

## CHAPTER 98-193

### Committee Substitute for Senate Bill No. 812

An act relating to clean air; creating ss. 252.934, 252.935, 252.936, 252.937, 252.938, 252.939, 252.940, 252.941, 252.942, 252.944, 252.945, 252.946, F.S.; providing for the Florida Accidental Release Prevention and Risk Management Planning Act; providing a short title and purpose; defining terms; directing the Department of Community Affairs to seek delegation from the U.S. Environmental Protection Agency to implement the Accidental Release Prevention Program under the federal Clean Air Act or specified sources; providing for funding and fees; providing enforcement authority; providing penalties; authorizing the department to conduct inspections and audits; providing for tort liability; providing for a start-up loan; providing procedures for the release of information; directing legislative committees to review the Florida Accidental Release Prevention and Risk Management Planning Act; amending s. 252.85, F.S.; deleting certain standard industrial classification codes from certain annual reporting requirements; allowing the Department of Community Affairs to consider certain factors in assessing late fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part IV of chapter 252, consisting of sections 252.934, 252.935, 252.936, 252.937, 252.938, 252.939, 252.940, 252.941, 252.942, 252.944, and 252.945, Florida Statutes, is created to read:

252.934 Short title.—This part may be cited as the “Florida Accidental Release Prevention and Risk Management Planning Act.”

252.935 Purpose.—The purpose of this part is to establish adequate state authorities to implement, fund, and enforce the requirements of the Accidental Release Prevention Program of Section 112(r)(7) of the federal Clean Air Act and federal implementing regulations for specified sources. To ensure the efficient use of resources, it is the intent of the Legislature for the state to seek delegation of the Section 112(r)(7) Accidental Release Prevention Program from the U.S. Environmental Protection Agency for specified sources and for duplication and redundancy to be avoided to the maximum extent practicable with no expansion or addition of the regulatory program.

252.936 Definitions.—As used in this part, the term:

(1) “Accidental release” means an unanticipated emission of a regulated substance into the ambient air from a stationary source.

(2) “Accidental Release Prevention Program” means the program to implement the accidental release prevention, detection, and response provisions of Section 112(r)(7) of the Clean Air Act and federal implementing regulations.

(3) “Audit” means a review of information at a stationary source subject to Section 112(r)(7), or submitted by a stationary source subject to Section 112(r)(7), to determine whether that stationary source is in compliance with the requirements of this part and rules adopted to implement this part. Audits must include a review of the adequacy of the stationary source’s Risk Management Plan, may consist of reviews of information submitted to the department or the U.S. Environmental Protection Agency to determine whether the plan is complete or whether revisions to the plan are needed, and the reviews may be conducted at the stationary source to confirm that information onsite is consistent with reported information.

(4) “Chemical Safety and Hazard Investigation Board” means the federal Chemical Safety and Hazard Investigation Board created under Section 112(r)(6) of the Clean Air Act.

(5) “Clean Air Act” means the federal Clean Air Act, as amended, codified at 42 USC ss. 7401-7671q.

(6) “Commission” means the State Emergency Response Commission for Hazardous Materials created by Executive Order 94-138.

(7) “Committee” means any local emergency planning committee established in the state under s. 301 of the federal Emergency Planning and Community Right To Know Act, 42 USC s. 11001, et seq.

(8) “Department” means the Department of Community Affairs.

(9) “Inspection” means a review of information at a stationary source subject to Section 112(r)(7), including documentation and operating practices and access to the source and to any area where an accidental release could occur, to determine whether the stationary source is in compliance with the requirements of this part or rules adopted to implement this part.

(10) “Owner or operator” means any person who owns, leases, operates, controls, or supervises any stationary source subject to Section 112(r)(7) of the Clean Air Act.

(11) “Person” means an individual, corporation, partnership, association, state or any agency or institution thereof, municipality, political subdivision of the state, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof, and, for the purposes of s. 252.941, any responsible corporate officer.

(12) “Process” means a process as that term is defined under 40 C.F.R. Part 68.

(13) “Program level” means a Program 1, Program 2, or Program 3 stationary source level as determined under 40 C.F.R. Part 68.

(14) “Regulated substance” means any regulated substance defined or listed under Section 112(r)(3) of the Clean Air Act and federal implementing regulations. Consistent with Section 112(r)(7) federal implementing regulations, ammonia used as an agricultural nutrient, when held by farmers, is exempt from this part.

(15) “Risk Management Plan” means the Risk Management Plan required under Section 112(r)(7) of the Clean Air Act and federal implementing regulations.

(16) “Section 112(r)” means the provisions of Section 112(r) of the Clean Air Act.

(17) “Section 112(r)(7)” means the accidental release prevention, detection, and response provisions in Section 112(r)(7) of the Clean Air Act.

(18) “Stationary source” means any buildings, structures, equipment, installations, or regulated substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term does not apply to transportation, including storage incident to transportation of any regulated substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at the stationary source for loading or unloading. Transportation includes, but is not limited to, transportation that is subject to oversight or regulation under 49 CFR parts 192, 193, or 195 or a state natural gas or hazardous liquid program for which the state has in effect a certification to the United States Department of Transportation under 40 U.S.C. s. 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties may not be considered contiguous solely because of a railroad or gas pipeline right-of-way. Stationary sources subject to chapter 527 whose only regulated substance subject to Section 112(r)(7) is liquefied petroleum gas are exempt from Part IV, chapter 252.

(19) “Trust fund” means the Operating Trust Fund established in the department’s Division of Emergency Management.

252.937 Department powers and duties.—

(1) The department has the power and duty to:

(a)1. Seek delegation from the U.S. Environmental Protection Agency to implement the Accidental Release Prevention Program under Section 112(r)(7) of the Clean Air Act and the federal implementing regulations for specified sources subject to Section 112(r)(7) of the Clean Air Act. Implementation for all other sources subject to Section 112(r)(7) of the Clean Air Act will be performed by the U.S. Environmental Protection Agency; and

2. Ensure the timely submission of Risk Management Plans and any subsequent revisions of Risk Management Plans.

(b) Adopt, modify, and repeal rules, with the advice and consent of the commission, necessary to obtain delegation from the U.S. Environmental Protection Agency and to administer the Section 112(r)(7) Accidental Release Prevention Program in this state for the specified stationary sources with no expansion or addition of the regulatory program.

(c) Make and execute contracts and other agreements necessary or convenient to the implementation of this part.

(d) Coordinate its activities under this part with its other emergency management responsibilities, including its responsibilities and activities under parts I, II, and III of this chapter and with the related activities of other state and local agencies, keeping separate accounts for all activities conducted under this part which are supported or partially supported from the Trust Fund.

(e) Establish, with the advice and consent of the commission, a technical assistance and outreach program on or before January 31, 1999, to assist owners and operators of specified stationary sources subject to Section 112(r)(7) in complying with the reporting and fee requirements of this part. This program is designed to facilitate and ensure timely submission of proper certifications or compliance schedules and timely submission and registration of Risk Management Plans and revised registrations and Risk Management Plans when required for these sources.

(f) Make a quarterly report to the State Emergency Response Commission on income and expenses for the state's Accidental Release Prevention Program under this part.

(2) To ensure that this program is self-supporting, the department shall provide administrative support, including staff, facilities, materials, and services to implement this part for specified stationary sources subject to s. 252.939 and shall provide necessary funding to local emergency planning committees and county emergency management agencies for work performed to implement this part. Each state agency with regulatory, inspection, or technical assistance programs for specified stationary sources subject to this part shall enter into a Memorandum of Understanding with the department which specifically outlines how each agency's staff, facilities, materials, and services will be utilized to support implementation. At a minimum, these agencies and programs include: the Department of Environmental Protection's Division of Air Resources Management and Division of Water Facilities, and the Department of Labor and Employment Security's Division of Safety. It is the Legislature's intent to implement this part as efficiently and economically as possible, using existing expertise and resources, if available and appropriate.

(3) To prevent the duplication of investigative efforts and resources, the department, on behalf of the commission, shall coordinate with any federal agencies or agents thereof, including the federal Chemical Safety and Hazard Investigation Board, or its successor, which are performing accidental release investigations for specified stationary sources, and may coordinate with any agencies of the state which are performing accidental release investigations. This accidental release investigation coordination is not intended to limit or take the place of any individual agency accidental release investigation under separate authority.

(4) To promote efficient administration of this program and specified stationary sources, the only agency which may seek delegation from the

U.S.E.P.A. for this program is the Florida Department of Community Affairs. Further, the Florida Department of Community Affairs shall not delegate this program to any local environmental agency.

252.938 Funding.—

(1) It is the intent of the Legislature that the state activities and expenditures under this part be self-sustaining through fees contributed by specified sources as provided in this part.

(2) All fees and penalties collected under this part must be deposited in the Operating Trust Fund for appropriation to fund the state's Accidental Release Prevention Program under this part.

252.939 Fees.—

(1)(a) Any owner or operator of a specified stationary source in the state which must submit a Risk Management Plan to the U.S. Environmental Protection Agency under Section 112(r)(7) shall pay an annual registration fee for each specified stationary source to the department. The annual registration fee is due to the department upon initial submission of a stationary source's Risk Management Plan to the U.S. Environmental Protection Agency, and every April 1 thereafter.

(b) Prior individual written notice shall be provided by U.S. mail by the department to owners or operators of specified stationary sources in the state subject to the requirements under Section 112(r)(7) to submit Risk Management Plans and corresponding state registration fees. This notice must include the requirements of the state fee schedule and must be mailed at least 90 days before the due date for the specified stationary source's initial registration and Risk Management Plan submission year and at least 30 days before the registration fee due date for subsequent years.

(c) The department shall establish a fee schedule by rule for the specified stationary sources, upon the advice and consent of the commission. The annual registration fee must be based on a stationary source's highest program level, as determined under the federal implementing regulations for Section 112(r)(7) and may not exceed the following:

1. Program 1 Stationary Sources \$100. Multiple Program 1 stationary sources which are under common ownership and which have the same single chemical process, shall pay a full fee for the first stationary source location and a 50 percent fee for subsequent locations with no owner of such multiple stationary sources paying more than \$1,000. To be eligible for this multiple stationary source fee provision, one single fee payment must be submitted by the owner of the eligible multiple stationary source locations with a listing of the multiple stationary source locations and the single chemical process.

2. Program 2 Stationary Sources \$200. Multiple Program 2 stationary sources which are under common ownership and which have the same single chemical process, shall pay a full fee for the first three stationary source locations and a 50 percent fee for subsequent locations with no owner of such

multiple stationary sources paying more than \$2,000. Multiple Program 2 stationary sources which are under common ownership and which are classified under one of the following Standard Industrial Classification group numbers 01, 02, or 07 shall pay a full fee, not to exceed \$100 for the first stationary source location and a 50 percent fee for subsequent locations with no owner of such multiple stationary sources paying more than \$800. To be eligible for this multiple stationary source fee provisions, one single fee payment must be submitted by the owner of the eligible multiple stationary source locations with a listing of the multiple stationary source locations and the chemical process.

3. Program 3 Stationary Sources \$1,000.

(d) Annual registration fees under this section are not required until after the department receives final delegation approval from the U.S. Environmental Protection Agency to administer the Section 112(r)(7) Accidental Release Prevention Program for the specified stationary sources.

(2) The department shall establish by rule late fees, not to exceed 10 percent per month of the annual registration fee owed, and not to exceed a total of 50 percent, for failure to timely submit an annual registration fee. A late fee may not be assessed against a stationary source during the initial registration and submission year if 90 days prior written notice was not provided to that stationary source.

(3) In determining whether an annual registration fee is timely submitted under subsections (1) and (2), if the fee is:

(a) Mailed via U.S. mail, the date of submittal is the date evidenced by the postmark.

(b) Delivered by overnight or other private mail carriers, the date of submittal is the date the package is deposited with the overnight carrier.

(c) Hand-delivered, other than by overnight or private mail carrier, the date of submittal is the date of actual receipt.

(4) If the Legislature directs the department to seek authority to implement and enforce Section 112(r)(7) of the Clean Air Act for additional stationary sources, the department shall, with the advise of the commission, review and suggest revisions, if necessary and appropriate, to the fees specified in s. 252.939.

252.940 Enforcement; procedure; remedies.—

(1) The department has the following enforcement authority and remedies for specified stationary sources available to it for violations of this part as specified in s. 252.941:

(a) To institute a civil action in a court of competent jurisdiction in order to seek injunctive relief to immediately restrain or enjoin any person from engaging in any activity in violation of this part which is presenting an imminent and substantial endangerment to the public health or welfare or

the environment; and to seek injunctive relief to enforce compliance with this part or any rule, regulation, program requirement, or order implementing this part.

(b) To institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation, as specified in s. 252.941(1), in an amount of not more than \$10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) To seek criminal remedies, including fines, for violations as specified in s. 252.941(2).

(d) Failure to comply with the fee provisions under s. 252.939 is not a violation under s. 252.941. Section 252.939(2) is the sole remedy for fee provisions in s. 252.939, except that the department may enforce a final order entered under that section pursuant to s. 120.69.

(2) An action may not be commenced or continued under this section if the Administrator of the U.S. Environmental Protection Agency has commenced and is diligently pursuing an administrative order or civil or criminal action to enforce a specific requirement or to impose a civil or criminal penalty under Section 112(r) with respect to the specific violation. If the U.S. Environmental Protection Agency initiates any action after the state has initiated an action based on the same cause, the state suit shall be dismissed without prejudice and may be refiled only in the event that the U.S. Environmental Protection Agency discontinues the enforcement action prior to settlement or final judgment.

(3) For the purposes of this section, the department may offer and accept the use of emergency planning, training, and response-related Supplemental Environmental Projects, consistent with the guidelines established by the U.S. Environmental Protection Agency.

(4) The authorities and remedies provided under this section shall not take effect until after such time as the department has received final delegation approval from the U.S. Environmental Protection Agency to administer the Section 112(r)(7) Accidental Release Prevention Program for specified stationary sources.

252.941 Prohibitions, violations, penalties, intent.—

(1) It is a violation of this part, and it is prohibited for any person to:

(a) Fail to make any submittal required by this part or by rule or regulation implementing this part, or to violate or fail to comply with any rule, regulation, order, plan, or certification adopted or issued by the department pursuant to its lawful authority under this part, other than fees under s. 252.939.

(b) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly

render inaccurate any monitoring device or method required to be maintained under this part or by any program, rule, regulation, or order issued under this part.

(c) Fail to report to the appropriate representative of the department, as established by department rule, within 1 working day of discovery of an accidental release of a regulated substance from the stationary source, if the owner or operator is required to report the release to the U.S. Environmental Protection Agency under Section 112(r)(6).

(2) Any person who willfully commits a violation specified in subsection (1) is guilty of a misdemeanor of the first degree punishable as provided in s. 775.083(1)(g) by a fine of not more than \$10,000 for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(3) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(4) The prohibitions and violations provided under this section shall take effect after such time as the department has received final delegation approval from the U.S. Environmental Protection Agency to administer the Section 112(r)(7) Accidental Release Prevention Program for specified stationary sources.

#### 252.942 Inspections and audits.—

(1)(a) Any duly authorized representative of the department may at any reasonable time enter to inspect and audit, in order to ascertain compliance with this part or rules adopted to implement this part, any specified stationary source subject to the requirements of Section 112(r)(7), except a building that is used exclusively for a private residence.

(b) Any duly authorized representative may at any reasonable time have access to any specified stationary source subject to Section 112(r)(7) for inspection and copying any supporting documentation required under this part.

(c) A person may not refuse reasonable entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with such inspection.

(2) An inspection or audit under subsection (1) may be conducted only after:

(a) Consent for the inspection is received from the owner, operator, or person in charge; or

(b) The appropriate inspection warrant as provided in this section is obtained.



(3)(a) An inspection warrant as authorized by this chapter may be issued by a judge of any county court or circuit court of this state which has jurisdiction over the place or thing to be searched.

(b) When a proper affidavit is made, the judge may issue an inspection warrant if:

1. It appears that the properties to be inspected may be connected with or contain evidence of the violation of any of the provisions of this Part or any rule properly promulgated thereunder; or

2. The inspection sought is an integral part of a larger scheme of systematic routine inspections that are necessary to, and consistent with, the continuing efforts of the department to ensure compliance with the provisions of this part and any rules adopted thereunder.

(c) The judge shall, before issuing the warrant, have the application for the warrant duly sworn to and subscribed by a representative of the department; and he or she may receive further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The affidavit and further proof must set forth the facts tending to establish the grounds specified in paragraph (b) or the reasons for believing that such grounds exist.

(d) Upon examination of the application and proofs submitted and if satisfied that cause exists for issuing the inspection warrant, the judge shall issue a warrant, signed by him or her with the name of his or her office, to any department representative, which warrant will authorize the representative to inspect the property described in the warrant.

(4) The department shall periodically audit Risk Management Plans submitted by owners or operators of stationary sources subject to Section 112(r)(7) and require revisions of such plans when necessary to ensure compliance with this part. The audit and revision requirements must substantially comply with federal regulations implementing Section 112(r)(7). The department shall develop, with the advice and consent of the commission, an annual audit work plan which identifies specified stationary sources or audits based on the program resources available. Stationary sources will be prioritized for audits based on factors which include, but are not limited to, stationary source location and proximity to population centers, chemical characteristics and inventories, stationary source accident history, process accident history, compliance or inspection by allied agency programs, and the results of stationary sources' self-audits.

(5) Upon request, owners or operators of specified stationary sources subject to Section 112(r)(7) shall receive an oral exit interview at the conclusion of an inspection or audit.

(6) Following an audit or inspection, the department shall issue the owner or operator a written preliminary determination of any necessary revisions to the stationary source Risk Management Plan to ensure that the plan meets the requirements of this part and rules adopted to implement this part. The preliminary determination must include an explanation of the

basis for the revisions, reflecting industry standards and guidelines to the extent that such standards and guidelines are applicable, and must include a timetable for their implementation.

(7) The department shall provide reasonable notice of its intent to conduct an onsite inspection or audit of a specified stationary source. Inspections or audits may be conducted without notice in response to an accidental release or to protect the public health, safety, and welfare.

252.944 Tort liability.—The commission and the committees are state agencies, and the members of the commission and committees are officers, employees, or agents of the state for the purpose of s. 768.28.

252.945 Start up loan.—The department may advance a start up loan in the amount of \$400,000 from the hazardous materials account in the Operating Trust Fund to support initial implementation of this part. This loan must be repaid in equal annual installments by 2006, beginning October 1, 2001.

252.946 Public records.—With regard to information submitted to the U.S. Environmental Protection Agency under this part or Section 112(r)(7), the Department of Community Affairs, the State Hazardous Materials Emergency Response Commission, and any local emergency planning committee may assist persons in electronically accessing such information held by the U.S. Environmental Protection Agency in its centralized database. If requested, the department, the commission, or a committee may furnish copies of such U.S. Environmental Protection Agency records.

Section 2. In the interim prior to the regular legislative session in 2000, the appropriate substantive committees of the Senate and the House of Representatives shall conduct a review of the Florida Accidental Release Prevention and Risk Management Planning Act. The Department of Community Affairs, the State Emergency Response Commission, local emergency planning committees, the Department of Environmental Protection, the Department of Labor and Employment Security, county emergency management agencies, and all other agencies or private entities providing regulatory, inspection, or technical assistance shall provide information and assist in the review as needed. The review should include an analysis of the effectiveness and efficiency of the program, including the technical assistance and outreach programs offered; the level of participation in the program; the quality of the Risk Management Plans submitted; the adequacy of the administrative support provided and the efficiency and effectiveness of program administration, monitoring, coordination, and recordkeeping; the adequacy and quality of investigative efforts; the adequacy of the fee structure; the adequacy and quality of contracts entered into, audits, or inspections; and any other aspect of the program as determined by the legislative committees. Subsequent to this review, the legislative committees are to make recommendations regarding whether to continue the program. The committees are to address what, if any, statutory provisions should be modified in order to improve the program. Legislation should be promulgated to effectuate the committees' recommendations.

Section 3. Subsections (3) and (4) of section 252.85, Florida Statutes, are amended to read:

252.85 Fees.—

(3) Any owner or operator of a facility ~~with a Standard Industrial Classification Code between 20 and 39~~ that is required to submit a report or filing ~~United States Environmental Protection Agency Form R report to the commission~~ under s. 313 of EPCRA shall pay an annual reporting fee not to exceed \$150 ~~per Form R report~~ for those s. 313 EPCRA listed substances in effect on January 1, ~~1998~~ 1996. The department shall establish by rule the date by which the fee is to be paid, as well as a formula or method of determining the applicable fee under this subsection.

(4)(a) The department may assess a late fee for the failure to submit a report or filing that substantially complies with the requirements of EPCRA or s. 252.87 by the specified date or for failure to pay any fee, including any late fee, required by this section. This late fee shall be in addition to the fee otherwise imposed pursuant to this section. If the department elects to impose a late fee, it shall provide the owner or operator with a written notice that identifies the specific requirements which have not been met and advises of its intent to assess a late fee.

(b) The department may impose a late fee, subject to the limitations set forth below:

1. If the report, filing, or fee is submitted within 30 days after the receipt of the department's notice, no late fee may be assessed.

2. If the report, filing, or fee is not submitted within 30 days after the receipt of the department's notice, the department may impose a late fee in an amount equal to the amount of the annual registration fee, filing fee, or Section 313 Form R fee due, not to exceed \$2,000.

3. If the report, filing, or fee is not submitted within 90 days after the receipt of the department's notice, the department may issue a second notice. If the report, filing, or fee is not submitted within 30 days after receipt of the department's second notice, the department may assess a second late fee in an amount equal to twice the amount of the annual registration fee, filing fee, or Section 313 Form R fee due, not to exceed \$4,000.

4. The department may consider, but is not limited to considering, the following factors in assessing late fees: good-faith attempt to comply; history of noncompliance; ability to pay or continue in business; threat to health and safety posed by noncompliance; and degree of culpability.

Section 4. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.