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Part XIV

Department of Education

Office of Elementary and Secondary
Education

**Asbestos Detection and Control: Local
Educational Agencies; Asbestos
Detection and State Plan: State
Educational Agencies; Final Regulations**

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 230 and 231

Asbestos Detection and Control: Local Educational Agencies; Asbestos Detection and State Plan: State Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues these regulations to implement the Asbestos School Hazard Detection and Control Act of 1980. These regulations establish procedures to make available Federal grants to assist local educational agencies (LEAs) and State educational agencies (SEAs) in the identification of asbestos hazards in school buildings and Federal interest-free loans to LEAs to correct those hazards.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Herman Goldberg, U.S. Department of Education, Room 2079, FOB-6, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-8094.

SUPPLEMENTARY INFORMATION: Regulations to implement the Asbestos School Hazard Detection and Control Act of 1980 (the Act) were published as a notice of proposed rulemaking (NPRM) in the Federal Register on September 17, 1980 (45 FR 61950). The purposes of the Act and the major provisions of the proposed regulations were outlined in the preamble to the NPRM.

The Department of Education received a number of comments from the public on those proposed regulations. A summary of the comments and the Secretary's responses, including changes made in the regulations, is attached as Appendix F to this document.

Members of the Asbestos Task Force, an advisory body established in accordance with the Act, played a significant role in reviewing the regulations and the comments, particularly with regard to the scientific procedures for asbestos detection and control. The Environmental Protection Agency, the source of many of those procedures and a member agency of the Task Force, was also helpful to the Secretary in preparing the Secretary's responses to comments requiring scientific expertise.

Members of the Task Force suggested a number of changes in the proposed regulations that reflect their scientific and technical expertise in asbestos-

related activities. These changes, which were adopted by the Secretary, are summarized below.

1. The statutory definition of "imminent hazard to the health and safety," which was paraphrased in the proposed regulations, has been changed. The Task Force believes that the change will make the definition more precise scientifically and, thus, less confusing to school districts.

2. The statutory term "likelihood of leakage of asbestos fibers," which appeared in several sections of the proposed regulations, has been changed to read "likelihood of release of asbestos fibers." The Task Force believes that the revised language is more precise and more in keeping with current usage.

3. The "Asbestos Exposure Assessment Algorithm," which appeared as Appendix A to the proposed regulations, has been revised. The Task Force believes that a less rigid system for guiding school districts in evaluating the health risks associated with the likelihood of release of asbestos fibers is preferable. The new document, entitled "Guidance System for Assessing Exposure to Asbestos," appears as Appendix B to these regulations. A more detailed summary of the changes made to the original algorithm is contained in the introduction to the new document.

4. A new paragraph has been added to § 230.43 ("What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection program?"). The Task Force believes this new paragraph will help a grantee avoid a possible conflict-of-interest problem by hiring to carry out its asbestos detection project a contractor different from the one it might later consider hiring to carry out its asbestos control project.

5. The regulations in § 230.11(b) make it clear that loans cannot be provided for management systems. However, the Secretary and the Task Force encourage schools to consider management systems where there are low risks and when corrective actions are not necessary.

At present no funds have been appropriated under the Act for either the Asbestos Detection Program or the Asbestos Control Program. Despite the lack of an appropriation, however, every SEA should note that the Act requires it to have submitted a State plan as described in Part 231 of these regulations by December 15, 1980. Those SEAs that have already submitted their State plans based on the provisions in the NPRM will have an opportunity to amend plans that do not comply with

the amended § 231.70(b)(1) of these regulations but will be held accountable for meeting only the statutory requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: January 9, 1981.

Shirley M. Hufstetler,
Secretary of Education.(Catalog of Federal Domestic Assistance
Number not assigned)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 230 to read as follows:

PART 230—ASBESTOS DETECTION AND CONTROL: LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.

- 230.1 Asbestos Detection and Control: Local Educational Agencies.
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- 230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?
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Subpart E—What Conditions Must Be Met by a Recipient?**Procedures and Standards for an Asbestos Detection Project**

- 230.40 What are the procedures for conducting an asbestos detection project?
- 230.41 What are the safety measures for conducting an asbestos detection project?
- 230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?
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Procedures and Standards for an Asbestos Control Project

- 230.45 What are the procedures for containing or removing asbestos materials?
- 230.46 What are the procedures for replacing building materials and restoring school buildings?
- 230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?
- 230.48-230.49 [Reserved]

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- 230.50 What are the rules for repayment of a loan?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

- 230.60 What report must a grantee submit?
- Authority:** The Asbestos School Hazard Detection and Control Act of 1980, Pub. L. 96-270 (20 U.S.C. 3601-3611, 94 Stat. 487) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-88 (20 U.S.C. 3474(a), 93 Stat. 685).

Subpart A—General**§ 230.1 Asbestos Detection and Control: Local Educational Agencies.**

The Asbestos Detection and Control Programs for Local Educational Agencies (LEAs) consist of—

- (a) *LEA Asbestos Detection Program.* This program provides Federal grants to LEAs to identify asbestos hazards in school buildings; and
- (b) *LEA Asbestos Control Program.* This program provides Federal interest-free loans to LEAs to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

(20 U.S.C. 3604(a)(1)(A); 20 U.S.C. 3605(a)(1) and (2))

§ 230.2 Who is eligible for assistance under these programs?

(a)(1) An LEA¹ is eligible for a grant under the LEA Asbestos Detection Program if that LEA proposes to conduct or has not completed before January 1, 1976 an asbestos detection project that is in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable.

(2) As used in paragraph (a)(1) of this section and throughout this part, the term "conformity" in reference to any asbestos detection project conducted prior to the effective date of these regulations means substantial conformity.

(b)(1) An LEA is eligible for a loan under the LEA Asbestos Control Program if that LEA—

(i) Has conducted an asbestos detection project in conformity with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable; and

(ii) Proposes to carry out or has not completed before January 1, 1976 an asbestos control project—

(A) In conformity with the procedures and standards in §§ 230.45 through 230.47, as applicable;

(B) Involving more than 2,500 square feet of surface in the school buildings in the LEA; and

(C) Meeting the criteria established by the Secretary under Section 7(a)(2) of the Act. These criteria will be established if appropriations become available for the LEA Asbestos Control Program.

(2) As used in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section and throughout this part, the term "conformity" in reference to any asbestos control project conducted prior to the date—which will be published in the Federal Register—when loan applications will be accepted means substantial conformity.

(20 U.S.C. 3604(a)(1)(A) and (b)(3); 20 U.S.C. 3605(a)(2) and (c)(1) and (3))

§ 230.3 What regulations apply to these programs?

(a) In addition to the regulations in this Part 230, the following regulations apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General) except the following definitions:

(i) Award.

¹(Note: As used in these programs, the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in § 230.4(b))

(ii) Recipient.

(2) The regulations in 34 CFR Part 231 (Asbestos Detection and State Plan: State Educational Agencies).

(b) In addition to the regulations in paragraph (a) of this section, the LEA Asbestos Detection Programs is governed by the regulations in EDGAR, 34 CFR Part 75 (Direct Grant Programs) except the following:

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant program and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria).

(5) Sections 75.217 through 75.236 (pertaining to selection procedures and procedures for making a grant).

(20 U.S.C. 3474(a))

§ 230.4 What definitions apply to these programs?

The following definitions apply to the LEA Asbestos Detection Program and the LEA Asbestos Control Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Secretary
State educational agency (SEA)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Asbestos School Hazard Detection and Control Act of 1980 (Pub. L. 96-270).

"Asbestos" means—

(a) Chrysotile, amosite, or crocidolite; or

(b) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

"Asbestos control project" means activities—described in § 230.11—designed to correct imminent hazards to the health and safety of school children and school employees posed by the presence of asbestos in school buildings.

"Asbestos detection project" means activities—described in § 230.10—designed to identify asbestos hazards in school buildings.

"Award" means—

(1) The amount of funds that the Secretary provides to a grantee under the LEA Asbestos Detection Program; or

(2) The amount of funds that the Secretary provides to an applicant for a loan under the LEA Asbestos Control Program.

"Friable" means able to be crumbled, pulverized, or reduced to powder by hand.

"Imminent hazard to the health and safety" means, with reference to asbestos, that the asbestos is contained in building material whose fibers could be released into a school building environment.

"Local educational agency" means—

(1) An LEA as defined in EDGAR, 34 CFR 77.1;

(2) The governing authority of a nonprofit private elementary or secondary school, as defined in Section 11 of the Act; or

(3) A school of an agency of the United States.

"Management system" is a system in which the condition of materials that contain asbestos are monitored to ascertain any changes in the materials that may require direct corrective action.

"Recipient" means—

(1) A grantee under the LEA Asbestos Detection Program; or

(2) An applicant that receives a loan under the LEA Asbestos Control Program.

"School buildings" means—

(1) Structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or school facilities used for the preparation of food;

(2) Gymnasiums or other facilities designed especially for athletic or recreational activities included in an academic course in physical education in the regular curriculum;

(3) Other facilities used for the instruction of students, for research, or for the administration of educational or research programs; or

(4) Maintenance, storage, or utility facilities essential to the operation of any of the facilities listed in paragraphs (1) through (3) of this definition.

"State" means—

(1) A State as defined in EDGAR, 34 CFR 77.1; and

(2) The Bureau of Indian Affairs. (20 U.S.C. 3610; 20 U.S.C. 2654; 34 CFR 77.1)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

§ 230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

(a) The Secretary provides a grant to an eligible applicant under the LEA Asbestos Detection Program for the following activities conducted in accordance with the procedures and standards in §§ 230.40 through 230.42, and 230.43 if applicable:

(1) Making a visual inspection of school buildings to detect friable building materials.

(2) Collecting samples of the friable building materials referred to in paragraph (a)(1) of this section, including insulation materials.

(3) Analyzing the samples referred to in paragraph (a)(2) of this section to determine the presence of asbestos and the level of asbestos content.

(4) Determining the extent of the imminent hazards posed by the asbestos referred to in paragraph (a)(3) of this section by evaluating the likelihood of the release of fibers of that asbestos into the school environment.

(b) If appropriate, the Secretary may also provide funds for administrative costs incurred in the preparation and supervision of the LEA Asbestos Detection Program.

(20 U.S.C. 3604(b)(4))

§ 230.11 What kinds of activities are assisted under the LEA Asbestos Control Program?

(a) The Secretary provides a loan to an eligible applicant under the LEA Asbestos Control Program for the following activities conducted in accordance with the procedures and standards in §§ 230.45 through 230.47, as applicable:

(1) Containing or removing school building materials that contain asbestos posing an imminent hazard to the health and safety of school children and school employees.

(2) Replacing the removed materials referred to in paragraph (a) of this section with other appropriate building materials.

(3) Making repairs the Secretary considers necessary to restore school buildings to conditions comparable to those that existed before the activities in paragraphs (a) (1) and (2) of this section were carried out.

(b) The Secretary does not provide loans for an asbestos management system.

Note.—Although the asbestos control program does not fund asbestos management systems, the Secretary and the Asbestos

Hazards School Safety Task Force encourage schools to carefully consider this alternative before engaging in costly control projects. These projects may not be funded if a management system is more appropriate and cost-effective.

(Cross-Reference: 34 CFR 230.31)

(20 U.S.C. 3605(a)(2))

Subpart C—How Does One Apply Under These Programs?

§ 230.20 How does one apply for a grant under the LEA asbestos detection program?

(a) To apply for a grant under the LEA Asbestos Detection Program, an applicant must file with the Secretary an application that—

(1) Meets the requirements of—
(i) EDGAR, 34 CFR 75.109 and 75.110; and
(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEA to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings under the jurisdiction of the applicant agency;

(3) Contains an estimate of the total cost of the detection project, including whatever detailed descriptions of the costs of each component of the project the Secretary may require;

(4) Designates the party that will conduct the detection project and describes that party's qualifications for conducting that project;

(5) Contains assurances that—

(i) The project will be carried out in conformity with the requirements in §§ 230.40 through 230.42;

(ii) Any party employed to carry out the project will satisfy the competency standards established under § 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b) An applicant for a grant for an asbestos detection project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604(b)(1) and (3); 34 CFR 75.109-110; 34 CFR 75.112-115)

§ 230.21 How does one apply for a loan under the LEA Asbestos Control Program?

(a) To apply for a loan under the LEA Asbestos Control Program, an applicant must file with the Secretary an application containing—

(1) All information the Secretary may require, including information describing—

- (i) The nature of the asbestos problem for which the loan is sought;
- (ii) The asbestos content of the material to be contained or removed by the LEA, as determined from the results of an asbestos detection project conducted in conformity with the requirements in §§ 230.40 through 230.42, and 230.43 if applicable;
- (iii) The methods to be used to contain or remove the asbestos materials, in conformity with the requirements in §§ 230.45 through 230.47, as applicable; and
- (iv) Any other pertinent details relating to the control project; and

(2) Assurances that—

(i) The LEA conducting the asbestos control project—

(A) Will notify in writing any employee engaged in any activity to carry out the project of the hazards of working with asbestos; and

(B) Will require each employee to use all appropriate safety procedures to minimize health risks;

(ii) The LEA will not permit a child, or a school employee not engaged in asbestos containment, removal, or replacement activity to be in the vicinity of such activity; and

(iii) The LEA will pay employees engaged in containment, removal, or replacement activities to carry out the asbestos control project, reasonable rates of pay, as established by the Secretary on the basis of prevailing wage rates in the location of that work.

(b) An applicant for a loan for an asbestos control project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application—in addition to the information required in paragraph (a) of this section—an assurance that it conducted the project in conformity with the requirements in §§ 230.45 through 230.47, as applicable.

(20 U.S.C. 3605(c)(1) and (3))

§ 230.22 In what circumstances may an LEA apply for a grant or loan greater than 50 percent?

(a) If an LEA believes that it has limited resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award, the LEA may submit to the Secretary, together with its application, a request for a grant or loan greater than the amount provided by the Secretary under §§ 230.30 or 230.32.

(b) The LEA shall include in its request for an increased award information that substantiates its claim

of limited financial resources. This may include the most recently available data describing any applicable factors listed in § 230.33(b).

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3); 20 U.S.C. 3474(a))

§ 230.23 What records must an LEA maintain?

An LEA that applies for a grant under the LEA Asbestos Detection Program or a loan under the LEA Asbestos Control Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the LEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3605(c)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 230.30 How does the Secretary determine the amount of a grant for an asbestos detection project?

(a) Except as provided in §§ 230.33 and 230.34, the Secretary makes a grant equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos detection project.

(b)(1) The amount awarded by the Secretary is the Federal share of the grantee's project.

(2) This applies whether Federal funds for the project are paid—

- (i) Directly to the LEA;
- (ii) To the SEA under 34 CFR Part 231 for reimbursement of funds it has paid to the LEA for this project; or
- (iii) To both the LEA and the SEA.

(20 U.S.C. 3604(a)(2) and (a)(1)(B))

§ 230.31 What criteria does the Secretary apply in selecting loan recipients?

In selecting loan recipients under the LEA Asbestos Control Program, the Secretary applies the following criteria:

- (a)(1) The likelihood of release of asbestos fibers into a school environment, as determined under the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations; or
- (2) Any other evidence of the extent of the hazards caused by the presence of asbestos.

(b)(1) The extent to which the corrective action proposed by the applicant will reduce the imminent hazards to the health and safety of school children and school employees; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was successful in reducing imminent hazards to the health

and safety of school children and school employees.

(c)(1) The extent to which the corrective action proposed by the applicant is cost-effective compared to other techniques including management of material containing asbestos; or

(2) The extent to which corrective action that the applicant took in a control project not completed before January 1, 1976 was cost-effective compared to other techniques, including management of material containing asbestos.

(20 U.S.C. 3606(a)(2))

§ 230.32 How does the Secretary determine the amount of a loan for an asbestos control project?

Except as provided in §§ 230.33 and 230.34, the Secretary may make an interest-free loan equal to 50 percent of the costs that an eligible LEA incurs or has incurred in conducting an asbestos control project.

(20 U.S.C. 3605(a)(2))

§ 230.33 What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?

(a) The Secretary may increase the amount of a grant or loan if the Secretary determines that an eligible LEA has limited financial resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award.

(b) The Secretary considers one or more of the following factors in making the determination described in paragraph (a) of this section:

(1) A measure of financial need used by the State in which the LEA is located.

(2) The per capita income of the LEA or county.

(3) The local school millage rate compared with the millage rate that the State determines to be reasonable for that LEA or county.

(4) The ratio, expressed as a percentage, of the cost of the project to the total budget of the LEA.

(5) Any other factor that demonstrates that the LEA has limited financial resources.

(20 U.S.C. 3604(a)(2); 20 U.S.C. 3605(a)(3))

§ 230.34 What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?

(a) If appropriations under the LEA Asbestos Detection Program or the LEA Asbestos Control Program do not meet the levels of assistance described in §§ 230.30 and 230.32, the Secretary determines which applicant LEAs have the greatest financial need for receiving

funds to conduct asbestos detection or control activities.

(b) In making the determination described in paragraph (a) of this section, the Secretary considers:

(1) One or more of the factors in paragraph (b) of § 230.33; and

(2) One or more of the following factors:

(i) The square footage of the structures to be included in the project compared with the total square footage of school buildings in the LEA.

(ii) The known or estimated asbestos content in friable building materials used in the LEA's school buildings.

(iii) The likelihood of release of asbestos fibers in building materials used in the LEA's school buildings.

(iv) The number of persons using the LEA's school buildings who are or will be exposed to asbestos that poses an imminent hazard.

(v) Any other factor that demonstrates the extent of the LEA's financial need for receiving funds to conduct asbestos detection or control activities.

(20 U.S.C. 3611(c); 20 U.S.C. 1226a)

Subpart E—What Conditions Must Be Met by a Recipient?

Procedures and Standards for an Asbestos Detection Project

§ 230.40 What are the procedures for conducting an asbestos detection project?

In conducting an asbestos detection project, a grantee under the LEA Asbestos Detection Program shall adhere to the following procedures:

(a) For making a visual inspection of school buildings, the procedures in Part I of Appendix A.

(b) For sampling friable materials, the procedures in Part II of Appendix A.

(c) For analyzing friable materials to determine their asbestos content, the procedures in Part III of Appendix A.

(d) For evaluating the likelihood of release of asbestos fibers, the procedures referred to in § 230.42.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.41 What are the safety measures for conducting an asbestos detection project?

A grantee under the LEA Asbestos Detection Program shall comply with the best available safety measures for conducting its asbestos detection project. A grantee is considered by the Secretary to be in compliance with this section if that grantee adheres to the following safety measures:

(a) Material is sampled only when the area in which that material is located is not in use.

(b) Only persons needed for sampling are present.

(c) The sampling container is held away from the face during the actual collection of the sample.

(d) The material is not disturbed more than is necessary.

Note.—The Secretary and the Task Force recommend that when persons take bulk samples, they use respirators or other respiratory protection.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.42 How does a grantee evaluate the likelihood of release of asbestos fibers?

A grantee under the LEA Asbestos Detection Program shall apply the Guidance System for Assessing Potential Asbestos Problems in Schools in Appendix B of these regulations to evaluate the likelihood of the release of asbestos fibers into a school environment.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.43 What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?

(a) A grantee under the LEA Asbestos Detection Program may, if it so chooses, select a contractor to carry out any or all of the activities under the grantee's asbestos detection project.

(b) A grantee that selects a contractor to carry out any or all of the activities under the grantee's asbestos detection project shall determine the qualifications of that contractor by applying the following standards:

(1) For making a visual inspection of school buildings, the contractor's knowledge of and ability to comply with the procedures in Part I of Appendix A.

(2) For sampling friable materials, the contractor's knowledge of and ability to comply with the procedures in Part II of Appendix A.

(3)(i) For analyzing friable materials to determine their asbestos content, the contractor's knowledge of and ability to comply with the analytic techniques in Part III of Appendix A.

(ii) In addition, the Secretary encourages the grantee to consult the results of the Asbestos Analytic Laboratory Proficiency Program developed by the Environmental Protection Agency (EPA), which assessed the ability of participating laboratories to analyze materials for asbestos.

(iii) The Secretary makes available to SEAs on request the results of the analytical proficiency program referred to in paragraph (b)(3)(ii) of this section.

(4)(i) For evaluating the likelihood of release of asbestos fibers, the contractor's knowledge of and familiarity with the Guidance System for Assessing Potential Asbestos Problems

in Schools in Appendix B of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's—

(A) Experience with the guidance system referred to in paragraph (b)(4)(i) of this section; and

(B) Past participation in training programs for using the guidance system or an EPA algorithm.

(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in applying the guidance system referred to in paragraph (b)(4)(i) of this section.

(c) The Secretary encourages a grantee to consider hiring a different contractor to carry out the grantee's control activities than the one the grantee hired to carry out its detection activities.

(20 U.S.C. 3606(a)(1) and (c))

§ 230.44 [Reserved]

Procedures and Standards for an Asbestos Control Project

§ 230.45 What are the procedures for containing or removing asbestos materials?

(a) A recipient of a loan under the LEA Asbestos Control Program shall comply with the applicable procedures in Appendix C of these regulations if the asbestos control project involves—

(1) Removal of asbestos materials; or

(2) Containment of asbestos materials and there is a significant risk of friable materials being released in the air.

(b) If the asbestos control project involves containment of asbestos materials and there is *no* significant risk of friable materials being released in the air, less restrictive procedures than those in Appendix C may be appropriate. Nevertheless, the Secretary recommends, in this case that the recipient follow the applicable procedures in Appendix C.

(20 U.S.C. 3606(b)(1) and (c))

§ 230.46 What are the procedures for replacing building materials and restoring school buildings?

(a) In replacing building materials and restoring a school building to its previous condition, the recipient of a loan under the LEA Asbestos Control Program shall use materials that do not pose an imminent hazard to the health and safety of school children and school employees.

(b) In conducting replacement and restoration activities, the recipient of a loan shall use the most appropriate method. This method should be the most cost-effective.

(c) In conducting restoration activities, the recipient of a loan under the LEA Asbestos Control Program may use those funds to make only those repairs the Secretary considers necessary to restore a school building to a condition comparable to the condition that existed before the recipient carried out activities in § 230.11(a)(1).
(20 U.S.C. 3606(b)(1))

§ 230.47 What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?

(a) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to contain or remove asbestos materials as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's—

(1) Knowledge of and ability to comply with EPA's National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.01 through 61.25;

(2) Knowledge of and ability to comply with the standards in the Occupational Safety and Health Act (OSHA) asbestos regulations, 29 CFR 1910.1001;

(3)(i) Knowledge of and ability to comply with the containment and removal practices described in Appendix C of these regulations.

(ii) In addition, the Secretary encourages the grantee to consider the contractor's experience in carrying out asbestos containment and removal operations and past participation in training programs for proper containment and removal operations.
(iii) The Secretary makes available to SEAs on request training materials and instructional aids to assist contractors in carrying out proper containment and removal operations.

(b) If the recipient of a loan under the LEA Asbestos Control Program selects a contractor to replace building materials and restore school buildings as part of the recipient's asbestos control project, the recipient shall determine the qualifications of that contractor on the basis of the contractor's knowledge of and ability to comply with the requirement of § 230.46(a).
(20 U.S.C. 3606 (b)(2) and (c))

§§ 230.48-230.49 [Reserved]

Fiscal Requirements

§ 230.50 What are the rules for repayment of a loan?

The following provisions apply to an interest-free loan to an LEA under the LEA Asbestos Control Program:

(a) The loan period begins on the effective date of the loan agreement.

(b) The LEA shall repay the loan within the period determined by the Secretary, but not to exceed 20 years.

(c) All other terms and conditions of the loan are contained in a loan agreement that the Secretary prepares and sends to the LEA.

(20 U.S.C. 3665(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 230.60 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR Part 75, a grantee under the LEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds used to carry out the grantee's asbestos detection project; and

(b) A description of—

(1) The detection activities that the grantee conducted;

(2) The results of the asbestos detection project, including any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The grantee's plans for correcting any imminent asbestos hazards that it detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

Note.—Information in the following part—34 CFR Part 231—has a direct bearing on programs carried out under this Part 230. Readers are encouraged to read the following part for that information.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 231 to read as follows:

PART 231—ASBESTOS DETECTION AND STATE PLAN: STATE EDUCATIONAL AGENCIES

Subpart A—General

Sec.

231.1 Asbestos Detection and State Plan: State Educational Agencies.

231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?

231.3 What regulations apply to this part?

231.4 What definitions apply to this part?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?

231.21 In what circumstances may an SEA apply for a grant greater than 50 percent?

231.22 What records must an SEA maintain?

Subpart D—How Does the Secretary Make an Award?

231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?

231.31 In what circumstances may the Secretary award a grant greater than 50 percent?

231.32 What criteria does the Secretary apply if appropriations do not meet the 50 percent level of assistance?

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

231.50 What report must a grantee submit?

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

231.70 What must a State plan contain?

231.71 What information must a State distribute to its LEAs?

231.72 What records must a State maintain?

231.73 What reports must a State submit?

Appendix A—Procedures for Conducting an Asbestos Detection Project

Appendix B—Guidance System for Assessing Potential Asbestos Problems in Schools

Appendix C—Procedures for Containing and Removing Asbestos-Containing Building Materials

Appendix D—Comments and Responses
Authority: The Asbestos School Hazard Detection and Control Act of 1980, Pub. L. 96-270 (20 U.S.C. 3601-3611, 94 Stat. 487) and Section 414(a) of the Department of Education Organization Act, Pub. L. 96-58 (20 U.S.C. 3474(a), 93 Stat. 685).

Subpart A—General

§ 231.1 Asbestos Detection and State Plan: State Educational Agencies.

The Asbestos Detection Program and State Plan for State Educational Agencies (SEAs) consists of—

(a) *SEA Asbestos Detection Program.* This program provides Federal grants to SEAs to reimburse those States that have made or are making grants to their local educational agencies (LEAs)¹ to conduct asbestos detection projects; and

(b) *State Plan.* The SEA of any State that receives Federal funds for the administration of any applicable program—as defined in Section 400(c)(1)(A) of the General Education Provisions Act—shall submit to the Secretary a plan as described in Subpart H of these regulations. Under the Asbestos School Hazard Detection and Control Act of 1980, the SEA shall

¹(Note: As used in this part the term LEA includes the governing authority of a nonprofit private elementary or secondary school as defined in 34 CFR 230.4(b))

submit this plan regardless of whether the SEA or its LEAs participate in the SEA or LEA asbestos detection programs.

(20 U.S.C. 3604(a)(1)(B); 20 U.S.C. 3603(a))

§ 231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?

An SEA is eligible for a grant under the SEA Asbestos Detection Program if the State—through the SEA or other appropriate State agency—has made or is making grants to its LEAs to conduct asbestos detection projects—

(a) Conducted on or after the effective date of these regulations in conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable; or

(b) Conducted prior to the effective date of these regulations, but not completed before January 1, 1976, in substantial conformity with the procedures and standards in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604(a) (B); and (b)(3))

§ 231.3 What regulations apply to this part?

In addition to the regulations in this Part 231, the following regulations apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General) except the following:

(1) Sections 75.107 and 75.108 (pertaining to applications for new grants under discretionary grant programs and under formula grant programs).

(2) Section 75.111 (pertaining to the description of a project).

(3) Section 75.116 (pertaining to the demonstration of capability).

(4) Sections 75.200 through 75.215 (pertaining to the selection of new projects, including selection criteria).

(5) Sections 75.217 through 75.236 (pertaining to selection procedures and procedures for making a grant).

(b) The regulations in 34 CFR Part 230 (Asbestos Detection and Control: Local Educational Agencies).

(20 U.S.C. 3474(a))

§ 231.4 What definitions apply to this part?

The following definitions apply to Asbestos Detection and State Plan: State Educational Agencies:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application

Award
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Recipient
Secretary
State educational agency (SEA).

(b) *Definitions in 34 CFR Part 230.* The definitions in 34 CFR 230.4(b) (the definitions section of Asbestos Detection and Control: Local Educational Agencies) apply also to this Part 231 except the following:

Award
Recipient.

(c) As used in this part, the term "State plan" or "plan" means the plan referred to in § 231.1(b) and described in Subpart H of these regulations.

(20 U.S.C. 3610; 20 U.S.C. 2854; 34 CFR 77.1)

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant Under the SEA Asbestos Detection Program?

§ 231.20 How does an SEA apply for a grant under the SEA Asbestos Detection Program?

(a) To apply for a grant under the SEA Asbestos Detection Program, an SEA must file with the Secretary an application that—

(1) Meets the requirements of—

(i) EDGAR, 34 CFR 75.109 and 75.110; and

(ii) EDGAR, 34 CFR 75.112 through 75.115;

(2) Contains a description of the methods to be used by the LEAs receiving grants from the State to determine whether hazardous concentrations of asbestos fibers or materials emitting those fibers exist in school buildings of the LEA;

(3) Contains an estimate of the total cost of LEA detection projects receiving grants from the State, including whatever detailed descriptions of the costs of the components of the projects the Secretary may require;

(4) Designates the parties conducting LEA detection projects that receive grants from the State, and describes those parties' qualifications for conducting those projects;

(5) Contains assurances that LEA detection projects receiving grants from the State are being carried out in conformity with the requirements in 34 CFR 230.40 through 230.42, and that parties employed to carry out those projects satisfy the competency standards established under 34 CFR 230.43; and

(6) Contains any other information or assurances the Secretary may require.

(b)(1) For asbestos detection projects conducted by its LEAs prior to the effective date of these regulations, but not completed before January 1, 1976, an assurance by the SEA that the LEAs conducted those projects in substantial conformity with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable; and

(2) For asbestos detection projects conducted by its LEAs on or after the effective date of these regulations, an assurance by the SEA that the LEAs conducted those projects in compliance with the requirements in 34 CFR 230.40 through 230.42, and 230.43 if applicable.

(20 U.S.C. 3604 (b)(1); and (b)(3); 34 CFR 75.109-75.110; 34 CFR 75.112-75.115)

§ 231.21 In what circumstances may an SEA apply for a grant greater than 50 percent?

(a) If an SEA believes that it has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award, the SEA may submit to the Secretary, together with its application, a request for a grant greater than the amount provided by the Secretary under § 231.30.

(b) The SEA shall include in its request for an increased award information that substantiates its claim of limited financial resources.

(20 U.S.C. 3604(a); 20 U.S.C. 3474(a))

§ 231.22 What records must an SEA maintain?

An SEA that applies for a grant under the SEA Asbestos Detection Program shall maintain and make available to the Secretary on request whatever records are necessary to substantiate claims—including cost claims—in the SEA's application.

(20 U.S.C. 3604(b)(1); 20 U.S.C. 3474(a))

Subpart D—How Does the Secretary Make an Award?

§ 231.30 How does the Secretary determine the amount of a grant under the SEA Asbestos Detection Program?

(a) Except as provided in §§ 231.31 and 231.32, the Secretary makes a grant to an SEA equal to 50 percent of that State's award to its LEAs to conduct asbestos detection projects.

(b) However, the Secretary may restrict the amount of the grant to the SEA to ensure that the Federal share of any LEA asbestos detection project in the State does not exceed the Federal share as specified in 34 CFR 230.30.

(20 U.S.C. 3604(a)(2))

§ 231.31 In what circumstances may the Secretary award a grant greater than 50 percent?

The Secretary may increase the amount of a grant if the Secretary determines that an eligible SEA has limited financial resources and would be unable to participate in the SEA Asbestos Detection Program without an increased award.

(20 U.S.C. 3604(a)(2))

§ 231.32 What criteria does the Secretary apply if appropriations do not meet the 50 percent level of assistance?

If appropriations under the Act do not meet the level of assistance described in § 231.30, the Secretary may determine which applicant SEAs have the greatest financial need for assistance under the SEA Asbestos Detection Program by—

(a) Considering in each of those States the percentage of LEAs that have requested State funds for detecting asbestos hazards; and

(b) Considering—according to one or more of the factors in each of paragraphs (b) (1) and (2) of 34 CFR 230.34—the needs of the LEAs that those SEAs have funded or are funding.

(20 U.S.C. 3611(c))

Subpart E—[Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 231.50 What report must a grantee submit?

In addition to any reports required by EDGAR, 34 CFR 75, an SEA that receives a grant under the SEA Asbestos Detection Program shall, not later than 120 days after receiving its grant, file with the Secretary a report that shall include—

(a) A detailed accounting of the funds that LEAs have received from the State to conduct asbestos detection projects; and

(b) A description of—

(1) The asbestos detection projects conducted by LEAs with financial assistance from the State;

(2) The results of those asbestos detection projects, including any findings of the presence in school building materials of asbestos that poses an imminent hazard to the health and safety of school children and school employees; and

(3) The plans of the assisted LEAs for correcting any imminent asbestos hazards that those LEAs detected.

(20 U.S.C. 3604(c); 34 CFR Part 75)

Subpart G—[Reserved]

Subpart H—What Is the State Plan Under This Act?

§ 231.70 What must a State plan contain?

An SEA, as described in § 231.1(b)(1), shall submit to the Secretary not later than December 15, 1980, a plan that—

(a) Describes the manner in which the State shall distribute to its LEAs the information required in § 231.71;

(b)(1) Describes the content of the information required in § 231.71(a) and any additional information the State considers desirable to distribute to its LEAs; and

(2) Provides an assurance that the State will continually revise, as necessary, the information described in § 231.71 and distribute the revised information to its LEAs;

(c) Describes the procedures the State will use for maintaining records as required in § 231.72; and

(d)(1) Designates a State agency or other State administrative unit responsible for submitting to the Secretary the reports required under § 231.73; and

(2) Provides an assurance that the designated agency or unit will carry out the duties required under § 231.73.

(20 U.S.C. 3603(a))

§ 231.71 What information must a State distribute to its LEAs?

(a) Not later than March 15, 1981, a State shall distribute to its LEAs information describing—

(1) The asbestos detection and control programs under this Act;

(2) The procedures and standards for conducting asbestos detection projects;

(3) The procedures and standards for conducting asbestos control projects; and

(4) The health hazards associated with exposure to asbestos fibers.

(b) A State that distributes to each of its LEAs a copy of these regulations, including all appendices, is considered by the Secretary to be in compliance with paragraphs (a)(1)–(3) of this section.

(20 U.S.C. 3603(a)(1))

§ 231.72 What records must a State maintain?

(a) A State shall maintain records on every LEA within its jurisdiction concerning the following:

(1) The asbestos detection activities conducted by the LEA.

(2) The presence, if any, of friable building materials containing asbestos in each school building of the LEA.

(3) The asbestos control activities conducted by the LEA. These include any activities related to the—

(i) Containment of asbestos materials;

(ii) Removal of asbestos materials;

(iii) Replacement of asbestos

materials with other appropriate building materials;

(iv) The repairs made by the LEA to restore school buildings to conditions comparable to those that existed before the LEA conducted any of the activities listed in paragraphs (a)(3)(i) and (ii) of this section.

(b) A State is considered by the Secretary to be in compliance with paragraphs (a) (1) and (2) of this section if that State maintains a copy of a form filled out by each of its LEAs in compliance with any EPA procedures that require an LEA to record the information in paragraphs (a) (1) and (2) of this section.

(20 U.S.C. 3603(a)(3))

§ 231.73 What reports must a State submit?

(a) The State agency or other administrative unit designated by the State in its State plan (see § 231.70(d)(1)) shall submit to the Secretary reports describing the actions taken by the State in accordance with its plan.

(b)(1) The designated agency or unit shall submit its first report no later than six months after the State submits its State plan.

(2) The designated agency or unit shall submit its subsequent reports every six months after submitting its first report.

(3) The designated agency or unit shall submit its final report no later than June 15, 1982.

(20 U.S.C. 3603(b))

Note.—Information in the preceding part—34 CFR Part 230—has a direct bearing on this Part 231. Readers are encouraged to read the preceding part for that information.

Appendix A—Procedures for Conducting Asbestos Detection Projects

Note.—These procedures originally appeared as 40 CFR 763.3 through 763.5 in proposed EPA regulations published in 45 FR 61987 (September 17, 1980). The Department of Education has made minor stylistic changes in the original procedures.

I. Inspection of School Buildings

LEAs shall visually inspect each school building under their authority to locate all friable materials. This inspection shall include surfaces behind suspended ceilings or other non-permanent structures that may be entered during normal building maintenance or repairs. For further information on inspection procedures.

officials should consult Chapter 4, "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1 (EPA No. C00090), which is incorporated by reference. Copies of the document can be obtained by calling 800-424-9065 (in Washington, D.C., call 554-1404). The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

II. Sampling Friable Materials

If friable materials are found in a school building, an LEA shall:

(a) Identify each distinct sampling area of friable materials within the school building.

(b) Take at least three samples from locations distributed throughout the sampling area. Sampling locations should not be selected for convenience (ease of reaching the sample) or because the sampler judges the location to be representative. Samples shall be taken using small sealable containers. Samples shall penetrate the depth of the friable material to the substrate.

(c) Label each sample container with a sample identification number unique to the sampling location and building. Officials should consult "Asbestos-Containing Materials in School Building: A Guidance Document," Part 1, Chapter 5, for further information on sampling procedures. The requirement that at least three samples be taken in each sampling area supersedes the recommendation made in the Guidance Document to take one sample per 5,000 square feet of friable material.

"Sampling area" means, within a school building, any area, whether contiguous or not, that contains friable material that is homogeneous in texture and appearance.

III. Analyzing Friable Materials

LEA's shall have all samples of friable material analyzed for asbestos—using Polarized Light Microscopy (PLM), supplemented, if necessary, by X-ray Diffraction—in accordance with "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples," which is incorporated by reference.

Persons interested in analyzing bulk samples for asbestos can obtain copies of the document by calling 800-424-9065 (in Washington, D.C., call 554-1404). The document is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

A list of laboratories capable of conducting analyses of friable materials can be obtained by calling 800-334-8571,

extension 6741. Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 6, for further information on analysis of friable materials.

Appendix B—Guidance System for Assessing Potential Asbestos Problems in Schools

I. Introduction

Asbestos fibers may be released within schools from friable materials containing asbestos, leading to exposure of building occupants. A variety of factors may influence the potential for release of fibers. By considering these factors, a school official can determine which friable materials containing asbestos pose the greatest potential to release fibers and, therefore, which materials may require corrective action.

To assist school officials in evaluating health risks, the Education Department and the Task Force has prepared a guidance system for assessing exposure. It must be emphasized that this guidance system does not quantify health risks. It does assist in assessing the potential for contamination. The most important use of this system is to rank several buildings or areas within buildings in order of priority for corrective action.

This guidance system is designed to assist officials to determine not only whether a building has a problem, but, also, which sections of the building have a higher potential for the release of fibers. The system can also be used a number of times within one room, such as a large auditorium, where the content of the material might be the same but the condition of the material changes.

The four factors used in the guidance system are—

- (a) Condition of the material;
- (b) Proportion of the material exposed;
- (c) Friability (very soft to quite hard); and
- (d) Total asbestos content.

The guidance system is a numerical combination of these four factors.

The guidance system should be used on friable materials that contain more than 5 percent asbestos. Materials with less than 5 percent asbestos are generally less friable and, therefore, less easily damaged than materials with larger amounts of fiber. A material with less than 5 percent asbestos can usually be assigned a low priority, and may not need corrective action, keeping in mind that the material must be maintained in good condition.

The guidance system presented here is a revision of an earlier draft that has been used by the Environmental

Protection Agency (EPA) for the past year. It incorporates a number of changes recommended by persons with extensive experience in using this method.

In order to use this assessment method effectively, evaluators—whether they be school officials or State or local health personnel—should be trained. There is a degree of subjectivity in applying the factors used in the system. To ensure that these factors are uniformly applied, evaluators should visit schools with a range of conditions to become familiar with the various types of materials that may be encountered. Because of extensive evaluating experience, EPA Regional Asbestos Coordinators are able to assist evaluators in the use of the guidance system.

II. Using the Guidance System

Using the guidance system is a two step process: assigning a factor value to each of the four factors (Step A); and then calculating the guidance number (Step B).

Step A. Assigning Values to Each Factor

In each area with friable material containing asbestos, the evaluator must choose the factor score that corresponds to the description best fitting the area. An evaluated area could be an entire building having constant values for each factor, separate rooms, or even sections of one room. For example, an auditorium with a sloping floor might have a section of the ceiling that is accessible and shows marks caused by vandalism, while other sections, beyond reach, remain unmarked. After the evaluator applies the guidance system *specifically to that section of the damaged ceiling*, the evaluator might find that it might be the *only* portion of the ceiling requiring direct corrective action.

Note that for condition of the material, the evaluator assigns only the values 0, 2, or 5; for friability, only 1, 2, or 3. For exposed surface, the evaluator assigns a value between 0 and 4 (it may be a decimal) that is proportional to the percent of the surface exposed. For asbestos content, the evaluator converts the reported mean asbestos concentration to a value between 1 and 3.

Factor One—Condition of Material

This factor is a measure of damage or disruption. Poor condition may be a result of a number of events. These include: everyday use, vandalism, maintenance, building vibration, water damage, or deterioration of the material itself. This damage or deterioration may appear as material delaminating or

separating from the substrate, water spots, gouged out areas, missing pieces of material, or indented areas. The condition shall be scored as follows:

Virtually No Damage or Deterioration: Score 0

The material is intact and shows no signs of deterioration. The material is adhering to the substrate. Essentially there are no missing pieces and no significant water spotting.

Moderate Damage or Deterioration: Score 2

The material is breaking up into layers or beginning to come loose from the substrate. There may be small areas (less than 10% of the total area) where the material is deteriorating. There are signs of accidental or intentional damage that cover no more than 10% of the area.

Extensive Damage or Deterioration: Score 5

Pieces are dislodged, and debris may be evident. Parts of the material may be hanging from the ceiling or may have fallen to the floor. Damage extends over more than 10% of the surface.

Note.—IF FRIABLE MATERIAL CONTAINING ASBESTOS IS WATER DAMAGED, CORRECT THE CONDITION THAT CAUSED THE WATER DAMAGE (e.g. roof leak) BEFORE PROCEEDING WITH ANY CORRECTIVE ACTION.

Factor Two: Proportion of the Material Exposed

The material is exposed if it can be seen by occupants of the area. The material is not exposed if it lies behind a false or suspended ceiling or other barrier that is intact. The exposed surface shall be evaluated as follows:

Estimate the percent of the surface of the friable material containing asbestos that is exposed. Multiply by 4 to convert to the factor score.

(Examples: 25% exposed—Therefore, $0.25 \times 4 = 1.0$; 60% exposed—Therefore, $0.60 \times 4 = 2.40$)

Proportion of the Material Exposed: Score 0-4

Factor Three: Friability

The term friable is applied to material that can be crumbled, pulverized, or reduced to powder by hand pressure. The evaluator must touch the material in order to score friability.

Material containing asbestos can vary in degree of friability. Sprayed asbestos material is generally more friable than trowelled material.

MATERIAL EVALUATED AS NOT FRIABLE NEED NOT BE FURTHER CONSIDERED.

Note.—It is possible to have friable materials with little or no asbestos content. Cellulose, fibrous glass, and other fibers can produce a material that is friable.

Friability shall be evaluated as follows:

Not Friable: Score 0

Low Friability: Score 1

The material can be damaged by hand but with difficulty.

Moderate Friability: Score 2

It is fairly easy to mark, damage, or dislodge the material by hand or to crush or pulverize it by hand. The material can be removed in small or large pieces.

High Friability: Score 3

The material is fluffy in appearance and is soft or spongy to the touch. It may be flaking. It is easy to penetrate the material with the fingers. Almost any brushing or touching of the material causes a visible breaking away or dusting.

Factor Four: Total Asbestos Content

The percentages for all types of asbestos present in a given sample shall be added to determine the total asbestos content.

The asbestos content must be determined by bulk sample analysis. Building records or assumptions are not reliable or acceptable. Only materials with greater than 5 percent asbestos should be evaluated using the guidance system. This cut-off is due to the difficulty of analysis below 5 percent and the uncertainty of establishing percentage of content.

Generally, materials containing less than 5 percent asbestos need not be considered further; however, unusual circumstances, such as extensive damage, may require special consideration.

Asbestos content is scored on a scale of 1 to 3. Convert the mean concentration of asbestos to a score in this range by multiplying the concentration by 2 and adding the result to 1.

(Example: A material has average content of 10% chrysotile-asbestos and 15% amosite-asbestos. The total concentration of asbestos is, therefore, 25%. Convert to a decimal for use in the formula—0.25)

Score = $1 + (0.25 \times 2) = 1 + (0.50) = 1.50$
The asbestos content score is 1.50.

Step B. Calculating the Guidance Number

Once scores have been assigned to the individual factors, the evaluator must calculate the guidance number. The number is simply the sum of the first two factors (condition of material and proportion of the material exposed) multiplied by the product of the next two factors (friability and total asbestos content).

Enter the factor numbers in the following table and compute the guidance number—

1. Condition of material:
No damage, 0

Moderate damage, 2

Severe damage, 5. _____

2. Proportion of the material exposed:

Scale, 0-4 + _____

Sum (No. 1 + No. 2) = (Sum) _____

3. Friability (not friable=0):

Low, 1

Moderate, 2

High, 3. _____

4. Total asbestos content:

Scale, 1-3 × _____

Product (No. 3 × No. 4) = (Product) _____

Guidance No. = Sum (No. 1 + No. 2) ×

Product of (No. 3 × No. 4) (Guidance No.) _____

Example

An 8th grade classroom has been evaluated and found to have the following:

1. Condition of Material: Some of the ceiling material is hanging, and the custodian reports frequently finding clumps of the ceiling material on the floor. Also, the damage covers 25% of the ceiling's surface—Score: 5.

2. Proportion of the Material Exposed: The ceiling material is totally visible and there is no hung ceiling. (100% exposed; $1.0 \times 4 = 4$)—Score: 4.

3. Friability: The material is fairly easy to dislodge and can be crushed by hand—Score: 2.

4. Total Asbestos Content: The analysis of the sample indicates 10-15% chrysotile-asbestos, and 80-85% fibrous glass. (Average the reported asbestos content if a range is given. In this case use 12.5%)

Calculation: $1 + (0.125 \times 2) = 1.25$ —Score = 1.25
Guidance No. is: $(5 + 4) \times (2 \times 1.25) = 22.5$

Step C. Interpreting the Guidance No.

The four approaches for dealing with asbestos are—

(1) A management system that monitors the condition of the material (but does not require direct corrective action unless the condition of the material changes);

(2) Enclosure with a containment system to isolate the material behind a solid barrier;

(3) Encapsulation with sealant; and

(4) Removal.

After applying the guidance system, the evaluator shall determine whether a management system or direct corrective action is appropriate. In many cases, the use of a management system to monitor an asbestos condition, prevent material disturbance, and control any necessary disturbance is adequate. In other cases, only some type of direct corrective action is appropriate.

The guidance system does not determine the type of action required. The choice of removal, encapsulation, or enclosure will be determined by a number of other factors as listed in Section III. Removal, encapsulation, and enclosure have advantages and disadvantages that must be considered in each case.

The guidance number can provide guidance for the decision maker. The guidance number is to be used as an indicator for the appropriate approach. The final determination should take into consideration such specific conditions of the building and room as those listed in Section III.

Note.—At present there are no specific guidance numbers that establish criteria to assist school administrators in deciding whether a management program or corrective action program needs to be implemented once asbestos is found. Several members of the Asbestos Hazards School Safety Task Force are conducting a comprehensive analysis of data in order to develop these guidance numbers. When the Task Force completes its analysis, the Secretary will distribute guidance numbers to the appropriate organizations and educational agencies.

The appropriateness of a management program should be reevaluated if the use of the area changes in such a way that damage may increase; e.g., because a more active population uses the space. Also, officials should periodically reconsider the effectiveness of a management program if the condition of the material changes.

III. Other Factors To Be Considered When Deciding Which Approach Is Most Appropriate

A school official will encounter conditions and considerations not explicitly included in the rating system that will influence the action decision. The approach selected will depend on factors not specified in the guidance system. The following is a non-exhaustive list of these considerations and how they may affect the decision:

A. Number of persons using the area. This affects likelihood of damage and overall risk because of exposure to the person involved.

B. Planned renovations and frequency of maintenance and repair. If renovations are planned or the asbestos is in an area frequently subject to repair work, it may be best to remove the material.

C. Complexity of surface. It is difficult to remove friable materials containing asbestos from very complex surfaces. Encapsulation or enclosure may be preferred.

D. Remaining life of building. If the building is soon to be demolished or abandoned, good management of the material may be preferred in the interim.

E. Accessibility. A highly accessible material should not be encapsulated. A material that is inaccessible (e.g., a very high ceiling)—even though it is totally exposed and has a high asbestos content—might be a candidate for a

management approach, rather than direct corrective action, if the material were in good, undamaged condition.

F. Change in use, activity, and movement. Increased or changed activity may lead to damage. For example, placing 7th and 8th graders in what had been a kindergarten-through-8th-grade school might make previously inaccessible surfaces vulnerable to damage.

G. Need to maintain fire rating. If the friable material containing asbestos is needed to meet fire codes, it cannot be removed without being replaced. Similarly, if it is to be encapsulated, check the fire-retardant characteristics of the sealant.

H. Need to maintain acoustics. A material that has acoustic properties may have to be replaced if removed. It may not be appropriate to encapsulate the material since most sealants eliminate the acoustical quality of the material on which they are sprayed.

Some of these factors do not directly affect exposure (e.g., fire rating). However, they will affect the decision to correct a material by limiting the scope of available actions, increasing the cost, etc.

Appendix C—Procedures for Containing and Removing Building Materials Containing Asbestos

These procedures have been developed by the Environmental Protection Agency and represent the best information currently available on controlling the release of fibers from friable materials containing asbestos. The purpose of the procedures is to reduce to the maximum extent possible the risk of contamination of areas of a building adjacent to the area in which asbestos containment or removal activities are being conducted and to provide maximum protection for workers involved in those activities and other users of the building.

I. Introduction

(a)(1) The three methods for containing or removing material containing asbestos are: (i)

Encapsulation, in which the material is coated with a bonding agent called a sealant to prevent the release of fibers.

(ii) Enclosure, in which the material is separated from the building environment by impermeable barriers.

(iii) Removal.

(2) Each of these methods can be used separately or in combination with one or both of the others.

(b) In order for encapsulation, enclosure, or removal to reduce imminent hazards to the health and safety of school children and school

employees, the work must be performed carefully. Poorly performed work not only creates a risk for persons performing this work, but is likely to increase the risk to students, school employees, and other persons using the building. To insure that the building environment and the outside air are not contaminated and that workers are protected from exposure to asbestos, all procedures for encapsulation, enclosure, or removal must—

(1) Conform to the procedures contained in Section II (of this appendix), General Work Practices;

(2) Conform to the specific work practices contained in the appropriate section of this appendix for the specific control method used. Section III contains work practices for encapsulation. Section IV contains work practices for enclosure. Section V contains work practices for removal;

(3) Comply with OSHA asbestos regulations, 29 CFR 1910.1001; and

(4) Comply with EPA regulations, 40 CFR Part 61, Subpart B, National Emission Standards for Hazardous Air Pollutants (NESHAPS): Asbestos

(c) Persons who perform encapsulation, enclosure, or removal must become familiar with these requirements before taking any action. The OSHA and NESHAPS regulations can be found in "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, which is available by calling 800-424-9065 (in Washington, D.C. 554-1404).

II. General Work Practices

All procedures for containment and removal of asbestos must comply with the following:

(a) **Medical services.** The party responsible for the encapsulation, enclosure, or removal (referred to in these appendices as "the contractor") shall provide medical services to employees as required by OSHA regulations, 29 CFR 1910.1001(j).

(b) **Worker Instruction.** The contractor and its employees shall be instructed, prior to the beginning of the encapsulation, enclosure, or removal, in—

(1) The health hazards of asbestos;

(2) The use of respirators and protective clothing;

(3) Work practices and safety procedures;

(4) Control of the release of asbestos fibers; and

(5) Proper preparation and decontamination of a worksite.

(c) **Materials.** The contractor shall obtain the following materials, which are necessary for any procedure related to the encapsulation, enclosure, or removal of asbestos:

Note.—The following list does not include ordinary construction materials such as lumber and hardware. It also does not include materials that are necessary for one procedure but not the others. These are discussed in the individual sections on encapsulation, enclosure, and removal.

- (1) Respirators (see paragraph (d)).
 - (2) Replacement cartridges for respirators.
 - (3) Disposable clothing for workers, including headgear and footwear.
 - (4) Shoes for use in the work area.
- Workers may not wear the same pair of shoes in the work area as they do in the clean areas of the building.

- (5) Duct tape.
- (6) Polyethylene sheets (6 mil., and 2 or 4 mil.).
- (7) Warning signs. (See OSHA regulations, 29 CFR 1910.1001(g).)
- (d) *Respirators.* The contractor shall select the proper type of respirator in accordance with OSHA regulations 29 CFR 1910.1001(d). The contractor shall be able to demonstrate that the type of respirator used by its employees is appropriate for the level of fibers found or expected in the work area, as required by § 1910.1001(d)(2).

(e) *Decontamination area.*

(1) Before beginning the encapsulation, enclosure, or removal, the contractor shall construct a decontamination area to prevent release of fibers to the exterior environment and to protect workers and others from fiber inhalation. This decontamination area must consist of three rooms: (i) A clean room where workers enter and leave the job area.

(ii) A shower for decontamination of workers before they leave the job area.

(iii) A room for removal and storage of contaminated items. This room is referred to in this appendix as the "contaminated room."

(2) If it is possible to use existing rooms in close proximity to the worksite, it may be necessary to construct temporary tunnels, from lumber and plastic, to connect these rooms to the work area. If it is not possible to use existing rooms in close proximity to the worksite, it may be necessary to construct a temporary clean room, shower, and contaminated room, from lumber and plastic, near the work area. Although some innovation is likely to be necessary, the arrangement for the decontamination area must include the following features: (i) There must be one clearly designated route from the clean room through the contaminated room into the work area, and back out. The shower may be used as a segment of the passageway between the clean room and the contaminated room. The doorway

between the contaminated room and the work area is the only doorway through which anyone may be allowed to enter the work area; there may not be any other entrance. If there is a doorway directly from the clean room to the contaminated room, it must be used for traffic in that direction only. No one may be allowed to go from the contaminated room to the clean area without first passing through, and using, the shower.

(ii)(A) The contractor shall construct airlocks in any passages between the clean room and the contaminated room. Each airlock must consist of two sets of two plastic sheets: one set at one end of the airlock and the other at the other end, at least two meters away. Each of the sheets must extend from floor to ceiling and be constructed of 2 or 4 mil plastic. The plastic sheets must be hung close together, with one sheet taped along the top of the doorway and down one side and the other taped along the top and down the other side.

(B) The shower should also function as an airlock with a set of two sheets at each entrance. If the shower is the only passage between the clean room and the contaminated room, no other airlocks are necessary.

(iii) The clean room must contain a space where workers can place their street clothes and a space for the storage of clean work clothes, respirators, respirator cartridges, soap, and towels.

(iv) If there are no usable permanent shower facilities, the contractor shall construct a temporary shower. The shower must have a ceiling. The shower must have a container for the disposal of used respirator cartridges. Water from the shower must be pumped to an existing drain in the building or collected for disposal.

(v) The contaminated room must have an area for workers to remove contaminated clothing and shoes and to store contaminated personal items (such as workshoes and gloves) and contaminated tools and equipment. It must also have containers for disposal of contaminated clothing as contaminated waste (see paragraph (k)).

(vi) Toilets, permanent or portable, must be available in the work area or contaminated room.

(f) *Work area preparation.* Before beginning the encapsulation, enclosure, or removal, the contractor and its employees shall use the following procedures to prevent the release of asbestos fibers from the work area: (1) Clean all movable items—such as furniture and equipment—with damp cloths and store them in a clean area outside of the work area. Clean all immovable items with damp cloths,

wrap the immovable items completely in plastic, and secure the plastic with duct tape. Dispose of the cleaning cloths as contaminated waste (see paragraph (k)).

(2) Bring in any large pieces of equipment, such as scaffolds and airless sprayers, that will not fit easily through the airlocks.

(3) Isolate the work area completely from the rest of the building by constructing barriers across all doorways or corridors except those in the decontamination area that are to be used by the workers. Construct the barriers so as to prohibit passage through them. Use 6 mil plastic, and tape the seams securely.

(4) Turn off all heating, ventilation, and air conditioning systems. Seal all heating registers, vents, and air ducts with plastic sheeting and duct tape. Lock windows and seal them with plastic tape. Remove all curtains, blinds, and other window coverings.

(5) Cover the floors with at least one layer of 6 mil plastic sheets. Bring the floor coverings up the walls and attach them with duct tape to the wall coverings approximately two feet above the floor. Cover the walls with 2 or 4 mil plastic sheets so that the sheets overlap the floor sheets, and secure them in place with tape.

(6) Turn off all electrical circuits and lock the electrical panels or boxes. If necessary, install temporary lighting.

(7) Post warning signs outside all entrances to contaminated areas of the building as specified in OSHA regulations, 29 CFR 1910.1001(g).

(8)(i) Arrange for air monitoring and inspections as required by OSHA regulations, 29 CFR 1910.1001(f) (air monitoring services should be provided by a reputable laboratory under direct contract to the building owner). At a minimum, have a single environmental sample collected outside the building at the beginning of the project.

(ii) Each day during the encapsulation, enclosure, or removal procedure, collect at least two air samples within the work area and two air samples immediately outside the work area.

(9) Take down light fixtures in the work area. Clean them with damp cloths and remove them from the work area, or—if debris on the fixtures cannot be removed—discard the fixtures as contaminated waste (see paragraph (k)).

(10) If it is necessary to remove a suspended ceiling to reach the materials containing asbestos, carefully take down the ceiling. Clean the ceiling tiles with damp cloths and store them outside the work area, or—if debris on the tiles cannot be removed—dispose of the tiles as contaminated waste (see paragraph (k)).

(g) *Measures for worker protection.* Each worker, and any other person who enters the job site (e.g., an industrial hygienist, an inspector, etc.) shall follow these procedures: (1) In the clean room before entering the work area, remove all street clothing, underwear, and shoes. Put on respirator, then dress in disposable coveralls and headgear (note that it is necessary to put on the respirator before the disposable headgear). Pass through the airlocks into the contaminated room. Then proceed to the work area.

(2) Never remove respirator while in the work area. No one may eat, drink, smoke, or chew tobacco or gum while in the work area.

(h) *Procedures for worker decontamination.* At the end of each work shift and before breaks, workers and any other persons in the work area shall follow these procedures when leaving the work area: (1) Before entering the contaminated room, remove all gross contamination from disposable clothing.

(2) In the contaminated room, remove all clothing and work shoes, leaving on only the respirator.

(3) Proceed to the shower and wet hair, body, and respirator before removing respirator. Complete shower, washing thoroughly with soap and water.

(4) Remove and discard respirator cartridges in the container provided in the shower. Proceed to the clean room. Clean respirator with a disinfectant, dry it, insert new cartridges, and place respirator in a dry, clean plastic bag.

(5) Put on street clothes and shoes or a new set of disposable clothing.

(i) *Corrective action.* Refer to Sections III, IV, and V of this appendix for directions on the specific control procedures being used.

(j) *Procedures for cleaning the work area.*

Note.—The contractor and its employees shall follow personal protection procedures (see paragraphs (g) and (h)) while conducting steps (1) through (7) of this paragraph (j).

(1) Dispose of all scrap and debris from the work area, the contaminated room, and the clean room. Treat this debris as contaminated waste (see paragraph (k)).

(2) Remove all floor and wall coverings except heating and ventilation duct covers, barriers, and airlocks. Dispose of the plastic and other materials as contaminated waste.

(3) Wet-clean—with a damp mop, sponge, or cloth—all floors, walls, and other surfaces—including any furniture and equipment in the work area or contaminated room. Wait 24 hours to

allow airborne fibers to settle; during this period allow no ventilation or traffic in the area.

(4) Wet-clean all surfaces again, and again wait 24 hours.

(5) Wet-clean all surfaces once more (EPA recommends that this final cleaning be supplemented by the use of a High Efficiency Particulate Absolute (HEPA) vacuum cleaner).

(6) Visually inspect the entire area to make sure it is clean. If dry wiping of surfaces reveals dust contamination, do further wet-cleaning. The monitoring of air may be required by the State or locality or specified in the contract.

(7) When the entire area is clean, dismantle all airlocks, barriers, and temporary shower facilities. Remove coverings from heating and ventilation ducts. Inspect all ducts, especially the horizontal sections, for debris containing asbestos, and vacuum with a HEPA vacuum or wet-clean the ducts, as necessary. Replace all heating, ventilation, and air conditioning filters, and dispose of old filters as contaminated waste. Dispose of all plastic and lumber as contaminated waste. Remove from the work area all cleaned equipment belonging to the contractor.

(8) Return to the work area furniture and other movable items stored during the encapsulation, enclosure, or removal. Restore electrical and other systems to operation, and return the building to normal use.

(k) *Disposal of contaminated waste.* The contractor and its employees shall follow the procedures in paragraphs (k) (1) through (4) when disposing of asbestos-contaminated waste—including asbestos-containing materials removed from the building structure, lumber and plastic used in barriers and airlocks, debris remaining on the floor, cleaning cloths, and any other contaminated materials.

(1) Place the waste in impermeable containers (EPA recommends that the waste be placed in 6 mil. polyethylene bags and that the bags be placed in sealable fiber drums). The waste containers must be sealed and labeled with warning signs as required by OSHA regulations, 29 CFR 1910.1001(g)(2).

(2) Handle containers carefully so that they do not break. The containers must be taken to the entrance of the work area, cleaned with a damp cloth, and placed in the airlock.

(3) A decontaminated worker shall take the waste containers from the airlock to a loading area for transportation to a disposal site.

(4) EPA recommends that all workers involved in disposal activities wear respirators.

(5) Dispose of the waste in compliance with EPA regulations, 40 CFR 61.22 and 61.25.

(6) Contractors using bags and drums shall observe the following procedures:

(i) If a bag is intact, it may be removed from the drum before disposal, and the drum may be recycled.

(ii) If a drum has been contaminated by leakage from a broken bag inside it, it must be buried with the bags.

III. *Work Practices for Removal*

These procedures are for wet removal of building materials containing asbestos. Wet removal is the most common removal method. Removal operations using other techniques are also acceptable if the contractor can demonstrate that those techniques are in compliance with EPA and OSHA regulations.

After completing construction of the decontamination area and preparation of the work area, the contractor and its employees shall follow these procedures in removing and disposing of materials containing asbestos:

(a) *The removal process.*

(1) Thoroughly saturate with water the material containing asbestos. EPA recommends the use of water that has been amended with a surfactant, or wetting agent, to increase its penetration and reduce the volume of water required. This surfactant is usually 50 percent polyoxyethylene ether and 50 percent polyoxyethylene ester or the equivalent (such as a low-sudsing soap). It is mixed with water at a rate of one ounce of surfactant to five gallons of water.

(2) Spray the amended water onto the material in a fine mist, using either an airless spray gun set at low pressure or some other low-pressure applicator such as a hand-held pesticide applicator.

(3) To make sure the material is thoroughly saturated, it may be necessary to spray it several times or to spray it once the night before removal is planned and again immediately before removal.

(4) Remove material containing asbestos, using broad-bladed putty knives or any other suitable tools. If any dry areas are exposed during the course of removal, stop scraping immediately and spray the dry material with water. To remove the last of the material containing asbestos, use a wire brush, wet rag, or sponge.

(5) Usually the material containing asbestos is allowed to drop to the ground. If the workers are standing on the ground, they can immediately place

the removed material directly into sealable, impermeable containers. If scaffolding is used, the wet material containing asbestos can be collected in sealable, impermeable containers mounted on the scaffolding. One convenient method involves constructing chutes that lead directly into containers that are also attached to the scaffolding near the floor.

(6) No matter what collection technique is used, the wet material must be placed in sealable, impermeable containers before it dries.

(7) If the material is to remain on the floor for any length of time, it must be periodically resprayed with water to keep it moist.

(8) EPA recommends that 6 mil. plastic bags be used as containers for asbestos waste and that the bags be placed in fiber drums for transportation to the disposal site.

(9) OSHA requires that the filled containers be sealed and warning labels attached. (See 29 CFR 1910.1001(g)(2).)

(b) *The disposal process.*

(1) The contractor shall dispose of containers of asbestos-contaminated waste in accordance with the provisions of paragraph (k) of Section II of this appendix.

IV. Work Practices for Encapsulation

(A) A contractor that encapsulates material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall use sealants that have been awarded fireproofing ratings of Class "A."

(b)(1) In order to minimize the release of fibers, sealants should be applied with an airless spray gun set at the minimum pressure at which the sealant can be applied.

(2) Sealants that cannot be applied by airless spray shall be applied at the lowest possible pressure to reduce fiber release.

(c) The contractor shall consult with the sealant's manufacturer to learn the recommended coverage rate, number of coats, time allowed between coats, and dilution of sealant, if any.

V. Work Practices For Enclosure

(a) A contractor that encloses material containing asbestos in order to reduce imminent hazards to the health and safety of school children and school employees shall insure that—

(1) The material to be enclosed is not exposed to an air plenum system; and
(2) The barriers constructed to enclose the material are airtight and impermeable.

(b) Installation of an enclosure barrier usually necessitates either penetrating

or touching the material containing asbestos. Because this operation is usually performed dry, higher fiber levels than those created during removal operations are usually present and may require more stringent respiratory protection for workers. These requirements are described in OSHA regulations, 29 CFR 1910.1001.

Appendix D—Comments and Responses to Notice of Proposed Rulemaking (NPRM)

These comments and responses are arranged in order of the sections in the NPRM.

§ 230.2 Who is eligible for assistance under these programs?

Comments. One commenter made the following comments: 1. Paragraph (a)(1) of this section refers to projects conducted since January 1, 1976, whereas the Act prohibits funding of projects completed before January 1, 1976. Also, paragraph (b)(1)(ii) of this section refers to projects carried out before January 1, 1976, whereas the Act uses the term *completed*.

2. A provision of the Act states that projects completed before the effective date of the Act must be in substantial conformity with the requirements established by the Secretary for conducting an asbestos detection project. Paragraph (a)(2) of this section, however, changes this provision to apply before the effective date of the regulations, and furthermore changes substantial conformity to *substantial compliance*.

3. Paragraph (b)(1)(ii)(B) of this section is vague as to whether the 2,500 square feet minimum applies to the entire LEA or a single school.

4. Paragraph (b)(1)(ii)(C) of this section states that the criteria for determining the minimum asbestos level will be established by the Secretary if appropriations become available for the control program. It would seem preferable to establish those criteria in the one regulations package.

5. Paragraph (b)(2) of this section states that control projects conducted prior to the date when loans are available must be in substantial compliance with applicable procedures, whereas the Act refers to projects conducted prior to the effective date of the Act. Also, it is unclear what prior to the date when loans are available means.

Responses. 1. Paragraph (a)(1) has been changed and now reads: "An LEA is eligible for a grant * * * if that LEA proposes to conduct or has not completed before January 1, 1976 an asbestos detection project * * *."

Paragraph (b)(1)(ii) has been changed and now reads: "Proposes to carry out or has not completed before January 1, 1976 an asbestos control project * * *." (Also, paragraph (b) of § 231.2—the analogous section applicable to SEAs—has been similarly changed.)

2. Paragraph (a)(2) has been changed and now reads: "* * * the term 'conformity' in reference to any asbestos detection project conducted prior to the effective date of these regulations means substantial conformity." (Also, paragraph (b) of § 231.2 has been similarly changed.)

The Act itself does not establish the standards and procedures for conducting an asbestos detection project but leaves those requirements for the Secretary to establish in consultation with the Task Force. Those standards and procedures are established in the final regulations. LEAs cannot conform strictly to the standards until the regulations take effect because they will not know what the standards are. Under the Act the Secretary has authority to define conformity with the standards and procedures the Secretary has established. The Secretary has used that authority to establish the "grace period" between the effective date of the Act and the effective date of the regulations.

3. The regulations have been changed. Paragraph (b)(1)(ii)(E) tracks verbatim the language of the Act. The Secretary felt that the only reasonable interpretation of the Act is to apply the minimum to the entire LEA. To remove any doubt, paragraph (b)(1)(ii)(B) now reads "Involving more than 2,500 square feet of surface in the school buildings in the LEA * * *."

4. No change has been made. The Task Force has informed the Secretary that this is an area which calls for extensive analysis based on the scientific and technical expertise of the Task Force. A subcommittee headed by one of the Task Force members is expected to review this area and make recommendations to the Secretary. The scientific information necessary to establish the criteria referred to in paragraph (b)(1)(ii)(C) is currently incomplete.

5. The regulations have been clarified. The comment on paragraph (b)(2) does not take into account the language of the Act. Section 6(C)(3) of the Act reads: "No loans may be made * * * for projects * * * which commenced before the availability of loans under the loan program unless * * * any work completed by the applicant has been carried out in substantial conformity * * *." (emphasis ours). The Secretary interprets the underscored phrase to mean the date—published in the Federal

Register—when applications for loans will begin to be accepted. For clarity, paragraph (b)(2) has been changed to read " * * * [t]he term 'conformity' in reference to any asbestos control project conducted prior to the date—which will be published in the Federal Register—when loan applications will be accepted means substantial conformity."

Comment. One commenter suggested that the regulations should make assistance under these programs available to universities, colleges, and public meeting places, as well as schools.

Response. No change has been made. The Act, which is concerned with the particular vulnerability of children to environmentally induced illnesses, authorizes funds for these programs in elementary and secondary schools only.

Comment. One commenter felt that the 2,500-square-foot minimum surface amount for a project's eligibility under the LEA Asbestos Control Program discriminates against persons exposed to asbestos found in surface areas that do not meet the minimum square footage.

Response. No change has been made. The 2,500-square-foot minimum is a statutory requirement, which the Secretary is unauthorized to change. The legislative history explains that the reason for the minimum square footage is that school districts are believed to be able to support the costs of very small projects without Federal assistance.

§ 230.4 What definitions apply to these programs?

Comments. One commenter made the following comments on the definitions in paragraph (b):

1. "Asbestos detection project." According to the legislation, detection encompasses more than just the testing of building materials.

2. "Imminent hazards." The term "to the health and safety" was deleted. Also, the Act gives the Secretary the authority to establish additional standards to further interpret this definition, yet this authority was not exercised.

3. "Local educational agency." The regulations use the term "governing body," whereas the Act uses "governing authority." Also, the definition should repeat Section 11 of the Act rather than incorporate it by reference.

4. "School buildings." The regulations add the word "indoor" before "facilities."

5. "State." The regulations should repeat the EDGAR definition rather than incorporate it by reference.

6. The Office of Overseas Schools, which is included in the definition of

"State" in the law, is omitted in the regulations.

Responses. 1. The regulations have been changed and now read: " * * * activities—described in § 230.10—designed to identify asbestos hazards in school buildings."

2. The regulations have been changed and now read: "Imminent hazards to the health and safety * * *." The Secretary feels that the definition is satisfactory and that there is no need at this time to establish additional standards to interpret the definition further.

3. The regulations have been changed and now read: " * * * the governing authority * * *." The reference to Section 11 of the Act is not meant to incorporate it by reference, but, rather, to highlight to the reader that the statute mandates the expansion of the traditional definition of an LEA to include nonprofit private schools.

4. The regulations have been changed and now read: "Gymnasiums or other facilities * * *."

5. No change has been made. The EDGAR document was compiled with the intention that it was to be read in conjunction with most grant programs operated by the Department. To incorporate the relevant provisions of EDGAR into all of the Department's grant regulations, including these, would result in very bulky documents and needless duplication. Therefore, the Secretary's general policy, in most instances, is not to reprint relevant EDGAR provisions and definitions in the Department's regulations.

6. No change has been made. The Office of Overseas Schools in the Department of Defense (now called the Office of Dependents' Education) would not qualify as a State under the statute either for purposes of the SEA Asbestos Detection program or the State plan. Therefore, it was omitted from the definition of "State."

Comment. One commenter suggested that the definition of "local building" be modified to reflect ownership rather than function, since many schools use for school activities facilities that are not under their jurisdiction.

Response. No change has been made. The Act clearly defines "school building" according to function, not ownership, and the Department is not authorized to alter the plain wording and meaning of the Act.

Comment. Several commenters felt that the definition of "imminent hazards" is too broad.

Response. A change was made. The Secretary and the Task Force carefully reviewed the definition. The Secretary changed the definition to be more

scientifically precise and less confusing to school administrators.

§ 230.10 What kinds of activities are assisted under the LEA Asbestos Detection Program?

Comments. One commenter made the following comments:

1. Paragraph (a) of this section limits the visual inspection to seeking out friable materials when the Act does not so limit it. Furthermore, paragraph (b) of this section limits sampling to friable materials when the Act does not so restrict it.

2. The Act states that insulation materials, as well as building materials, can be sampled. Why are insulation materials omitted from paragraph (b)?

3. There is no reference, in paragraph (c) of this section, to tests to determine the level of asbestos content, as suggested in the Act.

4. There is no reference in this section to the use of funds for administrative costs, as suggested in the Act.

Responses. 1. No change has been made. The Environmental Protection Agency (EPA) has concluded—based on available data on exposure and health effects—that friable building materials containing asbestos constitute the major hazard to the health and safety of school children. Based on this conclusion, EPA's proposed regulations published simultaneously with the Department's proposed regulations mandate only that friable school building materials be inspected for asbestos.

Since the Act and legislative history direct the Department to cooperate with EPA and to avoid interference with that agency's efforts to correct asbestos hazards, the inspection and sampling requirements in these regulations are limited to friable building materials to be consistent with the requirements and conclusions of EPA. The Task Force has reviewed those requirements and expressed satisfaction with them.

2. Paragraph (b) has been changed and now reads as paragraph (a)(2): "Collecting samples of the friable building materials referred to in paragraph (a)(1) of this section, including insulation materials."

3. Section 230.10(c) has been changed and now reads as § 230.10(a)(3): "Analyzing the samples * * * to determine the presence of asbestos and the level of asbestos content."

4. The regulations have been changed. A provision has been added to § 230.10, which now reads, as new paragraph (b): "If appropriate, the Secretary may also provide funds for administrative costs incurred in the preparation and supervision of the LEA Asbestos Detection Program."

§ 230.11 *What kinds of activities are assisted under the LEA Asbestos Control Program?*

Comments. One commenter made the following comments:

1. Paragraph (b) of this section is unclear because it suggests, contrary to the Act, that materials that have been contained, as well as removed, should be replaced.

2. Paragraph (c) of this section refers to restoring school buildings to conditions comparable to those that existed before the containment, removal, and replacement activities, whereas the Act speaks only to conditions that existed before the containment and removal activities.

3. What factors will the Secretary take into consideration to make this determination of comparable building conditions?

Responses. 1. Section 230.11(b) has been changed and now reads as paragraph (a)(2): "Replacing the removed materials referred to in paragraph (a) * * *."

2. Section 230.11(c) has been changed and now reads as paragraph (a)(3): "* * * conditions comparable to those that existed before the activities in paragraphs (a)(1) and (2) of this section were carried out."

3. No change has been made. The Secretary believes that school districts will have no trouble in determining what are comparable building conditions. In the absence of any indication that school districts need additional guidance in this matter, the Secretary has not established factors for making this determination. If and when the need for establishing these factors is demonstrated, the Secretary will amend the regulations.

§ 230.20 *How does one apply for a grant under the LEA Asbestos Detection Program?*

and

§ 230.21 *How does one apply for a loan under the LEA Asbestos Control Program?*

Comments. One commenter made the following comments:

1. The applicable statutory sections concerning the contents of the applications should be repeated instead of incorporated by reference.

2. See comment No. 1 for § 230.2 regarding the use of the term "conducted" rather than "completed."

3. Is a mere assurance, without substantiating information, adequate grounds for the Secretary to determine whether the detection and control activities were in substantial conformity with the Secretary's guidelines?

Responses. 1. Sections 230.20(a)(3) and 230.21(a) have been changed to include the applicable statutory language, with minor wording changes to be consistent with the language in the regulations. Similarly, paragraph (a)(3) of § 231.20, describing the SEA's procedures in applying for a detection grant, has been changed to include the applicable statutory language.

2. Section 230.20(b) has been changed and now reads: "An applicant for a grant for an asbestos detection project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application * * *."

Section 230.21(b) has been changed and now reads: "An applicant for a loan for an asbestos control project conducted prior to the date of its application but not completed before January 1, 1976 shall include in its application * * *."

3. No change has been made. Although the Act appears to require only "assurances" of substantial conformity (sections 5(b)(3)(B) and 6(c)(3)(B)), it does provide that the applications contain "such other information * * * as the Secretary may require" (sections 5(b)(1)(E) and 6(c)(1)(A)). Therefore, should the Secretary feel that assurances are not sufficient, the Act authorizes the Secretary to require substantiating information. Paragraph (a)(6) of this section in the regulations reflects this statutory authorization.

Comment. One commenter suggested funding options for the LEA's detection projects other than the direct grant program—such as a reimbursement system—to insure that LEAs are funded only for actual work completed.

Response. No change has been made. Except, of course, for work already completed, the Act provides for a funding system in which the Secretary makes grants to eligible LEAs, based on information in their applications, to conduct asbestos detection activities. The regulations implement this funding system. To insure that the grant funds are to be used to pay for the actual costs of the detection project, these regulations (and the Act) require that, within 120 days of the receipt of a grant, an LEA must submit to the Secretary a report that includes a detailed accounting of the funds used to carry out the detection project (§ 230.60).

Comment. Several commenters felt that requiring LEAs to apply directly to the Secretary for assistance for the detection and control programs circumvents the role of the SEA, and suggested that applications be sent to the SEA for review and sign-off.

Response. No change has been made. The Act establishes application procedures that require LEAs desiring assistance to apply directly to the Secretary. Of course, an SEA on its own may choose to require its LEAs first to submit their applications to the SEA to review for compliance with those procedures. Alternatively, an SEA may require that a copy of an LEA's application to the Secretary be sent to the SEA.

Comment. One commenter pointed out that a State statute currently prohibits boards controlling local school districts from obligating their districts to an indebtedness that extends more than one year without voter approval. The commenter expressed concern that, in light of that statute, LEAs in that State would be reluctant to participate in the Asbestos Control Program.

Response. No change has been made. The Secretary is sympathetic with the potential dilemma in that State, as well as in other States that may have similar statutes. Both the Act and the legislative history, however, make it very clear that the control phase of the Asbestos Program is to be funded by long-term, no-interest loans. The Secretary cannot change the method of funding for the control program, as that would subvert the language and intent of the Congress in enacting this law. Of course, the State statute described by the commenter would not prevent the LEAs from participating in the control program if they obtained voter approval for the long-term indebtedness or agreed to repay the debt within one year.

§ 230.22 *In what circumstances may an LEA apply for a grant or loan greater than 50 percent?*

Comment. One commenter noted that Section 5(a)(2) of the Act pertains to LEAs that would be unable to participate in the detection and control programs without receiving such increased award, whereas this section of the regulations refers to LEAs that would be unable to participate in any event.

Response. Section 230.22(a) has been changed and now reads: "If an LEA believes that it has limited resources and would be unable to participate in the LEA Asbestos Detection Program or the LEA Asbestos Control Program without an increased award * * *."

§ 230.30 *How does the Secretary determine the amount of a grant for an asbestos detection project?*

Comment. One commenter wanted to know why this section omits the statutory language that the Secretary considers recommendations made by

the Task Force before determining the amount of a grant.

Response. No change has been made. There are several provisions in the Act that indicate that certain decisions of the Secretary will be made in consultation with the Task Force. These are matters of internal procedure; they do not affect the rights or duties of the public or grantees. The Secretary's policy is to omit internal procedures of this sort from the Department's regulations. Repeating those procedures in the regulations whenever they are found in the Act would not be of particular value to an SEA or a potential applicant for whom, primarily, the regulations were written.

The lack of specific references to the Task Force should not be taken to mean that the Task Force has been assigned a secondary role in the decision-making process. On the contrary, the Task Force has met regularly, formed into subcommittees, and is playing an active role in the development of these programs and regulations.

Because the law requires the Secretary to promulgate final regulations within 240 days of the effective date of the statute, it was necessary, in order to meet the deadline, to begin drafting the notice of proposed rulemaking (NPRM) before the Task Force was fully organized. The Secretary expected the Task Force to take a major role in revising the NPRM and in considering the public comments. This expectation has proved correct. At their first meeting members of the Task Force expressed gratitude at having before them the published NPRM to use as a working document. The Task Force has closely reviewed the NPRM and made a number of valuable recommendations to the Secretary.

Furthermore, as outlined in the Act, the Secretary will rely heavily on the recommendations of the Task Force in making decisions mandated by statute, such as approval of applications and determining the amount of an award.

§ 230.31 *What criteria does the Secretary apply in selecting loan recipients?*

Comment. One commenter noted that the criterion in paragraph (a) of this section—the likelihood of leakage as determined under the algorithm—applies only to prospective projects and therefore penalizes already completed projects that are in competition for loans.

Response. The regulations have been changed. Paragraph (a) has been renumbered (a)(1). Paragraph (a)(2) has been added and reads: "Any other

evidence of the extent of the hazards caused by the presence of asbestos."

Comment. One commenter felt that the criterion of "cost effectiveness" in paragraphs (c) (1) and (2) is out of place in dealing with health hazards.

Response. No change has been made. The "cost effectiveness" criterion is only one of several criteria that the Secretary considers in selecting loan recipients and does not take precedence over any of the other criteria dealing with the extent of the health hazards. Nevertheless, this criterion is an important consideration in selecting loan recipients, since it would not be sound public policy to fund corrective action that an LEA proposes to conduct, or has conducted, in an unnecessarily costly manner. For example, the Secretary may reasonably not choose to fund a particular applicant that proposes to remove (or has removed) asbestos-containing materials, if, judging from the extent of the health hazards, containment or management would be (or would have been) a more appropriate corrective action.

§ 230.33 *What criteria does the Secretary apply in considering an application for a grant or loan greater than 50 percent?*

Comment. One commenter felt that the factors listed in paragraphs (c)(2) through (c)(5)—relating to the Secretary's determination of whether an LEA would be unable to participate in the LEA detection or control program without an increased award—are non-financial factors and have nothing to do with an LEA's ability to participate.

Response. The regulations have been changed. The Act reads: "Upon a determination by the Secretary that an applicant has limited fiscal resources and would be unable to participate in the program * * * (without an increased award) * * * ." (Section 5(a)(2)) Originally, the Secretary felt that this language meant that an applicant must meet two separate but related tests to qualify for an increased award: (1) Limited fiscal resources and (2) inability to participate in the program due to non-financial factors relating to the nature of the project. On reconsideration the Secretary concluded that the intention was to base this determination on financial factors only. Therefore, paragraph (c) has been eliminated—except for the first factor relating to fiscal need; that has been placed in paragraph (b).

Comments. One commenter felt that this section addressed only those LEAs that have not yet conducted a detection or control project and was concerned that LEAs that have already completed

projects would not be eligible for an increased award. Another commenter expressed difficulty in understanding how LEAs that have already completed projects would qualify for an increased award.

Response. No change has been made. The Act does not rule out making increased awards to LEAs that have already completed detection and control activities. The Secretary will consider the same financial factors in this section to determine whether an eligible LEA that has already completed a detection or control project qualifies for an increased award.

Comment. One commenter urged that the section be revised to indicate to what extent the Secretary will consider one or more of the factors listed in paragraph (b) in determining eligibility for an increased award.

Response. No change has been made. The Secretary determines an LEA's eligibility for an increased award on a case-by-case basis, based upon all the information the LEA submits to demonstrate its financial need. The factors listed in paragraphs (b) (1)-(4) are meant to give an LEA some idea of the type of financial information the Secretary looks for, but, as evidenced by paragraph (b)(5), the Secretary considers any demonstration of an LEA's financial need.

§ 230.34 *What criteria does the Secretary apply if appropriations do not meet the 50 percent levels of assistance?*

Comment. One commenter made several points. Section 230.34 ties the criteria the Secretary applies if appropriations do not meet the 50 percent levels of assistance to the criteria the Secretary applies for making an increased award. Since the Act makes clear that these are two separate issues, separate criteria for this section should be established. Also, most of the factors that this section incorporates by reference from section 230.33 are not relevant to the determination of greatest financial need.

Response. No substantive change has been made. The Secretary recognizes that the two determinations—which LEAs have limited financial resources and would be unable to participate in the program without an increased award, and which LEAs have the greatest need for financial assistance in the event appropriations are insufficient—involve two separate issues. The Secretary also recognizes that, as explained previously, the non-financial factors in proposed paragraphs (c)(2) through (c)(5) of § 230.33 are not relevant to the first determination.

However, the Secretary does feel that these non-financial factors are relevant to the latter determination in § 230.34. This view is based on sound public policy. If funds are not available to meet all needs, the Secretary cannot ignore students' and teachers' health needs in deciding which containment projects should be funded. A very poor school district with a very modest asbestos problem should not be preferred over a school district that is somewhat less poor but has extremely dangerous levels of asbestos in its schools.

This view is also based on language in the Act. The stated purpose of the Act is to reduce health hazards associated with the presence of asbestos. Section 12(c) provides that if funds appropriated under the Act are insufficient, the Secretary shall establish criteria to be used in determining which applicants have the "greatest financial need for receiving funds under this Act" (emphasis ours). A district may have great financial need but still not have the greatest need for assistance under the Act. Therefore, the factors in paragraphs (c) (2) through (5), which have been taken out of § 230.33, are retained and renumbered in § 230.34.

§ 230.40 *What are the procedures for conducting an asbestos detection project?*

Comment. One commenter asked why the Department chose to adopt EPA's proposed standards for conducting a detection project, and how the Department will proceed if the final EPA regulations should be delayed or substantially changed.

Response. The regulations have been changed. As explained in the preamble to the NPRM, the Secretary's reliance on EPA's procedures is part of a larger effort to coordinate requirements and procedures between two agencies, as contemplated in the Act. The Act states, once in connection with the Task Force and once in connection with the Secretary, that the Department should avoid, to the maximum extent practicable, duplicating similar activities undertaken by EPA. The legislative history makes note of the strides that EPA has made in the matters of asbestos detection and removal and states that the Act is not intended to interfere with the current activities of EPA in these matters.

Since EPA not only has published guidance documents on asbestos detection but, also, was in the process of publishing its own proposed regulation on that subject, and since both the Act and the legislative history contemplate coordination between the Department and EPA, it seemed only reasonable that

the Secretary initially rely on EPA's technical and scientific expertise.

As indicated, the Task Force has been reviewing those procedures as part of the regulations document and has made recommendations to the Secretary regarding their adoption. Because EPA's regulations are not yet final however, EPA's proposed procedures—along with any modifications made by EPA and the Secretary in consultation with the Task Force—are now adopted as the Secretary's procedures in this section. Therefore, all citations to the proposed EPA regulations have been deleted from these final regulations. Instead, reference is made in this section to Appendix A, in which the procedures adopted from EPA are reprinted in full as the Secretary's procedures. When EPA publishes final regulations, the Secretary, in consultation with the Task Force will consider what, if any, changes in the Secretary's procedures are appropriate.

§ 230.41 *What are the safety measures for conducting an asbestos detection project?*

Comment. One commenter inquired from what source the Secretary derived the safety measures in this section.

Response. Those measures were taken from recommendations by EPA as reflected in that agency's guidance documents on asbestos detection.

Comment. One commenter felt that the enumerated safety measures in this section should be made mandatory, since the Act requires the Secretary to establish safety measures for the detection program and requires that grantees comply with those measures.

Response. The regulations have been changed. In the NPRM the Secretary was reluctant to adopt the enumerated safety measures recommended by EPA since various jurisdictions may have adopted other and equally effective measures for the safety of workers conducting asbestos detection projects. The section now reads: "A grantee under the LEA Asbestos Detection Program shall comply with the best available safety measures for conducting its asbestos detection project. A grantee is considered by the Secretary to be in compliance with this section if that grantee adheres to the following safety measures: * * *." (Also, the Task Force recommended that paragraph (e)—"The material should be sprayed with a light mist of water to prevent fiber release during sampling"—be omitted since it may not be an effective safety measure.

§ 230.42 *How does a grantee evaluate the likelihood of leakage of asbestos fibers?*

Comment. One commenter pointed out that the algorithm method of determining the likelihood of leakage is under question, even by members of the Task Force. The commenter inquired how the Secretary will proceed if the algorithm is changed by EPA or repudiated by the Task Force.

Response. The regulations have been changed. The Task Force reviewed the Asbestos Exposure Assessment Algorithm developed by the EPA that appeared as Appendix A to the proposed regulations and was generally satisfied with it. However, members of the Task Force expressed a preference for a less rigid system for guiding school districts in evaluating the health risks associated with the likelihood of release of asbestos fibers. Therefore, the Task Force suggested a number of changes to the original document, including substituting the term "guidance system" for "algorithm." The revised document, entitled "Guidance System for Assessing Exposure to Asbestos," is found in Appendix B of these regulations, with an introduction explaining the major changes made in the original algorithm.

§ 230.43 *What standards does a grantee apply in determining the qualifications of a contractor to carry out an asbestos detection project?*

Comments. One commenter made the following comments:

1. The standards a grantee uses for determining the qualifications of a contractor to carry out a detection project—knowledge and familiarity with EPA procedures—are too lenient. They should include the ability, manpower, and equipment to carry out these procedures.

2. The regulations should state who conducted the Asbestos Analytic Laboratory Proficiency Program referred to in § 230.43(c)(2).

3. Are the results of the Analytic Proficiency Program currently available? Also, why aren't those materials included in the information a State must distribute to its LEAs under § 231.71?

Responses. 1. Paragraphs (a) and (b) of this section have been changed and now read, as paragraphs (b) (1) and (2): " * * * the contractor's knowledge of an ability to comply with the procedures * * *." Paragraph (c)(1) has been changed and now reads, as paragraph (b)(3)(i): " * * * the contractor's knowledge of and ability to comply with the analytic techniques * * *."

2. Paragraph (c)(2) has been changed and now reads, as paragraph (b)(3)(ii): "In addition, the Secretary encourages the grantee to consult the results of the Asbestos Analytic Laboratory Proficiency Program developed by EPA. * * *"

3. No change has been made. The results of this program are currently available. Requiring that those materials be included in the information a State must distribute to its LEAs under § 231.71 would be going beyond the requirements of the Act and result in increased burdens on the States. As noted in this section, those materials will be made available to the States upon request, and the States may distribute them to their LEAs.

Comment. One commenter suggested that this section be eliminated since grantees have the resources to conduct the detection projects themselves.

Response. The regulations have been changed. In many instances a grantee may have the resources to conduct some or all of the activities under the detection project. However, there may be a number of grantees with limited resources that would prefer to rely on the expertise of a contractor to carry out those activities. Section 230.43 has been changed to make it clear that a grantee is by no means obligated to select a contractor to carry out the detection project.

Comments. Two commenters suggested that the rules should state the minimum qualifications necessary for a grantee LEA to conduct a detection project, particularly in applying the algorithm. They suggested that the regulations should require some sort of formal instruction in the use of the algorithm. One commenter recommended that SEAs should be required to review and audit their LEAs to determine if they are meeting the minimum qualifications.

Response. No change has been made. The Secretary feels that a grantee is able to determine from the information provided in these regulations and the guidance materials prepared by EPA whether it is capable of conducting the detection project itself or whether it should rely on the expertise of a contractor. The Secretary is not inclined to impose on LEAs and SEAs additional requirements and minimum standards not imposed by the Act. However, an SEA is encouraged to conduct workshops or seminars for its LEAs on how to conduct the detection projects, and the Secretary will make available at the SEA's request helpful materials. The SEA, on its own, may choose to audit or review its LEAs to ensure their

compliance with the required procedures.

§ 230.45 *What are the procedures for containing or removing asbestos materials?*

Comment. One commenter felt that LEAs receiving loans for the control program should not have to adhere to the strict standards in this section but, rather, should be given broad flexibility in deciding when and to what extent to institute corrective procedures.

Response. No change has been made. The Act requires the Secretary to establish, by regulation, procedures for containing and removing asbestos in school buildings. Those procedures, for the most part, have been adopted from EPA guidelines that have proved successful in the past. Furthermore, the Asbestos Task Force, which is charged with reviewing those guidelines, is satisfied that the corrective procedures are based on sound scientific principles for eliminating health hazards associated with asbestos.

Comment. One commenter questioned the stringency of provisions in Appendix C and suggested that ED allow less restrictive practices if the party conducting an asbestos control project employs low-pressure encapsulation or enclosure without disturbance of the asbestos-containing materials.

Response. The regulations have been changed. Section 230.45 now indicates that the procedures outlined in Appendix C are recommended guidelines, rather than requirements, in the case of asbestos control projects that involve containment and present no significant risk of releasing friable materials into the air. These procedures represent the best information currently available on controlling the release of fibers from friable materials containing asbestos. They were developed to protect workers and control contamination during remedial operations.

The Secretary and EPA recommend stringent work practices even in the case of containment because even low-pressure spraying of a sealant will release fibers in elevated concentrations. In addition, reports from contractors have noted that friable surfaces, when heavy with a sealant, often separate from their substrates. Stringent working conditions are recommended in the face of such possibilities.

§ 230.46 *What are the procedures for replacing building materials and restoring school buildings?*

Comment. One commenter was of the opinion that replacement and

restoration are two very different types of activities, and, therefore, the procedures for each of those activities should not be the same. Also, the commenter felt that the procedures seem to be the barest minimum and are too vague to provide any guidance to LEAs.

Response. No change has been made. The Secretary recognizes that replacement and restoration are two different, albeit related, activities. However, the procedures established in paragraphs (a) and (b) of this section are equally applicable to both replacement and restoration. The standards set for restoration and replacement are indeed general. The Department has a policy against excessively detailed or unnecessary regulations. The Secretary is not aware of any particular abuses or improper practices that require more specific regulations than those proposed. If and when the need for more prescriptive rules is demonstrated, the Secretary will amend the regulations.

§ 230.47 *What standards does a recipient of a loan apply in determining the qualifications of a contractor to carry out an asbestos control project?*

Comments. One commenter made the following comments: 1. The EPA emission standards and the worker protection standards of the Occupational Health and Safety Hazards Administration that are cross-referenced in paragraphs (a) (1) and (2) of this section should be reprinted in full.

2. Are the EPA National Emission Standards referenced in paragraph (a)(1) of this section intended to apply to public buildings?

3. Why was the decision made to hold contractors to the OSHA standards in paragraph (a)(2) of this section since those standards were written to apply to asbestos manufacturing and workplace situations?

4. Paragraph (a)(3)(i) of this section should be consistent with the preceding paragraphs to refer to knowledge of and *ability to comply with*, rather than knowledge of and *familiarity*.

5. Are the training materials and instructional aids referred to in paragraph (a)(3)(iii) of this section already available?

6. The standard for selecting a contractor for replacement or restoration activities in paragraph (b) of this section is too lenient.

Responses. 1. The EPA and OSHA standards referenced in paragraphs (a)(1) and (2) have not been reprinted as appendices to these regulations, because Federal Register regulations do not permit combining regulations of several agencies in one document.

2. Yes. The EPA National Emission Standards referenced in paragraph (a)(1) of this section are intended to apply to public buildings.

3. The legislative history makes clear that the Act is not meant to interfere with the efforts that have already been made by other agencies to set standards for asbestos control. Therefore, the Secretary has agreed that OSHA should have the prime authority to set worker protection standards and that the OSHA regulations apply to contractors who undertake to contain or remove asbestos. The Task Force has reviewed the OSHA standards and generally is satisfied with them. The representative from OSHA who sits on the Task Force indicated at the first Task Force meeting that OSHA would try to take a second look at some of its standards to make sure they reflect the most currently accepted thinking on worker protection in asbestos control situations.

4. Paragraph (a)(3)(i) has been changed to read: "Knowledge of and ability to comply with the containment and removal practices * * *."

5. Yes. The training materials and instructional aids referred to in paragraph (a)(3)(iii) of this section are available.

6. No change has been made. See response to comment for § 230.46 concerning the procedures for replacement and restoration.

Comment. One commenter asked several questions: Is there a standard of protection that a contractor must meet for workers on corrective projects? Are there standards for environmental protection in removing and disposing of asbestos? If so, will those standards be used to determine compliance or eligibility for funding?

Response. These regulations provide that, before an LEA can be considered eligible for a loan to conduct its asbestos control project, it must submit an application that meets certain requirements. If an applicant intends to hire a contractor, the application must contain a description of the methods to be used by the applicant to conduct the control project in conformity with § 230.47, the standards for determining the qualifications of a contractor. Those standards include the contractor's knowledge of and ability to comply with the EPA National Emission Standards (which include procedures to prevent emissions of asbestos materials in the air) and the OSHA Asbestos Regulations (which contain standards for the protection of private contractors engaged in asbestos-related activities).

A qualified contractor must also, according to § 230.47, have knowledge of and ability to comply with the

containment and removal practices in Appendix C of these regulations. That appendix includes a description of methods to protect the worker.

§ 230.50 What are the rules for repayment of a loan?

Comment. One commenter noted that there is no mention in this section that the loans are interest-free.

Response. This section has been changed to read: "The following provisions apply to an interest-free loan to an LEA * * *."

§ 230.60 What report must a grantee submit?

Comment. Several commenters felt that a grantee LEA should be required to submit to its SEA a copy of the report the LEA must submit to the Secretary describing its detection project.

Response. No change has been made. The Secretary has no inclination to impose on grantee LEAs requirements in addition to those mandated by the Act. However, the Secretary will make available to an SEA on request copies of reports that the Secretary receives from the LEAs. An SEA, on its own, may wish to require or request from its LEAs copies of those reports.

§ 231.2 Who is eligible for a grant under the SEA Asbestos Detection Program?

Comment. One commenter asked if an SEA can receive a grant under the SEA Asbestos Detection Program if it does not currently have an "on-going" budget line specifically covering that program under the Act.

Response. According to the Act, an SEA is eligible for a grant under the SEA Asbestos Detection Program if it has made or is making grants to its LEAs to conduct asbestos detection projects. Although the SEA need not have a specific budget line covering this program, it must be able in its post-grant report (§ 231.50) to give a detailed account of the funds it has provided its LEAs to conduct asbestos detection projects.

§ 231.31 In what circumstances may the Secretary award a grant greater than 50 percent?

Comment. One commenter noted that the criteria in this section are so much broader than the related criteria for LEAs in § 230.33.

Response. No change has been made. The factors for making a determination of an LEA's financial need are much easier to specify than those for making the same determination with regard to an SEA. Furthermore, most of the factors listed in § 230.33 are not applicable to

an SEA. Since the number of SEAs in the country is so much smaller than the number of LEAs, and since few SEAs will likely claim fiscal need, the Secretary feels it more reasonable to make those determinations on a case-by-case basis. This approach allows an SEA maximum latitude to demonstrate its need for an increased award.

§ 231.50 What report must a grantee submit?

Comment. One commenter noted that paragraphs (a) and (b)(1) of this section seem to require an accounting of all State funds granted to LEAs to assist them in conducting their detection projects. The commenter was of the opinion that those paragraphs should require an accounting only of the Federal funds granted to SEAs to reimburse them for the grants they made to their LEAs.

Response. No change has been made. It is the intention that the report required from an SEA grantee include an account of not just the federally reimbursed funds, but, rather, of all State funds granted to its LEAs for their detection projects. This is to ensure that the amount awarded the SEA does not exceed the Federal share of any LEA asbestos detection project in that State, as explained in § 231.30(b).

§ 231.70 What must a State plan contain?

Comments. One commenter made the following comments: 1. Since the regulations will not be final before the State plans are required, will States be held accountable for complying with the proposed guidelines? If not, what guidelines are the States expected to follow in submitting their plans?

2. The Act requires an SEA in its State plan to describe the contents of the information the State is required to distribute to its LEAs, in addition to any other information the State desires to distribute (Section 4(a)(2)). Paragraph (b)(1) of the proposed regulations, however, requires only that the State plan describe the information distributed to the LEAs that is in addition to the information the State is required to distribute.

Responses. 1. No change has been made. For the most part, the proposed regulations on the State plan mirrored the statutory requirements, which themselves provide adequate guidance to SEAs in preparing their State plans. SEAs are required by the Act to have submitted their State plans by December 15, 1980. An SEA that submitted its State plan before the publication of these final regulations will have an opportunity to amend its plan in accordance with the

amended § 231.70(b)(1), but will be held accountable for meeting only the statutory requirements.

2. Paragraph (b)(1) has been changed and now reads: "Describes the content of the information required in § 231.71(a) and any additional information the State considers desirable to distribute to its LEAs * * *"

Comment. Several commenters expressed concern that there are insufficient State funds available to implement the required activities under the State plan and to take care of administrative costs incurred in conducting the SEA Asbestos Detection Program.

Response. No change has been made. While the Secretary is sympathetic with the concerns of those commenters, the Congress has already spoken on this subject in the Act. The Act does not authorize the appropriation of any Federal funds to be used toward fulfilling the requirements of the State plan; States must use their own funds to meet those requirements. Also, the Act does not provide for any Federal funds to be used to carry out the State's administrative responsibilities under the SEA Asbestos Detection Program.

Comments. One commenter felt that the "SEA"—not the "State" as referred to in this section—should be the entity that distributes the necessary information and maintains the required records. Another commenter felt that the term "designates" in paragraph (d)(1) is misleading, since SEAs have no authority to assign responsibilities, such as submitting reports to the Secretary, to other State agencies.

Response. No change has been made. This section tracks the language of the Act, which requires the State—not necessarily the SEA—to carry out many of the responsibilities under the State plan. The use of the term "designate" in paragraph (d)(1)—also a statutory term—is not meant to imply that an SEA always has the authority to assign responsibilities to other agencies. Rather, this paragraph allows an SEA the option of identifying another agency, presumably with the agreement of that agency, that is to be responsible for submitting the required reports to the Secretary.

Comment. Several commenters suggested that, for purposes of the Secretary's determination that an LEA is in need of an increased award, this section should require the State plan to include factors used by the State to determine fiscal need of its LEAs.

Response. No change has been made. The Secretary does not want to impose on a State requirements in addition to those mandated by the Act. However,

since this section lists only the information that a State plan *must* include, an SEA is free to provide in its State plan whatever additional information it considers helpful to the Secretary.

Comment. Several commenters suggested that the Secretary should provide a form to assist the SEAs in preparing their State plans.

Response. No change has been made. Since there is no prescribed form for the State plan, an SEA is free to prepare its State plan in whatever format it finds most convenient. The Secretary feels that a prescribed form would limit an SEA's flexibility in this regard.

§ 231.71 What information must a State distribute to its LEAs?

Comments. One commenter made the following comments: 1. Regarding paragraph (a)(4) of this section, how far along is the Task Force in developing materials on health hazards, and how will the materials be worked into the States' information program? Also, if the Task Force has not completed this task by next March, are there any other relevant documents prepared by the Department, EPA or another group that the States could use to fulfill this requirement?

2. Regarding paragraph (b) of this section, a State, in order to comply fully with the Act, would also have to distribute to its LEAs a copy of the EPA proposed regulations regarding detection standards that are cross-referenced in the Department's regulations.

3. How will the Task Force's education and technical assistance program be tied in to the information that States are required to distribute under § 231.71? The regulations should mention the future availability of this information.

Responses. 1. No change has been made. The Task Force is in the process of compiling materials on the health hazards associated with exposure to asbestos. These materials will be made available on request for States to distribute, if they so desire, to their LEAs. If the Task Force has not completed compiling these materials before March 15, 1980, a State will be considered to be in compliance with paragraph (a)(4) if it distributes to its LEAs copies of the relevant portions of the preamble to EPA's proposed regulations that document the health hazards associated with exposure to asbestos fibers (45 FR 61966, and 61969 through 61971, September 17, 1980). The Secretary, however, encourages the States to distribute to their LEAs any

other available materials on asbestos-related health hazards.

2. Since these regulations have been changed to include the texts of the relevant EPA proposed regulations in the appendices, distribution of the Education Department's regulations is all that is necessary to comply with the law.

3. No change has been made. Any information compiled by the Task Force will be made available on request for States to distribute, if they so desire, to their LEAs. Since these materials are being compiled and, thus, are not yet available, the Secretary feels that a reference in the regulations to their future availability would not at this time be of particular benefit to the States. Omission of this reference is in line with the Secretary's general policy to avoid in regulations prescriptive and descriptive information that would not provide helpful and timely guidance to the reader.

§ 231.72 What records must a State maintain?

Comments. One commenter made the following comments: 1. Paragraph (a)(2) of this section differs from the Act in that it requires recordkeeping of friable building materials only.

2. Paragraph (a)(3)(iv) of this section incorrectly refers to conditions that existed prior to replacement activities, since the Act refers to conditions that existed prior to containment or removal.

3. Regarding paragraph (b) of this section, if EPA decides not to require every school district to fill out a particular recordkeeping form, how will the Department proceed?

Responses. 1. No change has been made. See response no. 1 to comments for § 230.10 concerning the use of the term "friable."

2. Paragraph (a)(3)(iv) has been changed and now reads: "The repairs * * * before the LEA conducted any of the activities listed in paragraphs (a)(3) (i) and (ii) of this section."

3. If EPA's requirement that LEAs fill out a particular recordkeeping form is eliminated or substantially altered in EPA's final regulations, or if EPA has not yet produced final regulations, States will still have to comply with paragraphs (a) (1) and (2). Paragraph (b) has been changed, however, to provide for the possibility that at some future time EPA may promulgate final regulations that would require LEAs to record the same information SEAs are required to maintain in paragraphs (a) (1) and (2).

Comments. One commenter raised the question whether the requirement on a State to maintain records also included

the requirement to *obtain* records, and another commenter suggested revising the section to include the term "obtain."

Response. No change has been made. Since both the statutory language and the legislative history use the term "maintain," the regulations also use that term. However, it is obvious that if a State does not have in its possession the records that it is required to maintain, it must obtain them.

Comment. One commenter asked whether there is a date by which a State must have the records on file.

Response. The Act does not mandate a date. However, in describing in its State plan the procedures it will use to maintain records, a State may wish to set a target date by which it believes it can set up the required recordkeeping system on its LEAs.

Comments. One commenter inquired how long a State must maintain these records. Two commenters suggested that the section require a State to maintain permanent records.

Response. No change has been made. Neither the Act nor the legislative history gives an indication of the exact length of time a State must maintain the records. However, the legislative history notes that a file would be necessary if an LEA were to do remodeling or renovation in the future. Bearing this in mind, the Secretary recommends that an SEA, in preparing its State plan, set a reasonable length of time during which it intends to maintain the records.

Comments. Several commenters felt that requiring States to maintain records as described in this section imposed excessive burdens on the States. One commenter suggested the regulations should provide that a State that is aware of the location of an LEA's asbestos files shall be deemed to comply with this section. One commenter suggested that an LEA be required to forward to the SEA a summary of the information recorded from each of the school buildings in the LEA. Another commenter felt that those records should be sent directly from the LEAs to the Secretary.

Response. No change has been made. The requirement that a State maintain records on the asbestos activities of its LEAs was imposed by the Congress. The Secretary has no authority to alter this requirement. Nevertheless, the Secretary has made every effort within the confines of the Act to lessen the record-keeping burdens on the States. For example, the regulations do not require that a State maintain a file on each school building in the State, but, rather, that the State maintain records on each of its LEAs.

Therefore, nothing prevents a State from requiring or requesting each of its LEAs to obtain the necessary information on each of the school buildings in that LEA and to forward that information to the State. Furthermore, paragraph (b) of this section would lessen the burdens on States if EPA should at some future time require LEAs to maintain records on the same information.

Comment. One commenter asked if nonpublic schools are deemed to be under the jurisdiction of the State for purposes of this section.

Response. Since the Act defines "LEA" to include the governing authority of a nonprofit school, states are required to maintain records on the private schools if they are in any way under the jurisdiction of the State.

General

Comments. One commenter asked two questions: Why is there no provision in the regulations pertaining to Section 8 of the Act, which provides that recipients of grants or loans shall permit the United States to sue on their behalf? Also, why is there no provision in the regulations pertaining to section 9 of the Act, which prohibits SEAs and LEAs that receive assistance from discriminating against employees who have brought attention to an asbestos problem?

Response. No change has been made. As explained previously, these regulations were written primarily to guide an LEA and SEA in the grant and loan application process, and to assist an SEA in the development of its State plan. Thus, any provisions in the Act that do not bear on the application and State plan procedures (such as sections 8 and 9) are not repeated or referenced in these regulations on the theory that, initially at least, they would have no particular benefit to an LEA or SEA. This decision is in line with the general policy of the Department to exclude unnecessary material from its regulatory documents.

Comments. One commenter was concerned that the proposed regulations require school administrators to make technical decisions—on inspecting, sampling, and the competence of contractors—that are outside the professional capacities of those officials. Since officials must rely on the expertise of laboratories to analyze samples accurately and must trust in the competence of contractors to contain or remove asbestos properly, the commenter recommends that EPA develop a plan to help school officials ensure the quality of analysis and of contractors throughout the country.

Response. No change has been made. The Secretary and EPA recognize the burden on school administrators, and EPA has taken measures to enable administrators to identify qualified laboratories and contractors.

EPA has developed materials to provide guidance for the analysis of samples. Standards for analysis were published in "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples." EPA has distributed that publication to 100 participating laboratories.

In addition, EPA has developed a program to identify laboratories capable of performing the analysis. EPA distributed samples to 75 laboratories that claimed expertise in analysis, compared their results with reference analyses, and compiled a list of laboratories that successfully identified the asbestos content of those samples.

EPA is making this list available to the public via the toll-free EPA assistance line (800) 424-9065 (in Washington, D.C. 554-1404). EPA is planning to expand the list of competent laboratories and will publish its findings as soon as they are available.

A description of the methodology used in evaluating laboratories is available in the publication "Asbestos-Containing Materials in School Buildings: Bulk Sample Analysis Quality Assurance Program" (EPA 560/13-80-23). This is also available through the toll-free information line. EPA has also published the document "Asbestos-Containing Materials in School Buildings: Guidance for Asbestos Analytical Programs" (EPA 560/13-80-017). This document provides local school officials with guidance for implementing an analytical program that will, at reasonable cost, provide the information necessary to identify and assess hazards and, if officials choose to remedy hazards, to decide which remedial measures are appropriate.

The Secretary and EPA are similarly concerned about the quality of contractors for abatement. EPA has published "Asbestos-Containing Materials in School Buildings: A Guidance Document," part I and part II, which contains guidance on techniques for containment or removal of hazardous materials in order to enable administrators to assess contracts and monitor operations.

The Secretary and EPA have also developed "Procedures for Containing and Removing Building Materials Containing Asbestos," attached as Appendix C to the regulations. These are specifications for corrective measures, and represent the best information currently available on

containing or eliminating hazards posed by friable materials containing asbestos.

EPA is currently developing additional guidance for encapsulation and removal. This will be published as soon as it is complete. EPA has also trained regional asbestos coordinators in the practices EPA recommends so they can assist local officials in each region.

The Secretary and EPA do not feel that it is appropriate for Federal officials to monitor contractors that carry out remedial operations. By providing local school officials with information and specifications, sponsoring regional asbestos coordinators, and maintaining the toll-free technical assistance information line, EPA furnishes local school administrators with the resources to make accurate assessments of contractors.

Comments. 1. One commenter suggested that schools be required to analyze the materials used in boiler and pipe coverings so that if those coverings contain asbestos, they can be treated appropriately. The commenter recommended that school officials be required to sample and analyze suspect boiler and pipe coverings when renovation or demolition is contemplated.

2. The commenter also indicated that brake shoes and pads used in school automotive shops contain asbestos and pointed out that blowing dust out of brake drums and wheel assemblies with an air hose and resurfacing brake shoes on grinding equipment release fibers into the air. Therefore, the commenter recommended that EPA and ED consider requiring schools to acquire appropriate asbestos containment equipment and train shop teachers to reduce exposure.

Responses. 1. No change has been made. The Secretary and EPA have determined that all types of friable building materials containing asbestos can pose hazards to health. The Secretary intends that its regulations apply to boiler and pipe coverings, as well as to materials applied to ceilings and walls. Section 230.10 of the regulations requires that local educational agencies inspect school buildings "to detect friable building materials," whether on pipes, discarded in a crawl space, or on a ceiling.

2. No changes have been made. The purpose of the Act is to detect and contain or remove asbestos used in the fixed structure of school buildings. The Secretary and EPA are aware of the hazards posed by dust released in automotive shops and EPA has developed a program independent of these rules to address them. Along with the Consumer Product Safety

Commission, EPA is considering controlling the use of asbestos in brakes through rulemaking announced in its Advanced Notice of Proposed Rulemaking published in the Federal Register on October 17, 1979.

In the interim, while the rules are being developed, EPA is promoting a program, jointly sponsored with the Occupational Safety and Health Administration (OSHA), to alert mechanics to reduce risks. The program consists of (1) distributing educational pamphlets to people exposed to dust generated in brakes, (2) loaning audio-visual materials to interested groups, and (3) providing training manuals to instructors of automobile repair courses. The program will be aimed at automotive shops in a variety of settings, including schools. EPA expects this educational program to be in operation by mid-1981.

For further information about the Advance Notice published on October 17, 1980, please contact Mr. Peter Principe Chief, Minerals Groups, Chemical Control Division, EPA (202) 755-8023. For further information concerning the educational program, please contact Mr. Albert Colli, Chemical Control Division, EPA (202) 755-8023.

Comments. 1. One commenter pointed out that, based on the experience of State officials who used the guidance system, persons should receive training before using the algorithm. The commenter suggested that States be required to schedule training sessions for LEA personnel.

2. The commenter also suggested that the regulations require persons taking bulk samples to be equipped with an approved respirator while sampling, and to take precautions to avoid contamination of clothing.

Responses. 1. No change has been made. Training would be useful, but the Secretary does not require it. However, EPA has trained the regional asbestos coordinators in the use of the best methods currently available and encourages local officials to refer to those asbestos coordinators.

2. A change has been made. A note has been added, after § 230.41 of the regulations, to indicate that the Secretary recommends the use of respiratory protection when persons take bulk samples.

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