

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

Department: Dept. of Environmental Quality

Division: Hazardous Waste

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Title or Subject: **APC&EC Regulation No. 32 (Environmental Professional Certification)**

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

As originally adopted, Regulation No. 32 implemented a certification program under the authority of Act 2141 of 2005 (Arkansas Code, Ann. §§ 8-7-1301 *et seq.*) and as amended by Act 1018 of 2007 for consultants who perform environmental site assessments, site investigations and risk assessment in preparation of site cleanup plans, and contractors who actually carry out site cleanups.

This proposal seeks to revise the regulation to implement requirements for the certification of contractors and consultants who address properties which have been contaminated by the presence and/or operation of clandestine drug laboratories, used for the illicit manufacture of controlled substances. This is a program mandated by the Arkansas General Assembly by the passage of Act 864 of 2007.

2. What are the top three benefits of the proposed rule or regulation?

- Maintains the regulation in conformance with authorizing legislation.
- Establishes a consistent process to ensure that contractors and their employees who undertake the investigation and cleanup of clandestine drug laboratories have the necessary knowledge and safety training and equipment to carry out these activities at minimal risk to human health and the environment; and
- Provides a ready reference for the general public for consultants who have been screened and verified as meeting qualifications to undertake such cleanups.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

The Department will have failed to comply with the General Assembly's requirement to establish and promulgate appropriate standards pursuant to Act 864 and A.C.A. §8-7-1402(a)(1).

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

As this proposal seeks to incorporate specific state statutory revisions into the regulation, market-based or other alternatives were not considered.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Staff time and effort to implement the requirements of Act 864 of 2007 in this proposed revision would require approximately a full-time equivalent (FTE) for a Program Support Manager (Class Code 909Z, Grade 22, annual salary \$34,021) and approximately ¼ of a full-time equivalent of an Administrative Assistant I (Class code R009, Grade 15, annual salary \$21,446) to receive, review, and process applications, implement the certification program, provide public outreach and assistance for program-specific issues, review site cleanup submittals, and update a web-based listing of certified contractors and contaminated properties. With multipliers (1.8114) to account for fringe benefits and shared resources used by this position in the Department's currently authorized staffing level, as well as travel and training needed to provide the staff with the appropriate skills and experience to effectively oversee program requirements, costs are estimated at approximately \$80,940 for FY 08 and \$82,861 for FY 09.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Contractors and consultants (typically small businesses) which perform investigations and cleanup activities at properties which contain clandestine drug laboratories will be required to comply with the qualification criteria and participation in continuing education as set out in this proposed rule. Based on the number of entities which have sought similar certification in other states with similar programs for addressing clandestine laboratories, we estimate that between 25 to 30 small businesses will seek certification under these requirements.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

These revisions to Regulation No. 32 create minimum standards and criteria which a contractor or consultant must meet in order to provide investigation and cleanup services where the completion of specific cleanup standards would enable the property owner to receive a letter of no-further-action-required and subsequent deletion of the property from a statewide list of contaminated sites. These criteria will ensure that such cleanups will be carried out in a manner that is protective of human health and the environment as well as provide a level of assurance to the property owner and responsible party that the cleanup will be carried out in an appropriate manner.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

Small business owners who request to be certified as clandestine laboratory remediation contractors would pay an application fee of \$200 once every two years to cover the expense of screening their qualifications and maintenance of the list. These consultants and contractors would also incur training costs for each employee who works at a contaminated site to ensure that the employee has received the appropriate training for personal safety and protection while working with hazardous materials as prescribed by federal OSHA regulations under 29 CFR 1910.120, and have received appropriate job-specific training for entering, investigating, and cleaning up a controlled substance contaminated site. The certification standards concurred upon by participant in the stakeholder group used in the development of these proposed regulations include completion of the OSHA 40-hour HAZWOPER course (approximate cost \$1,000 per student), and at least 8 hours of training focused on controlled substance

contamination (approximate cost \$1,300 per student). Each employee is subsequently required to participate in continuing education is controlled substance site remediation, at a minimum completing 8 hours of OSHA HAZWOPER refresher training (approximate cost \$100 per student) and an additional 8 hours of training in the management and remediation of controlled substance contaminated sites (estimated costs \$1,200 per student).

Employers are required to maintain training records for each on-site worker, and submit these as proof of qualification and participation in required continuing education on a biennial basis. Cost of maintaining such records is estimated at approximately \$500 per year.)

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

The proposed revisions to Regulation No. 32 do not distinguish or provide different levels of regulation based on the size of the regulated party.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. With the exception of requiring specific training in addressing the problems associated with clandestine drug laboratories, existing state and federal regulations require workers handling hazardous substance to be provided and to comply with the OSHA personnel safety requirements at 29 CFR 1910.120. Discussions within the stakeholder group during the development of this proposal indicate that controlled-substance specific training is readily available and affordable from a variety of providers, both in- and out-of-state.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The Regulation No. 32 provisions implementing Act 864 of 2007 are consistent with the qualification criteria established in states which have similar programs. In developing these standards, ADEQ staff and the stakeholder group considered corresponding requirements in neighboring state with specific programs (dealing primarily with meth lab cleanups). These states included Kansas, Missouri, Tennessee, and Arizona. The requirements proposed in this revision to Regulation No. 23 are equivalent to and so not provide a disincentive to any regulated entity.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In November and December of 2007 ADEQ initiated a series of meetings with stakeholders to evaluate the impact of adopting the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas State Crime Lab, the Arkansas Manufactured Housing Association, the Arkansas Realtors Association, the Arkansas Municipal League, and two consultant firms which currently provide these types of services in Arkansas (Safety & Environmental Associates, Inc. of Little Rock and Meth Lab Cleanup, LLC, of Idaho). The revisions brought forward in this proposal represent the consensus of that stakeholder group.