

tivities relating to the replacement of the asbestos materials removed from school buildings with other appropriate building materials); and

(3) repairs made to restore school buildings to conditions comparable to those which existed before the abatement activities referred to in paragraph (2) were undertaken.

(b) Priority list

(1) Each year, in accordance with procedures established by the Administrator, the Governor of each State shall:

(A) submit to the Administrator a priority list of all schools under the authority of a local educational agency within the State, without regard to the public or private nature of the school involved, that are candidates for abatement activities and other response actions; and

(B) forward to the Administrator for each candidate for abatement activities and other response actions all applications for financial assistance prepared by the local educational agencies in accordance with the provisions of section 4014 of this title; and¹

(2) The priority list shall rank the potential candidates for abatement action based on the nature and magnitude of the existing and potential exposure presented by the asbestos materials.

(3) For each school listed, the Governor shall certify that the statement of need contained in the application for assistance accurately reflects the financial resources available to the local educational agency for the asbestos abatement program.

(4) For the purpose of determining the adequacy of the financial resources available to a local educational agency for the abatement of asbestos threats the Governor shall, to the extent practicable, consider the following:

(A) A measure of financial need used by the State in which the local educational agency is located.

(B) The estimated per capita income of the locality of such agency or of those directly or indirectly providing financial support for such agency.

(C) The extent to which the local school millage rate falls above or below (i) the millage rate average of the State and (ii) the millage rate of other local educational agencies with comparable enrollment, per capita income, and resource base.

(D) The ratio, expressed as a percentage, of the estimated cost of the project to the total budget of the local educational agency.

(E) The borrowing capacity of the local educational agency.

(F) Any additional costs to the local educational agency of meeting the special needs of disadvantaged students.

(G) Any other factor that demonstrates that the local educational agency has limited financial resources.

(Pub. L. 98-377, title V, §504, Aug. 11, 1984, 98 Stat. 1289; Pub. L. 101-637, §§ 5, 14(a)(4), (b)(5), (6), Nov. 28, 1990, 104 Stat. 4590, 4594, 4595.)

¹ So in original. Probably should end with a period instead of “; and”.

Editorial Notes

AMENDMENTS

1990—Pub. L. 101-637, §14(a)(4), substituted “State records and priority lists” for “State plans” in section catchline.

Subsec. (a). Pub. L. 101-637, §§ 5(a)(1), 14(b)(5), inserted heading and substituted “The Governor of each State shall maintain records on” for “Not later than three months after August 11, 1984, the Governor of each State shall submit to the Administrator a plan which describes the procedures to be used by the State for maintaining records on” in introductory provisions.

Subsec. (a)(2). Pub. L. 101-637, §5(a)(2), (3), inserted “and other response actions” after “abatement activities” and inserted “and” after semicolon at end.

Subsec. (a)(3). Pub. L. 101-637, §5(a)(4), substituted “paragraph (2)” for “subparagraph (B)”.

Subsec. (b). Pub. L. 101-637, §14(b)(6)(A), inserted heading.

Subsec. (b)(1). Pub. L. 101-637, §5(b)(1), substituted “Each year, in accordance with procedures established by the Administrator,” for “Not later than six months after August 11, 1984, and annually thereafter,” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101-637, §§ 5(b)(2), (3), 14(b)(6)(B), substituted “abatement activities and other response actions” for “abatement”, struck out “and the Secretary of the Department of Education” after “submit to the Administrator”, and inserted “and” after semicolon at end.

Subsec. (b)(1)(B). Pub. L. 101-637, §§ 5(b)(2), 14(b)(6)(B), (C), substituted “abatement activities and other response actions” for “abatement”, struck out “section 4012(b)(3) of this title and” before “section 4014”, and struck out “and the Secretary of the Department of Education” after “forward to the Administrator”.

Subsec. (b)(1)(C). Pub. L. 101-637, §5(b)(4), struck out subpar. (C) which read as follows: “forward to the Secretary of the Department of Education a copy of all information submitted to the Administrator in accordance with subsection (b)(3) of this section.”

Subsec. (b)(4)(C). Pub. L. 101-637, §14(b)(6)(D), inserted a comma after “per capita income”.

Subsec. (b)(4)(F), (G). Pub. L. 101-637, §5(c), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (c). Pub. L. 101-637, §5(d), struck out subsec. (c) which read as follows: “Not later than nine months after the submission of the plan described in subsection (a) of this section, and each twelve months thereafter, the Governor shall submit to the Administrator a report which describes the actions taken by the State in accordance with its plan under such subsection.”

§ 4014. Financial assistance

(a) Assistance Program

There is hereby established within the Environmental Protection Agency an Asbestos Hazards Abatement Assistance Program (hereinafter in this chapter referred to as the “Assistance Program”), which shall be administered in accordance with this section.

(b) Application submission

(1) Applications for financial assistance shall be submitted by a local educational agency to the Governor, or the Governor’s designee, who shall establish a priority list based on the criteria of section 4013(b)(2) of this title.

(2) Pursuant to section 4013 of this title, the Governor shall submit applications, together with the Governor’s report and priority list, to the Administrator who shall review and rank such applications pursuant to subsection (c)(2) and propose financing pursuant to the criteria of section 4013(b)(4) of this title. The Adminis-

trator shall approve or disapprove applications for financial assistance no later than April 30 of each year.

(c) Review of application

(1) The Administrator shall provide financial assistance on a school-by-school basis to local educational agencies in accordance with other provisions of this section to carry out projects for—

(A) abating the threat posed by materials containing asbestos to the health and safety of children or employees;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring school buildings to conditions comparable to those existing before abatement activities were undertaken pursuant to this section.

(2) The Administrator shall review and list in priority order applications for financial assistance. In ranking applications, the Administrator shall consider—

(A) the priority assigned to the abatement program by the Governor pursuant to section 4013(b)(2) of this title; and

(B)(i) the likelihood of release of asbestos fibers into a school environment;

(ii) any other evidence of the risk caused by the presence of asbestos including, but not limited to, situations in which there is a substantial quantity of dry loose asbestos-containing material on horizontal surfaces or asbestos-containing material is substantially deteriorated or damaged, and there is asbestos-containing material in an air plenum or in a high traffic area, confined space, or within easy reach of a passerby;

(iii) the extent to which the corrective action proposed by the applicant will reduce the exposure of school children and school employees; and

(iv) the extent to which the corrective action proposed by the applicant uses the least burdensome methods which protect human health and the environment.

(3) In determining whether an applicant is eligible for assistance, and the nature and amount of financial assistance, the Administrator shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title.

(d) Limitation

In no event shall financial assistance be provided under this subchapter to an applicant if—

(1) the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program; or

(2) the applicant is not in compliance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

(e) Amount of loan or grant

(1) An applicant for financial assistance may be granted a loan of up to 100 percent of the costs of an abatement program or, if the Administrator determines the applicant is unable to undertake and complete an asbestos materials

abatement program with a loan, such applicant may also receive a grant (alone or in combination with a loan) not to exceed 50 percent of the total costs of abatement, in the amount which the Administrator deems necessary.

(2) In approving any grant, the Administrator shall state with particularity the reasons why the applicant is unable to undertake and complete the abatement program with loan funds.

(f) Loan agreement

Loans under this section shall be made pursuant to agreements which shall provide for the following:

(1) the loan shall not bear interest;

(2) the loan shall have a maturity period of not more than twenty years (as determined by the Administrator) and shall be repayable during such period at such times and in such amounts as the Administrator may specify in the loan agreement;

(3) repayment shall be made to the Secretary of the Treasury for deposit in the Asbestos Trust Fund established by section 4022 of this title; and

(4) such other terms and conditions that the Administrator determines necessary to protect the financial interest of the United States.

(g) Application requirements

(1) No financial assistance may be provided under this section unless an application has been submitted to the Administrator in accordance with such procedures as may be developed by the Administrator.

(2) The Administrator shall not approve an application unless—

(A) the application contains such information as the Administrator may require, including but not limited to information describing—

(i) the nature and extent of the asbestos problem for which the assistance is sought;

(ii) the asbestos content of the material to be abated;

(iii) the methods which will be used to abate the asbestos materials;

(iv) the amount and type of financial assistance requested;

(v) a description of the financial resources of the local educational agency; and

(vi) a justification for the type and amount of the financial assistance requested.

(B) the application contains a certification that—

(i) the local educational agency has prepared and is implementing an asbestos management plan, as required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.); and

(ii) all activities to be conducted with the financial assistance will be performed by individuals trained and accredited in conformance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) and regulations promulgated under that title;

(C) the application contains assurances that the local educational agency will furnish such information as is necessary for the Adminis-

trator to make the report required by section 4016 of this title.

(3) No financial assistance may be provided by the Administrator under this section for projects described in subsection (a)(2) on which abatement action was completed prior to January 1, 1984.

(4) Except as provided in section 4021(b)(1) of this title, in approving applications the Administrator shall provide assistance to the local educational agencies having the highest priority among applications being considered in order of ranking until the appropriated funds are expended.

(Pub. L. 98-377, title V, §505, Aug. 11, 1984, 98 Stat. 1290; Pub. L. 99-519, §3(a), Oct. 22, 1986, 100 Stat. 2988; Pub. L. 100-368, §6(b), July 18, 1988, 102 Stat. 833; Pub. L. 101-637, §§6, 14(a)(5), (b)(7), (c)(1)-(4), Nov. 28, 1990, 104 Stat. 4591, 4594-4596.)

Editorial Notes

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in secs. (d)(2) and (g)(2)(B), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003. Title II of the Act, as added by Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2970, is classified generally to subchapter II (§2641 et seq.) of chapter 53 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

AMENDMENTS

1990—Pub. L. 101-637, §14(a)(5), made technical amendment to section catchline.

Subsec. (a). Pub. L. 101-637, §14(b)(7)(A), inserted heading.

Subsec. (b). Pub. L. 101-637, §14(b)(7)(B), inserted heading.

Subsec. (b)(1). Pub. L. 101-637, §14(c)(1), struck out comma after "educational agency".

Subsec. (b)(2). Pub. L. 101-637, §6(a)(1), (2), substituted "the Governor shall submit applications," for "applications shall be submitted," and inserted "The Administrator shall approve or disapprove applications for financial assistance no later than April 30 of each year."

Subsec. (b)(3). Pub. L. 101-637, §6(a)(3), struck out par. (3) which read as follows: "Within sixty days of receipt of the information described in section 4013(b)(1) of this title, the Secretary of the Department of Education shall review such information and, in the Secretary's discretion, provide to the Administrator comments and recommendations based upon the needs of local educational agencies for financial assistance. Within sixty days of receipt of the Secretary's report, or expiration of the time allowed for such report, the Administrator shall approve or disapprove applications for financial assistance."

Subsec. (c). Pub. L. 101-637, §14(b)(7)(C), inserted heading.

Subsec. (c)(2)(A). Pub. L. 101-637, §14(c)(2)(A), inserted "and" after semicolon at end.

Subsec. (c)(2)(B)(ii). Pub. L. 101-637, §14(c)(2)(B), inserted a comma after "confined space".

Subsec. (c)(2)(B)(iv). Pub. L. 101-637, §14(c)(2)(B), which directed the insertion of a comma after "techniques", could not be executed because of the intervening amendment by Pub. L. 101-637, §6(b). See below.

Pub. L. 101-637, §6(b), substituted "uses the least burdensome methods which protect human health and the environment" for "is cost-effective compared to other techniques including management of material containing asbestos".

Subsec. (c)(3). Pub. L. 101-637, §6(c), substituted "shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title." for "shall consider—

"(A) the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title; and

"(B) the report, if any, of the Secretary of Education pursuant to section 4013(b)(5) of this title."

Subsec. (d). Pub. L. 101-637, §6(d), inserted heading and amended text generally. Prior to amendment, text read as follows: "In no event shall financial assistance be provided under this subchapter to an applicant if the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program. In making such a determination, the Administrator may consult with the Secretary of Education."

Subsec. (e). Pub. L. 101-637, §14(b)(7)(D), inserted heading.

Subsec. (e)(1). Pub. L. 101-637, §14(c)(3), substituted "percent" for "per centum" in two places.

Subsec. (f). Pub. L. 101-637, §14(b)(7)(E), inserted heading.

Subsec. (f)(3). Pub. L. 101-637, §6(e), substituted "for deposit in the Asbestos Trust Fund established by section 4022 of this title" for "for deposit in the general fund".

Subsec. (g). Pub. L. 101-637, §14(b)(7)(F), inserted heading.

Subsec. (g)(1). Pub. L. 101-637, §6(f)(1), substituted "in accordance with such procedures as may be developed by the Administrator" for "within the five-year period beginning on August 11, 1984".

Subsec. (g)(2)(B)(i), (ii). Pub. L. 101-637, §6(f)(2), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) any employee engaged in an asbestos material abatement program will be trained and equipped pursuant to section 4015(b)(2)(B) of this title; and

"(ii) no child or inadequately informed or protected school employee will be permitted in the vicinity of any asbestos abatement activity;".

Subsec. (g)(3), (4). Pub. L. 101-637, §§6(f)(3), 14(c)(4), redesignated subpar. (B) appearing after par. (3) as par. (4), inserted a comma after "section 4021(b)(1) of this title", and struck out former par. (4) which read as follows:

"(A) No financial assistance may be provided under this section to any school—

"(i) which uses any person who has not been accredited pursuant to section 2646(b) or (c) of title 15, to carry out activities described in section 2646(a) of title 15, or

"(ii) which uses any laboratory which has not been accredited pursuant to section 2646(d) of title 15, to carry out activities described in such section.

"(B) This paragraph shall apply to any financial assistance provided under this section after October 22, 1986, for activities performed after the following dates:

"(i) In the case of activities performed by persons, after the date which is one year after October 22, 1986.

"(ii) 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 section 2646(d) of title 15."

1988—Subsec. (g)(4)(B)(i). Pub. L. 100-368, §6(b)(1), substituted reference to October 22, 1986, for reference to August 11, 1984.

Subsec. (g)(4)(B)(ii). Pub. L. 100-368, §6(b)(2), substituted "section 2646(d) of title 15" for "subsection (d)".

1986—Subsec. (g)(4). Pub. L. 99-519 added par. (4).

Statutory Notes and Related Subsidiaries

FINANCIAL ASSISTANCE TO CARRY OUT INSPECTIONS FOR ASBESTOS-CONTAINING MATERIAL

Pub. L. 99-519, §4(b), Oct. 22, 1986, 100 Stat. 2989, provided that, notwithstanding subsec. (c) of this section, for fiscal years 1988 and 1989 the Administrator would provide financial assistance under this section in the form of grants to States or local educational agencies

to carry out inspections for asbestos-containing material in school buildings and preparation of management plans for school buildings under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

§ 4015. Administrative provisions

(a) Regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

(b) Procedures

The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title, for—

- (1) abating asbestos materials in school buildings;
- (2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and
- (3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

(c) Relationship to other laws

Nothing contained in this subchapter shall be construed, interpreted, or applied to diminish in any way the level of protection required under any other State or Federal worker protection or other applicable laws.

(d) Other authority

In order to effectuate the purposes of this subchapter, the Administrator may also adopt such other procedures, standards, and regulations as the Administrator deems necessary, including—

- (1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;
- (2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and
- (3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.

(Pub. L. 98-377, title V, §506, Aug. 11, 1984, 98 Stat. 1292; Pub. L. 101-637, §§ 7, 14(a)(6), (b)(8), (9), Nov. 28, 1990, 104 Stat. 4592, 4594, 4595.)

Editorial Notes

AMENDMENTS

1990—Pub. L. 101-637 inserted section catchline.
Subsec. (a). Pub. L. 101-637, §14(b)(8), inserted heading.

Subsec. (b). Pub. L. 101-637, §7(2), added subsec. (b) and struck out former subsec. (b) which read as follows:
“The Administrator shall also establish—

- “(1) procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title for—
- “(A) abating asbestos materials in school buildings;
- “(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and
- “(C) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken; and

“(2) within ninety days, standards for determining—

“(A) which contractors are qualified to carry out the activities referred to in paragraph (1), and

“(B) what training, equipment, protective clothing and other information and material must be supplied to adequately advise and protect school employees utilized to carry out the activities in paragraph (1).

“(3) nothing contained in this subchapter shall be construed, interpreted or applied to diminish in any way the level of protection required under State or Federal worker protection laws.”

Subsec. (c). Pub. L. 101-637, §7(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101-637, §§7(1), 14(b)(9), redesignated subsec. (c) as (d), inserted heading, and inserted a comma after “standards” in introductory provisions.

§ 4016. Annual report

During each calendar year until 1999, the Administrator shall prepare and submit, not later than June 1 of each year, to the Committee on Environment and Public Works of the Senate and to the Committee on Energy and Commerce of the House of Representatives a report on the loan and grant program authorized by section 4014 of this title.

- (1) describe the number of applications received;
- (2) describe the number of loans and grants made in the preceding calendar year and specify each applicant for and recipient of a loan or grant;
- (3) specify the number of loan or grant applications which were disapproved during the preceding calendar year and describe the reasons for such disapprovals;
- (4) describe the types of programs for which loans or grants were made;
- (5) specify the estimated total costs of such programs to the recipients of loans or grants and specify the amount of loans or grants made under the program authorized by this section; and
- (6) estimate the number of schools still in need of assistance and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards.

(Pub. L. 98-377, title V, §507, Aug. 11, 1984, 98 Stat. 1293; Pub. L. 101-637, §§ 8, 14(a)(7), Nov. 28, 1990, 104 Stat. 4592, 4594.)

Editorial Notes

AMENDMENTS

1990—Pub. L. 101-637, §14(a)(7), made technical amendment to section catchline.

Pub. L. 101-637, §8(a), amended first sentence generally. Prior to amendment, first sentence read as follows: “During each of the ten calendar years after 1984, the Administrator shall prepare and submit not later than February 1 of each year a report to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives on the loan and grant program authorized by section 4014 of this title.”

Par. (6). Pub. L. 101-637, §8(b), inserted before period at end “and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards”.