

**15 U.S.C. II**

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Title 15 - COMMERCE AND TRADE

CHAPTER 53 - TOXIC SUBSTANCES CONTROL

SUBCHAPTER II - ASBESTOS HAZARD EMERGENCY RESPONSE

From the U.S. Government Printing Office, [www.gpo.gov](http://www.gpo.gov)**SUBCHAPTER II—ASBESTOS HAZARD EMERGENCY RESPONSE****§2641. Congressional findings and purpose****(a) Findings**

The Congress finds the following:

(1) The Environmental Protection Agency's rule on local educational agency inspection for, and notification of, the presence of friable asbestos-containing material in school buildings includes neither standards for the proper identification of asbestos-containing material and appropriate response actions with respect to friable asbestos-containing material, nor a requirement that response actions with respect to friable asbestos-containing material be carried out in a safe and complete manner once actions are found to be necessary. As a result of the lack of regulatory guidance from the Environmental Protection Agency, some schools have not undertaken response action while many others have undertaken expensive projects without knowing if their action is necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in schools, and some exposure actually may have increased due to the lack of Federal standards and improper response action.

(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local educational agencies required to use accredited contractors for asbestos work.

(3) The guidance provided by the Environmental Protection Agency in its "Guidance for Controlling Asbestos-Containing Material in Buildings" is insufficient in detail to ensure adequate responses. Such guidance is intended to be used only until the regulations required by this subchapter become effective.

(4) Because there are no Federal standards whatsoever regulating daily exposure to asbestos in other public and commercial buildings, persons in addition to those comprising the Nation's school population may be exposed daily to asbestos.

**(b) Purpose**

The purpose of this subchapter is—

(1) to provide for the establishment of Federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner;

(2) to mandate safe and complete periodic reinspection of school buildings following response actions, where appropriate; and

(3) to require the Administrator to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

(Pub. L. 94-469, title II, §201, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2970.)

## §2642. Definitions

For purposes of this subchapter—

### (1) Accredited asbestos contractor

The term “accredited asbestos contractor” means a person accredited pursuant to the provisions of section 2646 of this title.

### (2) Administrator

The term “Administrator” means the Administrator of the Environmental Protection Agency.

### (3) Asbestos

The term “asbestos” means asbestiform varieties of—

- (A) chrysotile (serpentine),
- (B) crocidolite (riebeckite),
- (C) amosite (cummingtonite-grunerite),
- (D) anthophyllite,
- (E) tremolite, or
- (F) actinolite.

### (4) Asbestos-containing material

The term “asbestos-containing material” means any material which contains more than 1 percent asbestos by weight.

### (5) EPA guidance document

The term “Guidance for Controlling Asbestos-Containing Material in Buildings”, means the Environmental Protection Agency document with such title as in effect on March 31, 1986.

### (6) Friable asbestos-containing material

The term “friable asbestos-containing material” means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

### (7) Local educational agency

The term “local educational agency” means—

- (A) any local educational agency as defined in section 7801 of title 20,
- (B) the owner of any private, nonprofit elementary or secondary school building, and
- (C) the governing authority of any school operated under the defense dependents’ education system provided for under the Defense Dependents’ Education Act of 1978 (20 U.S.C. 921 et seq.).

### (8) Most current guidance document

The term “most current guidance document” means the Environmental Protection Agency’s “Guidance for Controlling Asbestos-Containing Material in Buildings” as modified by the Environmental Protection Agency after March 31, 1986.

### (9) Non-profit elementary or secondary school

The term “non-profit elementary or secondary school” means any elementary or secondary school (as defined in section 7801 of title 20) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

**(10) Public and commercial building**

The term “public and commercial building” means any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units.

**(11) Response action**

The term “response action” means methods that protect human health and the environment from asbestos-containing material. Such methods include methods described in chapters 3 and 5 of the Environmental Protection Agency's “Guidance for Controlling Asbestos-Containing Materials in Buildings”.

**(12) School**

The term “school” means any elementary or secondary school as defined in section 7801 of title 20.

**(13) School building**

The term “school building” means—

(A) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food,

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education,

(C) any other facility used for the instruction of students or for the administration of educational or research programs, and

(D) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (A), (B), or (C).

**(14) State**

The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Pub. L. 94–469, title II, §202, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2971; amended Pub. L. 103–382, title III, §391(c)(1)–(3), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 107–110, title X, §1076(f)(1), Jan. 8, 2002, 115 Stat. 2091.)

**REFERENCES IN TEXT**

The Defense Dependents’ Education Act of 1978, referred to in par. (7)(C), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

**AMENDMENTS**

2002—Pars. (7)(A), (9), (12). Pub. L. 107–110 substituted “7801” for “8801”.

1994—Pars. (7)(A), (9), (12). Pub. L. 103–382 made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

**TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

**§2643. EPA regulations**

**(a) In general**

Within 360 days after October 22, 1986, the Administrator shall promulgate regulations as described in subsections (b) through (i) of this section. With respect to regulations described in subsections (b), (c), (d), (e), (f), (g), and (i) of this section, the Administrator shall issue an advanced notice of proposed rulemaking within 60 days after October 22, 1986, and shall propose regulations within 180 days after October 22, 1986. Any regulation promulgated under this section must protect human health and the environment.

**(b) Inspection**

The Administrator shall promulgate regulations which prescribe procedures, including the use of personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency. The regulations shall provide for the exclusion of any school building, or portion of a school building, if (1) an inspection of such school building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this subchapter or of the “Guidance for Controlling Asbestos-Containing Materials in Buildings” (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate). The regulations shall require inspection of any school building (or portion of a school building) that is not excluded by the preceding sentence.

**(c) Circumstances requiring response actions**

(1) The Administrator shall promulgate regulations which define the appropriate response action in a school building under the authority of a local educational agency in at least the following circumstances:

**(A) Damage**

Circumstances in which friable asbestos-containing material or its covering is damaged, deteriorated, or delaminated.

**(B) Significant damage**

Circumstances in which friable asbestos-containing material or its covering is significantly damaged, deteriorated, or delaminated.

**(C) Potential damage**

Circumstances in which—

- (i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and
- (ii) there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated.

**(D) Potential significant damage**

Circumstances in which—

- (i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and
- (ii) there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated.

(2) In promulgating such regulations, the Administrator shall consider and assess the value of various technologies intended to improve the decisionmaking process regarding response actions and the quality of any work that is deemed necessary, including air monitoring and chemical encapsulants.

**(d) Response actions**

**(1) In general**

The Administrator shall promulgate regulations describing a response action in a school building under the authority of a local educational agency, using the least burdensome methods which protect human health and the environment. In determining the least burdensome methods, the Administrator shall take into account local circumstances, including occupancy and use patterns within the school building and short- and long-term costs.

**(2) Response action for damaged asbestos**

In the case of a response action for the circumstances described in subsection (c)(1)(A) of this section, methods for responding shall include methods identified in chapters 3 and 5 of the “Guidance for Controlling Asbestos-Containing Material in Buildings”.

**(3) Response action for significantly damaged asbestos**

In the case of a response action for the circumstances described in subsection (c)(1)(B) of this section, methods for responding shall include methods identified in chapter 5 of the “Guidance for Controlling Asbestos-Containing Material in Buildings”.

**(4) Response action for potentially damaged asbestos**

In the case of a response action for the circumstances described in subsection (c)(1)(C) of this section, methods for responding shall include methods identified in chapters 3 and 5 of the “Guidance for Controlling Asbestos-Containing Material in Buildings”, unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become damaged, deteriorated, or delaminated.

**(5) Response action for potentially significantly damaged asbestos**

In the case of a response action for the circumstances described in subsection (c)(1)(D) of this section, methods for responding shall include methods identified in chapter 5 of the “Guidance for Controlling Asbestos-Containing Material in Buildings”, unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become significantly damaged, deteriorated, or delaminated.

**(6) “Preventive measures” defined**

For purposes of this section, the term “preventive measures” means actions which eliminate the reasonable likelihood of asbestos-containing material becoming damaged, deteriorated, or delaminated, or significantly damaged <sup>1</sup> deteriorated, or delaminated (as the case may be) or which protect human health and the environment.

**(7) EPA information or advisory**

The Administrator shall, not later than 30 days after November 28, 1990, publish and distribute to all local education agencies and State Governors information or an advisory to—

- (A) facilitate public understanding of the comparative risks associated with in-place management of asbestos-containing building materials and removals;
- (B) promote the least burdensome response actions necessary to protect human health, safety, and the environment; and
- (C) describe the circumstances in which asbestos removal is necessary to protect human health.

Such information or advisory shall be based on the best available scientific evidence and shall be revised, republished, and redistributed as appropriate, to reflect new scientific findings.

**(e) Implementation**

The Administrator shall promulgate regulations requiring the implementation of response actions in school buildings under the authority of a local educational agency and, where appropriate, for the determination of when a response action is completed. Such regulations shall include standards for

the education and protection of both workers and building occupants for the following phases of activity:

- (1) Inspection.
- (2) Response Action.<sup>2</sup>
- (3) Post-response action, including any periodic reinspection of asbestos-containing material and long-term surveillance activity.

**(f) Operations and maintenance**

The Administrator shall promulgate regulations to require implementation of an operations and maintenance and repair program as described in chapter 3 of the “Guidance for Controlling Asbestos-Containing Materials in Buildings” for all friable asbestos-containing material in a school building under the authority of a local educational agency.

**(g) Periodic surveillance**

The Administrator shall promulgate regulations to require the following:

- (1) An identification of the location of friable and non-friable asbestos in a school building under the authority of a local educational agency.
- (2) Provisions for surveillance and periodic reinspection of such friable and non-friable asbestos.
- (3) Provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such friable and non-friable asbestos.

**(h) Transportation and disposal**

The Administrator shall promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste material.

**(i) Management plans**

**(1) In general**

The Administrator shall promulgate regulations which require each local educational agency to develop an asbestos management plan for school buildings under its authority, to begin implementation of such plan within 990 days after October 22, 1986, and to complete implementation of such plan in a timely fashion. The regulations shall require that each plan include the following elements, wherever relevant to the school building:

- (A) An inspection statement describing inspection and response action activities carried out before October 22, 1986.
- (B) A description of the results of the inspection conducted pursuant to regulations under subsection (b) of this section, including a description of the specific areas inspected.
- (C) A detailed description of measures to be taken to respond to any friable asbestos-containing material pursuant to the regulations promulgated under subsections (c), (d), and (e) of this section, including the location or locations at which a response action will be taken, the method or methods of response action to be used, and a schedule for beginning and completing response actions.
- (D) A detailed description of any asbestos-containing material which remains in the school building once response actions are undertaken pursuant to the regulations promulgated under subsections (c), (d), and (e) of this section.
- (E) A plan for periodic reinspection and long-term surveillance activities developed pursuant to regulations promulgated under subsection (g) of this section, and a plan for operations and maintenance activities developed pursuant to regulations promulgated under subsection (f) of this section.

(F) With respect to the person or persons who inspected for asbestos-containing material and who will design or carry out response actions with respect to the friable asbestos-containing material, one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this title, a statement that the person (or persons) is accredited under such plan.

(ii) A statement that the local educational agency used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(G) A list of the laboratories that analyzed any bulk samples of asbestos-containing material found in the school building or air samples taken to detect asbestos in the school building and a statement that each laboratory has been accredited pursuant to the accreditation program under section 2646(d) of this title.

(H) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this title, a statement that the consultant is accredited under such plan.

(ii) A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(I) An evaluation of resources needed to successfully complete response actions and carry out reinspection, surveillance, and operation and maintenance activities.

## **(2) Statement by contractor**

A local educational agency may require each management plan to contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to this section and other applicable provisions of law. Such a statement may not be signed by a contractor who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

## **(3) Warning labels**

(A) The regulations shall require that each local educational agency which has inspected for and discovered any asbestos-containing material with respect to a school building shall attach a warning label to any asbestos-containing material still in routine maintenance areas (such as boiler rooms) of the school building, including—

(i) friable asbestos-containing material which was responded to by a means other than removal, and

(ii) asbestos-containing material for which no response action was carried out.

(B) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: **“CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.”**

## **(4) Plan may be submitted in stages**

A local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

**(5) Public availability**

A copy of the management plan developed under the regulations shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

**(6) Submission to State Governor**

Each plan developed under this subsection shall be submitted to the State Governor under section 2645 of this title.

**(j) Changes in regulations**

Changes may be made in the regulations promulgated under this section only by rule in accordance with section 553 of title 5. Any such change must protect human health and the environment.

**(k) Changes in guidance document**

Any change made in the “Guidance for Controlling Asbestos-Containing Material in Buildings” shall be made only by rule in accordance with section 553 of title 5, unless a regulation described in this section dealing with the same subject matter is in effect. Any such change must protect human health and the environment.

**(l) Treatment of Department of Defense schools****(1) Secretary to act in lieu of Governor**

In the administration of this subchapter, any function, duty, or other responsibility imposed on a Governor of a State shall be carried out by the Secretary of Defense with respect to any school operated under the defense dependents’ education system provided for under the Defense Dependents’ Education Act of 1978 (20 U.S.C. 921 et seq.).

**(2) Regulations**

The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of members of the Armed Forces. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to the manner in which a local educational agency is required to carry out such activities with respect to a school building under this subchapter.

**(m) Waiver**

The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 2644 of this title with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this section and section 2644 of this title.

(Pub. L. 94–469, title II, §203, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2972; amended Pub. L. 101–637, §13, Nov. 28, 1990, 104 Stat. 4593.)

**REFERENCES IN TEXT**

The Defense Dependents’ Education Act of 1978, referred to in subsec. (l)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

**AMENDMENTS**

1990—Subsec. (d)(7). Pub. L. 101–637 added par. (7).



<sup>1</sup> *So in original. Probably should be followed by a comma.*

<sup>2</sup> *So in original. Probably should not be capitalized.*

## **§2644. Requirements if EPA fails to promulgate regulations**

### **(a) In general**

#### **(1) Failure to promulgate**

If the Administrator fails to promulgate within the prescribed period—

- (A) regulations described in section 2643(b) of this title (relating to inspection);
- (B) regulations described in section 2643(c), (d), (e), (f), (g), and (i) of this title (relating to responding to asbestos); or
- (C) regulations described in section 2643(h) of this title (relating to transportation and disposal);

each local educational agency shall carry out the requirements described in this section in subsection (b); subsections (c), (d), and (e); or subsection (f); respectively, in accordance with the Environmental Protection Agency's most current guidance document.

#### **(2) Stay by court**

If the Administrator has promulgated regulations described in paragraph (1)(A), (B), or (C) within the prescribed period, but the effective date of such regulations has been stayed by a court for a period of more than 30 days, a local educational agency shall carry out the pertinent requirements described in this subsection in accordance with the Environmental Protection Agency's most current guidance document.

#### **(3) Effective period**

The requirements of this section shall be in effect until such time as the Administrator promulgates the pertinent regulations or until the stay is lifted (as the case may be).

### **(b) Inspection**

(1) Except as provided in paragraph (2), the local educational agency, within 540 days after October 22, 1986, shall conduct an inspection for asbestos-containing material, using personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, in each school building under its authority.

(2) The local educational agency may exclude from the inspection requirement in paragraph (1) any school building, or portion of a school building, if (A) an inspection of such school building (or portion) was completed before the date on which this section goes into effect, and (B) the inspection meets the inspection requirements of this section.

### **(c) Operation and maintenance**

The local educational agency shall, within 720 days after October 22, 1986, develop and begin implementation of an operation and maintenance plan with respect to friable asbestos-containing material in a school building under its authority. Such plan shall provide for the education of school service and maintenance personnel about safety procedures with respect to asbestos-containing material, including friable asbestos-containing material.

### **(d) Management plan**

#### **(1) In general**

The local educational agency shall—

- (A) develop a management plan for responding to asbestos-containing material in each school

building under its authority and submit such plan to the Governor under section 2645 of this title within 810 days after October 22, 1986,

- (B) begin implementation of such plan within 990 days after October 22, 1986, and
- (C) complete implementation of such plan in a timely fashion.

## **(2) Plan requirements**

The management plan shall—

- (A) include the elements listed in section 2643(i)(1) of this title, including an inspection statement as described in paragraph (3) of this section,<sup>1</sup>
- (B) provide for the attachment of warning labels as described in section 2643(i)(3) of this title,
- (C) be prepared in accordance with the most current guidance document,
- (D) meet the standard described in paragraph (4) for actions described in that paragraph, and
- (E) be submitted to the State Governor under section 2645 of this title.

## **(3) Inspection statement**

The local educational agency shall complete an inspection statement, covering activities carried out before October 22, 1986, which meets the following requirements:

(A) The statement shall include the following information:

- (i) The dates of inspection.
- (ii) The name, address, and qualifications of each inspector.
- (iii) A description of the specific areas inspected.
- (iv) A list of the laboratories that analyzed any bulk samples of asbestos-containing material or air samples of asbestos found in any school building and a statement describing the qualifications of each laboratory.
- (v) The results of the inspection.

(B) The statement shall state whether any actions were taken with respect to any asbestos-containing material found to be present, including a specific reference to whether any actions were taken in the boiler room of the building. If any such action was taken, the following items of information shall be included in the statement:

- (i) The location or locations at which the action was taken.
- (ii) A description of the method of action.
- (iii) The qualifications of the persons who conducted the action.

## **(4) Standard**

The ambient interior concentration of asbestos after the completion of actions described in the most current guidance document, other than the type of action described in sections 2643(f) of this title and subsection (c) of this section, shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. Either a scanning electron microscope or a transmission electron microscope shall be used to determine the ambient interior concentration. In the absence of reliable measurements, the ambient exterior concentration shall be deemed to be—

- (A) less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used, and
- (B) less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used.

## **(5) Public availability**

A copy of the management plan shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

## **(e) Building occupant protection**

The local educational agency shall provide for the protection of building occupants during each phase of activity described in this section.

**(f) Transportation and disposal**

The local educational agency shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

(Pub. L. 94-469, title II, §204, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2977.)

<sup>1</sup> *So in original. Probably should be "subsection."*

## **§2645. Submission to State Governor**

**(a) Submission**

Within 720 days after October 22, 1986 (or within 810 days if there are no regulations under section 2643(i) of this title), a local educational agency shall submit a management plan developed pursuant to regulations promulgated under section 2643(i) of this title (or under section 2644(d) of this title if there are no regulations) to the Governor of the State in which the local educational agency is located.

**(b) Governor requirements**

Within 360 days after October 22, 1986, the Governor of each State—

(1) shall notify local educational agencies in the State of where to submit their management plans under this section, and

(2) may establish administrative procedures for reviewing management plans submitted under this section.

If the Governor establishes procedures under paragraph (2), the Governor shall designate to carry out the reviews those State officials who are responsible for implementing environmental protection or other public health programs, or with authority over asbestos programs, in the State.

**(c) Management plan review**

**(1) Review of plan**

The Governor may disapprove a management plan within 90 days after the date of receipt of the plan if the plan—

(A) does not conform with the regulations under section 2643(i) of this title (or with section 2644(d) of this title if there are no regulations),

(B) does not assure that contractors who are accredited pursuant to this subchapter will be used to carry out the plan, or

(C) does not contain a response action schedule which is reasonable and timely, taking into account circumstances relevant to the speed at which the friable asbestos-containing material in the school buildings under the local educational agency's authority should be responded to, including human exposure to the asbestos while the friable asbestos-containing material remains in the school building, and the ability of the local educational agency to continue to provide educational services to the community.

**(2) Revision of plan**

If the State Governor disapproves a plan, the State Governor shall explain in writing to the local educational agency the reasons why the plan was disapproved and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of disapproval of its plan, the local educational agency shall revise the plan to conform with the State Governor's

suggested changes. The Governor may extend the 30-day period for not more than 90 days.

**(d) Deferral of submission**

**(1) Request for deferral**

A local educational agency may request a deferral, to May 9, 1989, of the deadline under subsection (a) of this section. Upon approval of such a request, the deadline under subsection (a) of this section is deferred until May 9, 1989, for the local educational agency which submitted the request. Such a request may cover one or more schools under the authority of the agency and shall include a list of all the schools covered by the request. A local educational agency shall file any such request with the State Governor by October 12, 1988, and shall include with the request either of the following statements:

**(A) A statement—**

(i) that the State in which the agency is located has requested from the Administrator, before June 1, 1988, a waiver under section 2643(m) of this title; and

(ii) that gives assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

**(B) A statement, the accuracy of which is sworn to by a responsible official of the agency (by notarization or other means of certification), that includes the following with respect to each school for which a deferral is sought in the request:**

(i) A statement that, in spite of the fact that the local educational agency has made a good faith effort to meet the deadline for submission of a management plan under subsection (a) of this section, the agency will not be able to meet the deadline. The statement shall include a brief explanation of the reasons why the deadline cannot be met.

(ii) A statement giving assurance that the local educational agency has made available for inspection by the public, at each school for which a deferral is sought in the request, at least one of the following documents:

(I) A solicitation by the local educational agency to contract with an accredited asbestos contractor for inspection or management plan development.

(II) A letter attesting to the enrollment of school district personnel in an Environmental Protection Agency-accredited training course for inspection and management plan development.

(III) Documentation showing that an analysis of suspected asbestos-containing material from the school is pending at an accredited laboratory.

(IV) Documentation showing that an inspection or management plan has been completed in at least one other school under the local educational agency's authority.

(iii) A statement giving assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

(iv) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including inspection of the school (if not completed at the time of the request) with a deadline of no later than December 22, 1988, for entering into a signed contract with an accredited asbestos contractor for inspection (unless such inspections are to be performed by school personnel), laboratory analysis of material from the school suspected of containing asbestos, and development of the management plan.

**(2) Notification and public meeting**

Before filing a deferral request under paragraph (1), a local educational agency shall notify affected parent, teacher, and employee organizations of its intent to file such a request. In the case of a deferral request for a public school, the local educational agency shall discuss the request at a public meeting of the school board with jurisdiction over the school, and affected parent, teacher, and employee organizations shall be notified in advance of the time and place of such meeting.

### **(3) Response by Governor**

(A) Not later than 30 days after the date on which a Governor receives a deferral request under paragraph (1) from a local educational agency, the Governor shall respond to the local educational agency in writing by acknowledging whether the request is complete or incomplete. If the request is incomplete, the Governor shall identify in the response the items that are missing from the request.

(B) A local educational agency may correct any deficiencies in an incomplete deferral request and refile the request with the Governor. In any case in which the local educational agency decides to refile the request, the agency shall refile the request, and the Governor shall respond to such refiled request in the manner described in subparagraph (A), no later than 15 days after the local educational agency has received a response from the Governor under subparagraph (A).

(C) Approval of a deferral request under this subsection occurs only upon the receipt by a local educational agency of a written acknowledgment from the Governor that the agency's deferral request is complete.

### **(4) Submission and review of plan**

A local educational agency whose deferral request is approved shall submit a management plan to the Governor not later than May 9, 1989. Such management plan shall include a copy of the deferral request and the statement accompanying such request. Such management plan shall be reviewed in accordance with subsection (c) of this section, except that the Governor may extend the 30-day period for revision of the plan under subsection (c)(2) of this section for only an additional 30 days (for a total of 60 days).

### **(5) Implementation of plan**

The approval of a deferral request from a local educational agency shall not be considered to be a waiver or exemption from the requirement under section 2643(i) of this title for the local educational agency to begin implementation of its management plan by July 9, 1989.

### **(6) EPA notice**

(A) Not later than 15 days after July 18, 1988, the Administrator shall publish in the Federal Register the following:

- (i) A notice describing the opportunity to file a request for deferral under this subsection.
- (ii) A list of the State offices (including officials (if available) in each State as designated under subsection (b) of this section) with which deferral requests should be filed.

(B) As soon as practicable, but in no event later than 30 days, after July 18, 1988, the Administrator shall mail a notice describing the opportunity to file a request for deferral under this subsection to each local educational agency and to each State office in the list published under subparagraph (A).

### **(e) Status reports**

(1) Not later than December 31, 1988, the Governor of each State shall submit to the Administrator a written statement on the status of management plan submissions and deferral requests by local educational agencies in the State. The statement shall be made available to local educational agencies in the State and shall contain the following:

(A) A list containing each local educational agency that submitted a management plan by October 12, 1988.

(B) A list containing each local educational agency whose deferral request was approved.

(C) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and whose deferral request was disapproved.

(D) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and did not submit a deferral request.

(2) Not later than December 31, 1989, the Governor of each State shall submit to the Administrator an updated version of the written statement submitted under paragraph (1). The statement shall be made available to local educational agencies in the State and shall contain the following:

- (A) A list containing each local educational agency whose management plan was submitted and not disapproved as of October 9, 1989.
- (B) A list containing each local educational agency whose management plan was submitted and disapproved, and which remains disapproved, as of October 9, 1989.
- (C) A list containing each local educational agency that submitted a management plan after May 9, 1989, and before October 10, 1989.
- (D) A list containing each local educational agency that failed to submit a management plan as of October 9, 1989.

(Pub. L. 94-469, title II, §205, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2979; amended Pub. L. 100-368, §§1(a), 2, July 18, 1988, 102 Stat. 829, 831.)

#### AMENDMENTS

- 1988—Subsec. (d). Pub. L. 100-368, §1(a), added subsec. (d).
- Subsec. (e). Pub. L. 100-368, §2, added subsec. (e).

## §2646. Contractor and laboratory accreditation

### (a) Contractor accreditation

A person may not—

- (1) inspect for asbestos-containing material in a school building under the authority of a local educational agency or in a public or commercial building,
- (2) prepare a management plan for such a school, or
- (3) design or conduct response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable asbestos-containing material in such a school or in a public or commercial building,

unless such person is accredited by a State under subsection (b) of this section or is accredited pursuant to an Administrator-approved course under subsection (c) of this section.

### (b) Accreditation by State

#### (1) Model plan

##### (A) Persons to be accredited

Within 180 days after October 22, 1986, the Administrator, in consultation with affected organizations, shall develop a model contractor accreditation plan for States to give accreditation to persons in the following categories:

- (i) Persons who inspect for asbestos-containing material in school buildings under the authority of a local educational agency or in public or commercial buildings.
- (ii) Persons who prepare management plans for such schools.
- (iii) Persons who design or carry out response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable asbestos-containing material in such schools or in public or commercial buildings.

##### (B) Plan requirements

The plan shall include a requirement that any person in a category listed in paragraph (1) achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos inspection and response action technology. The examination shall demonstrate the knowledge of the person in areas that the Administrator prescribes as

necessary and appropriate in each of the categories. Such examinations may include requirements for knowledge in the following areas:

- (i) Recognition of asbestos-containing material and its physical characteristics.
- (ii) Health hazards of asbestos and the relationship between asbestos exposure and disease.
- (iii) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos-containing material, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet response action methods.
- (iv) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.
- (v) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, the use of amended water, and principles of negative air pressure equipment use and procedures.
- (vi) Preparing a work area for response action work, including isolating work areas to prevent bystander or public exposure to asbestos, decontamination procedures, and procedures for dismantling work areas after completion of work.
- (vii) Establishing emergency procedures to respond to sudden releases.
- (viii) Air monitoring requirements and procedures.
- (ix) Medical surveillance program requirements.
- (x) Proper asbestos waste transportation and disposal procedures.
- (xi) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

## **(2) State adoption of plan**

Each State shall adopt a contractor accreditation plan at least as stringent as the model plan developed by the Administrator under paragraph (1), within 180 days after the commencement of the first regular session of the legislature of such State which is convened following the date on which the Administrator completes development of the model plan. In the case of a school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.), the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

## **(c) Accreditation by Administrator-approved course**

### **(1) Course approval**

Within 180 days after October 22, 1986, the Administrator shall ensure that any Environmental Protection Agency-approved asbestos training course is consistent with the model plan (including testing requirements) developed under subsection (b) of this section. A contractor may be accredited by taking and passing such a course.

### **(2) Treatment of persons with previous EPA asbestos training**

A person who—

- (A) completed an Environmental Protection Agency-approved asbestos training course before October 22, 1986, and
- (B) passed (or passes) an asbestos test either before or after October 22, 1986,

may be accredited under paragraph (1) if the Administrator determines that the course and test are equivalent to the requirements of the model plan developed under subsection (b) of this section. If the Administrator so determines, the person shall be considered accredited for the purposes of this subchapter until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b) of this section.

### **(3) Lists of courses**

The Administrator, in consultation with affected organizations, shall publish (and revise as necessary)—

- (A) a list of asbestos courses and tests in effect before October 22, 1986, which qualify for equivalency treatment under paragraph (2), and
- (B) a list of asbestos courses and tests which the Administrator determines under paragraph (1) are consistent with the model plan and which will qualify a contractor for accreditation under such paragraph.

**(d) Laboratory accreditation**

- (1) The Administrator shall provide for the development of an accreditation program for laboratories by the National Institute of Standards and Technology in accordance with paragraph (2). The Administrator shall transfer such funds as are necessary to the National Institute of Standards and Technology to carry out such program.
- (2) The National Institute of Standards and Technology, upon request by the Administrator, shall, in consultation with affected organizations—
  - (A) within 360 days after October 22, 1986, develop an accreditation program for laboratories which conduct qualitative and semi-quantitative analyses of bulk samples of asbestos-containing material, and
  - (B) within 720 days after October 22, 1986, develop an accreditation program for laboratories which conduct analyses of air samples of asbestos from school buildings under the authority of a local educational agency.
- (3) A laboratory which plans to carry out any such analysis shall comply with the requirements of the accreditation program.

**(e) Financial assistance contingent on use of accredited persons**

- (1) A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4014] is not eligible for such assistance unless the school, in carrying out the requirements of this subchapter—
  - (A) uses a person (or persons)—
    - (i) who is accredited by a State which has adopted an accreditation plan based on the model plan developed under subsection (b) of this section, or
    - (ii) who is accredited pursuant to an Administrator-approved course under subsection (c) of this section, and
  - (B) uses a laboratory (or laboratories) which is accredited under the program developed under subsection (d) of this section.

- (2) This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4011 et seq.] for activities performed after the following dates:
  - (A) In the case of activities performed by persons, after the date which is one year after October 22, 1986.
  - (B) In the case of activities performed by laboratories, after the date which is 180 days after the date on which a laboratory accreditation program is completed under subsection (d) of this section.

**(f) List of EPA-approved courses**

Not later than August 31, 1988, and every three months thereafter until August 31, 1991, the Administrator shall publish in the Federal Register a list of all Environmental Protection Agency-approved asbestos training courses for persons to achieve accreditation in each category described in subsection (b)(1)(A) of this section and for laboratories to achieve accreditation. The Administrator may continue publishing such a list after August 31, 1991, at such times as the Administrator considers it useful. The list shall include the name and address of each approved trainer and, to the extent available, a list of all the geographic sites where training courses will take place. The



Administrator shall provide a copy of the list to each State official on the list published by the Administrator under section 2645(d)(6) of this title and to each regional office of the Environmental Protection Agency.

(Pub. L. 94-469, title II, §206, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2980; amended Pub. L. 100-368, §3, July 18, 1988, 102 Stat. 832; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101-637, §15(a)(1), (2), Nov. 28, 1990, 104 Stat. 4596.)

#### REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (b)(2), is title XIV of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

The Asbestos School Hazard Abatement Act of 1984, referred to in subsec. (e)(2), is title V of Pub. L. 98-377, Aug. 11, 1984, 98 Stat. 1287, as amended, which is classified generally to subchapter V (§4011 et seq.) of chapter 52 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 4011 of Title 20 and Tables.

#### AMENDMENTS

1990—Subsec. (a)(1), (3). Pub. L. 101-637, §15(a)(1), inserted before comma at end “or in a public or commercial building”.

Subsec. (b)(1)(A)(i), (iii). Pub. L. 101-637, §15(a)(2), inserted before period at end “or in public or commercial buildings”.

1988—Subsec. (d)(1), (2). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards” wherever appearing.

Subsec. (f). Pub. L. 100-368 added subsec. (f).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 15(c) of Pub. L. 101-637 provided that: “This section [amending this section and section 2647 of this title and enacting provisions set out as notes under this section] shall take effect upon the expiration of the 12-month period following the date of the enactment of this Act [Nov. 28, 1990]. The Administrator may extend the effective date for a period not to exceed one year if the Administrator determines that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act [of 1986] (15 U.S.C. 2641) and such an extension is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act [15 U.S.C. 2643].”

#### REVISION OF MODEL CONTRACTOR ACCREDITATION PROGRAM

Section 15(a)(3) of Pub. L. 101-637 provided that: “Not later than one year after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall revise the model contractor accreditation plan promulgated under section 206(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2646(b)(1)) to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, required for asbestos abatement workers and to make such other changes as may be necessary to implement the amendments made by paragraphs (1) and (2) [amending this section].”

#### EPA ADMINISTRATOR NOT EXERCISING “STATUTORY AUTHORITY” UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

Section 15(b) of Pub. L. 101-637 provided that: “In exercising any authority under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] in connection with the amendment made by subsection (a) of this section [amending this section and section 2647 of this title], the Administrator of the Environmental Protection Agency shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.”

## §2647. Enforcement

**(a) Penalties**

Any local educational agency—

- (1) which fails to conduct an inspection pursuant to regulations under section 2643(b) of this title or under section 2644(b) of this title,
- (2) which knowingly submits false information to the Governor regarding any inspection pursuant to regulations under section 2643(i) of this title or knowingly includes false information in any inspection statement under section 2644(d)(3) of this title,
- (3) which fails to develop a management plan pursuant to regulations under section 2643(i) of this title or under section 2644(d) of this title,
- (4) which carries out any activity prohibited by section 2655 of this title, or
- (5) which knowingly submits false information to the Governor regarding a deferral request under section 2645(d) of this title.<sup>1</sup>

is liable for a civil penalty of not more than \$5,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of this title. For purposes of this subsection, a “violation” means a failure to comply with respect to a single school building. The court shall order that any civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this subchapter. Any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by section 4022 of title 20.

**(b) Relationship to subchapter I of this chapter**

A local educational agency is not liable for any civil penalty under subchapter I of this chapter for failing or refusing to comply with any rule promulgated or order issued under this subchapter.

**(c) Enforcement considerations**

- (1) In determining the amount of a civil penalty to be assessed under subsection (a) of this section against a local educational agency, the Administrator shall consider—
  - (A) the significance of the violation;
  - (B) the culpability of the violator, including any history of previous violations under this chapter;
  - (C) the ability of the violator to pay the penalty; and
  - (D) the ability of the violator to continue to provide educational services to the community.

- (2) Any action ordered by a court in fashioning relief under section 2619 of this title shall be consistent with regulations promulgated under section 2643 of this title (or with the requirements of section 2644 of this title if there are no regulations).

**(d) Citizen complaints**

Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to asbestos-containing material in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this chapter has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

**(e) Citizen petitions**

- (1) Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a regulation or order under this subchapter.
- (2) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a regulation or order

under this subchapter.

(3) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this subchapter. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this subchapter.

**(f) Citizen civil actions with respect to EPA regulations**

(1) Any person may commence a civil action without prior notice against the Administrator to compel the Administrator to meet the deadlines in section 2643 of this title for issuing advanced notices of proposed rulemaking, proposing regulations, and promulgating regulations. Any such action shall be brought in the district court of the United States for the District of Columbia.

(2) In any action brought under paragraph (1) in which the court finds the Administrator to be in violation of any deadline in section 2643 of this title, the court shall set forth a schedule for promulgating the regulations required by section 2643 of this title and shall order the Administrator to comply with such schedule. The court may extend any deadline (which has not already occurred) in section 2644(b), (c), or (d) of this title for a period of not more than 6 months, if the court-ordered schedule will result in final promulgation of the pertinent regulations within the extended period. Such deadline extensions may not be granted by the court beginning 720 days after October 22, 1986.

(3) Section 2619 of this title shall apply to civil actions described in this subsection, except to the extent inconsistent with this subsection.

**(g) Failure to attain accreditation; penalty**

Any contractor who—

- (1) inspects for asbestos-containing material in a school, public or commercial building;
- (2) designs or conducts response actions with respect to friable asbestos-containing material in a school, public or commercial building; or
- (3) employs individuals to conduct response actions with respect to friable asbestos-containing material in a school, public or commercial building;

and who fails to obtain the accreditation under section 2646 of this title, or in the case of employees to require or provide for the accreditation required, is liable for a civil penalty of not more than \$5,000 for each day during which the violation continues, unless such contractor is a direct employee of the Federal Government.

(Pub. L. 94-469, title II, §207, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2983; amended Pub. L. 100-368, §5, July 18, 1988, 102 Stat. 833; Pub. L. 101-637, §15(a)(4), Nov. 28, 1990, 104 Stat. 4596.)

**AMENDMENTS**

1990—Subsec. (g). Pub. L. 101-637 added subsec. (g).

1988—Subsec. (a)(4), (5). Pub. L. 100-368 added pars. (4) and (5).

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101-637 effective upon expiration of 12-month period following Nov. 28, 1990, with provisions for extension, see section 15(c) of Pub. L. 101-637, set out as a note under section 2646 of this title.

**EPA ADMINISTRATOR NOT EXERCISING “STATUTORY AUTHORITY” UNDER OSHA LAW IN EXERCISING**

### AUTHORITY UNDER THIS CHAPTER

In exercising any authority under this chapter in connection with amendment made by Pub. L. 101–637, Administrator of Environmental Protection Agency not, for purposes of section 653(b)(1) of Title 29, Labor, to be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, see section 15(b) of Pub. L. 101–637, set out as a note under section 2646 of this title.

<sup>1</sup> *So in original. The period probably should be a comma.*

## §2648. Emergency authority

### (a) Emergency action

#### (1) Authority

Whenever—

(A) the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment, and

(B) the local educational agency is not taking sufficient action (as determined by the Administrator or the Governor) to respond to the airborne asbestos or friable asbestos-containing material,

the Administrator or the Governor of a State is authorized to act to protect human health or the environment.

#### (2) Limitations on Governor's action

The Governor of a State shall notify the Administrator within a reasonable period of time before the Governor plans to take an emergency action under this subsection. After such notification, if the Administrator takes an emergency action with respect to the same hazard, the Governor may not carry out (or continue to carry out, if the action has been started) the emergency action.

#### (3) Notification

The following notification shall be provided before an emergency action is taken under this subsection:

(A) In the case of a Governor taking the action, the Governor shall notify the local educational agency concerned.

(B) In the case of the Administrator taking the action, the Administrator shall notify both the local educational agency concerned and the Governor of the State in which such agency is located.

#### (4) Cost recovery

The Administrator or the Governor of a State may seek reimbursement for all costs of an emergency action taken under this subsection in the United States District Court for the District of Columbia or for the district in which the emergency action occurred. In any action seeking reimbursement from a local educational agency, the action shall be brought in the United States District Court for the district in which the local educational agency is located.

### (b) Injunctive relief

Upon receipt of evidence that the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment—

(1) the Administrator may request the Attorney General to bring suit, or

(2) the Governor of a State may bring suit,

to secure such relief as may be necessary to respond to the hazard. The district court of the United States in the district in which the response will be carried out shall have jurisdiction to grant such relief, including injunctive relief.

(Pub. L. 94-469, title II, §208, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2985.)

## **§2649. State and Federal law**

### **(a) No preemption**

Nothing in this subchapter shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

### **(b) Cost and damage awards**

Nothing in this subchapter or any standard, regulation, or requirement promulgated pursuant to this subchapter shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

### **(c) State may establish more requirements**

Nothing in this subchapter shall be construed or interpreted as preempting a State from establishing any additional liability or more stringent requirements with respect to asbestos in school buildings within such State.

### **(d) No Federal cause of action**

Nothing in this subchapter creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

### **(e) Intent of Congress**

It is not the intent of Congress that this subchapter or rules, regulations, or orders issued pursuant to this subchapter be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to asbestos. This subsection does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State law with respect to the admission into evidence or any other use of this subchapter or rules, regulations, or orders issued pursuant to this subchapter.

(Pub. L. 94-469, title II, §209, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2986.)

## **§2650. Asbestos contractors and local educational agencies**

### **(a) Study**

#### **(1) General requirement**

The Administrator shall conduct a study on the availability of liability insurance and other forms of assurance against financial loss which are available to local educational agencies and asbestos contractors with respect to actions required under this subchapter. Such study shall examine the following:

(A) The extent to which liability insurance and other forms of assurance against financial loss are available to local educational agencies and asbestos contractors.

(B) The extent to which the cost of insurance or other forms of assurance against financial loss has increased and the extent to which coverage has become less complete.

(C) The extent to which any limitation in the availability of insurance or other forms of assurance against financial loss is the result of factors other than standards of liability in applicable law.

(D) The extent to which the existence of the regulations required by subsections (c) and (d) of section 2643 of this title and the accreditation of contractors under section 2646 of this title has affected the availability or cost of insurance or other forms of assurance against financial loss.

(E) The extent to which any limitation on the availability of insurance or other forms of assurance against financial loss is inhibiting inspections for asbestos-containing material or the development or implementation of management plans under this subchapter.

(F) Identification of any other impediments to the timely completion of inspections or the development and implementation of management plans under this subchapter.

### **(2) Interim report**

Not later than April 1, 1988, the Administrator shall submit to the Congress an interim report on the progress of the study required by this subsection, along with preliminary findings based on information collected to that date.

### **(3) Final report**

Not later than October 1, 1990, the Administrator shall submit to the Congress a final report on the study required by this subsection, including final findings based on the information collected.

### **(b) State action**

On the basis of the interim report or the final report of the study required by subsection (a) of this section, a State may enact or amend State law to establish or modify a standard of liability for local educational agencies or asbestos contractors with respect to actions required under this subchapter.

(Pub. L. 94-469, title II, §210, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2986.)

## **§2651. Public protection**

### **(a) Public protection**

No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this subchapter to any other person, including a State or the Federal Government.

### **(b) Labor Department review**

Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) of this section may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 660(c) of title 29.

(Pub. L. 94-469, title II, §211, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2987.)

## **§2652. Asbestos Ombudsman**

### **(a) Appointment**

The Administrator shall appoint an Asbestos Ombudsman, who shall carry out the duties described in subsection (b) of this section.

### **(b) Duties**

The duties of the Asbestos Ombudsman are—

(1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this subchapter,

(2) to render assistance with respect to the complaints, grievances, and requests received, and

(3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

(Pub. L. 94-469, title II, §212, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2987.)

### **§2653. EPA study of asbestos-containing material in public buildings**

Within 360 days after October 22, 1986, the Administrator shall conduct and submit to the Congress the results of a study which shall—

- (1) assess the extent to which asbestos-containing materials are present in public and commercial buildings;
- (2) assess the condition of asbestos-containing material in commercial buildings and the likelihood that persons occupying such buildings, including service and maintenance personnel, are, or may be, exposed to asbestos fibers;
- (3) consider and report on whether public and commercial buildings should be subject to the same inspection and response action requirements that apply to school buildings;
- (4) assess whether existing Federal regulations adequately protect the general public, particularly abatement personnel, from exposure to asbestos during renovation and demolition of such buildings; and
- (5) include recommendations that explicitly address whether there is a need to establish standards for, and regulate asbestos exposure in, public and commercial buildings.

(Pub. L. 94-469, title II, §213, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2987.)

### **§2654. Transitional rules**

Any regulation of the Environmental Protection Agency under subchapter I of this chapter which is inconsistent with this subchapter shall not be in effect after October 22, 1986. Any advanced notice of proposed rulemaking, any proposed rule, and any regulation of the Environmental Protection Agency in effect before October 22, 1986, which is consistent with the regulations required under section 2643 of this title shall remain in effect and may be used to meet the requirements of section 2643 of this title, except that any such regulation shall be enforced under this chapter.

(Pub. L. 94-469, title II, §214, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2988.)

### **§2655. Worker protection**

#### **(a) Prohibition on certain activities**

Until the local educational agency with authority over a school has submitted a management plan (for the school) which the State Governor has not disapproved as of the end of the period for review and revision of the plan under section 2645 of this title, the local educational agency may not do either of the following in the school:

- (1) Perform, or direct an employee to perform, renovations or removal of building materials, except emergency repairs, in the school, unless—
  - (A) the school is carrying out work under a grant awarded under section 4014 of title 20; or
  - (B) an inspection that complies with the requirements of regulations promulgated under section 2643 of this title has been carried out in the school and the agency complies with the following sections of title 40 of the Code of Federal Regulations:
    - (i) Paragraphs (g), (h), and (i) of section 763.90 (response actions).
    - (ii) Appendix D to subpart E of part 763 (transport and disposal of asbestos waste).

- (2) Perform, or direct an employee to perform, operations and maintenance activities in the school, unless the agency complies with the following sections of title 40 of the Code of Federal

**Regulations:**

(A) Section 763.91 (operations and maintenance), including appendix B to subpart E of part 763.

(B) Paragraph (a)(2) of section 763.92 (training and periodic surveillance).

**(b) Employee training and equipment**

Any school employee who is directed to conduct emergency repairs involving any building material containing asbestos or suspected of containing asbestos, or to conduct operations and maintenance activities, in a school—

(1) shall be provided the proper training to safely conduct such work in order to prevent potential exposure to asbestos; and

(2) shall be provided the proper equipment and allowed to follow work practices that are necessary to safely conduct such work in order to prevent potential exposure to asbestos.

**(c) “Emergency repair” defined**

For purposes of this section, the term “emergency repair” means a repair in a school building that was not planned and was in response to a sudden, unexpected event that threatens either—

(1) the health or safety of building occupants; or

(2) the structural integrity of the building.

(Pub. L. 94-469, title II, §215, as added Pub. L. 100-368, §4(a), July 18, 1988, 102 Stat. 832.)

**EFFECTIVE DATE**

Section 4(c) of Pub. L. 100-368 provided that: “Section 215 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on October 12, 1988.”

**§2656. Training grants****(a) Grants**

The Administrator is authorized to award grants under this section to nonprofit organizations that demonstrate experience in implementing and operating health and safety asbestos training and education programs for workers who are or will be engaged in asbestos-related activities (including State and local governments, colleges and universities, joint labor-management trust funds, and nonprofit government employee organizations) to establish and, or, operate asbestos training programs on a not-for-profit basis. Applications for grants under this subsection shall be submitted in such form and manner, and contain such information, as the Administrator prescribes.

**(b) Authorization**

Of such sums as are authorized to be appropriated pursuant to section 4021(a) of title 20 for the fiscal years 1991, 1992, 1993, 1994, and 1995, not more than \$5,000,000 are authorized to be appropriated to carry out this section in each such fiscal year.

(Pub. L. 94-469, title II, §216, as added Pub. L. 101-637, §16(a)(1), Nov. 28, 1990, 104 Stat. 4597.)

**EFFECTIVE DATE**

Section 16(b) of Pub. L. 101-637 provided that: “Section 216 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 28, 1990].”