

State Emergency Response Commission (SERC) Policy and Procedures for Public Access to Tier Two Reports

Purpose: The primary purpose of this policy is to establish procedures for the Alaska State Emergency Response Commission (SERC), Alaska Department of Environmental Conservation (DEC), and Local Emergency Planning Committees (LEPCs) to receive and process requests for Tier Two information to meet Alaska statutory requirements (see below). The primary intent is to ensure that the release of Tier Two data will not be applied to conduct illegal activities which could jeopardize the public safety and welfare of the citizens of Alaska. None of the Homeland Security precautions identified in these procedures stop the processing of a valid request for information about hazardous materials by citizens. The State of Alaska remains in full compliance of Community Right-to-Know (CRTK) laws.

General: Tier Two 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 LEPC, local fire department, and the DEC, on behalf of 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), concerned citizens and the general public may request Tier Two information on facilities in their community.

Following the September 11, 2001, terrorist attack on the United States, concerns regarding the use of extremely hazardous substances as chemical weapons needed to be considered. CRTK and Homeland Security concerns are not diametrically opposed and these procedures comply with the requirements of each concern.

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 Two 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:

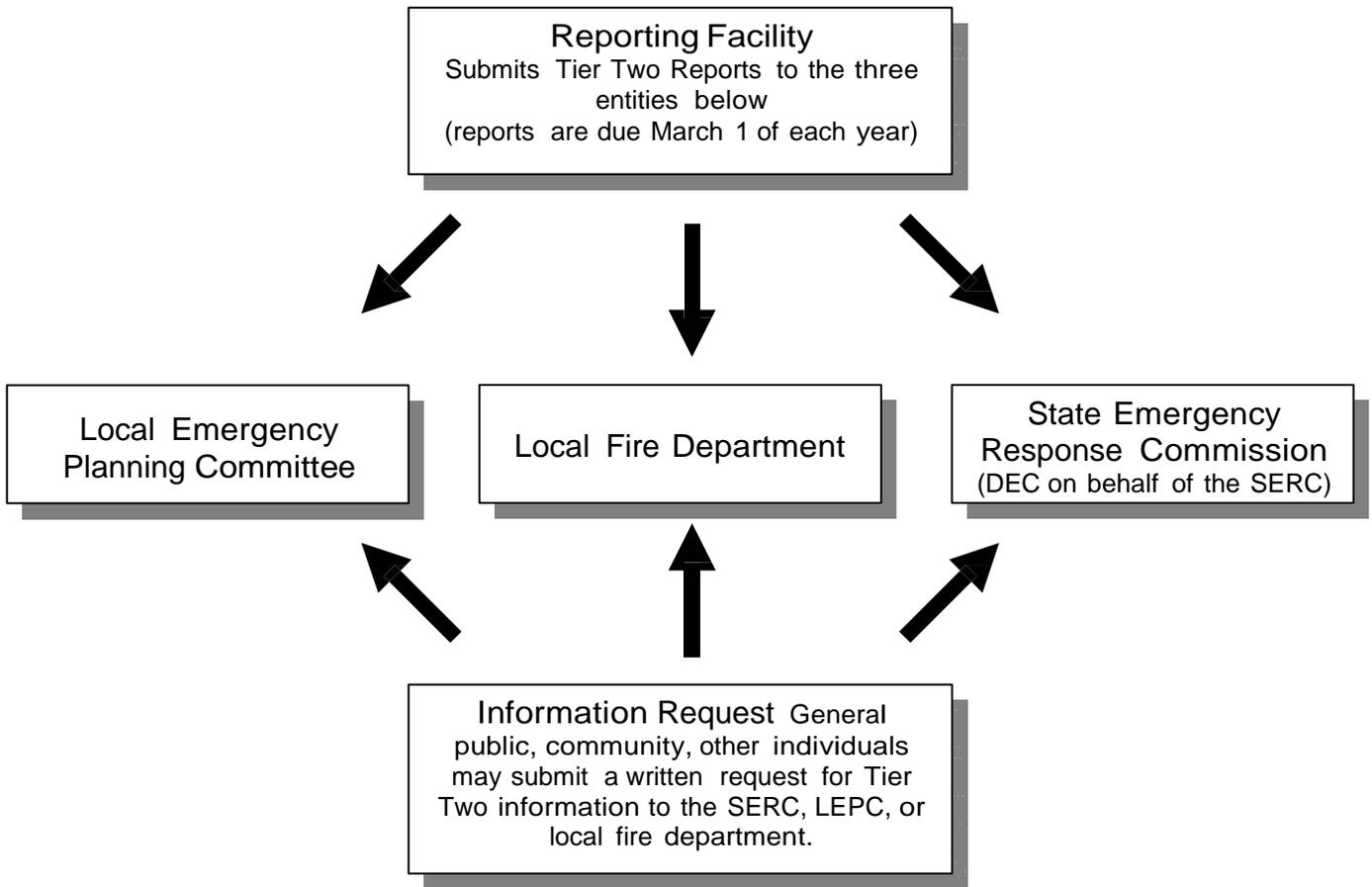
“(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

- (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 Two data managers should make a conscious effort to secure Tier Two data as much as possible (e.g., locking file cabinet for hard copy data and CDs with Tier Two data, as well as overall security of information stored in computers).

General Process for Receiving and Disseminating Tier Two Information:



Process for Providing Tier Two Information to the General Public

Checklist for Releasing Tier Two Data:

General: Tier Two data will not be released electronically (email or fax), telephonically, or via hard copy. The data may only be reviewed in person; notes can be taken but no copies can be made.

A written request must be submitted to the SERC or the appropriate LEPC. By law, the SERC and LEPCs have up to 45 days to process requests and provide the information to the requestor. Written requests will include the Tier Two Data Request Form (attached).

When DEC (on behalf of the SERC) receives a written request, staff will determine if the requestor can visit the DEC Anchorage or Juneau offices. If not, the requestor will be referred to the LEPC where the facility in question is located. When an LEPC receives a written request, it will forward it to the SERC Coordinator.

The procedures outlined in this document are mandatory for any release of Tier Two information by any state agency and the SERC strongly encourages each LEPC to mirror the state policy. LEPCs will develop local procedures to implement this program.

The following procedures will apply:

Notifications:

- Upon receipt of a written request, DEC or the SERC Coordinator will send the "Tier Two Data Request Form" (see 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).
- Upon receipt of the Tier Two Data Request Form, identification information provided on the form will be validated with the Department of Public Safety (DPS).
- DEC or the SERC Coordinator will also notify the owner/manager of the specific facility to inform him/her of this request for information, and determine if there is any additional information on the individual (e.g., former disgruntled employee, etc.).
- DEC or the SERC Coordinator will either provide access to the information or inform the LEPC that submitted the request to provide the data requested by appointment.
- If the person requesting the information refuses to provide ID, the reason for requesting data, or otherwise refuses to comply with these procedures, contact the Attorney General's office at 907-269-5157.

Procedures for Releasing Tier Two Data to the Requestor:

- Meet individual at the appointed time and place and verify identification.
- Explain the following general guidelines to the requestor.
 - No photocopying of information allowed. Information may be recorded on a piece of paper.
 - An escort will be provided at all times during the review period.
- Escort the requestor to the designated area for reviewing documents and remain with the individual at all times.
- Provide a hard copy of the requested information for review. Do not allow viewing of the Tier Two database via a computer. Do not provide facility maps or specific locations of the hazardous substance inventory.
- After completion of the review, retrieve all hard copies of the Tier Two records provided.
- Upon request of the facility owner/manager, block out or otherwise withhold the location of specific chemicals

TIER TWO DATA REQUEST FORM

Individual Requesting Data:

Name: Last, First, Middle Initial

Physical Address/Residence:

Telephone:

Work:

Home:

Type of Identification Provided: (check all that apply, AND 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)

Signature

Date