

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 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.

(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 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 (AAU).

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

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

(1) For renting a residential 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 failure 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 conducting blood lead analysis on residents of New Hampshire without a current New Hampshire laboratory license, or CLIA Certification, whichever is applicable, in violation of He-P 1603.01, the administrative fine shall be \$1000.00;

(4) For the failure 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 item of missing or incorrect of information in a blood lead analysis;

(5) For failure 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 failure 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 to perform 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 failure by 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 failure 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) For conducting 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 failure 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 performing 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 CERTIFICAION CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$250.00 per person;

(13) For performing 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 CERTIFICAION CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$500.00;

(14) For performing 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 CERTIFICAION CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$1000.00;

(15) For performing 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 CERTIFICAION CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$500.00;

(16) For performing 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 CERTIFICAION CRITERIA FOR LEAD PROFESSIONALS, the administrative fine shall be \$1000.00;

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

(18) For 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 failure 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) For failure 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) 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;

(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;

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

(24) For 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;

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

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

(27) For failure 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;

(28) For failure 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;

(29) For failure 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;

(30) For failure 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;

(31) For utilizing 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;

(32) For 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;

(33) For failure of a contractor, or owner-contractor to be available to a lead abatement supervisor when lead hazard reduction work is being carried out, in violation of He-P 1609.01 (e), the administrative fine shall be \$300.00;

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

(35) For 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;

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

(37) For 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;

(38) For 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;

(39) For 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;

(40) For 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;

(41) For 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;

(42) For submitting false or fraudulent information on or with an application, the administrative fine shall be \$1000.00;

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

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

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

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

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

(48) For 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 administrative fine in the amount of twice the amount of the first fine, 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 3 times the amount of the first fine.

APPENDIX

Rule	Specific State Statute which the Rule is Intended to Implement
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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