

**(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 em-

ployees 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.

**§ 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.