The Florida Senate

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Committee on Comprehensive Planning, Local and Military Affairs Senator James E. "Jim" King, Jr., President

PUBLIC RECORDS EXEMPTION OF THE FLORIDA ACCIDENTAL PREVENTION AND RELEASE AND RISK MANAGEMENT PLANNING ACT

(SECTION 252.943, FLORIDA STATUTES)

SUMMARY

The public records exemption for trade secret information contained in a risk management plan (RMP) and records or reports obtained during an investigation, inspection or audit under the Accidental Release Prevention Program, as provided in s. 252.943, F.S., is scheduled for repeal on October 2, 2003 unless reviewed and reenacted by the Legislature following the criteria specified in the Open Government Sunset Review Act , s. 119.15, F.S.

Section 252.943, F.S., exempts certain information in an RMP, other than release or emissions data, that is determined to contain a "trade secret." This exemption also protects trade secret information in records and reports, other than release or emissions data, that is obtained during an investigation, inspection, or audit conducted under the Accidental Release Prevention Program. A business must claim this information is exempt as a trade secret when submitting information as required to the United States Environmental Protection Agency (EPA). Following such a claim, the EPA will make a determination as to whether the information is confidential in accordance with the criteria in 40 C.F.R. part 2, subpart B.

Off-site Consequence Analysis (OCA) information is contained in an RMP and consists of the worst-case release scenarios or alternative release scenarios for facilities in the program. Disclosure of OCA information is governed by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act. This act expressly supercedes any inconsistent state or local law and, therefore, a public records exemption under Florida Statutes is unnecessary.

The public records exemption for trade secret information is necessary for the Department of Community Affairs to maintain delegation of the Accidental Release Prevention Program under the Clean Air Act. Further, the exemption encourages compliance with the program's reporting requirements. It is recommended that the current public records exemption for information submitted in compliance with the act and determined to be a trade secret by the EPA be reenacted with editorial changes and a cross-reference to the definition of a "trade secret" in Florida Statutes.

BACKGROUND

The Florida Accidental Release Prevention and Risk Management Planning Act—

In 1998, the Florida Legislature enacted the Florida Accidental Release Prevention and Risk Management Planning Act, ch. 98-193, Laws of Florida. The purpose of the legislation was to provide adequate statutory authority for the State to seek delegation of the Accidental Release Prevention Program authorized by s. 112(r)(7) of the Clean Air Act Amendments of 1990, from the United States Environmental Protection Agency (EPA). Unlike the federal program, the Florida act excludes from regulation stationary sources whose only regulated substance under s. 112(r)(7) is liquefied petroleum gas.

The act authorizes the Department of Community Affairs to administer the program for specified sources in Florida, seek program delegation from EPA, coordinate the program with its other emergency responsibility activities, establish a technical assistance and outreach program to assist the owners and operators of stationary sources who are required to submit risk management plans under the federal act, and report to the State Emergency Response

Commission on income and expenses related to the program.

The federal Accidental Release Prevention Program, codified at 40 C.F.R. part 68, requires the owner or operator of a stationary source (a facility that emits or has the potential to emit air pollutants) which uses, stores, processes, or manufactures any one of 140 regulated substances, over a certain threshold quantity in a process, to develop and implement a risk management program and submit a plan summarizing this program to a national reporting center by June 21, 1999. Examples of regulated sources include chemical plants, water and wastewater treatment facilities, utilities, electronic manufacturers, and pulp and paper manufacturers.

A risk management plan (RMP) must include these basic elements: a hazard assessment of accidental chemical releases upon the surrounding community and the environment; a five-year accident history of any accidental releases which occurred on the site; a prevention program designed to minimize the occurrence of any releases through improved safety practices; and an emergency response program to reduce the effects of any releases which do occur. The summary plan must be resubmitted every five years and revised as conditions at the facility warrant.

A "stationary source" is defined by s. 252.936(18), F.S., as 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 might occur. The definition does not apply to the transportation of substances regulated by the act.

RMPs are intended to provide information useful to emergency management officials as well as the public on the risk and prevention measures in place to prevent releases of hazardous substances. During a hazard assessment, a facility owner or operator examines the extent of the area surrounding the facility which would be affected in the event of a worst-case release scenario of the largest single storage or process vessel, assuming the entire contents of that vessel were released to the air and migrated off-site. Once the area of concern off-site has been identified, all potential public receptors, such as residences, offices, schools, and nursing homes, must be identified and the total affected population must be estimated.

The level of detail required for the facility's risk management program depends on the results of each affected process' hazard assessment, accident history, and standard industrial code classification. Each process which contains a regulated substance is assigned to one of three program levels: 1, 2, or 3. In order to be eligible for Program Level 1, processes cannot have had an accidental release within five years prior to the RMPs submittal, do not have any public receptors located inside the area of concern, and have coordinated with the local emergency response organizations. Processes in Program Level 3 are included because their industrial code classification has been historically associated with higher rates of accidental releases or because the process is also subject to the Occupational Safety and Health Administration's Process Safety Management (PSM) Standard.[1]

Program Level 2 processes are those which have not been specifically assigned to Level 3, based upon their classification code or compliance with the PSM standard, yet are ineligible for Level 1 (e.g., have identified public receptors within their area of concern or have had an accident within the last five years). A typical facility may have multiple processes on-site and each will have its own program level. The owner or operator of a stationary source subject to Program Level 2 or Program Level 3 requirements is required by 40 C.F.R. s. 68.10, in addition to preparing an RMP, to implement a management system, conduct a hazard assessment, implement certain prevention steps and develop and implement an emergency response program.

All plans nationwide must be submitted to the Risk Management Plan Reporting Center in Merrifield, Virginia. This center is responsible for uploading all plans to a national database. All of the national RMP information is located at a centralized point and can be electronically retrieved by the implementing agency, and EPA staff. This allows EPA and delegated state agencies to directly retrieve plans for individual states as well as to draw national comparisons across industry sectors on process accident data and prevention techniques. The database for the implementing agencies is known as the RMP*REVIEW. There is also a public access database, which does not include hazard assessment information, called RMP*INFO. (It should be noted that RMPs are not currently available to the public online as discussed later in this report.)

[1] 29 C.F.R. s. 1910.119.

Approximately 15,000 facilities nationwide have submitted plans to the reporting center as of August 1999, and 524 of these are located in Florida.

An important element of the program is the requirement to be self-supporting, with the fees collected to be deposited in the Operating Trust Fund. Under the Accidental Release Prevention Program, the owner or operator submits the RMP to EPA yet pays an annual registration fee to the Department of Community Affairs. Pursuant to s. 252.939, F.S., the department is required to adopt a rule setting a fee schedule that cannot exceed $100 for Program 1 sources, $200 for Program 2 sources and $1,000 for Program 3 sources. In addition, no owner of multiple Program 1 stationary sources is charged more than $1,000, nor may the owner of multiple Program 2 stationary sources be charged more than $2,000.

The department is also required to provide a technical assistance and outreach program to assist owners and operators of stationary sources subject to the act with compliance under the RMP registration and fee requirements of the act. Further, the department is granted the authority to enforce the act and to inspect and audit facilities regulated by the act. The department is required to prepare, with the advice and consent of the State Emergency Response Commission for Hazardous Materials, an annual audit work plan which prioritizes specified stationary sources for an audit based on factors such as stationary source location and proximity to population centers, chemical characteristics and inventories, stationary source accident history, and self-audits.

In order to assist the department in its effort to obtain delegation of the program, the Legislature enacted a public records exemption for trade secret information that is consistent with the protection afforded similar information under federal law. Specifically, s. 252.943, F.S., creates a public records exemption for records, reports or information, other than release or emissions data, contained in an RMP or obtained during an investigation, inspection or audit where public disclosure of such records would divulge methods or processes subject to trade secret protection as provided for in 40 C.F.R. part 2, subpart B. This exemption is subject to the Open Government Sunset Review Act of 1995, s. 119.15, F.S., and is scheduled for repeal on October 2, 2003 unless reviewed and reenacted by the Legislature.

OCA Information—

In 1999, Congress enacted the "Chemical Safety Information, Site Security and Fuels Regulatory Relief Act".[2] One of the major purposes of the act was to address the release of Off-site Consequence Analysis (OCA) information that is required to be included in an RMP. "OCA Information" is defined as:

Those portions of an RMP, excluding the executive summary of the plan, consisting of one or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

Prior to the enactment of the act, OCA sections of an RMP, and any EPA electronic databases created from those sections were subject to public release in an electronic format under the Freedom of Information Act, 5 U.S.C. s. 552. The Federal Bureau of Investigation and other law enforcement and intelligence agencies expressed concerns that releasing OCA information via the Internet "would enable individuals anywhere in the world anonymously to search electronically for industrial facilities in the U.S. to target for purposes of causing an intentional industrial chemical release."[3] One of the purposes of the act was to expressly address the issue of how to disseminate OCA information.

To begin, the act imposed a one-year exemption from the Freedom of Information Act for OCA information, including the OCA portions of RMPs, and any databases created from those sections of the plans. Next, the act required the President to, by the end of the one-year period of the Freedom of Information Act exemption, to determine how to disseminate the information. As part of the decision-making process, the President was required to assess the increased risk of terrorist and other criminal activity associated with "the posting of [OCA] information on the Internet" and "the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases." [4]

The President was given a deadline of August 5, 2000 to promulgate a rule governing access to OCA information in a manner that minimizes the likelihood of accidental releases and the likelihood of harm to public health and welfare and that:

[2] Pub. L. No. 106-40 (codified as amended at 42 U.S.C. s. 7412(r)).
[3] Federal Register, Volume 65, Number 151, p. 48109.
[4] 42 U.S.C. s. 7412(r)(7)(H)(ii)(I).

1. allows access by any member of the public to paper copies of OCA information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;
2. allows other public access to OCA information as appropriate;
3. allows access for official use by a covered person[5] to OCA information relating to stationary sources located in the person's state.
4. allows a state or local covered person to provide, for official use, OCA information relating to stationary sources located in the person's state to a state or local covered person in a contiguous state; and
5. allows a state or local covered person to obtain for official use, by request to the administrator, OCA information that is not available to the person under item (3).[6]

On July 31, 2000, EPA and the United States Department of Justice issued a rule governing the Distribution of Off-site Consequence Analysis Information, codified at 40 C.F.R. part 1400, subchapter A. The rule imposes the following restrictions on public access to off-site consequence information.

- Access to paper copies of OCA information is available in at least 50 reading rooms located throughout the United States.
- At such reading rooms, persons are allowed to read, but not remove or mechanically reproduce, a paper copy of OCA information.
- Any person shall be provided with access to a paper copy of OCA information for up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month.
- In addition, any person must be given access to a paper copy of OCA information for stationary sources located in the jurisdiction of the Local Emergency Planning Committee (LEPC) where the person lives or works and for any other stationary source that has a vulnerable zone that extends into the LEPC's jurisdiction.
- Personal identification is required of persons requesting access to OCA information at a federal reading room. A reading room representative must ascertain the person's identity by checking a photo identification of the person, obtain the person's signature on a sign-in sheet and a certification that the individual has not requested more than 10 stationary sources within the past year. If the person is requesting to view local OCA information, the reading room representative must also ascertain where the person lives or works and obtain the person's signature on a sign-in sheet.

The act prohibits a covered person from disclosing to the public OCA data in any form, or any statewide or national ranking of identified stationary sources derived from such information. In addition, the act creates criminal penalties for the willful violation of the act, or regulations promulgated under the act. An individual convicted for violating the act shall be fined for an infraction under 18 U.S.C. s. 3571 for each unauthorized disclosure of OCA information. The disclosure of OCA information for each specific stationary source is considered a separate offense, and the total penalties assessed a person shall not exceed $1,000,000 for violations committed during one calendar year.

Finally, the act creates a preemption clause that provisions of the act relating to public access to OCA data, "shall supersede any provision of state or local law that is inconsistent with this subparagraph (including the regulations)." The preemption clause has the effect of prohibiting Florida from enacting a public records exemption or other law that is inconsistent with the provisions of the federal act or rule.

Constitutional Access to Public Records and Meetings —

Article I, s. 24(a) of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the State, or persons acting on their behalf. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as

[5] Under the act, the term "covered person" includes: an officer or employee of the United States, or of a State or local government; an officer or employee of an agent or contractor of the Federal Government or of a State or local government; an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases; and a qualified researcher. 42 U.S.C. s. 7412(r)(7)(H)(i)(I).

[6] 42 U.S.C. s. 7412(r)(7)(H)(ii)(I).

constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The term "public records" has been defined by the Legislature in s. 119.011(1), F.S., to include:

. . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.[7] Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.[8]

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24 of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that creates a public records exemption may not contain other substantive provisions, but may contain multiple exemptions that relate to a single subject.

In the November 2002 election, 76.5% of voters approved a constitutional amendment concerning public records. This amendment to Article I, s. 24 of the State Constitution requires any law after the effective date of the amendment containing exemptions to public records or public meetings be passed by a two-thirds vote of each house of the Legislature. Previously, the constitution required a simple majority vote for these exemptions.

The Open Government Sunset Review Act of 1995, contained in s. 119.15, F.S., establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature reenacts the exemption.

In the year before the repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in that section. Any exemption that is not identified and certified is not subject to legislative review and repeal under the Open Government Sunset Review Act. If the division fails to certify an exemption that it subsequently determines should have been certified, it is required to include the exemption in the following year's certification after that determination.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:
(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
(b) The exemption is necessary for the effective and efficient administration of a governmental program; or
(c) The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following questions:
(a) What specific records or meetings are affected by the exemption?
(b) Whom does the exemption uniquely affect, as opposed to the general public?
(c) What is the identifiable public purpose or goal of the exemption?

[7] *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[8] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

(d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three specified criteria, one of which the exemption must satisfy, are if an exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information that would identify individuals and is of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Under s. 119.15(4)(e), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the State or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.[9]

METHODOLOGY

Staff reviewed relevant statutory provisions and legislative history and contacted the Department of Community Affairs and other interested entities. The exemption under review was examined pursuant to the criteria of the Open Government Sunset Review Act, s. 119.15, F.S.

FINDINGS

Description of Current Public Record Exemptions—

Section 252.943, F.S., creates two exemptions from the provisions of s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution. The first exemption covers certain information contained in an RMP, other than release or emissions data, that contains trade secret information as provided for in 40 C.F.R. part 2, subpart B.

Similarly, the second exemption protects certain records or reports, other than release or emissions data, that is obtained during an investigation, inspection or audit conducted under the Accidental Release Prevention Program, where the public release of such information would divulge methods or processes entitled to protection as a trade secret under 40 C.F.R. part 2, subpart B. Both of these exemptions expire on October 2, 2003, unless reviewed and reenacted by the legislature.

Definition of Trade secret—

The public records exemption in s. 252.943, F.S., prohibits disclosure of information "entitled to protection as trade secrets defined in 40 C.F.R. part II, subpart B…." However, this federal regulation provides a process for EPA to determine that certain information constitutes a "trade secret" and is confidential, but does not define the term. Instead, "trade secret" is included in the broader category of "confidentiality of business information" governed by subpart B. Specifically, section 2.201 defines "Reasons of business confidentiality" to:

include the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantage it derives from its rights in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905 or any of the various statutes cited in ss. 2.301-2.309.

[9] *Straughn v. Camp*, 239 So. 2d 689, 694 (Fla. 1974).

Confidential business information found in an RMP or obtained during an audit or investigation will most likely fall under the category of "trade secret." Section 688.002(4), F.S., the "Uniform Trade Secrets Act", defines the term "trade secret" as a "a formula, pattern, compilation, program, device, method, technique, or process" that derives economic value from not being generally known and efforts are made to maintain its secrecy.

Section 2.301 of subpart B contains special rules governing information obtained under the Clean Air Act, and contains specific rules for the treatment of air emissions data. Information that is emissions data, a standard or limitation, or is collected pursuant to s. 211(b)(2)(A) of the Clean Air Act is not eligible for confidential treatment. Information that is not defined as emissions data that meets the definition of information entitled to a business confidentiality claim is treated as follows pursuant to 40 C.F.R. ss. 2.201-.207, 2.209 and 2.211-.215.

The "Registration Information" section of an RMP includes a box to check if the stationary source is claiming "confidential business information". If the box is checked, the source has submitted a request for EPA to substantiate that the information for which confidentiality is claimed meets the criteria of 40 C.F.R. s. 2.208. In order to assert the business confidentiality claim, a business submitting information to the EPA must place on it a "cover sheet, stamped or typed legend, or other suitable form of notice employing language such as a *trade secret, proprietary, or company confidential*."[10] Following the submittal of information that a business identifies as confidential, EPA makes a determination as to whether the information is entitled to protection as confidential business information. Lastly, an EPA legal office makes a final determination as to whether business information constitutes a trade secret and is entitled to confidential treatment.

If a business submits information that EPA determines has met the criteria for "confidential business information", the EPA will not release the information deemed confidential in any of its RMP databases. Therefore, access to any of this data would have to be specifically requested by the department from EPA. Release of this information to the department is contingent upon the department having authority under state or local law to compel a business with such information to disclose it and whether the department is governed by state law that adequately protects the interests of the affected business. To date, however, none of the 524 stationary sources for whom RMPs have been filed in Florida have claimed "confidential business information."

Exemption for OCA Information—

Because of the federal preemption set forth in the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, the department must follow the terms of the act and federal rule in handling OCA data. Currently, the language of the Florida Accidental Release Prevention and Risk Management Planning Act does not contain a public records exemption for OCA information. However, such an exemption is not necessary for the department to legally restrict access to OCA information because of the federal preemption. When a federal statute expressly requires particular records to be closed and the state is clearly subject to the provisions of the statute, the State must keep the records confidential.

Post September 11—

Since the events of September 11, 2001, EPA has limited access to certain information under the Accidental Release Prevention Program beyond what was required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act. For example, EPA has removed access to the database containing RMPs from its Web page. The EPA Web page states that:

RMP files that do not contain OCA Information have been temporarily removed by EPA from its website in light of the September 11. EPA is reviewing the information we make available over the Internet and assessing how best to make the information publicly available. We hope to complete that effort as soon as possible.[11]

Risk Management Plan data, other than OCA information covered by the act and information falling under the trade secret public records exemption, is subject to public inspection under the Florida Public Records Act. Because RMP data is not currently available on EPA's web site, the frequency to which requests are made to department for RMP information may increase. According to the department, however,

[10] 40 C.F.R. s. 2.203(b).

[11] http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/rmp_review.htm

no RMPs have been requested within the last two years. During this same period of time, the department received only one request for an audit report which did not contain any confidential or exempt information.

Considerations Under the Open Government Sunset Act—

Pursuant to s. 119.15(4)(b), F.S., an exemption must satisfy three levels of review to be reenacted. First, an exemption should be maintained only if it is necessary for the effective and efficient administration of a governmental program, the exempted record is of a sensitive, personal nature concerning individuals, or the exemption protects confidential information concerning an entity that provides a business advantage. In this instance, the exemption for a trade secret contained either in an RMP or records or reports obtained during an investigation or audit of a facility can be characterized as necessary for the effective administration of a program. Without the exemption, the department risks losing delegation of the Accidental Release and Prevention Program. The exemption also encourages voluntary compliance with the program. In addition, this exemption protects trade secret information which, if disclosed, could eliminate a business advantage and injure the entity in the marketplace.

In addition, s. 119.15(4)(a), F.S., requires consideration of the following questions as part of the review process:

First, what specific records or meetings are affected by the exemption?
Portions of an RMP, other than release or emissions data, that are determined to be a trade secret as provided for in 40 C.F.R. part 2, subpart B. Also, any trade secret information contained in records, reports, or information or parts thereof, other than release or emissions data, that are obtained from an investigation, inspection, or audit under the Accidental Release Prevention Program are affected by the exemption.

Second, whom does the exemption uniquely affect, as opposed to the general public?
This exemption has the potential to affect the following: the Department of Community Affairs, the State Emergency Response Commission for Hazardous Materials, the EPA, as well as any owner or operator of public and private facilities including governmental entities, corporations and individuals using hazardous materials in accordance with s. 112(r) of the Clean Air Act.

Third, what is the identifiable public purpose or goal of the exemption?
The exemption is consistent with federal law and necessary for the department to maintain delegation of the Accidental Release Prevention Program.

Fourth, can the information contained in the records or discussed in the meeting be readily obtained by alternative means and if so, how?
The information protected by the exemption cannot be readily obtained elsewhere. The EPA is not required to disclose trade secret information and s. 252.943, F.S., affords this information the same protection.

Finally, to satisfy the criteria of the Open Government Sunset Review Act, an exemption may be maintained only if it serves an identifiable public purpose and is no broader than necessary to meet that purpose it serves. The public records exemption for trade secret information found in an RMP or records or reports obtained during an investigation, inspection or audit serves the public purpose of maintaining the delegation to the department of the Accidental Release Prevention Program. In addition, the exemption encourages voluntary compliance with the reporting requirements of the program. The exemption is narrowly drawn to include only confidential information that is deemed a trade secret by the EPA.

RECOMMENDATIONS

Staff recommends that the exemption in s. 252.943, F.S., be retained and reenacted for trade secret information, as determined by the EPA under 40 C.F.R. part 2, subpart B, that is contained in a risk management plan or found in records or reports obtained during an investigation, inspection or audit under the Accidental Release Prevention Program authorized by the Clean Air Act. In addition, staff recommends editorial changes and including a cross-reference to the definition of “trade secret” in s. 688.002(4), F.S., for clarification.