

**106 KAR 1:081. Kentucky Emergency Response Commission (KERC) Tier II reporting and fee schedule requirements; Extremely Hazardous Substance (EHS) facility planning participation requirements.**

RELATES TO: KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.190, 39E.220, 39E.230, 29 C.F.R. 1910.1200, 40 C.F.R. Part 355, Appendix A, Appendix B, Part 370, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, 42 U.S.C. 11002(c), 11003(c), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier II reporting and facility planning participation requirements for facilities subject to 42 U.S.C. 11001 through 42 U.S.C. 11050.

Section 1. Definitions. (1) "Category" means the five (5) types of facilities and applicable category numbers, defined by paragraphs (a) through (e) of this subsection, describing individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

(a) "Category One Facility" means any facility owned or operated by local, state, or federal government that is:

1. Exempted from paying any fee in accordance with KRS 39E.050; and
2. Not exempt from reporting requirements pursuant to KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.190, 39E.220, and 39E.230.

(b) "Category Two Facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances, with the combined total of all hazardous substances not exceeding 499,999 pounds.

(c) "Category Three Facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances, with the combined total of all hazardous substances not exceeding 499,999 pounds.

(d) "Category Four Facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(e) "Category Five Facility" means any facility that has an Extremely Hazardous Substance (EHS) as defined by subsection (4) of this section.

(2) "EHS Facility Emergency Response Plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:

- (a) Has in its inventory an EHS above Threshold Planning Quantity (TPQ); and
- (b) Meets all required planning elements of SARA Title III, 42 U.S.C. 11003; KRS 39E.110, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170 and 39E.220, and the KERC's planning requirements found in the Responsibilities of the LEPC Course Manual (KERC Document 715-RL).

(3) "EPCRA How to Comply Packet" or "KERC Document: 700-CP" means the packet published by Kentucky Emergency Management (KYEM) that describes the steps required to be compliant with all Emergency Planning and Community Right-to-Know (EPCRA), KRS, and the requirements established in 106 KAR 1:091.

(4) "Extremely Hazardous Substance" or "EHS" means any chemical listed on the EHS List

and their TPQs, codified as 40 C.F.R. Part 355, Appendix A and Appendix B.

(5) "Facility Annual Certification Letter" or "FACL" means the annual letter provided to the Local Emergency Planning Committee (LEPC) by any facility that has an EHS in excess of the TPQ to certify that the current EHS Facility Emergency Response Plan has been reviewed and:

- (a) Is correct without changes; or
- (b) Has been revised and the revisions are included with the FACL.

(6) "Facility Emergency Coordinator" or "FEC" means the EHS facility representative, assigned by the owner or operator of the EHS facility and designated on the annual Tier II report.

(7) "Hazardous Chemical" means:

(a) Any chemical that is classified by 29 C.F.R. 1910.1200(d), as a physical hazard or a health hazard;

(b) A simple asphyxiant, combustible dust, or pyrophoric gas; or

(c) A hazard not otherwise classified.

(8) "Hazardous Substance" is defined by KRS 39E.020(5).

(9) "KERC" means the Kentucky Emergency Response Commission.

(10) "Safety Data Sheet" or "SDS" means the Safety Data Sheets required by the Hazard Communication Standard (HCS) to be generated by chemical manufacturers, distributors, or importers in order to communicate the hazards of hazardous chemical products.

Section 2. Filing Requirements. (1) A facility shall file a Tier II report and pay all associated fees electronically as established in the EPCRA How to Comply Packet (KERC Document 700-CP). A paper report or check shall not be accepted.

(2)(a) The owner or operator of a facility that is required to prepare or have available a safety data sheet for a hazardous chemical present at the facility shall submit a Tier II Report prepared in accordance with the KERC's Tier II submitting process.

(b) The SDS requirements shall be as established in 29 C.F.R. 1910.1200, Hazard Communication Standard.

(c) A facility subject to the annual chemical inventory reporting requirements established in KRS 39E.210 and 42 U.S.C. 11022 shall submit the completed Tier II Report:

- 1. No later than March 1 each year; and
- 2. To each of the following organizations:
  - a. The KERC;
  - b. The LEPC; and
  - c. The fire department with jurisdiction over the facility.

(3) A facility shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at a level equal to or in exceedance of the reporting threshold.

(a) The minimum reporting thresholds shall be as established at 40 C.F.R. Part 370.

(b) The EPCRA chemical exemptions shall be those exemptions established in 40 C.F.R. Part 370.

(c) The exemptions established in 29 C.F.R. 1910.1200(b)(5) and (6) shall govern the preparation and availability of a Safety Data Sheet.

Section 3. Fees. (1) Except as established in subsection (2) of this section, a facility that is not exempt shall pay the applicable fee established in this subsection.

(a) There shall not be a fee for a Category One Facility.

(b) The fee for a Category Two Facility shall be forty (40) dollars.

(c) The fee for a Category Three Facility shall be \$250.

- (d) The fee for a Category Four Facility shall be \$250.
  - (e) The fee for a Category Five Facility shall be \$250.
  - (f) Maintenance and access fees, late fees, and fines shall be utilized for the administration of the KEREC program.
- (2) If the same owner or owners have two (2) or more facilities in a single county subject to paying a fee, the owner or owners shall pay the fees as established in subsection (1) of this section, not to exceed a total of \$250 for all those facilities in that county.
- (3) An owner or operator who violates this administrative regulation shall be subject to the penalties established in KRS 39E.990.

Section 4. EHS Facility Planning Participation Requirements. (1) In accordance with the planning requirements of KRS 39E.120 and KRS 39E.130, 42 U.S.C. 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the KEREC that it is subject to the requirements of this section, the facility shall:

- (a) Provide emergency response planning information to the LEPC; and
  - (b) Assist the LEPC in developing an EHS Facility Emergency Response Plan for all EHS in accordance with the Responsibilities of the LEPC Course Manual.
- (2) After initial submission and approval of the EHS Facility Emergency Response Plan in accordance with subsection (1) of this section, each March 1 any facility that has an EHS in excess of the TPQ shall review the EHS Facility Emergency Response Plan and send a FACL to the LEPC.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Responsibilities of the LEPC: Course Manual (KEREC Document 715-RL), 2018 edition;
  - (b) "EPCRA How to Comply Packet", KEREC Document; 700-CP, 2017; and
  - (c) "The EPA's Tier II Submit 20xx Self-Study Manual", 720A-T2SSS Course Manual, 2016.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m. (18 Ky.R. 1697; Am. 2310; eff. 1-27-1992; 43 Ky.R. 1211, 1506; eff. 3-31-2017; 45 Ky.R. 2743, 3050; eff. 5-31-2019.)