

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

DHS 163, Certification for the Identification, Removal and Reduction of Lead-Based Paint Hazards

3. Subject

To revise ch. DHS 163 relating to training, certification and work practice requirements for lead-safe renovation activities in pre-1978 housing and child-occupied facilities.

4. State Fiscal Effect:

No Fiscal Effect

Indeterminate

Increase Existing Revenues

Decrease Existing Revenues

Increase Costs

Yes No

May be possible to absorb within agency's budget.

Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

s. 20.435 (1) (gm), s. 20.435 (1) (n)

7. Local Government Fiscal Effect:

No Fiscal Effect

Indeterminate

Increase Revenues

Decrease Revenues

Increase Costs

Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others:

9. Private Sector Fiscal Effect (small businesses only):

No Fiscal Effect

Indeterminate

Increase Revenues

Decrease Revenues

Yes No May have significant economic impact on a substantial number of small businesses

Increase Costs

Yes No

May have significant economic impact on a substantial number of small businesses

Decrease Costs

10. Types of Small Businesses Affected:

Renovation contractors and trades (general construction, painters, plumbers, electricians, HVAC, etc.), rental property owners and management companies, childcare operators and owners of child-occupied facilities

11. Fiscal Analysis Summary

The proposed revision of DHS 163 implements changes to bring the Department's lead program into compliance with new federal regulations regarding lead renovation activities. Effective April 22, 2010, persons conducting renovation activities for compensation in pre-1978 target housing and child-occupied facilities must be certified by the Environmental Protection Agency (EPA) or by an EPA-authorized state program. If EPA administers the certification program, companies are subject to federal fees and enforcement. Once a state submits its self-certification application to EPA the state may immediately begin administering its renovation program and enforcing its regulations in lieu of EPA. Companies are subject to state fees only and will not be double charged. By becoming self-certified, Wisconsin will be able to provide lead-safe company certification at a lower cost than would be the case if the EPA administered the program in the state.

The Department intends to self-certify its renovation program with the EPA. The Department already regulates and certifies persons to conduct lead-safe work in registered lead-safe housing and federally-assisted rehabilitation projects and to do lead abatement and lead investigation activities. The Department has the infrastructure in place to effectively administer and enforce the renovation program. The Department plans to expand its current lead certification program to cover the estimated 15,000 additional businesses that will be required to comply with the new EPA renovation regulations.

State Government

DHS will require 2.0 FTE (1.0 License/Permit Program Associate and 1.0 Environmental Health Specialist-Sr.) for the increased work load of administering the lead-safe renovation program, at an estimated cost of \$119,600. The positions will be funded by program revenue, from fees charged for lead-safe renovator and company certification, and will not require GPR. Positions will be filled as revenue generated by the program becomes available. The positions will review and process certification applications, provide outreach and technical assistance to individuals and businesses, conduct inspections and complaint investigations, and engage in enforcement activities when necessary.

There are other potential costs to state agencies and the University of Wisconsin system if these agencies do their own renovation work in target housing or a child-occupied facility, including any state-operated residential or day-treatment facility with children under age six. Costs to the state would not include certification costs, from which government is exempt, but could include training, equipment and supplies needed to comply with the containment and cleaning requirements under the regulation. It is not possible to estimate these potential costs but they are not expected to be significant.

Revenue: The Department estimates that, with full compliance, an estimated 15,000 companies will become certified for renovation work at a cost of \$75 per company for a 2-year certification. Department rules require any individual who performs renovation work to be a Department-certified company. Companies that conduct regulated renovation activities are required to have at least one lead-safe renovator on their staff. As a result, an estimated 15,000 individual lead-safe renovators will have to become certified at a cost of \$50 each for a 2-year certification. If all regulated companies and renovators are compliant, the state will receive an additional \$900,000 PR annually.

However, full compliance will not be immediate and will require adequate agency staffing to provide compliance assistance and enforcement actions, when warranted, to increase the overall compliance rate over time. The Department assumes that there will be 8-10% compliance in the first year, with annual revenue at \$75,000. Compliance will increase by 10% to 15% (\$100,000 to \$150,000) per year in subsequent years. At 50% compliance, the program's revenues will be approximately \$475,000 annually and, at 70% compliance, approximately \$650,000 annually. The Department's goal is to achieve 50% compliance by the fifth year of implementation and increase it to at least 70% compliance statewide over the next five years.

Local Government

The renovation rule may have an effect on some local governments, including public school districts and day cares operated by local governments or school districts. Governmental entities are exempt from certification fees. If the government entity does its own regulated renovation work, however, there would be additional costs as a result of this rule. The costs would include training and such work practice costs as equipment and supplies. There may also be higher costs to government facilities for work performed by a paid contractor as a result of this rule. These costs are not expected to be significant. The EPA has concluded that the federal regulations do not significantly, uniquely, or primarily affect small governments, nor do the federal regulations impose a different burden on small governments than on other entities.

Small Business

Under the provisions of DHS 163 relating to pre-renovation education and lead-based paint renovation, small businesses will have increased expenses, including certification fees, recordkeeping and other administrative costs, information distribution expenses and work practice (equipment and supplies) costs.

Certification fees: Under the current rule, companies conducting lead-hazard reduction and lead-investigation activities are required to be certified by the department and to pay a certification fee of \$75 every 2 years (\$37.50 per year). Certification of companies performing only renovation activities is currently optional unless the work will be conducted in a state-registered lead-safe home. Under the revised rule, company certification will be required for companies that conduct renovations for compensation in pre-1978 housing or child-occupied facilities. Renovation companies will pay the current fee of \$75 for a 2-year certification.

Licensed plumbers and HVAC workers are not required to pay the fee and become certified under the rule but are required to comply with all other provisions relating to regulated work under the chapter, including training, recordkeeping and work practices. For others, the individual certification fee of \$50 every 2 years remains without revision and will apply to certified lead-safe renovators. Businesses are not required to pay these fees for their employees.

Accreditation of training courses: Under the rule, the current 1-day lead-safe work course is being converted to the 1-day lead-safe renovator course. Training providers that are already accredited to provide the lead-safe work course will be allowed to convert their course to the lead-safe renovator course with no additional fee. The department will require only a minimal paper submittal to accomplish the transition from the lead-safe work to lead-safe renovator course. The lead-safe renovator refresher course is new and training providers wishing to offer it submit an application to the department with a \$125 application and a \$100 accreditation fee. The application fee is a one-time fee and the accreditation fee is payable every 2 years.

Other costs to training providers are not expected to change, including existing fees for renewing accreditation (\$200 for 2 years for the lead-safe renovator course), and administrative costs to notify the department of scheduled classes, verify student identities, take student pictures, submit student information and pictures to the department, and keep required course and student records. These requirements are not revised under the rule except to reduce the requirement to view 2 forms of student ID to view only 1 form of photo ID per student.

The EPA provides complete curriculum materials for both the initial and refresher renovator courses, including instructor and student manuals, free for download from its website, thus minimizing course preparation costs for training providers. This curriculum is acceptable for use in Wisconsin. The EPA fees for training course accreditation are \$560 for accreditation of the initial renovator course and \$400 for the refresher course. Re-accreditation is required every 4 years at a cost of \$340 for the initial and \$310 for the refresher. Compared over 8 years, Wisconsin fees are \$85 less than EPA's fees for a company offering both the initial and the refresher renovator courses.

Recordkeeping: The rule requires renovators to create and maintain certain records, including the written contract for services; any lead paint inspection reports received from a certified lead inspector or risk assessor; written or printed evidence of distributing the required information pamphlet (such as a signed acknowledgement statement or a certificate of mailing); a written record of compliance with the rule requirements for each renovation activity conducted, including on-the-job training for uncertified workers, posting of warning signs, containment of work areas, waste handling, cleaning and post-renovation cleaning verification; documentation of training for each uncertified worker; documentation of emergency renovations that are not required to meet all of the renovation requirements under the rule; documentation of use of a recognized chemical paint test kit, if used; written clearance report if dust-wipe clearance is performed, and the company's certificate of approval from the department. The administrative costs for creating and maintaining these records will require some adjustment by many renovators, but not all records are required for all jobs. An estimate for the time needed to create and maintain these records would be less than 1 additional hour, and for less complex jobs, less than 1/2 additional hour per job. At \$15 per hour for administrative office help, this translates to less than \$7.50 to \$15 per job. These expenses would also be incurred under the EPA regulation.

Other persons certified under the rule, such as lead abatement contractors and lead investigators, already are required to keep many records. These requirements were found in many locations in the rule and these were consolidated in the revised rule into the new recordkeeping section under DHS 163.13 (3). No new costs are associated with recordkeeping for these regulated groups.

Information distribution: Renovators under the revised rule are required to distribute the pamphlet, “Renovate Right,” to property owners, occupants, child-occupied facility owners, operators and to parents of children attending the child-occupied facility. The costs include the time to prepare and ensure that the pamphlet is received by obtaining a signed acknowledgement of receipt or certificate of mailing, and by posting in common areas of multi-family housing or in child-occupied facilities where parents would be likely to see the information.

The pamphlet, “Renovate Right,” may be downloaded free from the EPA website and printed in-house for minimal expense or sent out for professional printing at the renovator’s discretion. Costs associated with distribution are expected to be minimal as most renovators work directly with the owner/occupant and have ample opportunity to provide the required material. Copy and distribution expenses would also be incurred under the EPA regulation.

Work practices: For renovators, there will be certain work practice expenses associated with this new rule, including possible purchase of certain equipment and supplies. These might include a HEPA vacuum, HEPA-attachments for high-speed machines such as sanders and grinders, disposable plastic sheeting, disposable dry and wet cleaning cloths and mops. Many renovators already use HEPA vacuums, but many others would need to purchase one or more.

Actual costs to renovators is indeterminate because of the number of variables involved, including:

- The size of the project/amount charged to customer to conduct the renovation – the larger the project/more charged to conduct the project, the lower the cost of compliance as a percent of the overall cost of the job.
- Number of jobs conducted by the renovator – the more jobs a renovator conducts in a month or year the lower the overall cost of compliance per job.
- Cost of equipment and supplies – whether more expensive equipment such as a HEPA vacuum is already owned or must be purchased and whether supplies are purchased in bulk or in smaller amounts.
- Generally larger, more active renovators will be affected less by the costs of compliance than smaller, less active renovators.

EPA analyzed the economic impact of compliance on small entities by evaluating the number of companies that would experience the impact and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average cost of the rule on small businesses and small governments. EPA estimated that the average compliance costs for small businesses would be 0.7% of annual revenues. For small non-profits such as private schools and pre-schools, the costs would be 0.1% of annual expenditures. EPA based these estimates on an average compliance cost of approximately \$35 per renovation. Even if the actual average cost per renovation is double EPA’s estimate, or \$70 per job, this would translate to only 1.4% or annual revenue for contractors and 0.2% for nonprofits.

The fees that Wisconsin will charge for lead-safe company certification will be lower than those charged by EPA. Current state fees for company certification are lower than federal EPA fees and no fee revisions are being requested with this rule revision. Company certification fees will remain at \$75 for 2-years (\$37.50 per year). Comparable federal fees are \$300 for a company certification for 5 years (\$60 per year). State penalties for non-compliance are also considerably lower than federal penalties. The highest federal penalty fee is \$37,500 per violation; the highest state penalty fee is \$1,000 per violation.

12. Long-Range Fiscal Implications

None known.

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