

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 Build-

ings” 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.

**(I) 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).

**§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—

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

(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.)

**§ 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