

# Breathe In That Rocky Mountain Air: Motor Carriers, Brokers, Freight Forwarders, and Private Fleets Operating in Colorado Face November 30, 2024 Deadline to Comply with State’s New Emissions Reporting Requirements and Avoid Substantial Penalties

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Motor carriers, brokers, freight forwarders and private fleets face substantial penalties if they fail to comply with Colorado’s new Large Entity Reporting (“LER”) requirement, a relatively unpublicized new regulatory measure in the State of Colorado aimed at tracking and reducing emissions from heavy-duty vehicles. This requirement, overseen by the Colorado Department of Public Health and Environment (“CDPHE”) Air Pollution Control Division (“APCD”), is part of Colorado’s efforts to promote a faster transition to lower and zero emission vehicles. The first deadline for reporting is November 30, 2024, and the next major reporting for applicable entities will be due on December 31, 2027.

### **Who Must Comply?**

Motor Carriers and Private Fleet Operators: The LER requirement applies to motor carriers and private fleet operators who: i) in the tax year preceding each LER reporting year, had 20 or more vehicles with a GVWR greater than 8,500 lbs. under common ownership or control (i.e., they own or lease the vehicles); AND ii) operated a facility in Colorado.

Brokers and Freight Forwarders: The LER requirement applies to brokers and freight forwarders who: i) dispatched 20 or more vehicles with a GVWR greater than 8,500 lbs. into or throughout Colorado; OR ii) operated a facility in Colorado, in the tax year preceding each reporting year.

### **Reporting Requirements**

Motor carriers, brokers, freight forwarders, and private fleet operators are required to provide detailed data about their fleet operations, including general business and financial information, as well as information regarding fleet composition and usage (i.e., facility locations, if applicable, vehicle types, vehicle identification numbers, fuel types, mileage for each vehicle, etc.) to the CDPHE. Notably, the magnitude of required information can quickly become quite substantial for

larger motor carriers or private fleet operators. In addition, all records that support the reported data must be retained by the reporting entity for at least five (5) years following each reporting deadline.

### **Penalties for Non-Compliance**

Although, the level enforcement of this new law is yet to be determined, Colorado law provides that non-compliance may result in fines of up to \$15,000 per day for each violation. These penalties underscore the importance of timely and accurate reporting in order to avoid substantial financial repercussions. The actual amount of the fine that will be issued will be within APCD's discretion and will likely vary based on the severity and duration of the non-compliance. Additionally, although the APCD has not yet disclosed to what extent it intends to enforce a subject party's compliance with the LER requirement, the APCD is authorized under Colorado law to undertake significant measures to enforce laws under its jurisdiction, which include the state potentially taking legal action against non-complying entities or seeking to restrict a non-complying entity's ability to operate within Colorado.

### **Conclusion**

To avoid substantial penalties for non-compliance or any other enforcement actions, as well as possible reputational damage, motor carriers, brokers, freight forwarders, and private fleet operators must take swift action to ensure that they will be compliant with Colorado's new LER requirement by November 30, 2024. The clock is ticking.

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