

State Emergency Response Commission (SERC) Policy and Procedures for Public Access to Tier II Information

Purpose: The primary purpose of this policy is to establish procedures for the Alaska State Emergency Response Commission (SERC), Alaska Department of Environmental Conservation (ADEC), and Local Emergency Planning Committees (LEPCs) to receive and process requests for Tier II information in order to meet federal and state requirements.

General: Tier II reports must be submitted annually by facilities with reportable quantities of chemicals and hazardous substances in their inventory (fixed facilities only; transportation facilities are not required to report under Federal and State law). Reports must be submitted to the appropriate LEPC, local fire department, and the SERC. Reports are due by March 1 of each year and represent inventories for the previous calendar year.

Under the Federal Emergency Planning and Community Right-to-Know Act (EPCRA), any person may request Tier II information.

Process for Providing Tier II Information to the General Public

Checklist for Releasing Tier II Data:

General:

Under EPCRA, accessibility to Tier II information is limited to the preceding calendar year with respect to a specific facility (42 U.S.C. 11022(e)(3)(A)).

Tier II data will not be released electronically (email or fax), or telephonically. Hard copies of the data may only be picked up in person by the requestor who follows the procedure outlined below.

A written request for Tier II information must be submitted to the SERC or the appropriate LEPC. By law, the SERC and LEPCs have up to 45 days to respond to the request. Written requests will include the Tier II Data Request Form (attached). Requests will also include specific information about the facility(s) in question, including name and address.

When the SERC (through ADEC) receives a written request, staff will determine if the requestor can visit an ADEC office with a staff presence from the Division of Spill Prevention and Response (SPAR). If not, the requestor will be referred to the LEPC where the facility in question is located. The ADEC Tier II Coordinator will work with the LEPC to compile hard copies of the Tier II forms for public review. When an LEPC receives a written request, it will forward the request to the ADEC Tier II Coordinator for processing.

The procedures outlined in this document are mandatory for any release of Tier II information by the SERC and LEPCs to members of the public.

The following procedures will apply:

Notifications:

- Upon receipt of a written request, the ADEC Tier II Coordinator will email (by attachment or hyperlink) the "Tier II Data Request Form" (attached) to the individual and request the form be completed and returned with a photocopy of the individual's proof of identification (driver's license, passport, or military ID). This paperwork will be maintained in the SERC's Tier II records for at least five years and will serve as a record of who requests Tier II information for which facility(s).
- The ADEC Tier II Coordinator will either set up a meeting at an ADEC office with SPAR staff presence to provide the requestor access to the information or work with the nearest LEPC to set up an appointment.
- If the person requesting the information refuses to provide ID, the reason for requesting data, or otherwise refuses to comply with these procedures, the ADEC Tier II Coordinator will seek guidance from the Alaska Department of Law.

Procedures for Releasing Tier II Data:

- Meet individual at the appointed time and place and verify identification.
- Provide a hard copy of the requested information. **Do not** allow viewing of the Tier II database via a computer. **Do not** provide facility maps or specific locations of the hazardous substance inventory per AS 40.25.120(a)(10)(c). **Do not** provide confidential location information or Trade Secret information as noted on the Tier II reports.
- The requestor's paperwork will be maintained in the SERC's Tier II records for at least five years and will serve as a record of who requests Tier II information for which facility(s).

Summary of Statutory Authorities:

AS 26.23 (Military Affairs and Veterans - Disasters): For the SERC, Section 26.23.07

states: “(e) The commission shall:

- (7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including Tier II information under 42 U.S.C. 11022; procedures established under this paragraph shall designate the Department of Environmental Conservation as the state agency to receive and process these requests on behalf of the commission;”

For LEPCs, Section 26.23.071 states:

“(g) Each local emergency planning committee shall

- (1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including Tier II information under 42 U.S.C. 11022;”

AS 29.35 (Municipal Government): Section 29.35.500 outlines Tier II reporting requirements, including items to be reported under State law.

AS 40.25 (Public Records and Recordors): Section 40.25.120(a)(10)(c) states in part:

- “(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except
- (10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information
 - (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;
 - (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or
 - (C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.”

Other Precautionary Measures:

Secure Storage: Tier II data managers should secure Tier II data as much as possible (e.g., locking file cabinet for hard copy data and CDs with Tier II data, as well as overall security of information stored in computers).

TIER II DATA REQUEST FORM

Individual Requesting Data:

Name:

Physical Address/Residence:

Telephone:

Work:

Home:

Type of Identification: (attach a photocopy of your proof of identification to this form)

- Driver's License
- Passport (if not U.S., specify country _____)
- Military ID

Representing:

- Self
- Company/Agency
Name of Company/Agency: _____

Reason for Requesting Data: (provide a short summary below)

Identify the specific facility(s) (name, address) you wish to obtain information about on a separate piece of paper or within the body of an email request.

Signature

Date