

and shall be removed from office or employment.²³ See *Chrysler Corp. v. Brown*, 441 U.S. 281, 301(1979) (*Chrysler*). The Trade Secrets Act applies to formal agency actions as well as actions by the agency's individual employees. Courts have found that the coverage of the Trade Secrets Act and Exemption 4 are co-extensive,²⁴ meaning that the Trade Secrets Act generally prohibits release of information covered by Exemption 4.²⁵ However, the Trade Secrets Act permits disclosure of trade secret information where "authorized by law."²⁶ Accordingly, under the Trade Secrets Act, protected information may be released where there is statutory or regulatory authority for the agency to release it. In cases where the authorization for release is found in an agency regulation, the inquiry is whether the regulation permitting the release is authorized by law.²⁷

The Commission has statutory authority to release trade secret information. While both the Federal Power and Natural Gas Acts place restrictions on an individual employee's release of information gathered in the course of examining records of a company, they permit the Commission itself to authorize such a release. The Federal Power Act provides:

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records and memorandum when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.²⁸

In addition, sections 4 and 312 of the Federal Power Act authorize the Commission "[t]o make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use."²⁹ Section 14 of the Natural Gas Act provides similar authorization. It states:

The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of

investigation. The Commission, in its discretion, may publish in the manner authorized in section 312 of the Federal Power Act * * * information concerning any such matter.³⁰

Because these provisions give the Commission broad discretion to release information, such release would be authorized by law under the Federal Power and Natural Gas Acts and, therefore, permitted under the Trade Secrets Act, creating an exception to the normal situation where the Trade Secrets Act prohibits release of information covered by Exemption 4. This, in turn, would permit the Commission to withhold the information from public FOIA disclosure under Exemption 4, and still disclose the information to selected individuals with appropriate restrictions on use and dissemination of that information without violating the Trade Secrets Act.

c. Exemption 7

Exemption 7 exempts from disclosure certain information compiled for law enforcement purposes.³¹ For purposes of CEII, the most relevant Exemption 7 provision is 7(F), which allows information to be withheld in order to protect a person's life or physical safety. In order to invoke Exemption 7, the agency must be able to demonstrate that the document at issue involves enforcement of a statute or regulation that the agency is authorized to enforce. The Commission has very broad authority to enforce the provisions of the Federal Power Act and the Natural Gas Act. For instance, under the Federal Power Act, the Commission (1) Monitors and investigates compliance with licenses, exemptions and preliminary permits it issues;³² (2) determines just and reasonable rates;³³ and (3) ensures compliance with the Act and regulations issued thereunder.³⁴ Similarly, with respect to the Natural Gas Act, the Commission has broad authority to (1) Determine whether rates and charges are just and reasonable;³⁵ and (2) enforce violations of the statute or regulations issued thereunder.³⁶ Thus, given its broad enforcement authority, much of the information the Commission collects qualifies as information collected for a law enforcement purpose. For such law enforcement information to enjoy protection under Exemption 7(F), however, the release of the information must reasonably be expected to endanger a person's life or safety.

As noted in paragraph 11 of the final rule, there have been official warnings that the energy infrastructure could be the target of terrorist attacks. Given that an attack on the energy infrastructure is a legitimate threat, the Commission concludes that release of information that could facilitate or increase the likelihood of the success of such an attack could be expected to endanger life and safety of people. The failure of a dam could

cause flooding that would endanger lives, as could the explosion of a natural gas pipeline. Interruptions to gas and electric power supplies likewise could endanger lives of those reliant on power, especially in times of extreme hot or cold weather. For these reasons, information identified as CEII may qualify for protection under Exemption 7(F).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N-0068]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water quality standard regulations by establishing an allowable level for the contaminant uranium. As a consequence, bottled water manufacturers are required to monitor their finished bottled water products for uranium at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers are also required to monitor their source water for uranium as often as necessary, but at least once every 4 years unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. FDA will retain the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This direct final rule will ensure that the minimum quality of bottled water, as affected by uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards. FDA is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed, rule under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule. The

²³ 18 U.S.C. 1905.

²⁴ See, e.g., *Bartholdi Cable Co. v. FCC*, 114 F.3d 274 (D.C. Cir. 1997); *CNA*, 830 F.2d at 1152.

²⁵ *CNA*, 830 F.2d at 1151.

²⁶ *Chrysler*, 441 U.S. at 301.

²⁷ *Id.*

²⁸ 16 U.S.C. 825(b); see also 15 U.S.C. 717g(b) (Natural Gas Act) and 18 CFR 3c.2(a).

²⁹ 16 U.S.C. 797(d), 825k.

³⁰ 15 U.S.C. 717m.

³¹ 5 U.S.C. 552(b)(7).

³² 16 U.S.C. 823b.

³³ 16 U.S.C. 824e.

³⁴ 16 U.S.C. 825m, 825o-1.

³⁵ 15 U.S.C. 717c.

³⁶ 15 U.S.C. 717s.