

§ 27.203

6 CFR Ch. I (1–17 Edition)

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 environmental 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, including 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.

[72 FR 65419, Nov. 20, 2007]

§ 27.204 Minimum concentration by security issue.

(a) *Release chemicals*—(1) *Release-toxic chemicals*. If a release-toxic chemical of interest is present in a mixture, and the concentration of the chemical is equal to or greater than one percent (1%) by weight, the facility shall count the amount of the chemical of interest in the mixture toward the STQ. If a release-toxic chemical of interest is

present in a mixture, and the concentration of the chemical is less than one percent (1%) by weight of the mixture, the facility need not count the amount of that chemical in the mixture in determining whether the facility possesses the STQ. Except for oleum, if the concentration of the chemical of interest in the mixture is one percent (1%) or greater by weight, but the facility can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of a vessel need not be considered when determining the STQ. The facility shall document this partial pressure measurement or estimate.

(2) *Release-flammable chemicals*. If a release-flammable chemical of interest is present in a mixture in a concentration equal to or greater than one percent (1%) by weight of the mixture, and the mixture has a National Fire Protection Association (NFPA) flammability hazard rating of 4, the facility shall count the entire amount of the mixture toward the STQ. Except as provided in § 27.203(b)(1)(v) for fuels that are stored in aboveground tank farms (including farms that are part of pipeline systems), if a release-flammable chemical of interest is present in a mixture in a concentration equal to or greater than one percent (1%) by weight of the mixture, and the mixture has a National Fire Protection Association (NFPA) flammability hazard rating of 1, 2, or 3, the facility need not count the mixture toward the STQ. The flammability hazard ratings are defined in NFPA 704: Standard System for the Identification of the Hazards of Materials for Emergency Response [2007 ed.]. The Director of the Federal Register approves the incorporation by reference of this standard in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from the National Fire Protection Association at 1 Batterymarch Park, Quincy, MA 02169–