

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 6/21/19
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> DHS 163	
<b>4. Subject</b> Certification for the identification, removal and reduction of lead-based paint hazards.	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> Appropriation 121
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> <b>\$110,000 per year</b>	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> 2015 Wisconsin Act 55 amended s. 254.11 (8) definition of "lead-based paint" from a level of lead in paint or other surface coating material of more than 0.06% lead by weight in the dried film of applied paint, to more than 0.5% lead by weight in the dried film of applied paint, and from more than 0.7 milligrams of lead per square centimeter in the dried film of applied paint, to more than 1 milligram of lead per square centimeter in the dried film of applied paint.  2015 Wisconsin Act 55 amended s. 254.30 (2) (a) stats., and increased the maximum forfeiture penalty from \$1,000 to \$5,000 per violation per day in compliance with federal requirements.  2015 Wisconsin Act 122 amended s. 254.18 to exempt certain partial lead inspection activities related to lead-safe renovation work from meeting lead inspection requirements.  The lead program is funded partially by a continuing lead grant from the U.S. EPA and by program revenue from certification and other fees. The fees have not been increases in rule since 2002 and the program is now operating in the red. Fee increases of \$25 for each 2-year individual certification and \$50 for each 2-year company certification are proposed.  Currently, certification applicants must wait until they receive their certification card from the department before they can start working. The program is proposing adding a provisional certification that will allow applicants to start work immediately after submitting their application.  Chapter DHS 163 has not been substantially revised since 2009 and several updates, corrections and clarifications are proposed to reflect current definitions, standards, and best practices.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals</b>	

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that may be Affected by the Proposed Rule that were Contacted for Comments.  
Certified lead companies, abatement contractors, lead risk assessors/inspectors, renovation contractors, lead training providers, local health departments, and housing agencies.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None. However, the department solicited information and advice from individuals, businesses, associations representing businesses, and local governmental units who may be affected by the proposed rule for use in analyzing and determining the economic impact that the rules would have on businesses, individuals, public utility rate payers, local governmental units, and the state's economy as a whole, from 05/20/19-06/03/19.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule includes modest fee increases that apply to certified lead companies. These increases will be no more than \$25 per certification over 2 years (or \$12.50 per year) for individuals, and \$50 per company certification over 2 years (or \$25 per year). The economic impact will be negligible for lead abatement, renovation and environmental consulting businesses and will have no impact on local governments or the state economy as a whole.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This revision brings the rule in line with recent revisions to state statute, Ch. 254, Environmental Health, and the corresponding U.S. EPA requirements, by increasing the maximum forfeiture penalty from \$1,000 to \$5,000 per violation per day. Other revisions of benefit to the state will make compliance easier by 1) adding provisional certification so people can start working using their training certificate while waiting for the certification application to be processed, 2) bringing the definition of lead-based paint in line with the federal government and all other states, 3) standardizing the length of certifications to a 2-year certification period for all disciplines, 4) reducing the student to instructor ratio from 8:1 to 12:1 for refresher classes to allow for larger refresher training classes, 5) allowing course tests to be read to students at the student's request, and 6) updating work practice standards for lead abatement, and otherwise simplifying and clarifying rule language to reflect current definitions, standards, and best practices. The fee increases will improve the fiscal health of the lead program, allowing the program to continue its work to monitor regulated lead activities while protecting Wisconsin's children, families and workers. The alternative to implementing the rule would be to allow the lead program to remain out of compliance with federal law and state statute and for the program to continue to cost more than its annual revenue.

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16. Long Range Implications of Implementing the Rule

These revisions bring ch. DHS 163 into compliance with state statute and federal law and ensure clear standards for the conduct of regulated lead activities such as lead abatements, lead-safe renovations, and lead risk assessments and inspections. This rule provides the standards for training, certification and safe work practices to be used by those conducting paint-disturbing work in older homes and child-occupied facilities and help ensure workers protect themselves and their own families and the families living in the home or using the facility being renovated. This rule help ensure the ongoing financial health of the DHS lead program as it conducts its important work to protect children, families and workers from hazardous lead exposures.

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17. Compare With Approaches Being Used by Federal Government

The U.S. EPA regulates lead abatement, lead-safe renovation and lead investigation activities and administers a lead certification, training accreditation and inspection program in all states that are not EPA-authorized to administer their own lead programs. The Wisconsin regulations generally reflect the federal regulations, and Wisconsin is fully authorized to administer its own lead program. Wisconsin receives an annual grant from the EPA to supplement its program revenue in funding its program.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Iowa is EPA-authorized for all aspects of the lead program and its program is generally similar to Wisconsin's and EPA's. Michigan is EPA-authorized to administer its lead abatement and investigation certification and accreditation program, but does not have a lead-safe renovation program. Minnesota also is EPA-authorized for its lead abatement and investigation certification and accreditation program and is finalizing its rule to adopt a lead-safe renovation program. Currently, EPA administers its renovation program in Michigan, Illinois and Minnesota. Minnesota does require

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contractors pulling permits for work in pre-1978 homes to be EPA-certified lead-safe renovators.

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19. Contact Name

Shelley Bruce

20. Contact Phone Number

608-267-0928

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

1. Certified lead companies (abatement contractors, renovation contractors and lead hazard investigation companies) that have certified lead abatement workers, supervisors, risk assessors, hazard investigators and inspectors:

This rule will add a minor increase in biannual certification fees for companies and individuals, increasing the 2-year company fee by \$50, from \$75 to \$125, and each of the various individual 2-year certification fees by \$25 each. These fee increases would apply to approximately 2650 lead companies with a sector-wide impact of about \$66,250 per year with a cost per company of \$25 per year. The impact on individual certifications would be approximately \$63,750 per year, with a cost per person of \$12.50 per year.

2. Lead training providers:

Fees for training providers will only increase for one course, the Lead Sampling Technician Refresher course, for renewal of a 2-year accreditation, from \$50 to \$100, because the course is increasing from 2 hours to 4 hours in length. Accreditation fees are based on course hours.

3. Local health departments:

Local health departments are exempt from fees for company and individual certifications. However, health department employees must pay the state exam fee for lead supervisor, risk assessor and hazard investigator certifications. This fee is increasing from \$50 to \$75. This is a one-time fee so will only apply to new employees applying for lead certification.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Data used to measure impact on small business came from the Department of Health Services lead certification database, Wisconsin Asbestos and Lead Database Online (WALDO) and is based on 2019 certification numbers.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

More lenient work requirements for certification applicants.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The following provisions incorporated into this rule will reduce impact on small businesses:

1. Adds provisional certification which will allow applicants to be able to work using only their training completion diploma until they receive their official certification card from the department. This will allow a person to start work immediately once they have submitted their application to the state.

2. Standardize all certification disciplines to a 2-year certification period rather than some having a 1 or 2 year option. This will reduce confusion about when refresher training is due as training will now always be due in the same year that certification must be renewed. People will only have to complete and send in applications once every 2 years instead of every year.

3. To help manage costs of training courses (which are set by individual training providers) the rule will allow an increase in the student to instructor ratio for hands-on training from an 8:1 ratio to a 12:1 ratio.

4. To assist students for whom English is a second language or who have reading difficulties, the rule allows the training provider to read the course test to any student at the student's request. This will hopefully help expand the labor

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pool for employers such as lead abatement companies.

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5. Describe the Rule's Enforcement Provisions

The department has authority to investigate, including entering upon and inspecting any site where an alleged violation is occurring or may have occurred, any site where a regulated activity is being or has been conducted or where there is reason to believe a regulated activity is being or has been conducted, or any premises where a person regulated under this chapter conducts business. The department may conduct tests, take samples, review work practices, review and copy records and perform other activities necessary to determine compliance with the rule. The department may initiate an action against any person to require compliance, or for failure or refusal to comply with any provision of the rule. These actions may include orders; revocation, suspension, summary suspension, or denial of certification or accreditation; civil forfeiture of between \$100 and \$5,000 per violation per day; or referral to a district attorney.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes     No

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