fiscal year through the fiscal year ending September 30, 1983.

(b) Any moneys received by the Secretary of Energy from vehicle sales or leases or other activities under this chapter may be retained and used for purposes of carrying out this chapter, notwithstanding the provisions of section 3302(b) of title 31, and may remain available until expended; but the amount authorized to be appropriated for any fiscal year under subsection (a) of this section shall be reduced by the amount of the moneys so received in that year.

(Pub. L. 94–413, § 16, Sept. 17, 1976, 90 Stat. 1270; Pub. L. 95–91, title III, § 301(a), Aug. 4, 1977, 91 Stat. 577.)

CODIFICATION

In subsec. (b), ''section 3302(b) of title 31'' substituted for ''section 3617 of the Revised Statutes (31 U.S.C. 484)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'' pursuant to section 301(a) of Pub. L. 95–91, see Codification note set out under section 2502 of this title.

CHAPTER 53—TOXIC SUBSTANCES CONTROL

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SUBCHAPTER I—CONTROL OF TOXIC SUBSTANCES

§ 2601. Findings, policy, and intent

(a) Findings

The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of

intrastate commerce in such chemical substances and mixtures.

(b) Policy

It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this chapter to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) Intent of Congress

It is the intent of Congress that the Administrator shall carry out this chapter in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this chapter.

(Pub. L. 94–469, title I, § 2, Oct. 11, 1976, 90 Stat. 2003; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

EFFECTIVE DATE

Section 31 of title I of Pub. L. 94–469; renumbered title I, Pub. L. 99–519, § 3(c), Oct. 22, 1986, 100 Stat. 2989, provided that: ''Except as provided in section 4(f) [section 2603(f) of this title], this Act [enacting this chapter] shall take effect on January 1, 1977.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–199, § 1, July 7, 2010, 124 Stat. 1359, provided that: ''This Act [enacting subchapter VI of this chapter and provisions set out as a note under section 2697 of this title] may be cited as the 'Formaldehyde Standards for Composite Wood Products Act'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–414, § 1, Oct. 14, 2008, 122 Stat. 4341, provided that: ''This Act [enacting section 6939f of Title 42, The Public Health and Welfare, amending sections 2605 and 2611 of this title, and enacting provisions set out as a note under section 2611 of this title] may be cited as the 'Mercury Export Ban Act of 2008'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title X, § 1021(c), Oct. 28, 1992, 106 Stat. 3924, provided that: ''This subtitle [subtitle B (§ 1021) of title X of Pub. L. 102–550, enacting sections 2681 to 2692 of this title and amending sections 2606, 2610, 2612, 2615, 2616, 2618, and 2619 of this title] may be cited as the 'Lead-Based Paint Exposure Reduction Act'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–519, § 1, Oct. 22, 1986, 100 Stat. 2970, provided that: ''This Act [enacting sections 2641 to 2654 of this title and section 4022 of Title 20, Education, amending sections 2614, 2618, and 2619 of this title and sections 4014 and 4021 of Title 20, and enacting provisions set out as a note under section 4014 of Title 20] may be cited as the 'Asbestos Hazard Emergency Response Act of 1986'.''

SHORT TITLE

Pub. L. 94–469, § 1, Oct. 11, 1976, 90 Stat. 2003; renumbered title I, Pub. L. 99–519, § 3(c), Oct. 22, 1986, 100 Stat. 2989, provided that: ''This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Toxic Substances Control Act'.''

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

§ 2602. Definitions

As used in this chapter:

(1) the[1] term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2)(A) Except as provided in subparagraph (B), the term ''chemical substance'' means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term ''food'' as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

(3) The term ''commerce'' means trade, traffic, transportation, or other commerce (A) between

[1] So in original. Probably should be capitalized.

a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The terms ''distribute in commerce'' and ''distribution in commerce'' when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term ''environment'' includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(6) The term ''health and safety study'' means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.

(7) The term ''manufacture'' means to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture.

(8) The term ''mixture'' means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(9) The term ''new chemical substance'' means any chemical substance which is not included in the chemical substance list compiled and published under section 2607(b) of this title.

(10) The term ''process'' means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term ''processor'' means any person who processes a chemical substance or mixture.

(12) The term ''standards for the development of test data'' means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

(13) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(14) The term ''United States'', when used in the geographic sense, means all of the States.

(Pub. L. 94–469, title I, § 3, Oct. 11, 1976, 90 Stat. 2004; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 100–418, title I, § 1214(e)(1), Aug. 23, 1988, 102 Stat. 1156.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in par. (2)(B)(ii), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Atomic Energy Act of 1954, referred to in par. (2)(B)(iv), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in par. (7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

For definition of Canal Zone, Governor of the Canal Zone, and Panama Canal Company, referred to in par. (13), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1988—Par. (7). Pub. L. 100–418 substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States''.

1986—Par. (2)(B)(v). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

§ 2603. Testing of chemical substances and mixtures

(a) Testing requirements

If the Administrator finds that—

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any

combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule require that testing be conducted on such substance or mixture to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

(b) Testing requirement rule

(1) A rule under subsection (a) of this section shall include—

(A) identification of the chemical substance or mixture for which testing is required under the rule,

(B) standards for the development of test data for such substance or mixture, and

(C) with respect to chemical substances which are not new chemical substances and to mixtures, a specification of the period (which period may not be of unreasonable duration) within which the persons required to conduct the testing shall submit to the Administrator data developed in accordance with the standards referred to in subparagraph (B).

In determining the standards and period to be included, pursuant to subparagraphs (B) and (C), in a rule under subsection (a) of this section, the Administrator's considerations shall include the relative costs of the various test protocols and methodologies which may be required under the rule and the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Any such rule may require the submission to the Administrator of preliminary data during the period prescribed under subparagraph (C).

(2)(A) The health and environmental effects for which standards for the development of test data may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment. The characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chronic toxicity, and any other characteristic which may present such a risk. The methodologies that may be prescribed in such standards include epidemiologic studies, serial or hierarchical tests, in vitro tests, and whole animal tests, except that before prescribing epidemiologic studies of employees, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.

(B) From time to time, but not less than once each 12 months, the Administrator shall review the adequacy of the standards for development of data prescribed in rules under subsection (a) of this section and shall, if necessary, institute proceedings to make appropriate revisions of such standards.

(3)(A) A rule under subsection (a) of this section respecting a chemical substance or mixture shall require the persons described in subparagraph (B) to conduct tests and submit data to the Administrator on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such data on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit data on a chemical substance or mixture subject to a rule under subsection (a) of this section:

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the distribution in commerce, use, or disposal of such substance or mixture.

(4) Any rule under subsection (a) of this section requiring the testing of and submission of data for a particular chemical substance or mix-

ture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B) of this section) which is applicable to test data for such substance or mixture unless the Administrator repeals the rule before such date; and a rule under subsection (a) of this section requiring the testing of and submission of data for a category of chemical substances or mixtures shall expire with respect to a chemical substance or mixture included in the category at the end of the reimbursement period (as so defined) which is applicable to test data for such substance or mixture unless the Administrator before such date repeals the application of the rule to such substance or mixture or repeals the rule.

(5) Rules issued under subsection (a) of this section (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to section 553 of title 5 except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) of this section and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.

(c) Exemption

(1) Any person required by a rule under subsection (a) of this section to conduct tests and submit data on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Administrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture with respect to which such application was submitted is equivalent to a chemical substance or mixture for which data has been submitted to the Administrator in accordance with a rule under subsection (a) of this section or for which data is being developed pursuant to such a rule, and

(B) submission of data by the applicant on such substance or mixture would be duplicative of data which has been submitted to the Administrator in accordance with such rule or which is being developed pursuant to such rule,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting data on such substance or mixture under the rule with respect to which such application was submitted.

(3)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the existence of previously submitted test data and if such exemption is granted during the reimbursement period for such test data (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted such test data, for a portion of the costs incurred by such person in complying with the requirement to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any test data for a chemical substance or mixture is a period—

(i) beginning on the date such data is submitted in accordance with a rule promulgated under subsection (a) of this section, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and which is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(4)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the fact that test data is being developed by one or more persons pursuant to a rule promulgated under subsection (a) of this section, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to each such person who is developing such test data, for a portion of the costs incurred by each such person in complying with such rule, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons

described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider the factors described in the second sentence of paragraph (3)(A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If any exemption is granted under paragraph (2) on the basis of the fact that one or more persons are developing test data pursuant to a rule promulgated under subsection (a) of this section and if after such exemption is granted the Administrator determines that no such person has complied with such rule, the Administrator shall (i) after providing written notice to the person who holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule with respect to which such exemption was granted.

(d) Notice

Upon the receipt of any test data pursuant to a rule under subsection (a) of this section, the Administrator shall publish a notice of the receipt of such data in the Federal Register within 15 days of its receipt. Subject to section 2613 of this title, each such notice shall (1) identify the chemical substance or mixture for which data have been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data; and (3) describe the nature of the test data developed. Except as otherwise provided in section 2613 of this title, such data shall be made available by the Administrator for examination by any person.

(e) Priority list

(1)(A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule under subsection (a) of this section. In making such a recommendation with respect to any chemical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,

(ii) the quantities in which the substance or mixture enters or will enter the environment,

(iii) the number of individuals who are or will be exposed to the substance or mixture in their places of employment and the duration of such exposure,

(iv) the extent to which human beings are or will be exposed to the substance or mixture,

(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to present an unreasonable risk of injury to health or the environment,

(vi) the existence of data concerning the effects of the substance or mixture on health or the environment,

(vii) the extent to which testing of the substance or mixture may result in the development of data upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and

(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be set forth, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) of this section with respect to the substances and mixtures. In establishing such list, the committee shall give priority attention to those chemical substances and mixtures which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations, or birth defects. The committee shall designate chemical substances and mixtures on the list with respect to which the committee determines the Administrator should, within 12 months of the date on which such substances and mixtures are first designated, initiate a proceeding under subsection (a) of this section. The total number of chemical substances and mixtures on the list which are designated under the preceding sentence may not, at any time, exceed 50.

(B) As soon as practicable but not later than nine months after January 1, 1977, the committee shall publish in the Federal Register and transmit to the Administrator the list and designations required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the list. At least every six months after the date of the transmission to the Administrator of the list pursuant to the preceeding[1] sentence, the committee shall make such revisions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. Upon receipt of any such revision, the Administrator shall publish in the Federal Register the list with such revision, the reasons for such revision, and the designations made under subparagraph (A). The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list, any revision of such list by the committee, and designations made by the committee, and shall make such comments available to the public. Within the 12-month period beginning on the date of the first inclusion on the list of a chemical substance or mixture designated by the committee under subparagraph (A) the Administrator shall with respect to such chemical substance or mixture either initiate a rulemaking proceeding under subsection (a) of this section or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding.

(2)(A) The committee established by paragraph (1)(A) shall consist of eight members as follows:

(i) One member appointed by the Administrator from the Environmental Protection Agency.

[1] So in original. Probably should be ''preceding''.

(ii) One member appointed by the Secretary of Labor from officers or employees of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(iii) One member appointed by the Chairman of the Council on Environmental Quality from the Council or its officers or employees.

(iv) One member appointed by the Director of the National Institute for Occupational Safety and Health from officers or employees of the Institute.

(v) One member appointed by the Director of the National Institute of Environmental Health Sciences from officers or employees of the Institute.

(vi) One member appointed by the Director of the National Cancer Institute from officers or employees of the Institute.

(vii) One member appointed by the Director of the National Science Foundation from officers or employees of the Foundation.

(viii) One member appointed by the Secretary of Commerce from officers or employees of the Department of Commerce.

(B)(i) An appointed member may designate an individual to serve on the committee on the member's behalf. Such a designation may be made only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed.

(ii) No individual may serve as a member of the committee for more than four years in the aggregate. If any member of the committee leaves the entity from which the member was appointed, such member may not continue as a member of the committee, and the member's position shall be considered to be vacant. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(iii) Initial appointments to the committee shall be made not later than the 60th day after January 1, 1977. Not later than the 90th day after such date the members of the committee shall hold a meeting for the selection of a chairperson from among their number.

(C)(i) No member of the committee, or designee of such member, shall accept employment or compensation from any person subject to any requirement of this chapter or of any rule promulgated or order issued thereunder, for a period of at least 12 months after termination of service on the committee.

(ii) No person, while serving as a member of the committee, or designee of such member, may own any stocks or bonds, or have any pecuniary interest, of substantial value in any person engaged in the manufacture, processing, or distribution in commerce of any chemical substance or mixture subject to any requirement of this chapter or of any rule promulgated or order issued thereunder.

(iii) The Administrator, acting through attorneys of the Environmental Protection Agency, or the Attorney General may bring an action in the appropriate district court of the United States to restrain any violation of this subparagraph.

(D) The Administrator shall provide the committee such administrative support services as may be necessary to enable the committee to carry out its function under this subsection.

(f) Required actions

Upon the receipt of—

(1) any test data required to be submitted under this chapter, or

(2) any other information available to the Administrator,

which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents or will present a significant risk of serious or widespread harm to human beings from cancer, gene mutations, or birth defects, the Administrator shall, within the 180-day period beginning on the date of the receipt of such data or information, initiate appropriate action under section 2604, 2605, or 2606 of this title to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding that such risk is not unreasonable. For good cause shown the Administrator may extend such period for an additional period of not more than 90 days. The Administrator shall publish in the Federal Register notice of any such extension and the reasons therefor. A finding by the Administrator that a risk is not unreasonable shall be considered agency action for purposes of judicial review under chapter 7 of title 5. This subsection shall not take effect until two years after January 1, 1977.

(g) Petition for standards for the development of test data

A person intending to manufacture or process a chemical substance for which notice is required under section 2604(a) of this title and who is not required under a rule under subsection (a) of this section to conduct tests and submit data on such substance may petition the Administrator to prescribe standards for the development of test data for such substance. The Administrator shall by order either grant or deny any such petition within 60 days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within 75 days of the date the petition is granted. If the petition is denied, the Administrator shall publish, subject to section 2613 of this title, in the Federal Register the reasons for such denial.

(Pub. L. 94–469, title I, § 4, Oct. 11, 1976, 90 Stat. 2006; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

EFFECTIVE DATE

Section effective Jan. 1, 1977, except as provided in subsec. (f) of this section, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§ 2604. Manufacturing and processing notices

(a) In general

(1) Except as provided in subsection (h) of this section, no person may—

(A) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 2607(b) of this title, or

(B) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use,

unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d) of this section, of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of subsection (b) of this section.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(b) Submission of test data

(1)(A) If (i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit test data for such substance pursuant to a rule promulgated under section 2603 of this title before the submission of such notice, such person shall submit to the Administrator such data in accordance with such rule at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) If—

(i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 2603(c) of this title from the requirements of a rule promulgated under section 2603 of this title before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in accordance with such rule of the test data the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A) of this section or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(B) of this section.

(2)(A) If a person—

(i) is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule promulgated under section 2603 of this title before the submission of such notice to submit test data for such substance,

such person shall submit to the Administrator data prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) Data submitted pursuant to subparagraph (A) shall be data which the person submitting the data believes show that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A) of this section, the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(B) of this section, the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Data submitted under paragraph (1) or (2) shall be made available, subject to section 2613 of this title, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2) of this section, would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation,

and (iii) the Administrator shall make and publish with the rule the finding described in subparagraph (A).

(c) Extension of notice period

The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b) of this section before which the manufacturing or processing of a chemical substance subject to such subsection may begin. Subject to section 2613 of this title, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) Content of notice; publications in the Federal Register

(1) The notice required by subsection (a) of this section shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 2607(a)(2) of this title, and

(B) in such form and manner as the Administrator may prescribe, any test data in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other data concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 2613 of this title, for examination by interested persons.

(2) Subject to section 2613 of this title, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) of this section or of data under subsection (b) of this section, the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or data has been received;

(B) lists the uses or intended uses of such substance; and

(C) in the case of the receipt of data under subsection (b) of this section, describes the nature of the tests performed on such substance and any data which was developed pursuant to subsection (b) of this section or a rule under section 2603 of this title.

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) of this section and for which the notification period prescribed by subsection (a), (b), or (c) of this section has not expired, and (B) each chemical substance for which such notification period has expired since the last publication in the Federal Register of such list.

(e) Regulation pending development of information

(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator may issue a proposed order, to take effect on the expiration of the notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c) of this section, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities.

(B) A proposed order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c) of this section, and (ii) unless the Administrator has, on or before the issuance of the proposed order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(C) If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect.

(2)(A)(i) Except as provided in clause (ii), if with respect to a chemical substance with respect to which notice is required by subsection (a) of this section, the Administrator makes the determination described in paragraph (1)(A) and if—

(I) the Administrator does not issue a proposed order under paragraph (1) respecting such substance, or

(II) the Administrator issues such an order respecting such substance but such order does not take effect because objections were filed under paragraph (1)(C) with respect to it,

the Administrator, through attorneys of the Environmental Protection Agency, shall apply to

the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer or processor, as the case may be, of such substance is found, resides, or transacts business for an injunction to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance (or to prohibit or limit any combination of such activities).

(ii) If the Administrator issues a proposed order under paragraph (1)(A) respecting a chemical substance but such order does not take effect because objections have been filed under paragraph (1)(C) with respect to it, the Administrator is not required to apply for an injunction under clause (i) respecting such substance if the Administrator determines, on the basis of such objections, that the determinations under paragraph (1)(A) may not be made.

(B) A district court of the United States which receives an application under subparagraph (A)(i) for an injunction respecting a chemical substance shall issue such injunction if the court finds that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance.

(C) Pending the completion of a proceeding for the issuance of an injunction under subparagraph (B) respecting a chemical substance, the court may, upon application of the Administrator made through attorneys of the Environmental Protection Agency, issue a temporary restraining order or a preliminary injunction to prohibit the manufacture, processing, distribution in commerce, use, or disposal of such a substance (or any combination of such activities) if the court finds that the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance may expire before such proceeding can be completed.

(D) After the submission to the Administrator of test data sufficient to evaluate the health and environmental effects of a chemical substance subject to an injunction issued under subparagraph (B) and the evaluation of such data by the Administrator, the district court of the United States which issued such injunction shall, upon petition, dissolve the injunction unless the Administrator has initiated a proceeding for the issuance of a rule under section 2605(a) of this title respecting the substance. If such a proceeding has been initiated, such court shall continue the injunction in effect until the effective date of the rule promulgated in such proceeding or, if such proceeding is terminated without the promulgation of a rule, upon the termination of the proceeding, whichever occurs first.

(f) Protection against unreasonable risks

(1) If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance with respect to which notice is required by subsection (a) of this section, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or environment before a rule promulgated under section 2605 of this title can protect against such risk, the Administrator shall, before the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 2605(a) of this title to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 2605(a) of this title, or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 2605(d)(2)(B) of this title shall apply with respect to such rule.

(3)(A) The Administrator may—

(i) issue a proposed order to prohibit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made under paragraph (1), or

(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found, resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.

A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacture or processing of such substance.

(B) If the district court of the United States to which an application has been made under subparagraph (A)(ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated

under section 2605 of this title can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance or to prohibit any combination of such activities.

(C) The provisions of subparagraphs (B) and (C) of subsection (e)(1) of this section shall apply with respect to an order issued under clause (i) of subparagraph (A); and the provisions of subparagraph (C) of subsection (e)(2) of this section shall apply with respect to an injunction issued under subparagraph (B).

(D) If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C) of this section, the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment.

(g) Statement of reasons for not taking action

If the Administrator has not initiated any action under this section or section 2605 or 2606 of this title to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b) of this section, before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) Exemptions

(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) of this section to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) of this section to submit data for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which data has been submitted to the Administrator as required by subsection (b)(2) of this section, and

(ii) submission of data by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such data on such substance. No exemption which is granted under this subparagraph with respect to the submission of data for a chemical substance may take effect before the beginning of the reimbursement period applicable to such data.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting data required under subsection (b)(2) of this section for a chemical substance because of the existence of previously submitted data and if such exemption is granted during the reimbursement period for such data, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the data on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) of this section to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such data to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(3) The requirements of subsections (a) and (b) of this section do not apply with respect to the

manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment. A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 2605(c) of this title.

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) of this section inapplicable with respect to the manufacturing or processing of any chemical substance (A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

(i) "Manufacture" and "process" defined

For purposes of this section, the terms ''manufacture'' and ''process'' mean manufacturing or processing for commercial purposes.

(Pub. L. 94–469, title I, § 5, Oct. 11, 1976, 90 Stat. 2012; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§ 2605. Regulation of hazardous chemical substances and mixtures

(a) Scope of regulation

If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture

as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

(b) Quality control

If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) Promulgation of subsection (a) rules

(1) In promulgating any rule under subsection (a) of this section with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) of this section to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this chapter. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this chapter and under such law (or laws), and (iii) the relative efficiency of actions under this chapter and under such law (or laws) to protect against such risk of injury.

(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 2618(a) of this title), and (E) make and publish with the rule the finding described in subsection (a) of this section.

(3) Informal hearings required by paragraph (2)(C) shall be conducted by the Administrator in accordance with the following requirements:

(A) Subject to subparagraph (B), an interested person is entitled—

(i) to present such person's position orally or by documentary submissions (or both), and

(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B)(ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.

(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be enti-

tled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.

(C)(i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.

(4)(A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) of this section to any person—

(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and

(ii) if—

(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.

In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.

(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

(i) would be regulated by the proposed rule, or

(ii) represent persons who would be so regulated,

may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(5) Paragraph (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a) of this section.

(d) Effective date

(1) The Administrator shall specify in any rule under subsection (a) of this section the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) of this section to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 2606 of this title granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c) of this section, for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or

revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term ''totally enclosed manner'' means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c) of this section.

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl.

(f) Mercury

(1) Prohibition on sale, distribution, or transfer of elemental mercury by Federal agencies

Except as provided in paragraph (2), effective beginning on October 14, 2008, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this chapter; or

(B) a conveyance, sale, distribution, or transfer of coal.

(3) Leases of Federal coal

Nothing in this subsection prohibits the leasing of coal.

(Pub. L. 94–469, title I, § 6, Oct. 11, 1976, 90 Stat. 2020; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 109–364, div. A, title III, § 317(a), Oct. 17, 2006, 120 Stat. 2142; Pub. L. 110–414, § 3, Oct. 14, 2008, 122 Stat. 4342.)

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–414 added subsec. (f).

2006—Subsec. (e)(3)(A). Pub. L. 109–364, § 317(a)(1), (b), temporarily substituted ''subparagraphs (B), (C), and (D)'' for ''subparagraphs (B) and (C)'' in introductory provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(B). Pub. L. 109–364, § 317(a)(2), (b), temporarily substituted ''but not more than 1 year from the date it is granted, except as provided in subparagraph (D)'' for ''but not more than one year from the date it is granted'' in concluding provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(D). Pub. L. 109–364, § 317(a)(3), (b), temporarily added subpar. (D) which read as follows: ''The Administrator may extend an exemption granted pursuant to subparagraph (B) that has not yet expired for a period not to exceed 60 days for the purpose of authorizing the Secretary of Defense and the Secretaries of the military departments to provide for the transportation into the customs territory of the United States of polychlorinated biphenyls generated by or under the control of the Department of Defense for purposes of their disposal, treatment, or storage in the customs territory of the United States if those poly-

chlorinated biphenyls are already in transit from their storage locations but the Administrator determines, in the sole discretion of the Administrator, they would not otherwise arrive in the customs territory of the United States within the period of the original exemption. The Administrator shall promptly publish notice of such extension in the Federal Register.'' See Termination Date of 2006 Amendment note below.

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title III, § 317(b), Oct. 17, 2006, 120 Stat. 2142, provided that: ''The amendments made by subsection (a) [amending this section] shall cease to have effect on September 30, 2012. The termination of the authority to grant exemptions pursuant to such amendments shall not effect the validity of any exemption granted prior to such date.''

§ 2606. Imminent hazards

(a) Actions authorized and required

(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b) of this section) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV of this chapter or an order under section 2604 of this title or subchapter IV of this chapter, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this chapter.

(2) If the Administrator has not made a rule under section 2605(a) of this title immediately effective (as authorized by section 2605(d)(2)(A)(i) of this title) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) Relief authorized

(1) The district court of the United States in which an action under subsection (a) of this section is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) of this section brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) of this section against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Venue and consolidation

(1)(A) An action under subsection (a) of this section against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) of this section against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) of this section in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas[1] requiring attendance of witnesses in an action brought under subsection (a) of this section may be served in any judicial district.

(2) Whenever proceedings under subsection (a) of this section involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under section 2605

Where appropriate, concurrently with the filing of an action under subsection (a) of this section or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 2605(a) of this title.

(e) Representation

Notwithstanding any other provision of law, in any action under subsection (a) of this section, the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) "Imminently hazardous chemical substance or mixture" defined

For the purposes of subsection (a) of this section, the term ''imminently hazardous chemical

[1] So in original. Probably should be ''Subpoenas''.

substance or mixture'' means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 2605 of this title can protect against such risk.

(Pub. L. 94–469, title I, § 7, Oct. 11, 1976, 90 Stat. 2026; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, § 1021(b)(1), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted ''section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV of this chapter'' for ''section 2603, 2604, or 2605 of this title'' in last sentence.

Pub. L. 102–550, which directed the insertion of ''or subchapter IV of this chapter'' after ''2604'', was executed by making the insertion after ''2604'' the second time appearing in last sentence, to reflect the probable intent of Congress.

§ 2607. Reporting and retention of information

(a) Reports

(1) The Administrator shall promulgate rules under which—

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this chapter.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this chapter. For purposes of the compilation of the list of chemical substances required under subsection (b) of this section, the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after January 1, 1977.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing data concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b) of this section.

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 2603, 2604(b)(4), or 2605 of this title, or an order in effect under section 2604(e) of this title, or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 2604 or 2606 of this title,

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business

Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(b) Inventory

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 2604 of this title or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1) of this section. In the case of a chemical substance for which a notice is submitted in accordance with section 2604 of this title, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after January 1, 1977. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this chapter, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) Records

Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies

The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this chapter; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) "Manufacture" and "process" defined

For purposes of this section, the terms ''manufacture'' and ''process'' mean manufacture or process for commercial purposes.

(Pub. L. 94–469, title I, § 8, Oct. 11, 1976, 90 Stat. 2027; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

ASBESTOS INFORMATION

Pub. L. 100–577, Oct. 31, 1988, 102 Stat. 2901, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Asbestos Information Act of 1988'.

''SEC. 2. SUBMISSION OF INFORMATION BY MANUFACTURERS.

''Within 90 days after the date of the enactment of this Act [Oct. 31, 1988], any person who manufactured or processed, before the date of the enactment of this Act, asbestos or asbestos-containing material that was prepared for sale for use as surfacing material, thermal system insulation, or miscellaneous material in buildings (or whose corporate predecessor manufactured or processed such asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the types or classes of product, and, to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material. Such person also may submit to the Administrator protocols for samples of asbestos and asbestos-containing material.

''SEC. 3. PUBLICATION OF INFORMATION.

''Within 30 days after the date of the enactment of this Act [Oct. 31, 1988], the Administrator shall publish a notice in the Federal Register that explains how,

when, and where the information specified in section 2 is to be submitted. The Administrator shall receive and organize the information submitted under section 2 and, within 180 days after the date of the enactment of this Act, shall publish the information. In carrying out this section, the Administrator may not—

''(1) review the information submitted under section 2 for accuracy, or

''(2) analyze such information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

''SEC. 4. DEFINITIONS.

''In this Act:

''(1) The term 'asbestos' means—

''(A) chrysotile, amosite, or crocidolite, or

''(B) in fibrous form, tremolite, anthophyllite, or actinolite.

''(2) The term 'asbestos-containing material' means any material containing more than one percent asbestos by weight.

''(3) The term 'identifying characteristics' means a description of asbestos or asbestos-containing material, including—

''(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both),

''(B) the types or classes of the product in which the asbestos or material is contained,

''(C) the designs, patterns, or textures of the product in which the asbestos or material is contained, and

''(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos-containing material.

''(4) The term 'miscellaneous material' means building material on structural components, structural members, or fixtures, such as floor and ceiling tiles. The term does not include surfacing material or thermal system insulation.

''(5) The term 'protocol' means any procedure for taking, handling, and preserving samples of asbestos and asbestos-containing material and for testing and analyzing such samples for the purpose of determining the person who manufactured or processed for sale such samples and the identifying characteristics of such samples.

''(6) The term 'surfacing material' means material in a building that is sprayed on surfaces, troweled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members.

''(7) The term 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes.''

§ 2608. Relationship to other Federal laws

(a) Laws not administered by the Administrator

(1) If the Administrator has reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A)(i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 2605 or 2606 of this title with respect to such risk.

(3) If the Administrator has initiated action under section 2605 or 2606 of this title with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) Laws administered by the Administrator

The Administrator shall coordinate actions taken under this chapter with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such

authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this chapter. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(c) Occupational safety and health

In exercising any authority under this chapter, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) Coordination

In administering this chapter, the Administrator shall consult and coordinate with the Secretary of Health and Human Services and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this chapter while imposing the least burdens of duplicative requirements on those subject to the chapter and for other purposes. The Administrator shall, in the report required by section 2629 of this title, report annually to the Congress on actions taken to coordinate with such other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this chapter with the authority granted under other Acts referred to in subsection (b) of this section.

(Pub. L. 94–469, title I, § 9, Oct. 11, 1976, 90 Stat. 2030; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (d), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to reporting certain coordinating actions annually to Congress in the report required by section 2629 of this title, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

§ 2609. Research, development, collection, dissemination, and utilization of data

(a) Authority

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(b) Data systems

(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of data submitted to the Administrator under this chapter.

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific data which could be useful to the Administrator in carrying out the purposes of this chapter. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health and Human Services, may make grants and enter into contracts for the development of a data retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(c) Screening techniques

The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health and Human Services, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical substances and mixtures.

(d) Monitoring

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) Basic research

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d) of this section, the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) Training

The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) Exchange of research and development results

The Administrator shall, in consultation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures.

(Pub. L. 94–469, title I, § 10, Oct. 11, 1976, 90 Stat. 2031; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

CODIFICATION

In subsec. (a), ''section 3324(a) and (b) of title 31 and section 6101 of title 41'' substituted for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 14 U.S.C. 5)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(2)(B), ''section 3324(a) and (b) of title 31 and section 6101 of title 41'' substituted for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (a), (b)(2), (d), (e), and (g), and ''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (c), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

AVAILABILITY OF GRANTS

Grants awarded under this section are available for research, development, monitoring, public education, training, demonstrations, and studies, beginning in fiscal year 2000 and thereafter, see provisions of title III of Pub. L. 106–74, set out as a note under section 136r of Title 7, Agriculture.

§ 2610. Inspections and subpoenas

(a) In general

For purposes of administering this chapter, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to subchapter IV of this chapter are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Scope

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances, mixtures, or products subject to subchapter IV of this chapter within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) of this section shall extend to—

(A) financial data,

(B) sales data (other than shipment data),

(C) pricing data,

(D) personnel data, or

(E) research data (other than data required by this chapter or under a rule promulgated thereunder),

unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) of this section for such inspection.

(c) Subpoenas

In carrying out this chapter, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(Pub. L. 94–469, title I, § 11, Oct. 11, 1976, 90 Stat. 2032; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, § 1021(b)(2), (3), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 1021(b)(2), in first sentence, substituted ''substances, mixtures, or products subject to subchapter IV of this chapter'' for ''substances or mixtures'' and inserted ''such products,'' before ''or such articles''.

Subsec. (b)(1). Pub. L. 102–550, § 1021(b)(3), substituted ''chemical substances, mixtures, or products subject to subchapter IV of this chapter'' for ''chemical substances or mixtures''.

§ 2611. Exports

(a) In general

(1) Except as provided in paragraph (2) and subsections (b) and (c) of this section, this chapter (other than section 2607 of this title) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 2603 of this title, testing of any chemical substance or mixture exempted from this chapter by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) Notice

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 2603 or 2604(b) of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 2604 of this title or a rule has been proposed or promulgated under section 2604 or 2605 of this title, or with respect to which an action is pending, or relief has been granted under section 2604 or 2606 of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(c) Prohibition on export of elemental mercury

(1) Prohibition

Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) Inapplicability of subsection (a)

Subsection (a) shall not apply to this subsection.

(3) Report to Congress on mercury compounds

(A) Report

Not later than one year after October 14, 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) Procedure

For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this subchapter, including sections 2609 and 2610 of this title.

(4) Essential use exemption

(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 2614 of this title, and shall be subject to penalties under section 2615 of this title, injunctive relief under section 2616 of this title, and citizen suits under section 2619 of this title.

(5) Consistency with trade obligations

Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) Export of coal

Nothing in this subsection shall be construed to prohibit the export of coal.

(Pub. L. 94–469, title I, § 12, Oct. 11, 1976, 90 Stat. 2033; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 110–414, § 4, Oct. 14, 2008, 122 Stat. 4342.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–414, § 4(1), substituted ''subsections (b) and (c)'' for ''subsection (b)'' in introductory provisions.

Subsec. (c). Pub. L. 110–414, § 4(2), added subsec. (c).

FINDINGS

Pub. L. 110–414, § 2, Oct. 14, 2008, 122 Stat. 4341, provided that: ''Congress finds that—

''(1) mercury is highly toxic to humans, ecosystems, and wildlife;

''(2) as many as 10 percent of women in the United States of childbearing age have mercury in the blood at a level that could put a baby at risk;

''(3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;

''(4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;

''(5) the Environmental Protection Agency reports that, as of 2004—

''(A) 44 States have fish advisories covering over 13,000,000 lake acres and over 750,000 river miles;

''(B) in 21 States the freshwater advisories are statewide; and

''(C) in 12 States the coastal advisories are statewide;

''(6) the long-term solution to mercury pollution is to minimize global mercury use and releases to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption since uncontaminated fish represents a critical and healthy source of nutrition worldwide;

''(7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);

''(8) the free trade of elemental mercury on the world market, at relatively low prices and in ready supply, encourages the continued use of elemental mercury outside of the United States, often involving highly dispersive activities such as artisinal [probably should be ''artisanal''] gold mining;

''(9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;

''(10) the member countries of the European Union collectively are the largest source of elemental mercury exports globally;

''(11) the European Commission has proposed to the European Parliament and to the Council of the European Union a regulation to ban exports of elemental mercury from the European Union by 2011;

''(12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and

''(13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world.''

§ 2612. Entry into customs territory of the United States

(a) In general

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this chapter, or

(B) it is offered for entry in violation of section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or an order issued in a civil action brought under section 2604 of this title, 2606 of this title or subchapter IV of this chapter.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when de-

manded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) Rules

The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

(Pub. L. 94–469, title I, § 13, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 100–418, title I, § 1214(e)(2), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 102–550, title X, § 1021(b)(4), Oct. 28, 1992, 106 Stat. 3923.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102–550 substituted ''section 2604 of this title, 2605 of this title, or subchapter IV of this chapter'' for ''section 2604 or 2605 of this title'' in two places and ''section 2604 of this title, 2606 of this title or subchapter IV of this chapter'' for ''section 2604 or 2606 of this title''.

1988—Subsec. (a)(1). Pub. L. 100–418 substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 to the Tariff Schedules of the United States'' in introductory text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

§ 2613. Disclosure of data

(a) In general

Except as provided by subsection (b) of this section, any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this chapter, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

(1) shall be disclosed to any officer or employee of the United States—

(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or

(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after October 11, 1976, for the performance of work in connection with this chapter and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this chapter, except that disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under section 552(a) of title 5 to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) Data from health and safety studies

(1) Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this chapter with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or

(ii) any chemical substance or mixture for which testing is required under section 2603 of this title or for which notification is required under section 2604 of this title, and

(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) If a request is made to the Administrator under subsection (a) of section 552 of title 5 for information which is described in the first sentence of paragraph (1) and which is not information described in the second sentence of such paragraph, the Administrator may not deny such request on the basis of subsection (b)(4) of such section.

(c) Designation and release of confidential data

(1) In submitting data under this chapter, a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a) of this section, and (B) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(2)(A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under

paragraph (1)(A), the Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under section 552(a) of title 5, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.

(B)(i) Subparagraph (A) shall not apply to the release of information under paragraph (1), (2), (3), or (4) of subsection (a) of this section, except that the Administrator may not release data under paragraph (3) of subsection (a) of this section unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b)(1) of this section other than information described in the second sentence of such subsection.

(d) Criminal penalty for wrongful disclosure

(1) Any officer or employee of the United States or former officer or employee of the United States, who by virtue of such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a) of this section, and who knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 does not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this chapter.

(2) For the purposes of paragraph (1), any contractor with the United States who is furnished information as authorized by subsection (a)(2) of this section, and any employee of any such contractor, shall be considered to be an employee of the United States.

(e) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(Pub. L. 94–469, title I, § 14, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§ 2614. Prohibited acts

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 2603 of this title, (B) any requirement prescribed by section 2604 or 2605 of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title, or (D) any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in action brought under section 2604 or 2606 of this title;

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this chapter or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 2610 of this title.

(Pub. L. 94–469, title I, § 15, Oct. 11, 1976, 90 Stat. 2036; renumbered title I and amended Pub. L. 99–519, § 3(b)(1), (c)(1), Oct. 22, 1986, 100 Stat. 2988, 2989.)

AMENDMENTS

1986—Par. (1)(D). Pub. L. 99–519 added cl. (D).

§ 2615. Penalties

(a) Civil

(1) Any person who violates a provision of section 2614 or 2689 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title.

(2)(A) A civil penalty for a violation of section section 2614 or 2689 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any

civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

Any person who knowingly or willfully violates any provision of section 2614 or 2689 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year, or both.

(Pub. L. 94–469, title I, § 16, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, § 1021(b)(5), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsecs. (a)(1), (2)(A), (b). Pub. L. 102–550 substituted ''section 2614 or 2689 of this title'' for ''section 2614 of this title'' wherever appearing.

§ 2616. Specific enforcement and seizure

(a) Specific enforcement

(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 2614 or 2689 of this title,

(B) restrain any person from taking any action prohibited by section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or by a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter,

(C) compel the taking of any action required by or under this chapter, or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to subchapter IV of this chapter manufactured or processed in violation of section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, or a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV of this chapter, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 2614 of this title occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) Seizure

Any chemical substance, mixture, or product subject to subchapter IV of this chapter which was manufactured, processed, or distributed in commerce in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel, for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 94–469, title I, § 17, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, § 1021(b)(6), (7), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, § 1021(b)(6), which directed that subsec. (a) be amended ''to read as follows'' and then set out the subsec. (a) designation and heading, followed by the par. (1) designation and text, without any restatement of par. (2), was executed as a general amendment of par. (1) only, to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: ''The district courts of the United States shall have jurisdiction over civil actions to—

''(A) restrain any violation of section 2614 of this title,

''(B) restrain any person from taking any action prohibited by section 2604 or 2605 of this title or by a rule or order under section 2604 or 2605 of this title,

''(C) compel the taking of any action required by or under this chapter, or

''(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 2604 or 2605 of this title or a rule or order under section 2604 or 2605 of this title and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.''

Subsec. (b). Pub. L. 102–550, § 1021(b)(7), in first sentence substituted ''substance, mixture, or product subject to subchapter IV of this chapter'' for ''substance or mixture'' and inserted ''product,'' before ''or article'' in two places.

§ 2617. Preemption

(a) Effect on State law

(1) Except as provided in paragraph (2), nothing in this chapter shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b) of this section—

(A) if the Administrator requires by a rule promulgated under section 2603 of this title the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 7401 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) Exemption

Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2) of this section, under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this chapter described in subsection (a)(2) of this section, and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this chapter described in subsection (a)(2) of this section and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

(Pub. L. 94–469, title I, § 18, Oct. 11, 1976, 90 Stat. 2038; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

§ 2618. Judicial review

(a) In general

(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e), or 2607 of this title, or under subchapter II or IV of this chapter, any person may file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under subparagraph (A) or (B) of section 2605(b)(1) of this title if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Administrator based the rule being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

(3) For purposes of this section, the term ''rulemaking record'' means—

(A) the rule being reviewed under this section;

(B) in the case of a rule under section 2603(a) of this title, the finding required by such section, in the case of a rule under section 2604(b)(4) of this title, the finding required by such section, in the case of a rule under section 2605(a) of this title the finding required by section 2604(f) or 2605(a) of this title, as the case may be, in the case of a rule under section 2605(a) of this title, the statement required by section 2605(c)(1) of this title, and in the case of a rule under section 2605(e) of this title, the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be[1] and in the case of a rule under subchapter IV of this chapter, the finding required for the issuance of such a rule;

(C) any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) any written submission of interested parties respecting the promulgation of such rule; and

(E) any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

(b) Additional submissions and presentations; modifications

If in an action under this section to review a rule the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule being reviewed or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(c) Standard of review

(1)(A) Upon the filing of a petition under subsection (a)(1) of this section for judicial review of a rule, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, and (ii) except as otherwise provided in subparagraph (B), to review such rule in accordance with chapter 7 of title 5.

(B) Section 706 of title 5 shall apply to review of a rule under this section, except that—

(i) in the case of review of a rule under section 2603(a), 2604(b)(4), 2605(a), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3) of this section) taken as a whole;

(ii) in the case of review of a rule under section 2605(a) of this title, the court shall hold unlawful and set aside such rule if it finds that—

(I) a determination by the Administrator under section 2605(c)(3) of this title that the petitioner seeking review of such rule is not entitled to conduct (or have conducted) cross-examination or to present rebuttal submissions, or

(II) a rule of, or ruling by, the Administrator under section 2605(c)(3) of this title limiting such petitioner's cross-examination or oral presentations,

has precluded disclosure of disputed material facts which was necessary to a fair determination by the Administrator of the rulemaking proceeding taken as a whole; and section 706(2)(D) shall not apply with respect to a determination, rule, or ruling referred to in subclause (I) or (II); and

(iii) the court may not review the contents and adequacy of—

(I) any statement required to be made pursuant to section 2605(c)(1) of this title, or

(II) any statement of basis and purpose required by section 553(c) of title 5 to be incorporated in the rule

except as part of a review of the rulemaking record taken as a whole.

The term ''evidence'' as used in clause (i) means any matter in the rulemaking record.

(C) A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(d) Fees and costs

The decision of the court in an action commenced under subsection (a) of this section, or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) Other remedies

The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 94–469, title I, § 19, Oct. 11, 1976, 90 Stat. 2039; renumbered title I and amended Pub. L. 99–519, § 3(b)(2), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, § 1021(b)(8), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1)(A). Pub. L. 102–550, § 1021(b)(8)(A), substituted ''subchapter II or IV of this chapter'' for ''subchapter II of this chapter''.

[1] So in original. Probably should be followed by a comma.

Subsec. (a)(3)(B). Pub. L. 102–550, § 1021(b)(8)(B), inserted before semicolon at end ''and in the case of a rule under subchapter IV of this chapter, the finding required for the issuance of such a rule''.

1986—Subsec. (a)(1)(A). Pub. L. 99–519 inserted reference to subchapter II of this chapter.

§ 2619. Citizens' civil actions

(a) In general

Except as provided in subsection (b) of this section, any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title, or subchapter II or IV of this chapter, or order issued under section 2604 of this title or subchapter II or IV of this chapter to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) Limitation

No civil action may be commenced—

(1) under subsection (a)(1) of this section to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2615(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) of this section before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) General

(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

(2) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this chapter or any rule or order under this chapter or to seek any other relief.

(d) Consolidation

When two or more civil actions brought under subsection (a) of this section involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

(Pub. L. 94–469, title I, § 20, Oct. 11, 1976, 90 Stat. 2041; renumbered title I and amended Pub. L. 99–519, § 3(b)(3), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, § 1021(b)(9), Oct. 28, 1992, 106 Stat. 3923.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted ''subchapter II or IV of this chapter'' for ''subchapter II of this chapter'' in two places.

1986—Subsec. (a)(1). Pub. L. 99–519 inserted references to subchapter II of this chapter.

§ 2620. Citizens' petitions

(a) In general

Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title.

(b) Procedures

(1) 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 rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e), 2605(b)(1)(A), or 2605(b)(1)(B) of this title.

(2) 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.

(3) 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 section 2603, 2604, 2605, or 2607 of this title. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial.

(4)(A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title, the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2603 of this title or an order under section 2604(e) of this title—

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2605 or 2607 of this title or an order under section 2605(b)(2) of this title, there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.[1]

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this chapter and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 94–469, title I, § 21, Oct. 11, 1976, 90 Stat. 2042; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§ 2621. National defense waiver

The Administrator shall waive compliance with any provision of this chapter upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this chapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

(Pub. L. 94–469, title I, § 22, Oct. 11, 1976, 90 Stat. 2044; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

[1] So in original. The period probably should be a semicolon.

§ 2622. Employee protection

(a) In general

No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Remedy

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) Exclusion

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this chapter.

(Pub. L. 94–469, title I, § 23, Oct. 11, 1976, 90 Stat. 2044; Pub. L. 98–620, title IV, § 402(19), Nov. 8, 1984, 98 Stat. 3358; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–620 struck out provision that civil actions brought under this subsection had to be heard and decided expeditiously.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 2623. Employment effects

(a) In general

The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 2603, 2604, or 2605 of this title, or

(2) a requirement of section 2604 or 2605 of this title.

(b) Investigations

(1) Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 2603, 2604, or 2605 of this title or a requirement of section 2604 or 2605 of this title. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2)(A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request,

(ii) such hearings shall be held in accordance with section 2605(c)(3) of this title, and

(iii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appropriate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this chapter.

(Pub. L. 94–469, title I, § 24, Oct. 11, 1976, 90 Stat. 2045; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

§ 2624. Studies

(a) Indemnification study

The Administrator shall conduct a study of all Federal laws administered by the Administrator for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any such law. The study shall—

(1) include an estimate of the probable cost of any indemnification programs which may be recommended;

(2) include an examination of all viable means of financing the cost of any recommended indemnification; and

(3) be completed and submitted to Congress within two years from the effective date of enactment of this chapter.

The General Accounting Office shall review the adequacy of the study submitted to Congress pursuant to paragraph (3) and shall report the results of its review to the Congress within six months of the date such study is submitted to Congress.

(b) Classification, storage, and retrieval study

The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health and Human Services, the Secretary of Commerce, and the heads of other appropriate Federal departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical substances and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such substances. A report on such study shall be completed and submitted to Congress not later than 18 months after the effective date of enactment of this chapter.

(Pub. L. 94–469, title I, § 25, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

The effective date of enactment of this chapter, referred to in subsecs. (a)(3) and (b), probably means January 1, 1977, the effective date of the chapter prescribed by sec. 31 of Pub. L. 94–469, which is set out as a note under section 2601 of this title, rather than October 11, 1976, the date of enactment.

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 2625. Administration

(a) Cooperation of Federal agencies

Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this chapter; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this chapter.

(b) Fees

(1) The Administrator may, by rule, require the payment of a reasonable fee from any person required to submit data under section 2603 or

2604 of this title to defray the cost of administering this chapter. Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100. In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to submit the data and the cost to the Administrator of reviewing such data. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 2603 or 2604 of this title.

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (1).

(c) Action with respect to categories

(1) Any action authorized or required to be taken by the Administrator under any provision of this chapter with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this chapter with respect to a category of chemical substances or mixtures, any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term ''category of chemical substances'' means a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term ''category of mixtures'' means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter.

(d) Assistance office

The Administrator shall establish in the Environmental Protection Agency an identifiable office to provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this chapter applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) Financial disclosures

(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health and Human Services who—

(A) performs any function or duty under this chapter, and

(B) has any known financial interest (i) in any person subject to this chapter or any rule or order in effect under this chapter, or (ii) in any person who applies for or receives any grant or contract under this chapter,

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health and Human Services (hereinafter in this subsection referred to as the ''Secretary''), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of January 1, 1977—

(i) to define the term ''known financial interests'' for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

(B) report to the Congress on June 1, 1978, and on June 1 of each year thereafter with respect to such statements and the actions taken in regard thereto during the preceding calendar year.

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health and Human Services, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18.

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Statement of basis and purpose

Any final order issued under this chapter shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) Assistant Administrator

(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection

of data, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this chapter, and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970.

(Pub. L. 94–469, title I, § 26, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 98–80, § 2(c)(2)(A), Aug. 23, 1983, 97 Stat. 485; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

REFERENCES IN TEXT

Reorganization Plan No. 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (g)(2). Pub. L. 98–80 struck out ''(A)'' before ''be in addition'' and '', and (B) be compensated at the rate of pay authorized for such Assistant Administrators'' after ''No. 3 of 1970''.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (e)(1), (3), and ''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (e)(1), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(2)(B) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 93 and 164 of House Document No. 103–7.

§ 2626. Development and evaluation of test methods

(a) In general

The Secretary of Health and Human Services, in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of test data to meet the requirements of rules promulgated under section 2603 of this title. The Administrator shall consider such methods in prescribing under section 2603 of this title standards for the development of test data.

(b) Approval by Secretary

No grant may be made or contract entered into under subsection (a) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) of this section as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(Pub. L. 94–469, title I, § 27, Oct. 11, 1976, 90 Stat. 2049; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 104–66, title I, § 1061(a), Dec. 21, 1995, 109 Stat. 719.)

CODIFICATION

In subsec. (b), ''section 3324(a) and (b) of title 31 and section 6101 of title 41'' substituted for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out heading and text of subsec. (c). Text read as follows:

''(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.

''(2) The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section.''

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 2627. State programs

(a) In general

For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this chapter, the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this chapter for their prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) Approval by Administrator

(1) No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a) of this section,

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

(c) Annual reports

Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) of this section in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.

(d) Authorization

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $1,500,000 for each of the fiscal years 1982 and 1983. Sums appropriated under this subsection shall remain available until expended.

(Pub. L. 94–469, title I, § 28, Oct. 11, 1976, 90 Stat. 2049; Pub. L. 97–129, § 1(a), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1981—Subsec. (d). Pub. L. 97–129 substituted provisions relating to authorization of appropriations of $1,500,000 for each of the fiscal years 1982 and 1983 for provisions relating to such authorization for fiscal years ending Sept. 30, 1977, Sept. 30, 1978, and Sept. 30, 1979.

§ 2628. Authorization of appropriations

There are authorized to be appropriated to the Administrator for purposes of carrying out this chapter (other than sections 2626 and 2627 of this title and subsections (a) and (c) through (g) of section 2609 of this title) $58,646,000 for the fiscal year 1982 and $62,000,000 for the fiscal year 1983. No part of the funds appropriated under this section may be used to construct any research laboratories.

(Pub. L. 94–469, title I, § 29, Oct. 11, 1976, 90 Stat. 2050; Pub. L. 97–129, § 1(b), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

AMENDMENTS

1981—Pub. L. 97–129 substituted provisions relating to authorization of appropriation of $58,646,000 for fiscal year 1982, and $62,000,000 for fiscal year 1983, for provisions relating to such authorization of $10,100,000 for fiscal year ending Sept. 30, 1977, $12,625,000 for fiscal year ending Sept. 30, 1978, and $16,200,000 for fiscal year ending Sept. 30, 1979.

§ 2629. Annual report

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this chapter during the preceding fiscal year. Such reports shall include—

(1) a list of the testing required under section 2603 of this title during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 2604 of this title, the number of such notices received during such year under such section for chemical substances subject to a section 2603 rule, and a summary of any action taken during such year under section 2604(g) of this title;

(3) a list of rules issued during such year under section 2605 of this title;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter and administrative actions under section 2615 of this title during such year;

(5) a summary of major problems encountered in the administration of this chapter; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this chapter.

(Pub. L. 94–469, title I, § 30, Oct. 11, 1976, 90 Stat. 2050; renumbered title I, Pub. L. 99–519, § 3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

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[1] 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.[2]

(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 transpor-

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should not be capitalized.

tation 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).

§ 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,[1]

(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.)

§ 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

[1] So in original. Probably should be ''subsection,''.

(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)[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 lab-

[1] So in original. Probably should be ''subparagraph (A)''.

oratories 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

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) 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

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

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.

§ 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

Pub. L. 100–368, § 4(c), July 18, 1988, 102 Stat. 833, 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 govern-

ments, 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

Pub. L. 101–637, § 16(b), Nov. 28, 1990, 104 Stat. 4598, 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].''

SUBCHAPTER III—INDOOR RADON ABATEMENT

§ 2661. National goal

The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.

(Pub. L. 94–469, title III, § 301, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2755.)

REPORT ON RECOMMENDED POLICY FOR DEALING WITH RADON IN ASSISTED HOUSING

Pub. L. 100–628, title X, § 1091, Nov. 7, 1988, 102 Stat. 3283, provided that:

''(a) PURPOSES.—The purposes of this section are—

''(1) to require the Department of Housing and Urban Development to develop an effective departmental policy for dealing with radon contamination that utilizes any Environmental Protection Agency guidelines and standards to ensure that occupants of housing covered by this section are not exposed to hazardous levels of radon; and

''(2) to require the Department of Housing and Urban Development to assist the Environmental Protection Agency in reducing radon contamination.

''(b) PROGRAM.—

''(1) APPLICABILITY.—The housing covered by this section is—

''(A) multifamily housing owned by the Department of Housing and Urban Development;

''(B) public housing and Indian housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

''(C) housing receiving project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(D) housing assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1]; and

''(E) housing assisted under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)].

''(2) IN GENERAL.—The Secretary of Housing and Urban Development shall develop and recommend to the Congress a policy for dealing with radon contamination that specifies programs for education, research, testing, and mitigation of radon hazards in housing covered by this section.

''(3) STANDARDS.—In developing the policy, the Secretary shall utilize any guidelines, information, or standards established by the Environmental Protection Agency for—

''(A) testing residential and nonresidential structures for radon;

''(B) identifying elevated radon levels;

''(C) identifying when remedial actions should be taken; and

''(D) identifying geographical areas that are likely to have elevated levels of radon.

''(4) COORDINATION.—In developing the policy, the Secretary shall coordinate the efforts of the Department of Housing and Urban Development with the Environmental Protection Agency, and other appropriate Federal agencies, and shall consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

''(5) REPORT.—The Secretary shall submit a report to the Congress within 1 year after the date of the enactment of this Act [Nov. 7, 1988] that describes the Secretary's recommended policy for dealing with radon contamination and the Secretary's reasons for recommending such policy. The report shall include an estimate of the housing covered by this section that is likely to have hazardous levels of radon.

''(c) COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY.—Within 6 months after the date of the enactment of this Act [Nov. 7, 1988], the Secretary and the Administrator of the Environmental Protection Agency shall enter into a memorandum of understanding describing the Secretary's plan to assist the Administrator in carrying out the Environmental Protection Agency's authority to assess the extent of radon contamination in the United States and assist in the development of measures to avoid and reduce radon contamination.

''(d) DEFINITIONS.—For purposes of this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(e) AUTHORIZATION.—Funds available for housing covered by this section shall be available to carry out this section with respect to such housing.''

§ 2662. Definitions

For purposes of this subchapter:

(1) The term ''local educational agency'' means—

(A) any local educational agency as defined in section 7801 of title 20;

(B) the owner of any nonprofit elementary or secondary school building; and

(C) the governing authority of any school operated pursuant to section 241 of title 20, as in effect before enactment of the Improving America's Schools Act of 1994, or successor authority, relating to impact aid for children who reside on Federal property.

(2) The term ''nonprofit elementary or secondary school'' has the meaning given such term by section 2642(8)[1] of this title.

(3) The term ''radon'' means the radioactive gaseous element and its short-lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media.

(4) The term ''school building'' has the meaning given such term by section 2642(13) of this title.

(Pub. L. 94–469, title III, § 302, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2755; amend-

[1] So in original. Probably should be section ''2642(9)''.

ed Pub. L. 103–382, title III, § 391(c)(4), 392(b)(2), Oct. 20, 1994, 108 Stat. 4022, 4026; Pub. L. 107–110, title X, § 1076(f)(2), Jan. 8, 2002, 115 Stat. 2091.)

REFERENCES IN TEXT

Section 241 of title 20, as in effect before enactment of the Improving America's Schools Act of 1994, referred to in par. (1)(C), means section 241 of Title 20, Education, prior to its repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965.

AMENDMENTS

2002—Par. (1)(A). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (1)(A). Pub. L. 103–382, § 391(c)(4)(A), made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

Par. (1)(C). Pub. L. 103–382 directed two separate amendments of par. (1)(C), the first, by section 391(c)(4)(B) of Pub. L. 103–382, directed the insertion of ''or successor authority'' immediately after ''section 241 of title 20'', the second, by section 392(b)(2) of Pub. L. 103–382, directed the insertion (without reference to the first amendment) of ''as in effect before enactment of the Improving America's Schools Act of 1994'' immediately after ''section 241 of title 20,''. Literal execution of the second amendment was not possible, as ''section 241 of title 20,'' was amended to read ''section 241 of title 20 or successor authority,'' by the first amendment. Commas were editorially inserted before and after the phrase added by the second amendment and it was inserted immediately after ''section 241 of title 20'' to reflect the probable intent of Congress.

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.

§ 2663. EPA citizen's guide

(a) Publication

In order to make continuous progress toward the long-term goal established in section 2661 of this title, the Administrator of the Environmental Protection Agency shall, not later than June 1, 1989, publish and make available to the public an updated version of its document titled ''A Citizen's Guide to Radon''. The Administrator shall revise and republish the guide as necessary thereafter.

(b) Information included

(1) Action levels

The updated citizen's guide published as provided in subsection (a) of this section shall include a description of a series of action levels indicating the health risk associated with different levels of radon exposure.

(2) Other information

The updated citizen's guide shall also include information with respect to each of the following:

(A) The increased health risk associated with the exposure of potentially sensitive populations to different levels of radon.

(B) The increased health risk associated with the exposure to radon of persons engaged in potentially risk-increasing behavior.

(C) The cost and technological feasibility of reducing radon concentrations within existing and new buildings.

(D) The relationship between short-term and long-term testing techniques and the relationship between (i) measurements based on both such techniques, and (ii) the actions[1] levels set forth as provided in paragraph (1).

(E) Outdoor radon levels around the country.

(Pub. L. 94–469, title III, § 303, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2755.)

§ 2664. Model construction standards and techniques

The Administrator of the Environmental Protection Agency shall develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these standards and techniques should be developed with the assistance of organizations involved in establishing national building construction standards and techniques. The Administrator shall make a draft of the document containing the model standards and techniques available for public review and comment. The model standards and techniques shall provide for geographic differences in construction types and materials, geology, weather, and other variables that may affect radon levels in new buildings. The Administrator shall make final model standards and techniques available to the public by June 1, 1990. The Administrator shall work to ensure that organizations responsible for developing national model building codes, and authorities which regulate building construction within States or political subdivisions within States, adopt the Agency's model standards and techniques.

(Pub. L. 94–469, title III, § 304, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2756.)

§ 2665. Technical assistance to States for radon programs

(a) Required activities

The Administrator (or another Federal department or agency designated by the Administrator) shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to, the following:

(1) Establishment of a clearinghouse of radon related information, including mitigation studies, public information materials, surveys of radon levels, and other relevant information.

(2) Operation of a voluntary proficiency program for rating the effectiveness of radon measurement devices and methods, the effectiveness of radon mitigation devices and methods, and the effectiveness of private firms and individuals offering radon-related architecture, design, engineering, measurement, and mitigation services. The proficiency program under this subparagraph shall be in operation within one year after October 28, 1988.

(3) Design and implementation of training seminars for State and local officials and private and professional firms dealing with radon

[1] So in original. Probably should be ''action''.

and addressing topics such as monitoring, analysis, mitigation, health effects, public information, and program design.

(4) Publication of public information materials concerning radon health risks and methods of radon mitigation.

(5) Operation of cooperative projects between the Environmental Protection Agency's Radon Action Program and the State's radon program. Such projects shall include the Home Evaluation Program, in which the Environmental Protection Agency evaluates homes and States demonstrate mitigation methods in these homes. To the maximum extent practicable, consistent with the objectives of the evaluation and demonstration, homes of low-income persons should be selected for evaluation and demonstration.

(6) Demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings. In the case of demonstration of such methods in homes, the Administrator should select homes of low-income persons, to the maximum extent practicable and consistent with the objectives of the demonstration.

(7) Establishment of a national data base with data organized by State concerning the location and amounts of radon.

(8) Development and demonstration of methods of radon measurement and mitigation that take into account unique characteristics, if any, of nonresidential buildings housing child care facilities.

(b) Discretionary assistance

Upon request of a State, the Administrator (or another Federal department or agency designated by the Administrator) may provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but is not limited to, the following:

(1) Design and implementation of surveys of the location and occurrence of radon within a State.

(2) Design and implementation of public information and education programs.

(3) Design and implementation of State programs to control radon in existing or new structures.

(4) Assessment of mitigation alternatives in unusual or unconventional structures.

(5) Design and implementation of methods for radon measurement and mitigation for nonresidential buildings housing child care facilities.

(c) Information provided to professional organizations

The Administrator, or another Federal department or agency designated by the Administrator, shall provide appropriate information concerning technology and methods of radon assessment and mitigation to professional organizations representing private firms involved in building design, engineering, and construction.

(d) Proficiency rating program and training seminar

(1) Authorization

There is authorized to be appropriated not more than $1,500,000 for the purposes of initially establishing the proficiency rating program under subsection (a)(2) of this section and the training seminars under subsection (a)(3) of this section.

(2) Charge imposed

To cover the operating costs of such proficiency rating program and training seminars, the Administrator shall impose on persons applying for a proficiency rating and on private and professional firms participating in training seminars such charges as may be necessary to defray the costs of the program or seminars. No such charge may be imposed on any State or local government.

(3) Special account

Funds derived from the charges imposed under paragraph (2) shall be deposited in a special account in the Treasury. Amounts in the special account are authorized to be appropriated only for purposes of administering such proficiency rating program or training seminars or for reimbursement of funds appropriated to the Administrator to initially establish such program or seminars.

(4) Reimbursement of general fund

During the first three years of the program and seminars, the Administrator shall make every effort, consistent with the goals and successful operation of the program and seminars, to set charges imposed under paragraph (2) so that an amount in excess of operation costs is collected. Such excess amount shall be used to reimburse the General Fund of the Treasury for the full amount appropriated to initially establish the program and seminars.

(5) Research

The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

(A) conducting comparisons among radon and radon progeny measurement techniques;

(B) developing measurement protocols for different building types under varying operating conditions; and

(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

(i) provide information on the results of research conducted under this paragraph; and

(ii) describe model State radon measurement and mitigation programs.

(6) Mandatory proficiency testing program study

(A) The Administrator shall conduct a study to determine the feasibility of establishing a mandatory proficiency testing program that would require that—

(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

(B) The study shall also address procedures for—

(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

(7) User fee

In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).

(e) Authorization

(1) There is authorized to be appropriated for the purposes of carrying out sections 2663, 2664, and 2665 of this title an amount not to exceed $3,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) No amount appropriated under this subsection may be used by the Environmental Protection Agency to administer the grant program under section 2666 of this title.

(3) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under subsection (a)(2) of this section.

(Pub. L. 94–469, title III, § 305, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2756; amended Pub. L. 101–508, title X, § 10202, Nov. 5, 1990, 104 Stat. 1388–393; Pub. L. 104–66, title II, § 2021(*l*), Dec. 21, 1995, 109 Stat. 728.)

AMENDMENTS

1995—Subsecs. (d) to (f). Pub. L. 104–66 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: ''Within 9 months after October 28, 1988, and annually thereafter, the Administrator shall submit to Congress a plan identifying assistance to be provided under this section and outlining personnel and financial resources necessary to implement this section. Prior to submission to Congress, this plan shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note).''

1990—Subsec. (e)(5) to (7). Pub. L. 101–508 added pars. (5) to (7).

§ 2666. Grant assistance to States for radon programs

(a) In general

For each fiscal year, upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to the State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

(b) Application

An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including each of the following:

(1) A description of the seriousness and extent of radon exposure in the State.

(2) An identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.

(3) A description of the activities and programs related to radon which the State proposes in such year.

(4) A budget specifying Federal and State funding of each element of activity of the grant application.

(5) A 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels. This clause shall apply only for the initial year in which a grant application is made.

(c) Eligible activities

Activities eligible for grant assistance under this section are the following:

(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high-risk residential construction types).

(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

(3) Implementation of programs to control radon in existing and new structures.

(4) Purchase by the State of radon measurement equipment or devices.

(5) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

(7) Payment of general overhead and program administration costs.

(8) Development of a data storage and management system for information concerning radon occurrence, levels, and programs.

(9) Payment of costs of demonstration of radon mitigation methods and technologies as approved by the Administrator, including State participation in the Environmental Protection Agency Home Evaluation Program.

(10) A toll-free radon hotline to provide information and technical assistance.

(d) Preference to certain States

Beginning in fiscal year 1991, the Administrator shall give a preference for grant assistance under this section to States that have made reasonable efforts to ensure the adoption, by the authorities which regulate building construction within that State or political subdivisions within States, of the model construction standards and techniques for new buildings developed under section 2664 of this title.

(e) Priority activities and projects

The Administrator shall support eligible activities contained in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on each of the following criteria:

(1) The seriousness and extent of the radon contamination problem to be addressed.

(2) The potential for the activity or project to bring about reduction in radon levels.

(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by the Administrator, or program management approaches which may be of use to other States.

(4) Any other uniform criteria that the Administrator deems necessary to promote the goals of the grant program and that the Administrator provides to States before the application process.

(f) Federal share

The Federal share of the cost of radon program activities implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State, 60 percent in the second year, and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

(g) Assistance to local governments

States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c) of this section.

(h) Information

(1) The Administrator may request such information, data, and reports developed by the State as he considers necessary to make the determination of continuing eligibility under this section.

(2) Any State receiving funds under this section shall provide to the Administrator all radon-related information generated in its activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(3) Any State receiving funds under this section shall maintain, and make available to the public, a list of firms and individuals within the State that have received a passing rating under the Environmental Protection Agency proficiency rating program referred to in section 2665(a)(2) of this title. The list shall also include the address and phone number of such firms and individuals, together with the proficiency rating received by each. The Administrator shall make such list available to the public at appropriate locations in each State which does not receive funds under this section unless the State assumes such responsibility.

(i) Limitations

(1) No grant may be made under this section in any fiscal year to a State which in the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented the activities funded by the grant in such preceding fiscal year.

(2) The costs of implementing paragraphs (4) and (9) of subsection (c) of this section shall not in the aggregate exceed 50 percent of the amount of any grant awarded under this section to a State in a fiscal year. In implementing such paragraphs, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

(3) The costs of general overhead and program administration under subsection (c)(7) of this section shall not exceed 25 percent of the amount of any grant awarded under this section to a State in a fiscal year.

(4) A State may use funds received under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(j) Authorization

(1) There is authorized to be appropriated for grant assistance under this section an amount not to exceed $10,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) There is authorized to be appropriated for the purpose of administering the grant program under this section such sums as may be necessary for each of such fiscal years.

(3) Notwithstanding any other provision of this section, not more than 10 percent of the amount appropriated to carry out this section may be used to make grants to any one State.

(4) Funds not obligated to States in the fiscal year for which funds are appropriated under this section shall remain available for obligation during the next fiscal year.

(5) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under section 2665(a)(2) of this title.

(Pub. L. 94–469, title III, § 306, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2758.)

FEDERAL SHARE OF COST

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 531, provided in part that: "Beginning in fiscal year 2006 and thereafter, and notwithstanding section 306 of the Toxic Substances Control Act [15 U.S.C. 2666], the Fed-

eral share of the cost of radon program activities implemented with Federal assistance under section 306 shall not exceed 60 percent in the third and subsequent grant years.''

§ 2667. Radon in schools

(a) Study of radon in schools

(1) Authority

The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings.

(2) List of high probability areas

In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which have elevated levels of radon.

(3) Basis of list

In compiling such list, the Administrator shall make such determinations on the basis of, among other things, each of the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures nearby any such school.

(C) Physical characteristics of the school buildings.

(4) Survey

In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. The survey shall include testing from a representative sample of schools in each high-risk area identified in paragraph (1) and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

(5) Assistance

(A) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. To assist such agencies, the Administrator also shall provide guidance and data detailing the risks associated with high radon levels, technical guidance and related information concerning testing for radon within schools, and methods of reducing radon levels.

(B) In addition to the assistance authorized by subparagraph (A), the Administrator is authorized to make available to the appropriate agency of each State, as designated by the Governor of such State, devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such devices for the presence of radon levels.

(6) Diagnostic and remedial efforts

The Administrator is authorized to select, from high-risk areas identified in paragraph (2), school buildings for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

(7) Status report

On or before October 1, 1989, the Administrator shall submit to the Congress a status report with respect to action taken by the Administrator in conducting the study required by this section, including the results of the Administrator's diagnostic and remedial work. On or before October 1, 1989, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to this section, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

(b) Authorization

For the purpose of carrying out the provisions of paragraph (6) of subsection (a) of this section, there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary. For the purpose of carrying out the provisions of this section other than such paragraph (6), there are authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary.

(Pub. L. 94–469, title III, § 307, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2761.)

§ 2668. Regional radon training centers

(a) Funding program

Upon application of colleges, universities, institutions of higher learning, or consortia of such institutions, the Administrator may make a grant or cooperative agreement, subject to such terms and conditions as the Administrator considers appropriate, under this section to the applicant for the purpose of establishing and operating a regional radon training center.

(b) Purpose of centers

The purpose of a regional radon training center is to develop information and provide training to Federal and State officials, professional and private firms, and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

(c) Applications

Any colleges, universities, institutions of higher learning or consortia of such institutions may submit an application for funding under this section. Such applications shall be submitted to the Administrator in such form and containing such information as the Administrator may require.

(d) Selection criteria

The Administrator shall support at least 3 eligible applications with the full amount of available funds. The Administrator shall select recipients of funding under this section to ensure that funds are equitably allocated among re-

gions of the United States, and on the basis of each of the following criteria:

(1) The extent to which the applicant's program will promote the purpose described in subsection (b) of this section.

(2) The demonstrated expertise of the applicant regarding radon measurement and mitigation methods and other radon-related issues.

(3) The demonstrated expertise of the applicant in radon training and in activities relating to information development and dissemination.

(4) The seriousness of the radon problem in the region.

(5) The geographical coverage of the proposed center.

(6) Any other uniform criteria that the Administrator deems necessary to promote the purpose described in subsection (b) of this section and that the Administrator provides to potential applicants prior to the application process.

(e) Termination of funding

No funding may be given under this section in any fiscal year to an applicant which in the preceding fiscal year received funding under this section unless the Administrator determines that the recipient satisfactorily implemented the activities that were funded in the preceding year.

(f) Authorization

There is authorized to be appropriated to carry out the program under this section not to exceed $1,000,000 for each of fiscal years 1989, 1990, and 1991.

(Pub. L. 94–469, title III, § 308, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2762.)

§ 2669. Study of radon in Federal buildings

(a) Study requirement

The head of each Federal department or agency that owns a Federal building shall conduct a study for the purpose of determining the extent of radon contamination in such buildings. Such study shall include, in the case of a Federal building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

(b) High-risk Federal buildings

(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with Federal departments and agencies, determines have a high probability of including Federal buildings which have elevated levels of radon.

(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures near any such Federal building.

(C) Physical characteristics of the Federal buildings.

(c) Study designs

Studies required under subsection (a) of this section shall be based on design criteria specified by the Administrator. The head of each Federal department or agency conducting such a study shall submit, not later than July 1, 1989, a study design to the Administrator for approval. The study design shall follow the most recent Environmental Protection Agency guidance documents, including ''A Citizen's Guide to Radon''; the ''Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements''; the ''Interim Indoor Radon & Radon Decay Product Measurement Protocol''; and any other recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in subsection (b) of this section. The study design also shall include additional testing data to the extent resources are available, including any reliable data supplied by Federal agencies, States, or other parties.

(d) Information on risks and testing

(1) The Administrator shall provide to the departments or agencies conducting studies under subsection (a) of this section the following:

(A) Guidance and data detailing the risks associated with high radon levels.

(B) Technical guidance and related information concerning testing for radon within Federal buildings and water supplies.

(C) Technical guidance and related information concerning methods for reducing radon levels.

(2) In addition to the assistance required by paragraph (1), the Administrator is authorized to make available, on a cost reimbursable basis, to the departments or agencies conducting studies under subsection (a) of this section devices suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. For the purpose of assisting such departments or agencies in evaluating any such devices for the presence of radon levels, the Administrator is authorized to recommend laboratories or to make available to such departments or agencies, on a cost reimbursable basis, the use of laboratories of the Environmental Protection Agency.

(e) Study deadline

Not later than June 1, 1990, the head of each Federal department or agency conducting a study under subsection (a) of this section shall complete the study and provide the study to the Administrator.

(f) Report to Congress

Not later than October 1, 1990, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a) of this section.

(Pub. L. 94–469, title III, § 309, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2763.)

§ 2670. Regulations

The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 94–469, title III, § 310, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2764.)

§ 2671. Additional authorizations

Amounts authorized to be appropriated in this subchapter for purposes of carrying out the provisions of this subchapter are in addition to amounts authorized to be appropriated under other provisions of law for radon-related activities.

(Pub. L. 94–469, title III, § 311, as added Pub. L. 100–551, § 1(a), Oct. 28, 1988, 102 Stat. 2764.)

SUBCHAPTER IV—LEAD EXPOSURE REDUCTION

§ 2681. Definitions

For the purposes of this subchapter:

(1) Abatement

The term ''abatement'' means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this subchapter. Such term includes—

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term ''accessible surface'' means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Deteriorated paint

The term ''deteriorated paint'' means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(4) Evaluation

The term ''evaluation'' means risk assessment, inspection, or risk assessment and inspection.

(5) Friction surface

The term ''friction surface'' means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(6) Impact surface

The term ''impact surface'' means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(7) Inspection

The term ''inspection'' means (A) a surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 4822(c) of title 42, and (B) the provision of a report explaining the results of the investigation.

(8) Interim controls

The term ''interim controls'' means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(9) Lead-based paint

The term ''lead-based paint'' means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as defined in section 4822(c) of title 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

(10) Lead-based paint hazard

The term ''lead-based paint hazard'' means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this subchapter.

(11) Lead-contaminated dust

The term ''lead-contaminated dust'' means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Administrator under this subchapter to pose a threat of adverse health effects in pregnant women or young children.

(12) Lead-contaminated soil

The term ''lead-contaminated soil'' means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Administrator under this subchapter.

(13) Reduction

The term ''reduction'' means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(14) Residential dwelling

The term ''residential dwelling'' means—

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(15) Residential real property

The term ''residential real property'' means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(16) Risk assessment

The term ''risk assessment'' means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including—

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(17) Target housing

The term ''target housing'' means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

(Pub. L. 94–469, title IV, § 401, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3912.)

§ 2682. Lead-based paint activities training and certification

(a) Regulations

(1) In general

Not later than 18 months after October 28, 1992, the Administrator shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health), promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors, as such term is defined in section 4851b of title 42. The provisions of this section shall supersede the provisions set forth under the heading ''Lead Abatement Training and Certification'' and under the heading ''Training Grants'' in title III of the Act entitled ''An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes'', Public Law 102–139 [105 Stat. 765, 42 U.S.C. 4822 note], and upon October 28, 1992, the provisions set forth in such public law under such headings shall cease to have any force and effect.

(2) Accreditation of training programs

Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities, including, but not limited to, each of the following:

(A) Minimum requirements for the accreditation of training providers.

(B) Minimum training curriculum requirements.

(C) Minimum training hour requirements.

(D) Minimum hands-on training requirements.

(E) Minimum trainee competency and proficiency requirements.

(F) Minimum requirements for training program quality control.

(3) Accreditation and certification fees

The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

(A) persons operating training programs accredited under this subchapter; and

(B) lead-based paint activities contractors certified in accordance with paragraph (1).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph (A) for the purpose of training their own employees.

(b) Lead-based paint activities

For purposes of this subchapter, the term ''lead-based paint activities'' means—

(1) in the case of target housing, risk assessment, inspection, and abatement; and

(2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

For purposes of paragraph (2), the term ''deleading'' means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

(c) Renovation and remodeling

(1) Guidelines

In order to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Administrator shall, within 18 months after October 28, 1992, promulgate guidelines for the conduct of such renovation

and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in such renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(2) Study of certification

The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after October 28, 1992.

(3) Certification determination

Within 4 years after October 28, 1992, the Administrator shall revise the regulations under subsection (a) of this section to apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of contractors engaged in renovation or remodeling does not require certification, the Administrator shall publish an explanation of the basis for that determination.

(Pub. L. 94–469, title IV, § 402, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3914.)

§ 2683. Identification of dangerous levels of lead

Within 18 months after October 28, 1992, the Administrator shall promulgate regulations which shall identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992 [42 U.S.C. 4851 et seq.], lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

(Pub. L. 94–469, title IV, § 403, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3916.)

REFERENCES IN TEXT

The Residential Lead-Based Paint Hazard Reduction Act of 1992, referred to in text, is title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, which is classified principally to chapter 63A (§ 4851 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of Title 42 and Tables.

§ 2684. Authorized State programs

(a) Approval

Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 2682 or 2686 of this title, or both, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b) of this section. Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 2682 or 2686 of this title, or both, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

(b) Approval or disapproval

Within 180 days following submission of an application under subsection (a) of this section, the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that—

(1) the State program is at least as protective of human health and the environment as the Federal program under section 2682 or 2686 of this title, or both, as the case may be, and

(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

(c) Withdrawal of authorization

If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this subchapter, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter.

(d) Model State program

Within 18 months after October 28, 1992, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this subchapter. Such model program shall, to the extent practicable, encourage States to utilize existing State and local certification and accreditation programs and procedures. Such program shall encourage reciprocity among the States with respect to the certification under section 2682 of this title.

(e) Other State requirements

Nothing in this subchapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this subchapter.

(f) State and local certification

The regulations under this subchapter shall, to the extent appropriate, encourage States to

seek program authorization and to use existing State and local certification and accreditation procedures, except that a State or local government shall not require more than 1 certification under this section for any lead-based paint activities contractor to carry out lead-based paint activities in the State or political subdivision thereof.

(g) Grants to States

The Administrator is authorized to make grants to States to develop and carry out authorized State programs under this section. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this subchapter.

(h) Enforcement by Administrator

If a State does not have a State program authorized under this section and in effect by the date which is 2 years after promulgation of the regulations under section 2682 or 2686 of this title, the Administrator shall, by such date, establish a Federal program for section 2682 or 2686 of this title (as the case may be) for such State and administer and enforce such program in such State.

(Pub. L. 94–469, title IV, § 404, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3916.)

§ 2685. Lead abatement and measurement

(a) Program to promote lead exposure abatement

The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards.

(b) Standards for environmental sampling laboratories

(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust. Within 2 years after October 28, 1992, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

(2) Not later than 24 months after October 28, 1992, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph (1).

(c) Exposure studies

(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control,[1] (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

(2) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

(A) Surveillance and intervention capability in the States to identify and prevent hazardous exposures to lead abatement workers.

(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

(C) Evaluation, in consultation with the National Institute of Environmental Health Sciences, of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

(A) Drinking water.

(B) Food.

(C) Lead-based paint and dust from lead-based paint.

(D) Exterior sources such as ambient air and lead in soil.

(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

(4) Not later than 30 months after October 28, 1992, the Secretary shall submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

(d) Public education

(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Director of the Agency for Toxic Substances and Disease Registry, and in conjunction with the Secretary of Housing and Urban Development, shall sponsor public edu-

[1] So in original. The comma probably should not appear.

cation and outreach activities to increase public awareness of—

(A) the scope and severity of lead poisoning from household sources;

(B) potential exposure to sources of lead in schools and childhood day care centers;

(C) the implications of exposures for men and women, particularly those of childbearing age;

(D) the need for careful, quality, abatement and management actions;

(E) the need for universal screening of children;

(F) other components of a lead poisoning prevention program;

(G) the health consequences of lead exposure resulting from lead-based paint hazards;

(H) risk assessment and inspection methods for lead-based paint hazards; and

(I) measures to reduce the risk of lead exposure from lead-based paint.

(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

(A) health professionals;

(B) the general public, with emphasis on parents of young children;

(C) homeowners, landlords, and tenants;

(D) consumers of home improvement products;

(E) the residential real estate industry; and

(F) the home renovation industry.

(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

(4) The Administrator, in consultation with the Chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

(e) Technical assistance

(1) Clearinghouse

Not later than 6 months after October 28, 1992, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as ''Clearinghouse''). The Clearinghouse shall—

(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead-based paint hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

(B) maintain a rapid-alert system to inform certified lead-based paint activities contractors of significant developments in research related to lead-based paint hazards; and

(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this chapter.

(2) Hotline

Not later than 6 months after October 28, 1992, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead-based paint hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

(f) Products for lead-based paint activities

Not later than 30 months after October 28, 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of this subchapter, that lead-based paint hazard evaluation and reduction products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

(Pub. L. 94–469, title IV, § 405, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3917.)

§ 2686. Lead hazard information pamphlet

(a) Lead hazard information pamphlet

Not later than 2 years after October 28, 1992, after notice and opportunity for comment, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development and with the Secretary of Health and Human Services, shall publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this subchapter and section 4852d of title 42. The pamphlet shall—

(1) contain information regarding the health risks associated with exposure to lead;

(2) provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;

(3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;

(4) describe the risks of renovation in a dwelling with lead-based paint hazards;

(5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

(6) advise persons how to obtain a list of contractors certified pursuant to this subchapter in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;

(7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;

(8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and

(9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

(b) Renovation of target housing

Within 2 years after October 28, 1992, the Administrator shall promulgate regulations under this subsection to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

(Pub. L. 94–469, title IV, § 406, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3920.)

§ 2687. Regulations

The regulations of the Administrator under this subchapter shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this subchapter. The regulations may be amended from time to time as necessary.

(Pub. L. 94–469, title IV, § 407, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§ 2688. Control of lead-based paint hazards at Federal facilities

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint activities, and lead-based paint hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for isolated, intermittent or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint activities, or lead-based paint hazard activities program. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law relating to lead-based paint, lead-based paint activities, or lead-based paint hazards with respect to any act or omission within the scope of his official duties.

(Pub. L. 94–469, title IV, § 408, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§ 2689. Prohibited acts

It shall be unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.

(Pub. L. 94–469, title IV, § 409, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§ 2690. Relationship to other Federal law

Nothing in this subchapter shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this subchapter.

(Pub. L. 94–469, title IV, § 410, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§ 2691. General provisions relating to administrative proceedings

(a) Applicability

This section applies to the promulgation or revision of any regulation issued under this subchapter.

(b) Rulemaking docket

Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a ''rule''). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.

(c) Inspection and copying

(1) The rulemaking docket required under subsection (b) of this section shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying

facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(d) Explanation

(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(e) Judicial review

The material referred to in subsection (c)(2)(B) of this section shall not be included in the record for judicial review.

(f) Effective date

The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after October 28, 1992.

(Pub. L. 94–469, title IV, § 411, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3922.)

§ 2692. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this subchapter such sums as may be necessary.

(Pub. L. 94–469, title IV, § 412, as added Pub. L. 102–550, title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3923.)

SUBCHAPTER V—HEALTHY HIGH-PERFORMANCE SCHOOLS

§ 2695. Grants for healthy school environments

(a) In general

The Administrator, in consultation with the Secretary of Education, may provide grants to States for use in—

(1) providing technical assistance for programs of the Environmental Protection Agency (including the Tools for Schools Program and the Healthy School Environmental Assessment Tool) to schools for use in addressing environmental issues; and

(2) development and implementation of State school environmental health programs that include—

(A) standards for school building design, construction, and renovation; and

(B) identification of ongoing school building environmental problems, including contaminants, hazardous substances, and pollutant emissions, in the State and recommended solutions to address those problems, including assessment of information on the exposure of children to environmental hazards in school facilities.

(b) Sunset

The authority of the Administrator to carry out this section shall expire 5 years after December 19, 2007.

(Pub. L. 94–469, title V, § 501, as added Pub. L. 110–140, title IV, § 461(a), Dec. 19, 2007, 121 Stat. 1640.)

EFFECTIVE DATE

Subchapter effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§ 2695a. Model guidelines for siting of school facilities

Not later than 18 months after December 19, 2007, the Administrator, in consultation with the Secretary of Education and the Secretary of Health and Human Services, shall issue voluntary school site selection guidelines that account for—

(1) the special vulnerability of children to hazardous substances or pollution exposures in any case in which the potential for contamination at a potential school site exists;

(2) modes of transportation available to students and staff;

(3) the efficient use of energy; and

(4) the potential use of a school at the site as an emergency shelter.

(Pub. L. 94–469, title V, § 502, as added Pub. L. 110–140, title IV, § 461(a), Dec. 19, 2007, 121 Stat. 1640.)

§ 2695b. Public outreach

(a) Reports

The Administrator shall publish and submit to Congress an annual report on all activities carried out under this subchapter, until the expiration of authority described in section 2695(b) of this title.

(b) Public outreach

The Federal Director appointed under section 17092(a) of title 42 (in this subchapter referred to as the ''Federal Director'') shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 17083(1) of title 42 receives and makes available information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, § 503, as added Pub. L. 110–140, title IV, § 461(a), Dec. 19, 2007, 121 Stat. 1640.)

§ 2695c. Environmental health program

(a) In general

Not later than 2 years after December 19, 2007, the Administrator, in consultation with the Secretary of Education, the Secretary of Health and Human Services, and other relevant agencies, shall issue voluntary guidelines for use by the State in developing and implementing an environmental health program for schools that—

(1) takes into account the status and findings of Federal initiatives established under this subchapter or subtitle C of title IV of the Energy Independence and Security Act of 2007 [42 U.S.C. 17091 et seq.] and other relevant Federal law with respect to school facilities, including relevant updates on trends in the field, such as the impact of school facility environments on student and staff—

(A) health, safety, and productivity; and

(B) disabilities or special needs;

(2) takes into account studies using relevant tools identified or developed in accordance with section 492 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17122];

(3) takes into account, with respect to school facilities, each of—

(A) environmental problems, contaminants, hazardous substances, and pollutant emissions, including—

(i) lead from drinking water;

(ii) lead from materials and products;

(iii) asbestos;

(iv) radon;

(v) the presence of elemental mercury releases from products and containers;

(vi) pollutant emissions from materials and products; and

(vii) any other environmental problem, contaminant, hazardous substance, or pollutant emission that present or may present a risk to the health of occupants of the school facilities or environment;

(B) natural day lighting;

(C) ventilation choices and technologies;

(D) heating and cooling choices and technologies;

(E) moisture control and mold;

(F) maintenance, cleaning, and pest control activities;

(G) acoustics; and

(H) other issues relating to the health, comfort, productivity, and performance of occupants of the school facilities;

(4) provides technical assistance on siting, design, management, and operation of school facilities, including facilities used by students with disabilities or special needs;

(5) collaborates with federally funded pediatric environmental health centers to assist in on-site school environmental investigations;

(6) assists States and the public in better understanding and improving the environmental health of children; and

(7) takes into account the special vulnerability of children in low-income and minority communities to exposures from contaminants, hazardous substances, and pollutant emissions.

(b) Public outreach

The Federal Director and Commercial Director shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 423 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17083] receives and makes available—

(1) information from the Administrator that is contained in the report described in section 2695b(a) of this title; and

(2) information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, § 504, as added Pub. L. 110–140, title IV, § 461(a), Dec. 19, 2007, 121 Stat. 1641.)

REFERENCES IN TEXT

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(1), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492. Subtitle C of title IV of the Act enacted part C (§ 17091 et seq.) of subchapter III of chapter 152 of Title 42, The Public Health and Welfare, amended sections 6832, 6834, 8253, and 8254 of Title 42, and enacted provisions set out as a note under section 6834 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of Title 42 and Tables.

§ 2695d. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $1,000,000 for fiscal year 2009, and $1,500,000 for each of fiscal years 2010 through 2013, to remain available until expended.

(Pub. L. 94–469, title V, § 505, as added Pub. L. 110–140, title IV, § 461(a), Dec. 19, 2007, 121 Stat. 1642.)

SUBCHAPTER VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

§ 2697. Formaldehyde standards

(a) Definitions

In this section:

(1) Finished good

(A) In general

The term ''finished good'' means any good or product (other than a panel) containing—

(i) hardwood plywood;

(ii) particleboard; or

(iii) medium-density fiberboard.

(B) Exclusions

The term ''finished good'' does not include—

(i) any component part or other part used in the assembly of a finished good; or

(ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—

(I) an antique; or

(II) secondhand furniture.

(2) Hardboard

The term ''hardboard'' has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

(3) Hardwood plywood

(A) In general

The term ''hardwood plywood'' means a hardwood or decorative panel that is—

(i) intended for interior use; and

(ii) composed of (as determined under the standard numbered ANSI/HPVA HP–1–2009) an assembly of layers or plies of veneer, joined by an adhesive with—

(I) lumber core;

(II) particleboard core;

(III) medium-density fiberboard core;

(IV) hardboard core; or

(V) any other special core or special back material.

(B) Exclusions

The term ''hardwood plywood'' does not include—

(i) military-specified plywood;

(ii) curved plywood; or

(iii) any other product specified in—

(I) the standard entitled ''Voluntary Product Standard—Structural Plywood'' and numbered PS 1–07; or

(II) the standard entitled ''Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels'' and numbered PS 2–04.

(C) Laminated products

(i) Rulemaking

(I) In general

The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term ''hardwood plywood'' should exempt engineered veneer or any laminated product.

(II) Modification

The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

(ii) Laminated product

The term ''laminated product'' means a product—

(I) in which a wood veneer is affixed to—

(aa) a particleboard platform;

(bb) a medium-density fiberboard platform; or

(cc) a veneer-core platform; and

(II) that is—

(aa) a component part;

(bb) used in the construction or assembly of a finished good; and

(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

(4) Manufactured home

The term ''manufactured home'' has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(5) Medium-density fiberboard

The term ''medium-density fiberboard'' means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2–2009).

(6) Modular home

The term ''modular home'' means a home that is constructed in a factory in 1 or more modules—

(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

(B) that are transported to the home building site, installed on foundations, and completed.

(7) No-added formaldehyde-based resin

(A) In general

(i) The term ''no-added formaldehyde-based resin'' means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) one test conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to clause (ii), ASTM D–6007–02; and

(II) 3 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term ''no-added formaldehyde-based resin'' may include any resin made from—

(i) soy;

(ii) polyvinyl acetate; or

(iii) methylene diisocyanate.

(C) Emission standards

The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(8) Particleboard

(A) In general

The term ''particleboard'' means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under the standard numbered ANSI A208.1–2009).

(B) Exclusions

The term ''particleboard'' does not include any product specified in the standard entitled ''Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels'' and numbered PS 2–04.

(9) Recreational vehicle

The term ''recreational vehicle'' has the meaning given the term in section 3282.8 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(10) Ultra low-emitting formaldehyde resin

(A) In general

(i) The term ''ultra low-emitting formaldehyde resin'' means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) 2 quarterly tests conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to clause (ii), ASTM D–6007–02; and

(II) 6 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term ''ultra low-emitting formaldehyde resin'' may include—

(i) melamine-urea-formaldehyde resin;

(ii) phenol formaldehyde resin; and

(iii) resorcinol formaldehyde resin.

(C) Emission standards

(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

(II) For medium-density fiberboard—

(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.09 parts per million of formaldehyde.

(III) For particleboard—

(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.08 parts per million of formaldehyde.

(IV) For thin medium-density fiberboard—

(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.11 parts per million of formaldehyde.

(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(b) Requirement

(1) In general

Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

(2) Emission standards

The emission standards referred to in paragraph (1), based on test method ASTM E–1333–96 (2002), are as follows:

(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

(B) For hardwood plywood with a composite core—

(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(C) For medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(D) For thin medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(E) For particleboard—

(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(3) Compliance with emission standards

(A) Compliance with the emission standards described in paragraph (2) shall be measured by—

(i) quarterly tests shall be[1] conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to subparagraph (B), ASTM D–6007–02; and

(ii) quality control tests shall be[1] conducted pursuant to ASTM D–6007–02, ASTM D–5582, or such other test methods as may be established by the Administrator through rulemaking.

(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

(4) Applicability

The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—

(A) in the form of an unfinished panel; or

(B) incorporated into a finished good.

(c) Exemptions

The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—

(1) hardboard;

(2) structural plywood, as specified in the standard entitled ''Voluntary Product Standard—Structural Plywood'' and numbered PS 1–07;

(3) structural panels, as specified in the standard entitled ''Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels'' and numbered PS 2–04;

(4) structural composite lumber, as specified in the standard entitled ''Standard Specification for Evaluation of Structural Composite Lumber Products'' and numbered ASTM D 5456–06;

(5) oriented strand board;

(6) glued laminated lumber, as specified in the standard entitled ''Structural Glued Laminated Timber'' and numbered ANSI A190.1–2002;

(7) prefabricated wood I-joists, as specified in the standard entitled ''Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists'' and numbered ASTM D 5055–05;

(8) finger-jointed lumber;

(9) wood packaging (including pallets, crates, spools, and dunnage);

(10) composite wood products used inside a new—

(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has never been—

(i) the subject of a retail sale; or

(ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;

(B) rail car;

(C) boat;

(D) aerospace craft; or

(E) aircraft;

(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or

(12) exterior doors and garage doors that contain composite wood products, if—

(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

(d) Regulations

(1) In general

Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

(2) Inclusions

The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

(A) labeling;

(B) chain of custody requirements;

(C) sell-through provisions;

(D) ultra low-emitting formaldehyde resins;

[1] So in original.

(E) no-added formaldehyde-based resins;

(F) finished goods;

(G) third-party testing and certification;

(H) auditing and reporting of third-party certifiers;

(I) recordkeeping;

(J) enforcement;

(K) laminated products; and

(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

(3) Sell-through provisions

(A) In general

Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational vehicles, manufactured homes, and modular homes), shall—

(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

(B) Implementing regulations

The regulations promulgated under this subsection shall—

(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

(C) Definition

For purposes of this paragraph, the term ''stockpiling'' means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between July 7, 2010, and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before July 7, 2010.

(4) Import regulations

Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 2612 of this title as the Administrator determines to be necessary to ensure compliance with this section.

(5) Successor standards and test methods

The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

(e) Prohibited acts

An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 2614 of this title.

(Pub. L. 94–469, title VI, § 601, as added Pub. L. 111–199, § 2(a), July 7, 2010, 124 Stat. 1359.)

MODIFICATION OF REGULATION

Pub. L. 111–199, § 4, July 7, 2010, 124 Stat. 1367, provided that: ''Not later than 180 days after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act [15 U.S.C. 2697(d)] (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act [July 7, 2010]), to ensure that the regulation reflects the standards established by section 601 of the Toxic Substances Control Act [15 U.S.C. 2697].''

CHAPTER 54—AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT

Sec.
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§ 2701. Congressional findings and purpose

(a) The Congress finds that—

(1) existing automobile propulsion systems, on the average, fall short of meeting the long-term goals of the Nation with respect to environmental protection, and energy conservation;

(2) advanced alternatives to existing automobile propulsion systems could, with sufficient research and development effort, meet these long-term goals, and have the potential to be mass produced at reasonable cost; and advanced automobile propulsion systems could