

1 252.940, 252.941, 252.942, 252.944, 252.945, and 252.946,
2 Florida Statutes, is created to read:
3 252.934 Short title.--This part may be cited as the
4 "Florida Accidental Release Prevention and Risk Management
5 Planning Act."
6 252.935 Purpose.--The purpose of this part is to
7 establish adequate state authorities to implement, fund, and
8 enforce the requirements of the Accidental Release Prevention
9 Program of Section 112(r)(7) of the federal Clean Air Act and
10 federal implementing regulations for specified sources. To
11 ensure the efficient use of resources, it is the intent of the
12 Legislature for the state to seek delegation of the Section
13 112(r)(7) Accidental Release Prevention Program from the U.S.
14 Environmental Protection Agency for specified sources and for
15 duplication and redundancy to be avoided to the maximum extent
16 practicable.
17 252.936 Definitions.--As used in this part, the term:
18 (1) "Accidental release" means an unanticipated
19 emission of a regulated substance into the ambient air from a
20 stationary source.
21 (2) "Accidental Release Prevention Program" means the
22 program to implement the accidental release prevention,
23 detection, and response provisions of Section 112(r)(7) of the
24 Clean Air Act and federal implementing regulations.
25 (3) "Audit" means a review of information at a
26 stationary source subject to Section 112(r)(7), or submitted
27 by a stationary source subject to Section 112(r)(7), to
28 determine whether that stationary source is in compliance with
29 the requirements of this part and rules adopted to implement
30 this part. Audits must include a review of the adequacy of the
31 stationary source's Risk Management Plan, may consist of

1 reviews of information submitted to the department or the U.S.
2 Environmental Protection Agency to determine whether the plan
3 is complete or whether revisions to the plan are needed, and
4 the reviews may be conducted at the stationary source to
5 confirm that information onsite is consistent with reported
6 information.

7 (4) "Chemical Safety and Hazard Investigation Board"
8 means the federal Chemical Safety and Hazard Investigation
9 Board created under Section 112(r)(6) of the Clean Air Act.

10 (5) "Clean Air Act" means the federal Clean Air Act,
11 as amended, codified at 42 U.S.C. ss. 7401-7671q.

12 (6) "Commission" means the State Emergency Response
13 Commission for Hazardous Materials created by Executive Order
14 94-138.

15 (7) "Committee" means any local emergency planning
16 committee established in the state under s. 301 of the federal
17 Emergency Planning and Community Right To Know Act, 42 U.S.C.
18 s. 11001, et seq.

19 (8) "Department" means the Department of Community
20 Affairs.

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

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

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

7 (12) "Program 3 source" means any stationary source
8 subject to 112(r)(7) of the Clean Air Act as defined by 40
9 C.F.R., part 68.

10 (13) "Public source" means any stationary source
11 subject to Section 112(r)(7) of the Clean Air Act with a
12 governmental body as owner or operator.

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

19 (15) "Risk Management Plan" means the Risk Management
20 Plan required under Section 112(r)(7) of the Clean Air Act and
21 federal implementing regulations.

22 (16) "Section 112(r)" means the provisions of Section
23 112(r) of the Clean Air Act.

24 (17) "Section 112(r)(7)" means the accidental release
25 prevention, detection, and response provisions in Section
26 112(r)(7) of the Clean Air Act.

27 (18) "Stationary source" means any buildings,
28 structures, equipment, installations, or regulated substance
29 emitting stationary activities which belong to the same
30 industrial group, which are located on one or more contiguous
31 properties, which are under the control of the same person (or

1 persons under common control), and from which an accidental
2 release may occur. The term does not apply to transportation,
3 including storage incident to transportation of any regulated
4 substance under the provisions of this part. A stationary
5 source includes transportation containers used for storage not
6 incident to transportation and transportation containers
7 connected to equipment at the stationary source for loading or
8 unloading. Transportation includes, but is not limited to,
9 transportation that is subject to oversight or regulation
10 under 49 C.F.R. part 192, part 193, or part 195 or a state
11 natural gas or hazardous liquid program for which the state
12 has in effect a certification to the United States Department
13 of Transportation under 40 U.S.C. s. 60105. A stationary
14 source does not include naturally occurring hydrocarbon
15 reservoirs. Properties may not be considered contiguous solely
16 because of a railroad or gas pipeline right-of-way.

17 (19) "Trust fund" means the Operating Trust Fund
18 established in the department's Division of Emergency
19 Management.

20 252.937 Department powers and duties.--

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

22 (a)1. Seek delegation from the U.S. Environmental
23 Protection Agency to implement the Accidental Release
24 Prevention Program under Section 112(r)(7) of the Clean Air
25 Act and the federal implementing regulations for Program 3
26 sources and public sources subject to Section 112(r)(7) of the
27 Clean Air Act. Implementation for all other sources subject to
28 Section 112(r)(7) of the Clean Air Act will be performed by
29 the U.S. Environmental Protection Agency; and

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

1 (b) Adopt, modify, and repeal rules, with the advice
2 and consent of the commission, necessary to obtain delegation
3 from the U.S. Environmental Protection Agency and to
4 administer the Section 112(r)(7) Accidental Release Prevention
5 Program in this state for Program 3 sources and public
6 sources.

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

9 (d) Coordinate its activities under this part with its
10 other emergency management responsibilities, including its
11 responsibilities and activities under parts I, II, and III of
12 this chapter and with the related activities of other state
13 and local agencies, keeping separate accounts for all
14 activities conducted under this part which are supported or
15 partially supported from the trust fund.

16 (e) Establish, with the advice and consent of the
17 commission, a technical assistance and outreach program on or
18 before January 31, 1999, to assist owners and operators of
19 Program 3 and public stationary sources subject to Section
20 112(r)(7) in complying with the reporting and fee requirements
21 of this part. This program is designed to facilitate and
22 ensure timely submission of proper certifications or
23 compliance schedules and timely submission and registration of
24 Risk Management Plans and revised registrations and Risk
25 Management Plans when required for these sources.

26 (2) To ensure that this program is self-supporting,
27 the department shall provide administrative support, including
28 staff, facilities, materials, and services to implement this
29 part for Program 3 and public stationary sources subject to s.
30 252.939 and shall provide necessary funding to local emergency
31 planning committees and county emergency management agencies

1 for work performed to implement this part. Each state agency
2 with regulatory, inspection, or technical assistance programs
3 for Program 3 and public stationary sources subject to this
4 part shall enter into a Memorandum of Understanding with the
5 department which specifically outlines how each agency's
6 staff, facilities, materials, and services will be utilized to
7 support implementation. At a minimum, these agencies and
8 programs include: the Department of Environmental
9 Protection's Division of Air Resources Management and Division
10 of Water Facilities, and the Department of Labor and
11 Employment Security's Division of Safety. It is the
12 Legislature's intent to implement this part as efficiently and
13 economically as possible, using existing expertise and
14 resources, if available and appropriate.

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

27 (4) To promote efficient administration of this
28 program for public and Program 3 sources, the only agency
29 which may seek delegation from the U.S.E.P.A for this program
30 is the Florida Department of Community Affairs. Further, the
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1 Florida Department of Community Affairs shall not delegate
2 this program to any local environmental agency.
3 252.938 Funding.--
4 (1) It is the intent of the Legislature that the state
5 activities and expenditures under this part be self-sustaining
6 through fees contributed by Program 3 and public sources as
7 provided in this part.
8 (2) All fees and penalties collected under this part
9 must be deposited in a separate account in the Operating Trust
10 Fund for appropriation to fund the state's Accidental Release
11 Prevention Program under this part.
12 252.939 Fees.--
13 (1)(a) Any owner or operator of a Program 3 or public
14 stationary source in the state which must submit a Risk
15 Management Plan to the U.S. Environmental Protection Agency
16 under Section 112(r)(7) shall pay an annual registration fee
17 for each Program 3 or public stationary source to the
18 department. The annual registration fee is due to the
19 department upon initial submission of a stationary source's
20 Risk Management Plan to the U.S. Environmental Protection
21 Agency, and every April 1 thereafter.
22 (b) Prior individual written notice shall be provided
23 by U.S. mail by the department to owners or operators of
24 Program 3 and public stationary sources in the state subject
25 to the requirements under Section 112(r)(7) to submit Risk
26 Management Plans and corresponding state registration fees.
27 This notice must include the requirements of the state fee
28 schedule and must be mailed at least 90 days before the due
29 date for the Program 3 or public stationary source's initial
30 registration and Risk Management Plan submission year and at
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1 least 30 days before the registration fee due date for
2 subsequent years.

3 (c) The department shall establish a fee schedule by
4 rule for Program 3 public and private sources and public
5 sources in Program 1 or Program 2, upon the advice and consent
6 of the commission. The annual registration fee must be based
7 on a stationary source's highest program level, as determined
8 under the federal implementing regulations for Section
9 112(r)(7) and may not exceed the following:

10	<u>Program 1 Stationary Sources</u>	<u>\$ 150</u>
11	<u>Program 2 Stationary Sources</u>	<u>\$ 200</u>
12	<u>Program 3 Stationary Sources</u>	<u>\$1,000</u>

13 (d) Annual registration fees under this section are
14 not required until after the department receives final
15 delegation approval from the U.S. Environmental Protection
16 Agency to administer the Section 112(r)(7) Accidental Release
17 Prevention Program for Program 3 and public stationary
18 sources.

19 (2) The department shall establish by rule late fees,
20 not to exceed 100 percent of the annual registration fee owed,
21 for failure to timely submit an annual registration fee. A
22 late fee may not be assessed against a Program 3 or public
23 stationary source during the initial registration and
24 submission year if 90 days prior written notice was not
25 provided to that Program 3 or public stationary source.

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

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

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

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

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

13 252.940 Enforcement; procedure; remedies.--

14 (1) The department has the following enforcement
15 authority and remedies for Program 3 and public stationary
16 sources available to it for violations of this part as
17 specified in s. 252.941:

18 (a) To institute a civil action in a court of
19 competent jurisdiction in order to seek injunctive relief to
20 immediately restrain or enjoin any person from engaging in any
21 activity in violation of this part which is presenting an
22 imminent and substantial endangerment to the public health or
23 welfare or the environment; and to seek injunctive relief to
24 enforce compliance with this part or any rule, regulation,
25 program requirement, or order implementing this part.

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

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

5 (d) Failure to comply with the fee provisions under s.
6 252.939 is not a violation under s. 252.941. Section
7 252.939(2) is the sole remedy for fee provisions in s.
8 252.939, except that the department may enforce a final order
9 entered under that section pursuant to s. 120.69.

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

22 (3) For the purposes of this section, the department
23 may offer and accept the use of Supplemental Environmental
24 Projects, consistent with the guidelines established by the
25 U.S. Environmental Protection Agency.

26 (4) The authorities and remedies provided under this
27 section shall not take effect until after such time as the
28 department has received final delegation approval from the
29 U.S. Environmental Protection Agency to administer the Section
30 112(r)(7) Accidental Release Prevention Program for Program 3
31 and public stationary sources.

1 252.941 Prohibitions, violations, penalties, intent.--
2 (1) It is a violation of this part, and it is
3 prohibited for any person to:
4 (a) Fail to make any submittal required by this part
5 or by rule or regulation implementing this part, or to violate
6 or fail to comply with any rule, regulation, order, plan, or
7 certification adopted or issued by the department pursuant to
8 its lawful authority under this part, other than fees under s.
9 252.939.
10 (b) Knowingly make any false statement,
11 representation, or certification in any application, record,
12 report, plan, or other document filed or required to be
13 maintained under this part, or to falsify, tamper with, or
14 knowingly render inaccurate any monitoring device or method
15 required to be maintained under this part or by any program,
16 rule, regulation, or order issued under this part.
17 (c) Fail to report to the appropriate representative
18 of the department, as established by department rule, within 1
19 working day of discovery of an accidental release of a
20 regulated substance from the stationary source, if the owner
21 or operator is required to report the release to the U.S.
22 Environmental Protection Agency under Section 112(r)(6).
23 (2) Any person who willfully commits a violation
24 specified in subsection (1) is guilty of a misdemeanor of the
25 first degree punishable as provided in s. 775.083(1)(g) by a
26 fine of not more than \$10,000 for each offense. Each day
27 during any portion of which such violation occurs constitutes
28 a separate offense.
29 (3) It is the legislative intent that the civil
30 penalties and criminal fines imposed by the court be of such
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1 amount as to ensure immediate and continued compliance with
2 this section.

3 (4) The prohibitions and violations provided under
4 this section shall take effect after such time as the
5 department has received final delegation approval from the
6 U.S. Environmental Protection Agency to administer the Section
7 112(r)(7) Accidental Release Prevention Program for Program 3
8 and public stationary sources.

9 252.942 Inspections and audits.--

10 (1)(a) Any duly authorized representative of the
11 department may at any reasonable time enter to inspect and
12 audit, in order to ascertain compliance with this part or
13 rules adopted to implement this part, any Program 3 or public
14 stationary source subject to the requirements of Section
15 112(r)(7), except a building that is used exclusively for a
16 private residence.

17 (b) Any duly authorized representative may at any
18 reasonable time have access to any Program 3 or public
19 stationary source subject to Section 112(r)(7) for inspection
20 and copying any supporting documentation required under this
21 part.

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

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

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

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

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

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

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

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

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

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

1 representative to inspect the property described in the
2 warrant.
3 (4) The department shall periodically audit Risk
4 Management Plans submitted by owners or operators of
5 stationary sources subject to Section 112(r)(7) and require
6 revisions of such plans when necessary to ensure compliance
7 with this part. The audit and revision requirements must
8 substantially comply with federal regulations implementing
9 Section 112(r)(7). The department shall develop, with the
10 advice and consent of the commission, an annual audit work
11 plan which identifies Program 3 and public stationary sources
12 or audits based on the program resources available. Stationary
13 sources will be prioritized for audits based on factors which
14 include, but are not limited to, stationary source location
15 and proximity to population centers, chemical characteristics
16 and inventories, stationary source accident history, process
17 accident history, compliance or inspection by allied agency
18 programs, and the results of stationary sources' self-audits.
19 (5) Upon request, owners or operators of Program 3 or
20 public stationary sources subject to Section 112(r)(7) shall
21 receive an oral exit interview at the conclusion of an
22 inspection or audit.
23 (6) Following an audit or inspection, the department
24 shall issue the owner or operator a written preliminary
25 determination of any necessary revisions to the stationary
26 source Risk Management Plan to ensure that the plan meets the
27 requirements of this part and rules adopted to implement this
28 part. The preliminary determination must include an
29 explanation of the basis for the revisions, reflecting
30 industry standards and guidelines to the extent that such
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1 standards and guidelines are applicable, and must include a
2 timetable for their implementation.

3 (7) The department shall provide reasonable notice of
4 its intent to conduct an onsite inspection or audit of a
5 Program 3 or public stationary source. Inspections or audits
6 may be conducted without notice in response to an accidental
7 release or to protect the public health, safety, and welfare.

8 252.944 Tort liability.--The commission and the
9 committees are state agencies, and the members of the
10 commission and committees are officers, employees, or agents
11 of the state for the purpose of s. 768.28.

12 252.945 Start up loan.--The department may advance a
13 startup loan in the amount of \$400,000 from the hazardous
14 materials account in the Operating Trust Fund to support
15 initial implementation of this part. This loan must be repaid
16 in equal annual installments by 2006, beginning October 1,
17 2001.

18 252.946 Public records.--The Department of Community
19 Affairs, the State Hazardous Materials Emergency Response
20 Commission, and any local emergency planning committee may
21 fulfill requests for public records under s. 119.07 for
22 information electronically submitted under this part or the
23 Section 112(r)(7) Accidental Release Prevention Program to the
24 U.S. Environmental Protection Agency's centralized database by
25 referral to such database or other reasonably accessible data
26 collection points. Upon request, the department, the
27 commission, or the committees shall furnish copies of public
28 records not available through electronic data collection
29 points, and may elect to furnish copies of public records
30 which are available through electronic data collection points.
31 The department, the commission, or the committees may charge a

1 fee of up to \$1 per page, per person, per year for over 10
2 pages of materials copied.

3 Section 2. Subsections (3) and (4) of section 252.85,
4 Florida Statutes, are amended to read:

5 252.85 Fees.--

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

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

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

28 1. If the report, filing, or fee is submitted within
29 30 days after the receipt of the department's notice, no late
30 fee may be assessed.

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

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

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

19 Section 3. This act shall take effect upon becoming a
20 law.

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