

(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), except that the Governor may extend the 30-day period for revision of the plan under subsection (c)(2) 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)) 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 man-

agement 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) or is accredited pursuant to an Administrator-approved course under subsection (c).

(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)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 show-

ers, 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). 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). 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).

(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.

¹ So in original. Probably should be "subparagraph (A)".

(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), or

(ii) who is accredited pursuant to an Administrator-approved course under subsection (c), and

(B) uses a laboratory (or laboratories) which is accredited under the program developed under subsection (d).

(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).

(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) 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

Pub. L. 101-637, §15(c), Nov. 28, 1990, 104 Stat. 4597, 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

Pub. L. 101-637, §15(a)(3), Nov. 28, 1990, 104 Stat. 4596, 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

Pub. L. 101-637, §15(b), Nov. 28, 1990, 104 Stat. 4596, 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.¹

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) 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.

¹ So in original. The period probably should be a comma.