

Subpart B—Chemical Facility Security Program

§ 27.200 Information regarding security risk for a chemical facility.

(a) *Information to determine security risk.* In order to determine the security risk posed by chemical facilities, the Secretary may, at any time, request information from chemical facilities that may reflect potential consequences of or vulnerabilities to a terrorist attack or incident, including questions specifically related to the nature of the business and activities conducted at the facility; information concerning the names, nature, conditions of storage, quantities, volumes, properties, customers, major uses, and other pertinent information about specific chemicals or chemicals meeting a specific criterion; information concerning facilities' security, safety, and emergency response practices, operations, and procedures; information regarding incidents, history, funding, and other matters bearing on the effectiveness of the security, safety and emergency response programs, and other information as necessary.

(b) *Obtaining information from facilities.* (1) The Assistant Secretary may seek the information provided in paragraph (a) of this section by contacting chemical facilities individually or by publishing a notice in the FEDERAL REGISTER seeking information from chemical facilities that meet certain criteria, which the Department will use to determine risk profiles. Through any such individual or FEDERAL REGISTER notification, the Assistant Secretary may instruct such facilities to complete and submit a Top-Screen process, which may be completed through a secure Department Web site or through other means approved by the Assistant Secretary.

(2) A facility must complete and submit a Top-Screen in accordance with the schedule provided in § 27.210, the calculation provisions in § 27.203, and the minimum concentration provisions in § 27.204 if it possesses any of the chemicals listed in appendix A to this part at or above the STQ for any applicable Security Issue.

(3) Where the Department requests that a facility complete and submit a

Top-Screen, the facility must designate a person who is responsible for the submission of information through the CSAT system and who attests to the accuracy of the information contained in any CSAT submissions. Such submitter must be an officer of the corporation or other person designated by an officer of the corporation and must be domiciled in the United States.

(c) *Presumptively High Risk Facilities.*

(1) If a chemical facility subject to paragraph (a) or (b) of this section fails to provide information requested or complete the Top-Screen within the timeframe provided in § 27.210, the Assistant Secretary may, after attempting to consult with the facility, reach a preliminary determination, based on the information then available, that the facility presumptively presents a high level of security risk. The Assistant Secretary shall then issue a notice to the entity of this determination and, if necessary, order the facility to provide information or complete the Top-Screen pursuant to these rules. If the facility then fails to do so, it may be subject to civil penalties pursuant to § 27.300, audit and inspection under § 27.250 or, if appropriate, an order to cease operations under § 27.300.

(2) If the facility deemed "presumptively high risk" pursuant to paragraph (c)(1) of this section completes the Top-Screen, and the Department determines that it does not present a high level of security risk under § 27.205, its status as "presumptively high risk" will terminate, and the Department will issue a notice to the facility to that effect.

[72 FR 17729, Apr. 9, 2007, as amended at 72 FR 65418, Nov. 20, 2007]

§ 27.203 Calculating the screening threshold quantity by security issue.

(a) *General.* In calculating whether a facility possesses a chemical of interest that meets the STQ for any security issue, a facility need not include chemicals of interest:

- (1) Used as a structural component;
- (2) Used as products for routine janitorial maintenance;
- (3) Contained in food, drugs, cosmetics, or other personal items used by employees;

(4) In process water or non-contact cooling water as drawn from environment or municipal sources;

(5) In air either as compressed air or as part of combustion;

(6) Contained in articles, as defined in 40 CFR 68.3;

(7) In solid waste (including hazardous waste) regulated under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.*, except for the waste described in 40 CFR 261.33;

(8) in naturally occurring hydrocarbon mixtures prior to entry of the mixture into a natural gas processing plant or a petroleum refining process unit. Naturally occurring hydrocarbon mixtures include condensate, crude oil, field gas, and produced water as defined in 40 CFR 68.3.

(b) *Release Chemicals*—(1) *Release-Toxic, Release-Flammable, and Release-Explosive Chemicals*. Except as provided in paragraphs (b)(2) and (b)(3), in calculating whether a facility possesses an amount that meets the STQ for release chemicals of interest, the facility shall only include release chemicals of interest:

(i) In a vessel as defined in 40 CFR 68.3, in a underground storage facility, or stored in a magazine as defined in 27 CFR 555.11;

(ii) In transportation containers used for storage not incident to transportation, including transportation containers connected to equipment at a facility for loading or unloading and transportation containers detached from the motive power that delivered the container to the facility;

(iii) Present as process intermediates, by-products, or materials produced incidental to the production of a product if they exist at any given time;

(iv) In natural gas or liquefied natural gas stored in peak shaving facilities; and

(v) In gasoline, diesel, kerosene or jet fuel (including fuels that have flammability hazard ratings of 1, 2, 3, or 4, as determined by using National Fire Protection Association (NFPA) 704: Standard System for the Identification of the Hazards of Materials for Emergency Response [2007 ed.], which is incorporated by reference at 27.204(a)(2)) stored in aboveground tank farms, in-

cluding tank farms that are part of pipeline systems;

(2) *Release-Toxic, Release-Flammable, and Release-Explosive Chemicals*. Except as provided in paragraph (c)(2)(i), in calculating whether a facility possesses an amount that meets the STQ for release-toxic, release-flammable, and release-explosive chemicals, a facility need not include release-toxic, release-flammable, or release-explosive chemicals of interest that a facility manufactures, processes or uses in a laboratory at the facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3.

(i) This exemption does not apply to specialty chemical production; manufacture, processing, or use of substances in pilot plant scale operations; or activities, including research and development, involving chemicals of interest conducted outside the laboratory.

(ii) [Reserved]

(3) *Propane*. In calculating whether a facility possesses an amount that meets the STQ for propane, a facility need not include propane in tanks of 10,000 pounds or less.

(c) *Theft and Diversion Chemicals*. In calculating whether a facility possesses an amount of a theft/diversion chemical of interest that meets the STQ, the facility shall only include theft/diversion chemicals of interest in a transportation packaging, as defined in 49 CFR 171.8. Where a theft/diversion-Chemical Weapons (CW) chemical is designated by "CUM 100g," a facility shall total the quantity of all such designated chemicals in its possession to determine whether the facility possesses theft/diversion-CW chemicals that meet or exceed the STQ of 100 grams.

(d) *Sabotage and Contamination Chemicals*. A facility meets the STQ for a sabotage/contamination chemical of interest if it ships the chemical and is required to placard the shipment of that chemical pursuant to the provisions of subpart F of 49 CFR part 172.

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