

# CHAPTER 1: GENERAL APPLICABILITY

## 1.1 INTRODUCTION

The purpose of this chapter is to help you determine if you are subject to Part 68, the risk management program rule. Part 68 covers you if you are:

- ◆ The owner or operator of a stationary source (facility)
- ◆ That has more than a threshold quantity
- ◆ Of a regulated substance
- ◆ In a process.

The goal of this chapter is to make it easy for you to identify processes that are covered by this rule so you can focus on them.

This chapter walks you through the key decision points (rather than the definition items above), starting with those provisions that may tell you that you are not subject to the rule. We first outline the general applicability provisions and the few exemptions and exclusions, then discuss which chemicals are "regulated substances." If you do not have a "regulated substance" at your site, you are not covered by this rule. The exemptions may exclude you from the rule or simply exclude certain activities from consideration. (Throughout this document, when we say "rule" we mean the regulations in part 68.)

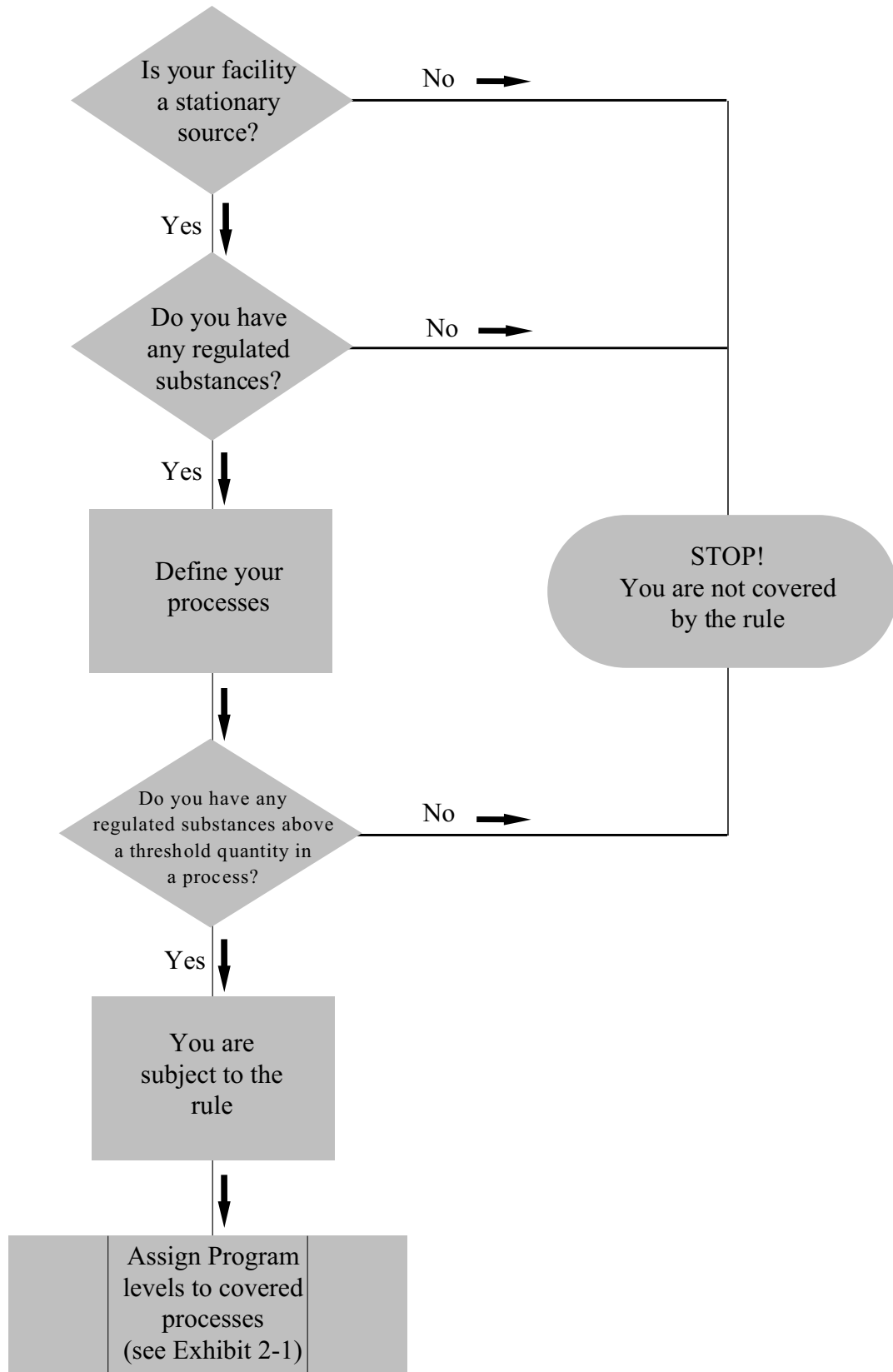
We then describe what is considered a "process," which is critical because you are subject to the rule *only* if you have more than a threshold quantity of a regulated substance in a process. The chapter next describes how to determine whether you have more than a threshold quantity.

Finally, we discuss how you define your overall stationary source and when you must comply. These questions are important once you have decided that you are covered. For most facilities covered by this rule, the stationary source is basically all covered processes at your site. If your facility is part of a site with other divisions of your company or other companies, the discussion of stationary source will help you understand what you are responsible for in your compliance and reporting. Exhibit 1-1 presents the decision process for determining applicability.

### STATE PROGRAMS

This guidance applies to only 40 CFR part 68. You should check with your state government to determine if the state has its own accidental release prevention rules or has obtained delegation from EPA to implement and enforce part 68 in your state. State rules may be more stringent than EPA's rules. Unless your state has been granted delegation, you must comply with part 68 as described in this document even if your state has different rules under state law. See Chapter 10 for a discussion of state implementation of part 68.

**EXHIBIT 1-1**  
**EVALUATE FACILITY TO IDENTIFY COVERED PROCESSES**



## 1.2 GENERAL PROVISIONS

The CAA applies the Risk Management Program rule to any person who owns or operates a stationary source. "Person" is defined to include:

"An individual, corporation, partnership, association, State, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agency, or employee thereof."

The rule, therefore, applies to all levels of government as well as private businesses.

CAA section 112(r)(2)(c) defines "stationary sources" as:

"Any buildings, structures, equipment, installations, or substance emitting stationary activities

- ◆ Which belong to the same industrial group,
- ◆ Which are located on one or more contiguous properties,
- ◆ Which are under the control of the same person (or persons under common control), and
- ◆ From which an accidental release may occur."

EPA has added some language in the rule to clarify issues related to transportation (see below).

### **FARM USE OF AMMONIA (§68.125)**

The rule exempts ammonia when held by a farmer for use on a farm. This exemption applies to ammonia only when used as a fertilizer by a farmer. It does not apply to agricultural suppliers or the fertilizer manufacturer. It does not apply to farm cooperatives or to groups of farmers who buy, use, and sell ammonia. In the event that a farmer stores one or more other regulated substance above threshold quantities, that storage would be covered.

### **FLAMMABLE FUELS (§68.126)**

The flammable substances listed in § 68.130 are excluded from coverage under part 68 when they are used as a fuel or held for sale as a fuel at a retail facility. A retail facility is defined as a stationary source at which more than half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

Unless your facility meets the definition of a "retail facility," if you hold a listed flammable substance for purposes other than on-site use as fuel, you are potentially covered by part 68. For example, if you manufacture a listed flammable fuel, use it as a chemical feedstock, or store it in bulk for sale and do not meet the definition of a retail facility, you may be covered by the rule. If you store a listed flammable

substance for non-fuel use and also use some of it on-site as a fuel, the quantity used as a fuel is not covered; the quantity not used on site as a fuel is potentially subject to the rule. If you are a retailer who sells a flammable fuel and a listed toxic substance, the toxic substance is potentially subject to the rule, but the flammable substance is excluded from coverage.

## TRANSPORTATION ACTIVITIES

The rule applies only to stationary sources. It does not apply to transportation, including storage incident to transportation. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192 (Federal safety standards for transportation of natural and other gas by pipeline), 193 (Federal safety standards for liquefied natural gas facilities), or 195 (Federal safety standards for transportation of hazardous liquids by pipeline), or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105. Storage of natural gas incident to transportation (i.e., gas taken from a pipeline during non-peak periods and placed in storage fields, then returned to the pipeline when needed) is not covered. Storage fields include, but are not limited to, depleted oil and gas reservoirs, aquifers, mines, or caverns.

### Qs & As STATIONARY SOURCE

**Q.** What does “same industrial group” mean?

**A.** Operations at a site that belong to the same three-digit North American Industry Classification System (NAICS) code prefix (which has replaced the old SIC codes) belong to the “same industrial group. In addition, where one or more operations at the site serve primarily as support facilities for the main operation at the site, the supporting operations are part of the “same industrial group” as the main operation. For example, if you manufacture chemicals (NAICS 325) and operate a waste treatment facility (NAICS 562) that handles primarily wastes generated by your chemical operations, the waste operation would be considered a support operation. If you operate a petrochemical manufacturing operation (NAICS 32511) next to your petroleum refinery (NAICS 32411), the two plants would be considered in different industrial groups and would require two RMPs unless the majority of the refinery’s production was used by the chemical manufacturing plant.

**Q.** What does “contiguous property” mean?

**A.** Property that is adjoining. Public rights-of-way (e.g., railroads, highways) do not prevent property from being considered contiguous. Property connected only by rights-of-way are not considered contiguous (e.g., two plants with a connecting pipeline).

**Q.** What does “control of the same person” mean?

**A.** Control of the same person refers to corporate control, not site management. If two divisions of a corporation operate at the same site, even if each operation is managed separately, they will count as one source provided the other criteria are met because they are under control of the same company.

Transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source are considered part of the stationary source. Transportation containers that have been unhooked from the motive power that delivered them to the site (e.g., truck or locomotive) and left on your site for short-term or long-term storage are part of your stationary source. For example, if you have railcars on a private siding that you use as storage tanks until you are ready to hook them to your process, these railcars should be considered to be part of your source. If a tank truck is being unloaded **and** the motive power is still attached, the truck and its contents are considered to be in transportation and not covered by the rule. You should count only the substances in the piping or hosing as well as the quantity unloaded. Some issues related to transportation are still under discussion with DOT.

### **RELATIONSHIP TO OSHA PROCESS SAFETY MANAGEMENT STANDARD EXEMPTIONS**

The OSHA Process Safety Management (PSM) standard (29 CFR 1910.119) exempts retail facilities, substances used solely as a fuel if such substances are not part of a process containing another regulated substance, flammable liquids stored in atmospheric storage tanks, and remote oil and gas production. In addition, state and local governments are not subject to federal OSHA standards.

EPA's Risk Management Program Rule has a different set of exemptions than the OSHA PSM standard; OSHA exempts some processes that EPA does not exempt, and vice versa. You should carefully evaluate the exemptions of the Risk Management Program rule to determine whether your process is covered, even if it qualifies for an OSHA PSM exemption. For example, the EPA rule exempts flammable substances used as fuel and fuels sold at retail facilities, but does not exempt non-fuel substances sold at retail facilities. The EPA rule does not exempt substances stored in atmospheric storage tanks, and it applies to state and local governments. If such governments own or operate a facility where there is more than a threshold quantity of a regulated substance in a process, they must comply with the rule. As discussed in Section 1.5, many oil and gas production facilities, as well as most retail gas stations and propane retailers are not subject to the rule because the flammable substances at these facilities are excluded from threshold determinations.

### **1.3 REGULATED SUBSTANCES AND THRESHOLDS (§68.130)**

The list of substances regulated under § 68.130 is in Appendix A. Check the list carefully. If you do not have any of these substances (either as pure substances or in mixtures above 1 percent concentration) or do not have them above their listed threshold quantities, you do not need to read any further because you are not covered.

The list includes 77 chemicals that were listed because they are acutely toxic; they can cause serious health effects or death from short-term exposures. The list also covers 63 flammable gases and highly volatile flammable liquids. The flammable chemicals have the potential to form vapor clouds and explode or burn if released. The rule also covers flammable mixtures that include any of the listed flammables if the mixture meets the criteria for the National Fire Protection Association's (NFPA) 4 rating (see Chapter 1, section 1.5).

## 1.4 WHAT IS A PROCESS

The concept of "process" is key to whether you are subject to this rule. Process is defined in 40 CFR §68.3 as:

"Any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process."

"Vessel" in §68.3 means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

EPA's definition of process is identical to the definition of process under the OSHA PSM standard. Understanding the definition of process is important in determining whether you have a threshold quantity of a regulated substance and what level of requirements you must meet if the process is covered.

What does this mean to you?

- ◆ If you store a regulated substance in a single vessel in quantities above the threshold quantity, you are covered.
- ◆ If you have interconnected vessels that altogether hold more than a threshold quantity of a regulated substance, you are covered. The connections need not be permanent. If two or more vessels are connected occasionally, they are considered a single process for the purposes of determining whether a threshold quantity is present.
- ◆ If you have multiple unconnected vessels containing the same substance, you will have to determine whether they are co-located and thus considered a single process for purposes of the rule.

A process can be as simple as a single storage vessel or a group of drums or cylinders in one location or as complicated as a system of interconnected reactor vessels, distillation columns, receivers, pumps, piping, and storage vessels.

### **SINGLE VESSELS**

If you have only a single vessel containing a regulated substance, you need not worry about the other possibilities for defining a process and can skip to section 1.5. For the purposes of defining a threshold quantity, you need only consider the quantity in this vessel.

### **INTERCONNECTED VESSELS**

In general, if you have two or more vessels that contain a regulated substance and are connected through piping or hoses for transfer of the regulated substance, you must consider the total quantity of the regulated substance in all the connected vessels and

pipng when determining if you have a threshold quantity in a process. If the vessels are connected for transfer of the substance using hoses that are sometimes disconnected, you still have to consider the contents of the vessels as one process, because if one vessel were to rupture while a hose was attached or a hose were to break during the transfer, both tanks could be affected. Therefore, you must count the quantities in both tanks and in any connecting piping or hoses. You cannot consider the presence of automatic shutoff valves or other devices that can limit flow, because these are assumed to fail for the purpose of determining the total quantity in a process.

Once you have determined that a process is covered (the process contains more than a threshold quantity of a regulated substance), you must also consider equipment, piping, hoses, or other interconnections that do not carry or contain the regulated substance, but that are important for accidental release prevention. Equipment or connections which contain utility services, process cooling water, steam, electricity, or other non-regulated substances may be considered part of a process if such equipment could cause a regulated substance release or interfere with mitigating the consequences of an accidental release. Your prevention program for this process will need to cover such equipment. If, based on your analysis, it is determined that interconnected equipment or connections not containing the regulated substance cannot cause a regulated substance release or interfere with mitigation of the consequences of such a release, then such equipment or connections could safely be considered outside the limits or boundaries of the covered process.

In some cases, such as in a large refinery or multi-unit chemical plant, determining the boundaries of a process for purposes of the RMP rule may be complicated. In the preamble to the June 20, 1996 rule (61 FR 31668), EPA clearly stated its intent to be consistent with OSHA's interpretation of "process" as that term is used in OSHA's PSM rule. Therefore, if your facility is subject to the PSM rule, the limits of your process(es) for purposes of OSHA PSM will be the limits of your process(es) for purposes of RMP (except where the two rules' applicability differ such as for retail facilities and atmospheric storage tanks). If your facility is not covered by OSHA PSM and is complicated from an engineering perspective, you should consider contacting your implementing agency for advice on determining process boundaries.

## Co-LOCATION

The third possibility you must consider is whether you have separate vessels that contain the same regulated substance that are located such that they could be involved in a single release. If so, you must add together the total quantity in all such vessels to determine if you have more than a threshold quantity. This possibility will be particularly important if you store a regulated substance in cylinders or barrels or other containers in a warehouse or outside in a rack. In some cases, you may have two vessels or systems that are in the same building or room. For each of these cases, you should ask yourself:

- ◆ Could a release from one of the containers lead to a release from the other? For example, if a cylinder of propane were to rupture and burn, would the fire spread to other propane cylinders?

- ◆ Could an event external to the containers, such as a fire or explosion or collapse of collision (e.g., a vehicle collides with several stored containers), have the potential to release the regulated substance from multiple containers?

You must determine whether there is a credible scenario that could lead to a release of a threshold quantity.

For flammables, you should consider the distance between vessels. If a fire could spread from one vessel to others or an explosion could rupture multiple vessels, you must count all of them. For toxics, a release from a single vessel will not normally lead to a release from others unless the vessel fails catastrophically and explodes, sending metal fragments into other vessels. Co-located vessels containing toxic substances, however, may well be involved in a release caused by a fire or explosion that occurs from another source. You should assume such a fire or explosion could take place in determining whether separate vessels could be involved in a single release. In addition, a collapse of storage racks could lead to multiple vessels breaking open.

If vessels are separated by fire walls or barricades that will contain the blast waves from explosions of the substances, you will not need to count the separated vessels, but you would count any that are in the same room. You may not dismiss the possibility of a fire spreading based on an assumption that your fire brigade will be able to prevent any spread. You should ask yourself how far the fire would spread if the worst happens — the fire brigade is slow to arrive, the water supply fails, or the local fire department decides it is safer to let the fire burn itself out. If you have separate vessels containing a regulated substance that could be affected by the same accident, you should count them as a single process.

### **PROCESSES WITH MULTIPLE CHEMICALS**

When you are determining whether you have a covered process, you should not limit your consideration to vessels that have the same regulated substance. A covered process includes any vessels that altogether hold more than a threshold quantity of one of more regulated substances and that are interconnected or co-located. Therefore, if you have four storage or reactor vessels holding four different regulated substances above their individual thresholds and they are located close enough to be involved in a single event, they are considered a single process. One implication of this approach is that if you have two vessels, each containing slightly less than a threshold quantity of the same regulated substance and located a considerable distance apart, and you have other storage or process vessels in between with other regulated substances above their thresholds, the two vessels with the first substance may be considered to be part of a larger process involving the other intervening vessels and other regulated substances, based on co-location.

Exhibit 1-2 provides illustrations of what may be defined as a process.

### **DO NOT AGGREGATE QUANTITIES OF DIFFERENT SUBSTANCES**

OSHA aggregates different flammable liquids across vessels in making threshold determinations. OSHA also aggregates different flammable gases (but does not



aggregate flammable liquids with flammable gases). EPA aggregates neither. Therefore, if you have three co-located or connected reactor vessels each containing 5,000 pounds of a different flammable liquid, OSHA considers that you have 15,000 pounds of flammable liquids and are covered by the PSM standard. Under EPA's rule, you would not have a covered process because you do not meet the threshold quantity for any one of the three substances. OSHA, like EPA, does not aggregate quantities for toxics as a class (i.e., each toxic substance must meet its own threshold quantity).

### **AGGREGATION OF SUBSTANCES**

A toxic substance is never aggregated with a different toxic substance to determine whether a threshold quantity is present. If your process consists of co-located vessels with different toxic substances, you must determine whether each substance exceeds its threshold quantity.

A flammable substance in one vessel is never aggregated with a different flammable substance in another vessel to determine whether a threshold quantity is present. However, if a flammable mixture meets the criteria for NFPA-4 and contains different regulated flammables, it is the mixture, not the individual substances, that is considered in determining if a threshold quantity is present.

## **1.5 THRESHOLD QUANTITY IN A PROCESS**

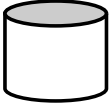
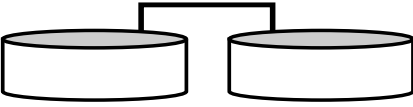
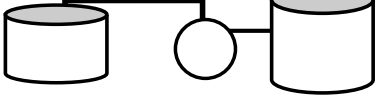
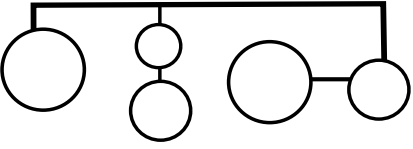

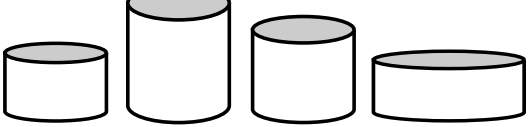

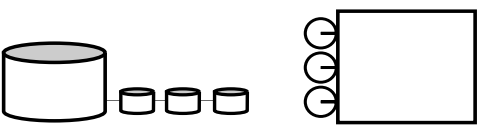
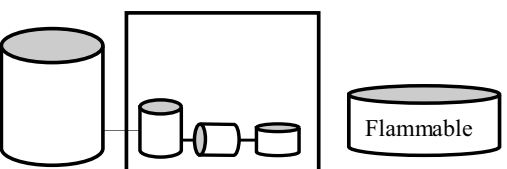
The threshold quantity for each regulated substance is listed in 40 CFR §68.130, in Appendix A. You should determine whether the maximum quantity of each substance in a process is greater than the threshold quantity listed. If it is, you must comply with this rule for that process. Even if you are not covered by this rule, you may still be subject to other reporting requirements, such as those under the Emergency Planning and Community Right to Know Act (EPCRA).

### **QUANTITY IN A VESSEL**

To determine if you have the threshold quantity of a regulated substance in a vessel involved in a single process, you need to consider the maximum quantity in that vessel at any one time. You do not need to consider the vessel's maximum capacity if you never fill it to that level. Base your decision on the actual maximum quantity that you may have in the vessel. Your maximum quantity may be more than your normal operating maximum quantity; for example, if you may use a vessel for emergency storage, the maximum quantity should be based on the quantity that might be stored.

"At any one time" means you need to consider the largest quantity that you ever have in the vessel. If you fill a tank with 50,000 pounds and immediately begin using the substance and depleting the contents, your maximum is 50,000 pounds. If you fill the vessel four times a year, your maximum is still 50,000 pounds. Throughput is not considered because the rule is concerned about the maximum quantity you could release in a single event.

**EXHIBIT 1-2  
PROCESS**

Schematic Representation	Description	Interpretation
	1 vessel 1 regulated substance above TQ	1 process
	2 or more connected vessels <i>same</i> regulated substance above TQ	1 process
	2 or more connected vessels <i>different</i> regulated substance each above TQ	1 process
	pipeline feeding multiple vessels total above TQ	1 process
	2 or more vessels co-located <i>same</i> substance total above TQ	1 process
	2 or more vessels co-located <i>different</i> substances each above TQ	1 process
	2 vessels, located so they won't be involved in a single release <i>same or different</i> substances each above TQ	2 processes
	2 locations with regulated substances each above TQ	1 or 2 processes depending on distance
	1 series of interconnected vessels <i>same or different</i> substances above TQs <i>plus</i> a co-located storage vessel containing flammables	1 process

**QUANTITY IN A PIPELINE**

The maximum quantity in a pipeline will generally be the capacity of the pipeline (volume). In most cases, pipeline quantity will be calculated and added to the interconnected vessels.

**INTERCONNECTED/CO-LOCATED VESSELS**

If your process consists of two or more interconnected vessels, you must determine the maximum quantity for each vessel and the connecting pipes or hoses. The maximum for each individual vessel and pipe is added together to determine the maximum for the process.

If you have determined that you must consider co-located vessels as one process, you must determine the maximum quantity for each vessel and sum up the quantities of all such vessels.

**QUANTITY OF A SUBSTANCE IN A MIXTURE OR SOLUTION*****TOXICS WITH LISTED CONCENTRATION***

Four toxic substances have listed concentrations in the rule: hydrochloric acid — 37 percent or greater; hydrofluoric acid — 50 percent or greater; nitric acid — 80 percent or greater; and ammonia — 20 percent or greater.

- ◆ If you have these substances in solution and their concentration is less than the listed concentration, you do not need to consider them at all.
- ◆ If you have one of these four above their listed concentration, you must determine the weight of the substance in the solution and use that to calculate the quantity present. If that quantity is greater than the threshold, the process is covered. For example, aqueous ammonia is covered at concentrations above 20 percent, with a threshold quantity of 20,000 pounds. If the solution is 25 percent ammonia, you would need 80,000 pounds of the solution to meet the threshold quantity; if the solution is 44 percent ammonia, you would need 45,455 pounds to meet the threshold quantity (quantity of mixture x percentage of regulated substance = quantity of regulated substance).

Note that in a revision to part 68, EPA changed the concentration for hydrochloric acid to 37 percent or greater (see Appendix A).

### **Qs & As PROCESS**

**Q.** Do I have to do my hazard review, process hazard analysis, or other prevention activity on the whole process or can I break it into separate units?

**A.** Once you have determined that you have a covered process, you can divide the covered process any way you want to implement the prevention program. If you have multiple interconnected storage and reactor vessels in your process, you may want to treat them separately when you conduct the hazard review or process hazard analysis, if only to make the analyses easier to manage. Storage and reactor vessels may require separate maintenance programs. You should do what makes sense for your process.

**Q.** How far apart do separate vessels have to be to be considered different processes?

**A.** There is no hard and fast rule for how great this distance should be before you do not need to consider the vessels as part of one process. Two vessels at opposite ends of a large warehouse room might have to be considered as one process if the entire warehouse or room could be engulfed in a fire. Two vessels separated by the same distance out of doors might be far enough apart that a fire affecting one would be unlikely to spread to the other. You may want to consult with your local fire department. You should then use your best professional judgment. Ask yourself how much of the regulated substance could be released if the worst happens (you have a major fire, an explosion, a natural disaster).

### **TOXICS WITHOUT A LISTED CONCENTRATION**

For toxics without a listed concentration, if the concentration is less than one percent you need not consider the quantity in your threshold determination. If the concentration in a mixture is above one percent, you must calculate the weight of the regulated substance in the mixture and use that weight to determine whether a threshold quantity is present. However, if you can measure or estimate (and document) that the partial pressure of the regulated substance in the mixture is less than 10 mm Hg, you do not need to consider the mixture. Note that the partial pressure rule does not apply to toluene diisocyanate (2-4, 2-6, or mixed isomers) or oleum.

EPA treats toxic mixtures differently from OSHA. Under the OSHA PSM standard, the entire weight of the mixture is counted toward the threshold quantity; under part 68, only the weight of the toxic substance is counted.

### **FLAMMABLES**

Flammable mixtures are subject to the rule only if there is a regulated substance in the mixture above one percent and the entire mixture meets the NFPA-4 criteria. If the mixture meets both of these criteria, you must use the weight of the entire mixture (not just the listed substance) to determine if you exceed the threshold quantity. The NFPA-4 definition is as follows:

"Materials that will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature or that are readily dispersed in air, and that will burn readily. This degree usually includes:

Flammable gases

Flammable cryogenic materials

Any liquid or gaseous material that is liquid while under pressure and has a flash point below 73 F (22.8 C) and a boiling point below 100 F (37.8 C) (i.e., Class 1A flammable liquids)

Materials that will spontaneously ignite when exposed to air."

***FLAMMABLES NOT COVERED BY PART 68 (§68.115)***

The following flammables are not considered part of a "stationary source" and, therefore, any regulated substances contained in them need not be included in your calculations of threshold quantities:

- ◆ Naturally occurring hydrocarbon reservoirs; and
- ◆ Naturally occurring hydrocarbon transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105.

"Naturally occurring hydrocarbon reservoirs" include oil and gas fields, where the hydrocarbons occur in nature and from which they are pumped; they do not include natural formations, such as salt domes, where hydrocarbons are stored after they have been produced or processed. Transportation subject to DOT and/or state oversight or regulation refers to transportation in pipelines and liquefied natural gas facilities.

You do not need to consider the following flammable substances when you determine the applicability of the rule:

- ◆ Gasoline, when in distribution or related storage for use as fuel for internal combustion engines;
- ◆ Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit (NAICS code 32411) or a natural gas processing plant (NAICS code 21112). Naturally occurring hydrocarbon mixtures include any of the following:
- ◆ Condensate - hydrocarbon liquid separated from natural gas that condenses because of changes in temperature, pressure, or both, and that remains liquid at standard conditions;
- ◆ Crude oil - any naturally occurring, unrefined petroleum liquid;

- ◆ Field gas - gas extracted from a production well before the gas enters a natural gas processing plant (any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both); and
- ◆ Produced water - water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

***EXCLUSION FOR FLAMMABLE SUBSTANCES USED AS FUEL OR HELD FOR SALE AS FUEL AT RETAIL FACILITIES (§68.126)***

A flammable substance listed in Tables 3 and 4 of §68.130 is excluded from coverage when the substance is used as fuel at the source or held for sale as a fuel at a retail facility. Retail facilities include any stationary source where more than one half of the income (from fuel sales) is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

**EXCLUSIONS (§68.115)**

The rule has a number of additional exclusions that allow you to ignore certain items that contain a regulated substance when you determine whether a threshold quantity is present. Note that these same exclusions apply to EPCRA section 313; you should be familiar with them if you are subject to that provision.

***MANUFACTURED ITEMS & ARTICLES (§68.115(B)(3))***

You do not need to include in your threshold calculations any manufactured item defined at §68.3 (as defined under 29 CFR 1910.1200(b)) that:

- ◆ Is formed to a specific shape or design during manufacture,
- ◆ Has end use functions dependent in whole or in part upon the shape or design during end use, and
- ◆ Does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

***CERTAIN USES OF REGULATED SUBSTANCES (§68.115(B)(4))***

You also do not need to include regulated substances in your calculation when in use for the following purposes:

- ◆ Use as a structural component of the stationary source;
- ◆ Use of products for routine janitorial maintenance;
- ◆ Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substances; and

- ◆ Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

#### *ACTIVITIES IN LABORATORIES (§68.115(B)(5))*

If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual (as defined by § 720.3 (ee) of 40 CFR), the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exclusion does not extend to:

- ◆ Specialty chemical production;
- ◆ Manufacture, processing, or use of substances in pilot plant scale operations; and
- ◆ Activities conducted outside the laboratory.

## 1.6 STATIONARY SOURCE

The rule applies to "stationary sources" and each stationary source with one or more covered processes must file an RMP that includes all covered processes.

### **SIMPLE SOURCES**

For most facilities covered by this rule, determining what constitutes a "stationary source" is simple. If you own or lease a property, your processes are contained within the property boundary, and no other companies operate on the property, then your stationary source is defined by the property boundary and covers any process within the boundaries that has more than a threshold quantity of a regulated substance. You must comply with the rule and file a single RMP for all covered processes.

### **MULTIPLE OPERATIONS OWNED BY A SINGLE COMPANY**

If the property is owned or leased by your company, but several separate operating divisions of the company have processes at the site, the divisions' processes may be considered a single stationary source because they are controlled by a single company. Two factors will determine if the processes are to be considered a single source: Are the processes located on one or more contiguous properties? Are all of the operations in the same industrial group?

If your company does have multiple operations that are on the same property and are in the same industrial group, each operating division may develop its prevention program separately for its covered processes, but you must file a single RMP for all covered processes at the site. You should note that this is different from the requirements for filing under CAA Title V, and EPCRA section 313 (the annual

toxic release inventory), where each division could file separately if your company chose to do so.

## **OTHER SOURCES**

There are situations where two or more separate companies occupy the same site. The simplest of these cases is if multiple companies lease land at a site (e.g., an industrial park). Each company that has covered processes must file an RMP that includes information on its own covered processes at the site. You are responsible for filing an RMP for any operations that you own or operate.

Another possibility is that one company owns the land and operates there while leasing part of the site to a second company. If both companies have covered processes, each is considered a separate stationary source and must file separate RMPs even if they have contractual relationships, such as supplying product to each other or sharing emergency response functions.

If you and another company jointly own a site, but have separate operations at the site, you each must file separate RMPs for your covered processes. Ownership of the land is not relevant; a stationary source consists of covered processes located on the same property and controlled by the same person (or persons under common control).

## **JOINT VENTURES**

You and another company may jointly own covered processes. In this case, the legal entity you have established to operate these processes should file the RMP. If you consider this entity a subsidiary, you should be listed as the parent company in the RMP.

## **MULTIPLE LOCATIONS**

If you have multiple operations in the same area, but they are not on physically connected land, you must consider them separate stationary sources and file separate RMPs for each, even if the sites are connected by pipelines that move chemicals among the sites. Remember, the rule applies to covered processes at a single location.

Exhibit 1-3 provides examples of stationary source decisions.

## **1.7 WHEN YOU MUST COMPLY**

June 21, 1999 was the original compliance date for facilities that had covered processes as of that date. If the first time you have a covered process is after June 21, 1999, or you bring a new process on line after that date, you must comply with part 68 no later than the date on which you first have more than a threshold quantity of a regulated substance in a process. By that time you must have developed and implemented all of the elements of the rule that apply to each of your covered processes, and you must submit an RMP to EPA in the specified form and manner (see Chapter 9 for detailed information on submitting your RMP).



**Qs & As**  
**STATIONARY SOURCE**

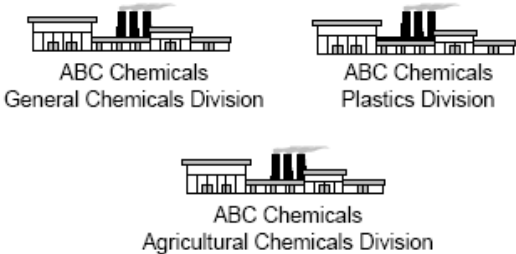
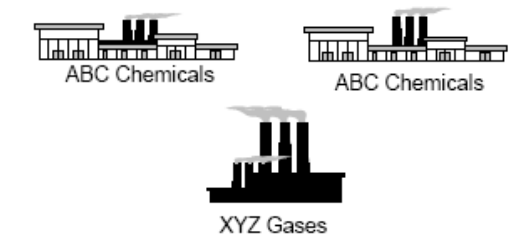
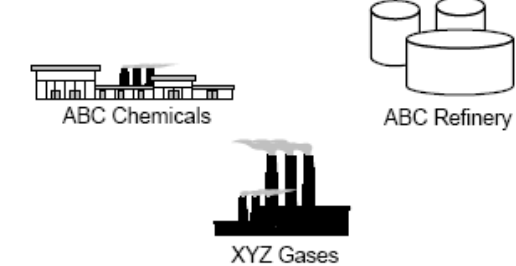
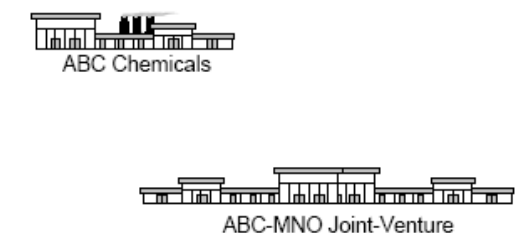
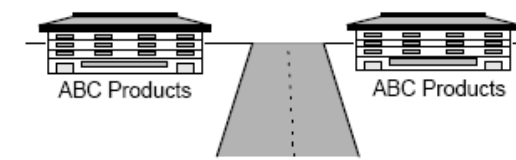
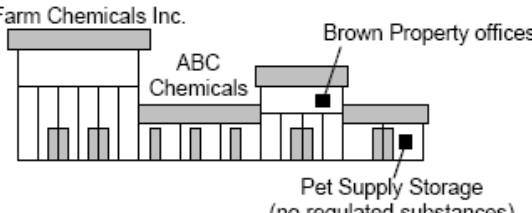
**Q.** I operate a single covered process on a site owned by a large company. I manufacture a regulated substance that I pipe to the other company for use in its processes. At what point do the piping and substance become part of the other company's stationary source?

**A.** The answer will vary. The company that owns and maintains the piping should probably consider it part of its stationary source. If, however, there is a point (e.g., a valve or meter) where the receiving company is considered to take ownership of the substance, then you may decide to divide the piping and its contents at that point.

**Q.** The definition of process would seem to say that my process is part of the larger company's process because they are interconnected. Why can't the larger company just include my process in its RMP?

**A.** Your process is not part of the larger company's stationary source because it does not meet the statutory criteria for stationary sources. Although the process may be part of the same industrial group and is at the same location, it is not under control of the same person. Therefore, the process is a separate stationary source and must have a separate RMP.

EXHIBIT 1-3 - STATIONARY SOURCE

Schematic Representation	Description	Interpretation
 <p>ABC Chemicals General Chemicals Division</p> <p>ABC Chemicals Plastics Division</p> <p>ABC Chemicals Agricultural Chemicals Division</p>	<p>same owner same industrial group</p>	<p>1 stationary source 1 RMP</p>
 <p>ABC Chemicals</p> <p>ABC Chemicals</p> <p>XYZ Gases</p>	<p>two owners</p>	<p>2 stationary sources 2 RMPs 1 ABC 1 XYZ</p>
 <p>ABC Chemicals</p> <p>ABC Refinery</p> <p>XYZ Gases</p>	<p>two owners three industrial groups</p>	<p>3 stationary sources 1 ABC Chemicals 1 ABC Refinery 1 XYZ Gases</p>
 <p>ABC Chemicals</p> <p>ABC-MNO Joint-Venture</p>	<p>two owners</p>	<p>2 stationary sources 2 RMPs</p>
 <p>ABC Products</p> <p>ABC Products</p>	<p>same owner same industrial group contiguous property</p>	<p>1 stationary source 1 RMP</p>
<p>Building owned by Brown Properties</p>  <p>Farm Chemicals Inc.</p> <p>ABC Chemicals</p> <p>Brown Property offices</p> <p>Pet Supply Storage (no regulated substances)</p>	<p>two owners</p>	<p>2 stationary sources 2 RMPs 1 ABC Chemicals 1 Farm Chemicals</p>

**Qs & As**  
**COMPLIANCE DATES**

**Q.** What happens if I bring a new covered process on line (e.g., install a second storage tank) after submitting my original RMP?

**A.** For a new covered process added after the initial compliance date, you must be in compliance on the date you first have a regulated substance above the threshold quantity. There is no grace period. You must develop and implement all the applicable rule elements and update your RMP before your process contains more than a threshold quantity of a regulated substance.

**Q.** What if EPA lists a new substance?

**A.** You will have three years from the date on which the new listing is effective to come into compliance for any process that is covered because EPA has listed a new substance.

**Q.** What if I change a process by adding new reactor vessels, but do not change the substances?

**A.** Because increasing the number of reactor vessels is usually a major change to your process, you will have six months to update your RMP to reflect changes in your prevention program elements and report any other changes.

**Q.** What if the quantity in the process fluctuates? I may not have a threshold quantity now, but I will intermittently exceed the threshold quantity.

**A.** You do not need to comply with the rule and file an RMP unless you have more than threshold quantity in a process; however, once you have more than threshold quantity in a process, you must be in compliance immediately. In this situation, with fluctuating quantities, it may be prudent to file now, so you will be in compliance when your quantity exceeds the threshold. You may also want to consider a “predictive filing” (see Chapter 9 for more information on predictive filing).