

RULEMAKING NOTICE FORM

Notice Number 2015-180

Rule Number He-P 1606.02

<p>1. Agency Name & Address: NH Dept. of Health & Human Services Division of Public Health Services Healthy Homes & Environmental Section 29 Hazen Drive Concord, NH 03301</p>	<p>2. RSA Authority: RSA 130-A:2, I(d); RSA 130-A:10</p> <p>3. Federal Authority: 15 USC 2684</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Lead Poisoning Prevention and Control Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (DHHS) proposes to readopt with amendment He-P 1606.02. The proposed rule amends He-P 1606.02 which describes administrative fines imposed in enforcement actions for violations of RSA 130-A, “Lead Paint Poisoning Prevention and Control.” The proposed rule increases the maximum fine imposed per violation of RSA 130-A:14 from \$2,000 to \$5,000 as mandated by SB 368 of the 2014 Legislative Session (Chapter 157 of the Laws of 2014). The proposed rule clarifies some of the violations for which fines are imposed. The change in state law meets the requirements of the US Environmental Protection Agency (EPA) Lead Clearance Testing Requirement for the Renovation, Repair and Painting Program (RRP). Pursuant to 40 CFR 745.327, the state is required to have a flexible array of enforcement statutory and regulatory remedies including the authority to impose administrative or civil fines, up to a maximum penalty for any violation in an amount no less than \$5,000 per violation per day.

6.(b) Brief description of the groups affected:

The rule will affect any person or entity against whom a violation of RSA 130-A:14 is found. The increase in the maximum fine will especially affect any person or entity who commits the most severe violations which are most likely to incur the most costly fines.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State or Federal Regulation Implemented
He-P 1602.02	RSA 130-A:2, I(i), RSA 130-A: 7, RSA 130-A:10, RSA 130-A:11, I, RSA 130-A:14, 40 CFR 745.327

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
 Address: **Dept. of Health and Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St., Brown Building E-mail: catherine.l.bernhard@dhhs.state.nh.us
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday, November 30, 2015**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, November 23, 2015 at 1:00 PM**

Place: [**DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 15:190, dated 10/19/15

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Any difference in cost is attributable to RSA 130-A:14.

2. Cite the Federal mandate. Identify the impact of state funds:

Effective October 4, 2011, the U.S. Environmental Protection Agency (EPA) finalized Lead; Clearance Testing Requirements for the Renovation, Repair, and Painting Program (RRP), which amends the EPA's 2008 rule. This amendment imposed minimum compliance and enforcement provisions required for New Hampshire as an authorized state lead abatement program. In accordance with the Code of Federal Regulation 40 CFR 745.327, New Hampshire is required to have authority to assess administrative or civil fines, including a maximum penalty authority for any violation in an amount no less than \$5,000 per violation per day. Without the EPA authorization for its lead abatement program New Hampshire will be unable to receive the U.S. Housing and Urban Development lead control grant funds and EPA funds necessary to operate the program.

3. Cost and benefits of the proposed rule(s):

RSA 130-A:14, as amended by Chapter 157, Laws of 2014, increased from \$2,000 to \$5,000 the maximum fine per violation the Department may impose for violations of RSA 130-A, "Lead Paint Poisoning Prevention and Control." This statutory change, reflected in the proposed rule, may increase costs for state citizens and independently owned businesses to the extent they are subject to an increased fine amount. Also per RSA 130-A:14, fines are to be deposited in the Lead Poisoning Prevention Fund. As a result of the statutory change and associated rule, revenue to the fund will increase by an indeterminable amount.

A. To State general or State special funds:

See response to 3 above.

B. To State citizens and political subdivisions:

See response to 3 above.

C. To Independently owned businesses:

See response to 3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-P 1606.02, effective 9-1-11 (Document #9986), cited and to read as follows:

PART He-P 1606 ENFORCEMENT ACTIONS

He-P 1606.02 Administrative Fines.

(a) The department shall impose an administrative fine upon an owner, applicant, licensee, certificate holder or an unlicensed or uncertified individual for violations of RSA 130-A, "Lead Paint Poisoning Prevention" or He-P 1600, "Lead Poisoning Prevention and Control Rules."

(b) When the department imposes an administrative fine, it shall provide written notice, pursuant to RSA 130-A:7 and RSA 130-A:14, as applicable, which:

- (1) Identifies the specific statute or rule that has been violated;
- (2) Identifies the specific sanction(s) that has been imposed; and
- (3) Provides the following information:
 - a. The right to a hearing in accordance with RSA 541-A and He-C 200; and
 - b. The reduction of the imposed administrative fine by 25% if fine payment is received by the department within 10 business days of receipt of the notice of the violation, basis and amount of the administrative fine, and the owner, applicant, licensee, certificate holder or unlicensed or uncertified individual waives the right to appeal the administrative fine.

(c) Payment of any imposed administrative fine to the department shall meet the following requirements:

- (1) Payment shall be received by the department within 10 business days of receiving the written administrative fine notice unless the administrative fine is appealed ~~at~~ ~~person does not appeal the imposed administrative fine~~ as described in He-P 1607.01;
- (2) Payment shall be made in the form of personal check or money order which is made payable to "Treasurer, State of New Hampshire," or cash in the exact amount due; and
- (3) Cash, money order, or certified check shall be required when any past payment to the department by personal check has been returned for insufficient funds.

(d) A person may appeal the notice of administrative fine within 10 business days as set forth in He-P 1607.01.

(e) A person may waive the right of appeal of the notice of administrative fine and pay the administrative fine within 10 business days of the date of receipt of notice. ~~of the proposed administrative fine.~~

(f) Any hearing held on an appeal, under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(g) ~~An notice of administrative~~An administrative fine, which is appealed and upheld, shall be paid in full within 10 business days of the date of the decision of the administrative appeals unit ~~within the department, (AAU), decision.~~

(h) RSA 541 shall govern further appeals of department decisions under this section.

(i) The department shall impose administrative fines as follows:

(1) ~~For Knowingly Rrenting,~~ for a residential purposes, a unit under a written order by the commissioner or health authority for lead hazard reduction, without a valid and current certificate of compliance, in violation of RSA 130-A:8-a, III and IV, the fine shall be \$5,000.00;

(2) ~~For the Ffailure~~ing to disclose, in writing, the existence of an order of lead hazard reduction prior to the sale, lease, rental or transfer of interest of the property in violation of RSA 130-A:8-a, V, the administrative fine shall be \$1000.00;

(3) ~~For Cconducting~~ blood lead analysis on residents of New Hampshire without a current New Hampshire ~~Llaboratory~~ license, ~~if applicable, and/ or a~~ CLIA Certification, whichever is applicable, in violation of He-P 1603.01, the administrative fine shall be \$1000.00;

(4) ~~For the Ffailure~~ of any collection station, laboratory or other individual that collects specimens for blood lead analysis to report all the information required by He-P 1603.02(i)(1)–(10) to the testing laboratory or to the department, the administrative fine shall be \$250.00 for each ~~instance;~~ item of missing or incorrect of information in a blood lead analysis;

(5) ~~For Ffailure~~ by a laboratory to report results of blood lead analysis within the timelines required in violation of He-P 1603.02(j) and (k), the administrative fine shall be \$200.00 for each instance;

(6) ~~For Ffailure~~ing to provide the commissioner with all required information, when requested, in violation of He-P 1604.02, the administrative fine shall be \$250.00;

(7) ~~For Beginning rbeginning to Pperforming any~~ remodeling, renovating, maintenance, lead hazard reduction work or any other dust generating activities after being notified that an environmental inspection shall occur, in violation of He-P 1604.03(b), the administrative fine shall be \$5,000.00;

(8) ~~For Ffailure by~~of an owner or owner's agent to allow access, or to arrange access, to a dwelling or dwelling unit, or units within a multi-family dwelling for purposes of investigation, in violation of He-P 1604.03(c)(3) and (d)(1), the administrative fine shall be \$500.00;

(9) ~~For Ffailure~~ing to comply with an order of lead hazard reduction, issued in accordance with He-P 1605.01, the administrative fine shall be \$1000.00;

(10) ~~Starting For Cconducting~~ lead hazard reduction work that requires a written variance from the department prior to receiving the department's written decision, in

violation of He-P 1605.03(h), the administrative fine shall be \$1000.00;

(11) ~~For Ffailureing~~ to pay an administrative fine within 10 business days, in violation of He-P 1606.02(c), the fine shall be \$250.00;

(12) ~~For Pperforming~~ the duties of a lead abatement worker without a current lead abatement worker certificate, or a variance from the department, in violation of He-P 1612, LICENSURE AND CERTIFICAITON CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$250.00 per person;

(13) ~~For Pperforming~~ the duties of a lead abatement supervisor without a current lead abatement supervisor license, or a variance from the department, in violation of He-P 1612, LICENSURE AND CERTIFICAITON CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$500.00;

(14) ~~For Pperforming~~ the duties of a lead abatement contractor without a current lead abatement contractor license, or a variance from the department, in violation of He-P 1612, LICENSURE AND CERTIFICAITON CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$1000.00;

(15) ~~For Pperforming~~ the duties of a lead inspector without a current lead inspector license, or a variance from the department, in violation of He-P 1612, LICENSURE AND CERTIFICAITON CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$500.00;

(16) ~~For Pperforming~~ the duties of a risk assessor without a current risk assessor license, or a variance from the department, in violation of He-P 1612, LICENSURE AND CERTIFICAITON CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$1000.00;

(17) ~~For Ffailureing~~ to notify the department of intended start and end work dates or a change in the intended start and/or ending work dates in violation of He-P 1608.06, the administrative fine shall be \$250.00;

(18) ~~For Failureing to failure to~~ prepare the work area in a manner, which prevents the escape of lead contaminated materials, in violation of He-P 1608.07 and He-P 1608.08, the administrative fine shall be \$500.00;

(19) ~~For Failing Ffailure~~ to contain lead-based substances or lead contaminated material in the work area in violation of He-P 1608.09(a), the administrative fine shall be \$500.00;

(20) ~~Failing For Ffailure~~ to comply with worker safety and respiratory protection requirements, in violation of He-P 1608.09(b) – (d), the administrative fine shall be \$500.00;

~~(21) Failing Failure to control access in accordance with He-P 1608.10, the administrative fine shall be \$500.00;~~

~~(22)~~(21) For failure to provide for the safety of the building's occupants during lead hazard reduction work, in violation of He-P 1608.10(a) and (e), the administrative

fine shall be \$1000.00;

~~(23)~~(22) For failure to ensure the maintenance of an accurate record of individuals entering and exiting a hazard reduction work area, as required by of He-P 1608.10(b) – (c), the administrative fine shall be \$200.00;

~~(24)~~(23) ~~Failing-For Ffailure~~ to clean up and dispose of waste in accordance with He-P 1608.11~~(e)~~(a) –(f), the administrative fine shall be \$1000.00

~~(25)~~(24) For ~~h~~issuing a certificate of compliance without complying with all of the requirements of a clearance inspection, in violation of He-P 1608.12 or He-P 1608.14(c) or (d), the administrative fine shall be \$2000.00;

~~(26)~~(25) ~~Failing-For Ffailure~~ to have a preliminary clearance inspection conducted, if required, in accordance with He-P 1608.12(b), the administrative fine shall be \$500.00;

~~(27)~~(26) ~~Failing-For Ffailure~~ to document a preliminary clearance inspection as required by He-P 1608.12(d) the administrative fine shall be \$250.00;

~~(28)~~(27) For ~~F~~ailure of a risk assessor to submit a copy of a written clearance inspection report to the department as required by He-P 1608.12(q)(3)c, the administrative fine shall be \$250.00;

~~(29)~~(28) For ~~F~~ailure of the risk assessor to submit all the information required by He-P 1608.12(r) with the certificate of compliance, the administrative fine shall be \$250.00;

~~(30)~~(29) ~~Failing-For Ffailure~~ to maintain at the work site while lead hazard reduction work is taking place all documentation required by He-P 1608.15(a), the administrative fine shall be \$200.00;

~~(31)~~(30) For ~~F~~ailure of a lead abatement contractor to keep all business and personnel records of all lead projects for 5 years, in violation of He-P 1608.15(b), the administrative fine shall be \$200.00;

~~(32)~~(31) For ~~U~~tilizing or employing uncertified or unlicensed persons to perform lead hazard reduction work, or an owner performing lead hazard reduction work, without the written permission of the department, in violation of He-P 1605.03, Variance Request, the administrative fine shall be \$1000.00 per uncertified or unlicensed person, or owner;

~~(33)~~(32) ~~F~~or failure of a lead abatement supervisor, licensed lead abatement contractor, or owner-contractor, to remain on site when lead hazard reduction work is being carried out, in violation of He-P 1609.01(d), the administrative fine shall be \$300.00;

~~(34)~~(33) For ~~F~~ailure of a contractor, or owner-contractor to ~~remain on site or~~ be available to a lead abatement supervisor when lead hazard reduction work is being carried out, in violation of He-P 1609.01~~(d)~~ and (e), the administrative fine shall be \$300.00;

~~(35)~~(34) ~~For P~~performing lead hazard reduction work utilizing any of the prohibited practices listed in He-P 1609.02(~~bc~~), the administrative fine shall be \$1000.00;

~~(36)~~(35) ~~For C~~certifying that a dwelling or dwelling unit is either owner occupied or off the rental market as required by He-P 1609.04(c) when the dwelling or dwelling unit is not, the administrative fine shall be \$1000.00;

~~(37)~~(36) ~~For T~~eaching classes without authorization by the department, in violation of He-P 1611.01(a), the administrative fine shall be \$2000.00;

~~(38)~~(37) ~~For U~~utilizing faculty who do not meet the requirements as described in He-P 1611.01(c) or (d) in a training program, the administrative fine shall be \$500.00;

~~(39)~~(38) ~~Failing-For F~~failure to notify the department within 30 business days of changes in the names and addresses of the responsible corporate department of the licensed educational company, as required by He-P 1611.01(e), the administrative fine shall be \$250.00;

~~(40)~~(39) ~~Failing-For F~~failure to notify the department before the start of an educational program in violation of He-P 1611.01(f), the administrative fine shall be \$500.00;

~~(41)~~(40) ~~For F~~failure of a program manager to maintain required educational records pursuant to He-P 1611.01(h) for a period of 5-years, the administrative fine shall be \$500.00;

~~(42)~~(41) ~~Failing-For F~~failure to hold a class when there are at least 5 clients scheduled for the class pursuant to He-P 1611.03(a)(5)a., the administrative fine shall be \$250.00;

~~(43)~~(42) ~~Knowingly-s~~~~For S~~submitting false or fraudulent information on or with an application, the administrative fine shall be \$1000.00;

~~(44)~~(43) ~~For F~~falsifying a lead abatement contractor license, the administrative fine shall be \$1000.00;

~~(45)~~(44) ~~For f~~falsifying a lead abatement supervisor license, the administrative fine shall be \$1000.00;

~~(46)~~(45) ~~For F~~falsifying a lead abatement worker certificate, the administrative fine shall be \$1000.00;

~~(47)~~(46) ~~For F~~falsifying a risk assessor license, the administrative fine shall be \$1000.00;

~~(48)~~(47) ~~F~~For falsifying a lead inspector license, the administrative fine shall be \$1000.00; and

~~(49)~~(48) ~~Failing-For F~~failure to attend the annual educational program, as required

by He-P 1612.02(m), without providing the department with documentation of good cause as defined in He-P 1602.01(u), the administrative fine shall be equal to the applicable annual certification or licensing fee.

(j) If an administrative fine has been issued, and the same violation is subsequently cited or the violation has not been remedied within 30 days, a second the administrative fine in the amount of ~~shall be~~ twice the amount of the first fine, ~~not to exceed \$10,000.00~~ per violation shall be issued.

(k) For the third and all subsequent repeat violations to those cited in (j) above, or for violations that have not been remedied after 90 days, the administrative fine per violation shall be three times the amount of the first fine. ~~be \$2,000.00.~~

APPENDIX

Rule	Specific State Statute which the Rule is Intended to Implement
He-P 1602.02	RSA 130-A:2, I(i), RSA 130-A: 7, RSA 130-A:10, RSA 130-A:11, I, RSA 130-A:14, 40 CFR 745.327