

DEPARTMENT OF PUBLIC SAFETY

Division of Homeland Security and Emergency Management

FILING TIER II REPORTS ELECTRONICALLY

8 CCR 1507-42

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1507-42.1 Authority

This regulation is adopted pursuant to the authority in section 24-33.5-1503.5 (1) and (2) C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-101 et seq. (the "APA"), C.R.S. and the Colorado Emergency Planning Committee Act, sections 24-33.5-1501 et seq. (the "Act"), C.R.S.

1507-42.2 Background

The federal "Emergency Planning and Community Right-to-Know Act" (EPCRA), 42 U.S.C. § 11001 et seq., was adopted by Congress in 1986. EPCRA Section 312 (42 U.S.C. § 11022) requires regulated facilities to submit a report of their emergency and hazardous chemical inventory to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department annually. The purpose of this report is to provide state and local emergency planning and response officials as well as the public with specific information on hazardous chemicals present at a facility.

For facilities exceeding the chemical thresholds defined by U.S. EPA regulations promulgated under the authority of EPCRA, this report requirement is fulfilled by the annual submission of a Tier II Chemical Inventory report. The format and content of the Tier II report were established by U.S. EPA through regulations promulgated under the authority of EPCRA.

The Tier II report is filed with the Colorado Emergency Planning Committee (CEPC) by submittal to the Colorado Department of Public Health and Environment (CDPHE) Division of Environmental Health and Sustainability (DEHS). Beyond 2015, the DEHS in support with the CEPC intends to explore, in conjunction with national update efforts for CAMEO, electronic Tier II submittal, and on-line products, one filing point for submittal to the CEPC (SERC), LEPC, and local Fire Departments.

The CEPC is established by statute and is the State Emergency Response Commission (SERC) as defined by EPCRA. Under Colorado Revised Statutes § 24-33.5-1501 et seq, C.R.S., the CEPC is the state agency responsible for the implementation of EPCRA in Colorado. The Director of the Division of Homeland Security and Emergency with advice of the CEPC is charged to promulgate rules and regulations necessary to "establish a uniform system for reporting and management of information required by the federal act".

Specifically, under §24-33.5-1503.5 (2)(b), C.R.S., the Division Director is required

"To establish a uniform system for reporting and management of information required by the federal act."

Further, under §24-33.5-1503.5 (2)(c), C.R.S., the Division Director has authority

“To create and adopt such forms as are necessary for the uniform reporting and management of information required by the federal act, including, but not limited to, the following:

- (I) A standardized tier II reporting form to replace the tier II form which is required under the federal act, and which shall be accepted by local emergency planning committees in reporting the information contained therein;”***

In guidance issued on July 13, 2010, EPA provided the following interpretation of its Tier II reporting regulations under EPCRA:

States have the flexibility to use any system for collecting chemical inventory information under section 312 and to establish the means to ensure the information is true, accurate, and complete so they may effectively and efficiently manage chemical risks and provide information to the public. 75 FR 39852, at 39856, July 13, 2010.

Since the adoption of EPCRA, electronic reporting capability has expanded. U.S. EPA has supported electronic reporting with free software designed to take the place of the Tier II paper form. Known as Tier2 Submit, there have been several generations of this free software and in its current form has proven to be reliable and easy for the reporting facilities to use. It may be downloaded from EPA at

<http://www.epa.gov/emergencies/content/epcra/tier2.htm>

Tier2 Submit is also useful to the LEPCs and fire departments that use and review hazardous chemical information from reporting facilities. With the same free software, LEPCs and fire departments can review and manage the hazardous chemical information they receive from reporting facilities.

1507-42.3 Purpose

The CEPC proposes a rule requiring the owner or operator of a facility subject to EPCRA Section 312 (Tier II) Chemical Inventory reporting to use the U.S. EPA Tier2 Submit software, as updated or modified over time, to prepare their Tier II report. Using the Tier2 Submit software, the facility submits its report as an electronic file in the Tier2 Submit format either via e-mail or by a mailed CD/diskette to the Colorado Department of Public Health and Environment (CDPHE) Division of Environmental Health and Sustainability (DEHS).

Instructions for downloading the Tier2 Submit software, and requirements for the validation and submission of reports to DEHS on behalf of the CEPC will be updated each year on Internet pages maintained by both DEHS and the CEPC to reflect any changes to web and mailing addresses or any other changes regarding the validation process and/or Tier2 Submit software.

The main benefits of receiving Tier II reporting in the Tier2 Submit format are:

- 1) Streamlining data processing so that updated Tier II data is available to emergency planners and responders more quickly;
- 2) Allowing the efficient import of Tier II data into the most commonly available emergency management software tools; and
- 3) Reducing manual data entry errors that lower data accuracy.

This rule change is also expected to increase efficiencies and reduce reporting burden for regulated facilities. This is evidenced by the Reporting Year (RY) 2009 results (submitted around March 1, 2010), in which about 60% of reporting companies/agencies already used Tier2Submit. Facility data has to be entered into Tier2Submit only once. In subsequent years, the previous year's data will upload into the next version of Tier2 Submit, and only changes in chemicals, personnel, etc. from the previous year have to be entered. For RY 2014, DEHS only received three (3) filings using paper instead of Tier II submit software.

Of the reporting companies/agencies using Tier2 Submit for RY 2009, about 80% used e-mail to report with the remaining 20% coming in by CD or diskette and accompanied by a paper copy. Over 99% of the Tier2Submit data came in via e-mail, showing that larger companies/agencies with more facilities and/or chemicals found this approach to be efficient.

1507-42.4 Regulation

1. Facilities required to submit a Tier I or Tier II form under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11022, shall do so by the use of Tier2 Submit electronic reporting format, as it may be modified or renamed from time to time, which is freely available from the U.S. Environmental Protection Agency. The Colorado Department of Public Health & Environment (CDPHE) – Division of Environmental Health & Sustainability (DEHS), and the Colorado Emergency Planning Committee, will maintain a web page with current instructions on downloading the software and the process by which the report generated by that software will be validated and submitted, including an e-mail address for that purpose. This requirement was effective January 1, 2011 for the 2010 reporting year and for all Tier I and Tier II reports submitted thereafter and is restated in this 2015 update.
 - A. A facility owner/operator that reports using the Tier2 Submit electronic reporting software is not required to provide that same report to the local emergency planning committee or the local fire department. The Colorado Emergency Planning Committee will provide Tier II information to the local emergency planning committees and local fire departments.
 - B. The name of the county in which a facility is located is a mandatory element of the Tier II report.
2. If a facility owner/operator is unable to comply with this requirement due to inadequate Internet connection and/or computer capability, the owner/operator must contact DEHS to make other arrangements to comply with the Tier II reporting obligations under 42 U.S.C. §11022, to include submittal of the paper form if no electronic means of reporting is possible for that facility.

Editor's Notes

History

Entire rule eff. 09/30/2015.