involved.

With the evidence collected through interviews and examining relevant literature, it is not possible to confirm the hypothesis that government proposal of standards leads to an increase in democracy. One example has been found of an instance where a government proposal did not increase participation, but this does not mean that the hypothesis couldn't still hold true in the vast majority of cases. To be reasonably confident in the validity of this hypothesis, a study should be conducted on the entire body of API standards to see which organizations are usually represented on standard-making committees, which outsiders are consulted in the development

of various types of standards, who takes advantage of the comment periods once standards are drafted, how the number of people involved at each of these stages varies based on the significance of the standard under consideration, who proposes the new standard or standard-revision, and whether or not the standard ends up being referenced by law. With access to this information, it would be possible for future researchers to control for the "significant" standards proposed by government to determine whether or not government involvement with a standard has any impact on the level of democracy inherent in the adoption process. For instance, if the government proposes a relatively insignificant standard and the number of participants in the process increases in comparison to similarly insignificant non-government proposed standards, the likelihood of the government's involvement having an impact on the democratic process increases.

API vs. The State: Who Should Regulate Oil & Gas?

In 2003, the Department of Commerce "estimated that standards-related issues impacted 80% of world commodity trade. Given that the world trade in petroleum was about 44 million barrels per day in 2003, the impact of standards for [the oil & gas industry] is crystal clear." A 2000 study done by the German National Standards body found a direct economic benefit of 1% of GDP from standardization. The oil & gas industry's estimated capital expenditure is between $150-200 billion annually, which translates into an annual savings of $200-500 million from standardization.[38] Given these figures, it makes sense that the industry should be standardized. The question is, who should be in charge of making these types of industry policies: the government or a trade group like API? Why does it matter whether or not the democracy inherent in API's standards-writing procedure increases if the government has proposed a standard? It matters because the United States employs a democratic form of government, and

for those who believe that democracy is important, allowing a group like API to make policy without any sort of government intervention in the types of policies generated or the validity of a policy in a court of law is anathema to the principles on which the American society was founded. Bernard Crick states that "to be effective, active citizenship demands not just will and skill but some knowledge of institutions."[39] A lack of general awareness of API, how it makes policy, and the effects of its decisions on citizens prevents the development of an active citizenry that is able to make its voice heard in governance.

Democratic theory states that citizens deserve to have a voice in the creation of policies that have a fundamental impact on their lives. However, in some cases, it is possible that the costs of ensuring that the democratic process is discernible in the creation of certain policies may outweigh the benefits, and an argument can be made that this is the case with the types of policies being set by API. While the effects of many of API's standards are indeed wide reaching, the public impact may not be enough to justify a more democratic process for creating standards, or even more government oversight. Most of the policy API creates is so technical in nature that the government lacks the expertise to write it, and the costs involved with developing that expertise and building up a bureaucracy to nurture it are difficult to justify when the oil and gas industry is currently willing to do the job on its own, at the expense of its members. If API was making standards that were detrimental to the health of the environment, the safety of industry workers, or the ability of the public to gain access to reasonably-priced petroleum products, the government would have a duty to step in and hold hearings to determine wrongdoing and pass laws to protect against corruption or place more limits on the industry, but if the standards created are beneficial overall, there seems to be no reason to effect a change.

[1] Tim Sampson (API Spokesperson & Coordinator for Drilling Production Operations), in discussion with the author, June 19, 2006.
[2] API Creative Services. "There's Always Room for New Ideas on an API Standards Committee." Washington, DC: American Petroleum Institute, 2004. [cited July 20, 2006] Available from http://api-ep.api.org/filelibrary/apistandardscommittee.pdf .
[3] *Procedures for Standards Development*. 2nd Edition. American Petroleum Institute. September 2000.
[4] *Procedures for Standards Development.*

[5] Tim Sampson.
[6] *How Are API Standards Developed?* [website]. American Petroleum Institute, 2006 [cited July 20, 2006]. Available from http://api-ep.api.org/committees/index.cfm?objectid=1A4F2047-853A-11D5-BC6B00B0D0E15BFC&method=display_body&er=1&bitmask=002009001000000000.
[7] *Procedures for Standards Development.*

[8] *Engine Oil Licensing and Certification System* American Petroleum Institute, 2006 [cited July 20, 2006. Available from http://api-ep.api.org/quality/index.cfm?objectid=EA75302D-91EA-11D5-BC6B00B0D0E15BFC&method=display_body&er=1&bitmask=002001005001000000.
[9] *Draft of API S1: Organization and Procedures for Standardization of Oilfield Equipment and Materials*. December 3, 2005.
[10] Schwarzwalder, Robert. "The American Petroleum Institute." *Database* 21, no. 1 (1998): 3.
[11] "API Girds for Clinton Greenhouse Tax Battle." *Oil & Gas Journal* 94, no. 47 (1996).
[12] *Oil & Gas Journal.*
[13] Tim Sampson.
[14] Bob Moran (Former API lobbyist), in discussion with the author, June 21, 2006.
[15] Don Deline (Vice President, Government Affairs, Halliburton Company), in discussion with the author, July 11, 2006.
[16] Tim Sampson.
[17] Ibid.
[18] Ibid.
[19] API Creative Services. "There's Always Room for New Ideas on an API Standards Committee."
[20] Bob Moran.
[21] Tim Sampson
[22] *About ANSI Overview* American National Standards Institute, 2006 [cited July 20, 2006]. Available from http://www.ansi.org/about_ansi/overview/overview.aspx?menuid=1.
[23] *American Petroleum Institute to Act as Principal United Nations* Business Wire, 2004 [cited June 26, 2006]. Available from www.freerepublic.com/focus/f-news/1189892/posts.
[24] Tim Sampson
[25] *China Petroleum Technology and Development Corporation Company Profile* CPTDC, 2006, 2002 [cited July 20, 2006.] Available from http://www.cptdc.com/company/default.asp.
[26] *The Australian Gas Association Website* [cited July 1, 2006.] Available from www.aga.asn.au.
[27] Tim Sampson
[28] Gas Technical Regulators Committee. *Who We Are*, 2006 [cited June 14, 2006.] Available from http://www.gtrc.gov.au/who.html.
[29] Lieb, John M. P.E. "Updates to API Standards." Indianapolis, IN: Tank Industry Consultants, 2004. Available from www.epa.gov/oilspill/pdfs/lieb2_04.pdf#search='api%20standards'
[30] American Petroleum Institute. "API Ballot Comments and Resolution." Ballot: Approve 21st Edition of API S1. Washington, DC: API, 2006.
[31] *API Recommended Practice 95J: Gulf of Mexico Jackup Operations for Hurricane Season-Interim Recommendations*. June 2006. Available from (http://api-ep.api.org/filelibrary/95J_final.pdf)
[32] *API Recommended Practice 95F: Interim Guidance for Gulf of Mexico MODU Mooring Practice–2006 Hurricane Season*. 1st Edition. May 2006. Available from http://api-ep.api.org/filelibrary/95F_1.pdf
[33] API Creative Services. "The Oil and Natural Gas Industry's Most Valuable Resource." Washington, DC: American Petroleum Institute, 2004. [cited July 21, 2006]. Available from http://api-ep.api.org/filelibrary/valueofstandards.pdf .

[34] API Creative Services. “The Oil and Natural Gas Industry’s Most Valuable Resource.”
[35] The Bureau of National Affairs. "CSB Releases Data on 2005 BP Trailer Explosion Damage." In *Daily Report for Executives*. Washington, DC: The Bureau of National Affairs, July 5, 2006.
[36] Cable, Josh. "In Wake of BP Tragedy, CSB Calls for Safer Placement of Trailers." *Occupational Hazards*, October 26, 2005. [cited July 21, 2006]. Available from http://www.occupationalhazards.com/articles/14216.
[37] "New Year, New Guidelines for Greenhouse Gas Reporting." *Octane Week* 18, no. 49 (2003).
[38] API Creative Services. “The Oil and Natural Gas Industry’s Most Valuable Resource.”
[39] Crick, Bernard. *Democracy: A Very Short Introduction*. New York: Oxford University Press, 2002. 106.