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**State of Wisconsin**

**Department of Health and Family Services**

HFS 163

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February 8, 1999

The Honorable Fred Risser, President  
Wisconsin State Senate  
1 East Main, Suite 402  
Madison, WI 53702

The Honorable Scott Jensen, Speaker  
Wisconsin State Assembly  
1 East Main, Suite 402  
Madison, WI 53702

Re: Clearinghouse Rule 98-155

HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards, accreditation of training courses that prepare individuals for certification, and approval of training course managers, principal instructors and guest instructors.

Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rule is in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Gail Boushon at 267-2289.

Sincerely,

Paul E. Menge  
Administrative Rules Manager

- cc. Gary Poulson, Deputy Revisor of Statutes
- ✓ Senator Judy Robson, JCRAR
- Representative Glenn Grothman, JCRAR
- Gail Boushon, Division of Public Health
- Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES – HFS 163  
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES  
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction. In addition, the Department is given broad responsibility and authority under s. 250.04, Stats., to protect the public's health.

The Department's rules for certification to perform lead abatement, other lead hazard reduction and lead management activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code.

On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek U.S. Environmental Protection Agency (EPA) approval under 40 CFR 745, Subparts L and Q, for the Wisconsin lead certification program. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria.

Work practice standards, which are required by EPA, were then developed, reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

On August 29, 1998, the Department published an emergency order revising ch. HFS 163 to qualify the state lead training and certification program for EPA approval. For EPA approval, the following major revisions were made to ch. HFS 163:

*Certification*

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.

- Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead-based paint activities.

#### *Accreditation*

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

#### *Enforcement and oversight*

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA, the emergency order established a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

This order includes replacement permanent rules for the emergency rules published on August 29, 1998. In addition, this order makes the following changes in ch. HFS 163.

- The rules are reordered and renumbered to improve the logical flow of information and wording and format revisions are made to clarify, but not change, current policy.
- Fees are added for the following: worker-homeowner certification, lead (Pb) company certification, principal instructor approval and renewal of approval, guest instructor approval and renewal of approval, course accreditation and reaccreditation.
- Fees are reduced for the following: project designer and risk assessor certification, and initial course accreditation application.

- Fees are increased for the following: supervisor certification and certification examination registration.
- An additional 3 months are allowed to complete refresher training when training expires within the 3-month period prior to expiration of certification.
- Principal instructor qualifications are revised to require certification in fewer disciplines and allow an instructor to receive credit for taking a course that the instructor also teaches. In exchange, principal instructors are required to attend 2 meetings with Department staff within a 3 year period.
- The lengths of time that some approvals are in effect are revised to simplify procedures. Lead (Pb) company certification and guest instructor approval expire annually on November 1. Course accreditation allows for either a 2-year or a 4-year term. Principal instructor approval may be granted for a maximum of 12 months, not to exceed the date the instructor's qualifying certification expires.

Wisconsin's Lead (Pb) Certification and Training Program received EPA authorization effective January 27, 1999.

#### Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse on the proposed rules were accepted except the following:

1.a. Comment: Under HFS 163.30 (2), the Department may delegate all or part of its enforcement authority to any other state or federal agency through a memorandum of understanding. Section 254.152, Stats., permits the Department to delegate such authority to a local health department under specified conditions. However, there appears to be no statutory authority to delegate enforcement authority to any state or federal agency.

Response: Under s. 250.04 (1) and (7), Stats., the Department has authority to promulgate rules relating to any subject matter under the Department's supervision that are necessary to provide effective administration and to protect the public's health.

1.b. Comment: Section HFS 163.30 (3) (a) permits the Department to inspect the premises where any violation of HFS 163 is alleged to be occurring or to have occurred. However, under s. 254.30 (1) (a), Stats., the Department's authority to enter premises is not as broad as that rule provides. The statute permits the Department to "enter, at a reasonable time, a dwelling or premises undergoing any lead hazard reduction to determine if all persons engaged in lead hazard reduction have been appropriately certified if required under s. 254.176, Stats." In view of the specificity of s. 254.30 (1) (a), Stats., what statutory authority exists for the broad power asserted in HFS 163.30 (3) (a)?

Response: Section 250.04 (1) and (7), Stats. Under that statute the Department is given authority to promulgate rules relating to any subject matter under the Department's supervision that are necessary to provide effective administration and to

protect the public's health. Authority to inspect premises where any violation of HFS 163 is alleged to be occurring or to have occurred is necessary for administration of the program. This is not prohibited by s. 254.30 (1) (a), Stats. Moreover, ss. 254.176 (3) (b) and 254.178 (2) (b), Stats., direct the Department, when promulgating rules that establish certification and accreditation requirements, to at least meet referenced federal requirements. Federal requirements include 40 CFR 745.237 (b) (2) which states that "state...officials must be able to enter...premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections."

**2.a. Comment:** Section titles should be written with an initial capital letter and in bold print, and paragraph titles should not be underlined and should be italicized. See current Manual.

**Response:** No change. These rules have been in process for a while, using the forms for titles that were in effect before September 1998. These rules will replace emergency rules that use the older forms for these titles. The Clearinghouse Director has stated that the titles of rules in process do not have to be changed.

**2.b. Comment:** In HFS 163.10 (8), the Note following par. (a) should be incorporated into the body of the rules.

**Response:** The note is intended to inform an individual who has been certified and whose certification has expired what he or she must do to regain certification. "Initial certification" is defined in HFS 163.03 (36) as either first certification for a specific discipline or certification after a certification has lapsed for 12 months or more. So to get certified again after a certification has lapsed for or been expired for 12 months or more a person has to go through the initial certification process again under subs. (3) to (7) rather than the recertification process under sub. (8). The note is just information; it does not add a requirement. The language of the note has been clarified.

**4.a. Comment:** In HFS 163.01, is the cite to s. 250.04 (7), Stats., supposed to be to s. 250.04, Stats.? The entire section is cited as authority for the rule in the Analysis.

**Response:** The rule cite is correct. The Analysis cite has been corrected.

**4.j. Comment:** In HFS 163.23 (2), (3) (a) and (5) (a), should "chapter" be replaced with "subchapter"?

**Response:** No change. Referencing the entire chapter is more accurate, especially since subch. III requires compliance with certification and work practices under subch. II.

**5.d. Comment:** In HFS 163.03 (1) (b) 5., is the request for an abatement made by the owner of the property? Also, the phrase "or which claims to be an abatement" appears to be superfluous and could be deleted.

Response: The request for abatement could be made by the owner, but it could also be made by a tenant or occupant with the owner's permission. Since the definition of abatement relies on "intent", it is important that abatement projects include a variety of activities that indicate intent, such as a contractor's claim that an activity is abatement, even though it is not called an abatement in a written contract. The provision has been amended to specify that the contractor may claim it is an abatement project.

5.l. Comment: In HFS 163.03 (55), the phrase "has the authority to" should be replaced by the word "may."

Response: The suggested change does not accurately capture the intent. The definition is revised to more accurately reflect that the supervisor's authority to make changes or stop activities comes from the employing company.

5.w. Comment: In HFS 163.11 (1) (b), it is unclear what is meant by "as protective as the accreditation requirements under subch. III." Would it be appropriate to substitute "comparable to the accreditation requirements under subch. III"?

Response: No change. Language is required as stated for EPA authorization of the lead certification program.

5.al. Comment: In HFS 163.14 (5) (d) 2. and 3., may emergency and revised notice be either written or verbal? If verbal notice is given, is subsequent written notice required?

Response: Yes, both an emergency and a revised notice may be either written or verbal. As stated under HFS 163.14 (5) (f) 3. written follow-up must be given to any verbal notice.

5.aq. Comment: In HFS 163.14 (6), it may be clearer if pars. (b) and (d) were combined.

Response: No change. Keeping them separate places emphasis on the important requirement to wait one hour after abatement before proceeding with clearance.

5.ar. Comment: In HFS 163.14 (6) (e) 1., are there any guidelines as to how far outside the containment area a dust sample should be collected?

Response: Yes, there is a guideline as to the location of the dust sample taken outside containment. A note referring to the guideline is added.

5.at. Comment: In HFS 163.14 (6) (h), the abbreviation  $\mu\text{g}/\text{ft}^2$  should either be defined in HFS 163.03 or spelled out.

Response: The abbreviation is commonly used in this industry and is included in training. Since the work practice standards apply to the work performed by certified persons, the individual using the standard will know the meaning of the abbreviation.

5.au. Comment: In HFS 163.14 (6) (i) 2., it is not clear how one achieves a 95% level of confidence that at least 95% of all dwelling units would pass clearance if all were sampled without sampling 95% of the units. Could more guidance be given for this requirement?

Response: Appendix B has been added to HFS 163 as a table showing the proper number of samples to take. A note has been added to the rule to reference the table. Required training includes information and practice on achieving a 95% level of confidence.

5.ay. Comment: In HFS 163.22 (5), would it be accurate to delete "or use the certificate" at the end of the last sentence and insert "or use" after "shall not allow another person to copy" instead?

Response: No change. The qualifier "for fraudulent or misleading purposes" applies only to copying. Any use of the certificate by another person, regardless of purpose, is not allowed.

5.az. Comment: Under HFS 163.22 (6) (a), the department may conduct an on-site audit of an accreditation training course. It appears that current HFS 163.23 (2) (a) requires that such an audit be conducted. If this is accurate, the change in policy should be addressed in the analysis. In addition, in the last sentence, it appears that the word "in" should precede the phrase "class activities and in the course test."

Response: No change. The requirement for an audit under current HFS 163.23 (2) (a) is covered under proposed HFS 163.22 (4) of the proposed rule. The provision under proposed HFS 163.22 (6) (a) allows for additional audits, as is allowed under current HFS 163.26 (1).

5.bg. Comment: In HFS 163.25 (3) (c) 2., if a training manager notifies the department of a scheduled training course by telephone, is a follow-up written notification required? This comment also applies to sub. (5) (g).

Response: No change. Written follow-up is not required to verbal notice of a change in the course or instructor.

5.bj. Comment: In HFS 163.31 (2) (a) to (k), the violations should be expressed as nouns. For example, par. (a) should read: "Submission of a check to the state . . . ." This comment also applies to sub. (4).

Response: No change. The Department prefers to state violations as actions.

5.bm.(2) Comment: The language in HFS 163.31 (5) (b) is extremely broad, without any standards for determining whether a person is "fit and qualified."

Response: Yes, the language under HFS 163.31 (5) (b) is broad. However, the Department retains the right to screen participants in a program operated by the State. Section HFS 163.31(5) (b) does specify some criteria for a finding and in this respect it is consistent with other rules the department has issued which require that a person be "fit and qualified" for licensure purposes. Refer to HFS 46.12 (7) (b), HFS 149.03 (2) (a), HFS 83.11 (1) (b) and HFS 132.21 (4) (b) for examples of current rules which include a "fit and qualified" requirement.

### Public Hearings

The Department held 4 public hearings on the proposed permanent rules and the emergency rules. The hearings were in late November 1998 and early December 1998, in Madison, Eau Claire, Waukesha and Green Bay. Ten persons attended, of whom 7 testified on the rules. In addition, 3 other persons submitted written comments to the Department during the public review period ending on December 21, 1998. A list of public review participants and a summary of their comments, with the Department's responses, are included in an attachment to this document.

In response to comments received during public review of the proposed rules, the Department made five changes in the permanent rules, as follows:

- In HFS 163.03 (1) (b) 1., a clarification has been added that a provision applies only when the written contract states that the project will permanently eliminate a lead-based paint hazard, rather than every time there is a written contract.
- In HFS 163.13 (6), a note has been added after par. (a) that a summary of the lead identification activity does not have to be submitted to the Department by a local health department under this chapter if the activity conducted is an environmental investigation under s. 254.166, Stats., in response to a child found with lead poisoning.
- Also in HFS 163.13 (6), an item has been revised in par. (d) on the contents of the required summary of lead identification activities that a lead company must submit to the Department. Use of a unique identifying number for an activity instead of a street address will safeguard the privacy of some inspection requests in connection with certain real estate contracts.
- In HFS 163.14 (2), paragraph (a) 3. has been added to provide under work practices for a partial inspection by a certified lead (Pb) inspector or risk assessor for purposes of identifying lead-based paint in an area of a dwelling to be renovated or remodeled.
- In HFS 163.14 (6) (e) 3., the rule has been revised to add examples of what would be included in an "outdoor living area" that must be visually inspected following an exterior paint abatement.



## Final Regulatory Flexibility Analysis

These rules will affect small businesses as defined in s. 227.114(1)(a), Stats. Almost all the changes are being made so that the Department will meet U.S. Environmental Protection Agency (EPA) conditions for authorization and approval of the Department's lead (Pb) certification and training program. They are EPA requirements. The certification and accreditation fees have been established by the Department to cover program costs, and some of them are being amended by this order.

Certification of lead (Pb) companies is a new requirement because EPA requires it. Of the 200 non-government lead (Pb) companies currently identified by the Department, an estimated 75% have fewer than 25 employees. For this reason, lead company certification fees were established at \$50, which is just sufficient to cover the administrative costs of certification.

The certification fee for nongovernment lead risk assessors is reduced because most are self-employed and have difficulty recovering the cost.

Seven training providers offer accredited courses in this state. Four are small businesses, 2 providing training on a limited basis and 2 providing a full range of courses. The current rules provide for a one-time course accreditation application fee of \$750 per initial course and \$250 per refresher course. The revised rules reduce the one-time course accreditation application fee to \$500 per initial course and \$125 per refresher course, and require reaccreditation of a course every 2 years and payment of an accreditation fee of \$500 per initial course and \$250 per refresher course for each 2-year accreditation period.

Within the flexibility allowed by EPA regulations, the Department developed rules that would cause minimal difficulty for small businesses. Forms collect the minimum information needed to support the program and approved, alternative forms may be used. Certification, accreditation, approval and training time periods (terms) were established that would be as simple and easy to track as allowed under EPA regulations.

During public review of the proposed rules, concerns were expressed by small businesses (a landlord, a lead consultant, a lead companies association representative) about the availability and cost of liability insurance for lead claims and insurance coverage. The Department's response to these concerns in part is that it will work with the Department of Commerce Small Business Ombudsman to bring the insurance issues to the attention of the Commissioner of Insurance.

**Department of Health and Family Services  
Bureau of Occupational Health  
Public Hearing and Written Comment Summary  
Chapter HFS 163 Emergency Rules and Proposed Permanent Rules**

*Public hearings were held as follows:*

- (a) November 30, 1998, Madison
- (b) December 1, 1998, Eau Claire
- (c) December 7, 1998, Waukesha
- (d) December 9, 1998, Green Bay

*Staff in attendance:*

Terry Moen, Hearing Officer, Director, Bureau of Occupational Health (all sites)  
Perry Manor, Chief, Asbestos and Lead Section (all sites)  
Gail Boushon, Regulatory Specialist, Asbestos and Lead Section (all sites)  
Shelley Bruce, Training Officer, Asbestos and Lead Section (Madison)  
Anna Storkson, Environmental Health Specialist, Asbestos and Lead Section (Madison)  
Jeanette Tierney, Public Health Nurse, Bureau of Occupational Health (Madison)  
Dave Schmitt, Environmental Health Specialist, Asbestos and Lead Section (Eau Claire)

*Participation in the hearings:*

Participation is summarized below. The indication of support and opposition reflect the positions indicated on the registrations or written statements filed by the hearing participants.

Registered: 10 at the Madison and Eau Claire hearings.  
No one registered at the Waukesha and Green Bay hearings.

Oral testimony: 7

Support the rules: 0

Support the rules with changes: 4

Oppose the rules: 0

Undecided: 6

The hearing record was left open until December 21, 1998, for receipt of written comments. Written comments were received from 3 individuals who also presented oral testimony at a hearing and from 2 individuals who did not attend a hearing.

## Public Hearing Participants

The following is a complete list of the persons who attended a public hearing or submitted written comments during the public review period. With each individual's name and affiliation is an indication of whether or not the individual testified or provided written comments. In the attached summary of hearing comments, the name of the hearing participant who made a specific comment follows that comment.

Name and address	Action
1. William Volkman Mazomanie, WI (Rep. Painting & Decorating Contractors of America)	Oral testimony - Madison
2. Carl Bayerl Milwaukee, WI (Rep. self - landlord)	Oral testimony - Madison
3. Richard Horan Middleton, WI (Rep. Assurance Inspection Services)	Oral testimony and written comments - Madison
4. Cheryl Gain, Small Business Ombudsman WI Dept. of Commerce, Madison, WI (Rep. small businesses)	Observe only - Madison
5. Warren Stubb Almond, WI (Rep. WI Laborers Training School)	Observe only - Madison
6. Holly Scrimsher Chippewa Falls, WI (Rep. self - parent of lead-poisoned children)	Oral testimony - Eau Claire
7. David Kragness Fall Creek, WI (Rep. Eau Claire City-Co. Health Dept.)	Oral testimony - Eau Claire
8. Darryll Farmer Eau Claire, WI (Rep. Eau Claire City-Co. Health Dept.)	Oral testimony and written comments - Eau Claire
9. Tim Ringhand Chippewa Falls, WI (Rep. Chippewa Co. Dept. of Public Health)	Oral testimony and written comments - Eau Claire
10. Kirsten Gierhart Eau Claire, WI (Rep. Eau Claire City-Co Health Dept)	Observe only - Eau Claire
11. John S. Hausbeck, MS, Environmental Epidemiologist Madison, WI (Rep. Madison Department of Public Health)	Written testimony only
12. Jane C. Luxton Seeger Potter Richardson Luxton Joselow & Brooks, L.L.P Washington, D.C. (Rep. Lead Industries Association, Inc.)	Written testimony only

**Summary of Public Hearing Testimony Including Written Comments and Departmental Responses**

<u>Rule Reference</u>	<u>Comment</u>	<u>Department Response</u>
HFS 163.03 (1) (b) 1.	Delete subd. par. a. because it conflicts with par. (c). (Hausbeck)	No to the suggested revision, because subd. par. a. is part of EPA definition and the Department cannot change that definition. However, a clarification has been added to subd. 1. (intro) that subd. par. a. applies when the written contract states that the project will permanently eliminate a lead-based paint hazard, rather than every time there is a written contract.
HFS 163.03 (44)	Reconsider the reliance on a 50 ppm threshold for defining "lead-contaminated soil" in non-industrial soil lead abatement. It is more restrictive than EPA's screening threshold and recommended abatement levels. (Luxton)	No change. The suggested change would conflict with ch. NR 720, in effect since 4/1/95. In addition, the term "lead-contaminated soil" only refers to soil that is considered contaminated by lead. The rules do not require abatement of lead-contaminated soil at this or any other level; the note only <u>recommends</u> abatement when lead levels are above 5,000 µg/g.
HFS 163.03 (66)	Revise definition of "recognized laboratory" to add: "or by its certification to perform analysis for lead under ch. NR 149." (Farmer, Hausbeck)	No to the suggested revision. However, the definition has been revised to allow for acceptance of any future accreditation process that is equivalent to NLLAP. Certification under NR 149 is not acceptable to EPA. NR 149 does not require the same standard as NLLAP for proficiency testing; laboratory technical capacity and quality assurance as is addressed by NLLAP.  The issue is the proficiency of the laboratory to process, digest and analyze lead samples in dust, soil or paint chips. The digestion of extraneous media from the sample requires special laboratory equipment and protocols.  The WI Occupational Health Laboratory, part of the State Laboratory of Hygiene, currently provides ELPAT proficiency testing for ALHA. The laboratory is willing to provide an equivalent program, including both proficiency testing and a site audit, for local public health department laboratories in order to alleviate some of the local financial burden. However, the laboratories must still meet the proficiency testing, equipment, protocol, quality assurance and record keeping requirements of NLLAP. Department staff are researching review by the Occupational Health Laboratory as an alternative to NLLAP and will advise local public health departments if EPA approval is received for this alternative.

Rule Reference

Comment

Department Response

HFS 163.11 (5)  
Incorporate applicable worker safety training in inspector and risk assessor courses. (Hausbeck)

No change. EPA eliminated worker safety from the core curriculum because OSHA already requires it. Leaving the worker safety component as separate training outside of the required curriculum reduces redundancy and allows an employer more flexibility in the amount of time spent on training and how training is provided. The Department will assist employers in locating appropriate training materials or formal training.

HFS 163.13 (6)  
Delete requirement or modify to exclude partial inspections and inspections for a real estate contract. Specific knowledge of location and result may keep buyers from obtaining lead inspections or risk assessments. (Horan)

No to the suggested revision, but the rule has been revised to protect privacy. The revision allows lead consultants to assign their own internal record numbers and to report information to the State by record number. In the event the Department wishes to review the lead activity for compliance with standard, the consultant must be able to retrieve the records associated with the record number reported to the Department.

HFS 163.13 (6)  
Reporting requirement in emergency rule is redundant with lead poisoning reports already provided to Childhood Lead Program. (Ringhand)

Agreed. The permanent rule adds a note that additional reporting of environmental investigations related to lead-poisoned children is not required.

HFS 163.14 (2)  
Can a partial inspection be conducted when the purchaser of services only wants information about a potential lead hazard in an area to be renovated? (Horan, Farmer, Hausbeck)

Yes, a partial inspection may be conducted instead of a full inspection at the purchaser's request when the purpose of the inspection is to identify lead-based paint surfaces prior to renovation. There must be a written contract that clearly states the inspection is only partial and is only intended to identify lead-based paint on the surfaces specified in the contract. The rule has been revised to add this exception.

HFS 163.14 (2), (3), (4)  
Revise to allow public health staff certified as lead risk assessors to conduct investigations that don't meet one of these standards. (Farmer, Hausbeck)

No change. Environmental investigation related to a lead-poisoned child is already exempt and we are adding partial inspections prior to renovation. EPA developed the 3 remaining options--full inspection, lead hazard screen and risk assessment--with national input.

<u>Rule Reference</u>	<u>Comment</u>	<u>Department Response</u>
HFS 163.14 (2) (c), (3) (i), (4) (i)	Regarding the requirement that reports are to include the name, address, and telephone number of the owner or owners, change "owner" to "owner or prospective buyer". On inspections or risk assessments for real estate transactions, am hired by potential buyer and often don't know name of owner. (Horan)	No change. This is an EPA requirement and cannot be changed at this time. The comment has been forwarded to EPA.
HFS 163.14 (4) Note	Does the environmental investigation exemption only apply to risk assessments? (Kragness)	Yes, the note only applies to risk assessments. When investigating lead-based paint or lead hazard not related to a lead-poisoned child, the work practice standards apply.
HFS 163.14 (6)	Revise to require clearance testing be done by an independent lead inspector or risk assessor, not the homeowner or person who conducted the abatement. (Ringhand)	No change. While both EPA and the Department agree that the homeowner and person conducting the abatement may have a conflict of interest, EPA has declined to require independent testing for fear that it may increase the cost of an abatement project. Under current statute, the Department must follow EPA's regulations.
HFS 163.14 (6) (e) 1. & 2. (Hausbeck)	Combine subd. 1. & 2. into 1 paragraph. (Hausbeck)	No change. This is an EPA standard. Although the subdivisions appear the same as to the number of samples and where the samples are taken, the subdivisions actually address taking samples from different areas depending on where abatement was done.
HFS 163.14 (6) (e) 3.	What is meant by "outdoor living area"? Write the paragraph to be broader. The visual inspection should include the work area plus any area that could be affected by the abatement activities. (Hausbeck)	Outdoor living areas include porches, patios, decks, sidewalks and stoops. The rule has been revised to add these examples of horizontal surfaces in the outdoor living area closest to the abated surface.
HFS 163.14 (7)	If a health dept. conducts clearance to verify compliance with orders, does it have to meet these standards? (Farmer)	No, a health department is not prohibited from conducting sampling to verify clearance results after a certified lead inspector or risk assessor conducts clearance. However, abatement must be cleared according to these standards. A health department's verification of clearance is not regulated by HFS 163.

<u>Rule Reference</u>	<u>Comment</u>	<u>Department Response</u>
HFS 163.30 (2)	Does this require local public health departments to enforce these rules? Public health departments are not paid to be agents of the State. (Ringhand)	No, public health departments are not required to enforce HFS 163 but are encouraged to refer potential violations to the Department. The rule refers to other state agencies, not (local) public health departments. For other state agencies, the rule has been revised to permit, rather than require, notification of DHFS of a potential violation.
HFS 163 General	Proper and effective enforcement of these rules is necessary. Will be out of business if can be continually undercut by businesses that do not comply. (Volkman)	Enforcement options are being added to the rules. The Department expects to add enforcement staff with funding from a federal lead grant.
HFS 163 General	Regulations that tell what is acceptable practice and what isn't are welcome. Also need clear compliance assistance, especially on work practice standards. (Volkman)	The Department is planning additional public outreach to help affected parties comply with the lead certification rules.
HFS 163 General	PDCA chapter offers technical assistance to the Department on future revisions of HFS 163. (Volkman)	The Department appreciates the offer of technical assistance and will remain in contact with the Wisconsin chapter of PDCA.
HFS 163 General	Have difficulty finding affordable insurance when work involves lead. Many association members will not work on older homes, especially since landlord liability usually excludes lead claims. (Volkman)	The Department will work with the Department of Commerce Small Business Ombudsman to present the insurance issues to the Insurance Commissioner. However, a recent article in a lead abatement trade publication discussed insurance issues. The article states that affordable liability insurance is now available for lead contractors and consultants from standard, regulated insurance companies. Premiums are based on gross revenues and can be split between lead work and nonlead work. Minimum premium is \$5,000 on a standard \$1 million/\$1 million liability policy.
HFS 163 General	Agree that insurance coverage is an issue and could result in a decision to drop out of the lead consultant field. (Horan)	The Department will work with the Department of Commerce Small Business Ombudsman to present the insurance issues to the Insurance Commissioner.

Rule Reference

Comment

Department Response

HFS 163 General

Insurance company has dropped liability coverage for lead claims. Many landlords are selling out rather than dealing with lead. Agree that lead hazards need to be reduced to protect children, but would like it to be less costly. (Bayerl)

The Department will work with the Department of Commerce Small Business Ombudsman to present the insurance issues to the Insurance Commissioner.

HFS 163 General

No one agency has clear authority, so there is little enforcement. Health departments just keep moving families around rather than forcing landlords to fix problems. (Scrimsher)

The Department welcomes all lead-related complaints and will work with other state agencies and with federal and local agencies, as necessary, to address citizen concerns relating to lead.

HFS 163 General

Add regulations to make child-occupied facilities, such as schools or day care operations in old homes, fix lead-based paint hazards. (Scrimsher)

Day care regulations require deteriorating paint to be repaired. Complaints may be filed with the Department or with the local health department when there is believed to be a public health hazard.



SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified January 1999*

Date: January 19, 1999

Location: 201 SE State Capitol

Moved by Grothman, Seconded by Robson

**THAT**, pursuant to 227.24(2)(a), stats., the Joint Committee for the Review of Administrative Rules extend the effective period of emergency rule HFS 163, Wis. Adm. Code by 60 days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON			✓
8. Representative SERATTI			✓
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	8	0	2

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR

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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 24, 1999

Secretary Joe Leean  
Department of Health and Family Services  
PO Box 7850  
1 West Wilson Street  
Madison, WI 53707-7850

Dear Secretary Leean:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on March 24, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule HFS 163**, relating to certifications of persons to remove lead-based paint or otherwise reduce lead-based paint hazards.

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 24, 1999 and adopted the following motion:

Carried unanimously: Pursuant to §227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules extends the effective date of **HFS 163** by 60 days, at the request of the Department of Health and Family Resources.

Ayes: (10) Senators Robson, Grobschmidt,  
\*Shibilski, Welch, and \*Darling;  
Representatives Grothman, Seratti,  
Gunderson, Kreuser, and Black

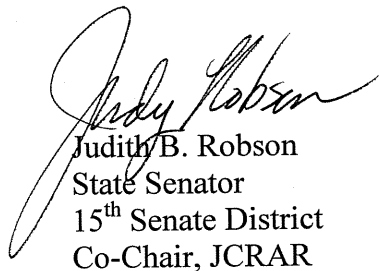
Noes: (0)

Absent: (0)\* Roll held open, voted by phone


**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Wisconsin State Statutes*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District  
Co-Chair, JCRAR



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District  
Co-Chair, JCRAR

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson

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**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

**Date:** March 24, 1999

**Location:** Wisconsin State Capitol, 300 SE, Madison, WI

Moved by \_\_\_\_\_, Seconded by \_\_\_\_\_

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule HFS 163 by ~~10~~ <sup>35</sup> days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT			X
3. Senator SHIBLISKI	X		
4. Senator WELCH	X		
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals	9		1

Motion Carried

Motion Failed

**ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,  
AND CREATING RULES**

**FINDING OF EMERGENCY**

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding

training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register, as 40 CFR 745, Subpts. L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

*Certification*

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.

- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
- Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead-based paint activities.

#### *Accreditation*

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

#### *Enforcement and oversight*

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

## ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 227.24(1), 250.04(7), 254.167, 254.172, 254.176(1) and (3) and 254.178(2), Stats., the Department hereby repeals, renumbers, amends, repeals and recreates and creates rules interpreting ss. 254.167, 254.172, 254.176 and 254.178, Stats.

SECTION 1. HFS 163 (title) and 163.01 and 163.02 are repealed and recreated to read:

### **CHAPTER HFS 163 CERTIFICATION FOR THE IDENTIFICATION, REMOVAL AND REDUCTION OF LEAD-BASED PAINT HAZARDS**

**HFS 163.01 AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of ss. 250.04 (7), 254.167, 254.172, 254.176 (1) and (3) and 254.178 (2) Stats., to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants to hazardous levels of lead. This is accomplished by requiring that before a person performs, supervises or offers to perform or supervise a lead-based paint activity involving target housing or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, the person shall successfully meet the requirements of this chapter and have documentation of certification issued by the department. A homeowner is not required to be certified except as specified under s. HFS 163.10 (1). This chapter also requires that training courses for certification of lead (Pb) inspectors, project designers, risk assessors, supervisors, workers and worker-homeowners be accredited by the department and that training managers and instructors be separately approved by the department.

**HFS 163.02 SCOPE.** (1) **APPLICABILITY.** (a) 1. This subchapter, subch. II and subch. IV apply to any person performing, supervising or offering to perform or supervise a lead-based paint activity involving target housing or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, when certification is required under s. HFS 163.10 (1), and to any person performing any activity involving lead-based paint or a lead hazard when certification is required under a contract or under an order issued by a court, the department, another state agency or a local agency.

2. The applicability date of this subchapter, subch. II and subch. IV for any individual performing, supervising or offering to perform or supervise a lead-based paint activity shall be August 30, 1998. Beginning August 30, 1998, a company performing, supervising or offering to perform or supervise a lead-based paint activity may apply for certification and shall comply with this subchapter, subch. II and subch. IV upon receipt of certification. Otherwise, the applicability date of this subchapter, subch. II and subch. IV for all companies performing, supervising or offering to perform or supervise a lead-based paint activity shall be August 30, 1999.



(b) 1. This subchapter, subch. III, subch. IV and Appendix A apply to any person or organization that offers, conducts or teaches a lead (Pb) inspector, project designer, risk assessor, supervisor, worker or worker-homeowner training course leading to certification by the department.

2. The applicability date of this subchapter, subch. III, subch. IV and Appendix A for any person or organization that offers, conducts or teaches lead (Pb) inspector, project designer, risk assessor, supervisor, worker or worker-homeowner training courses shall be August 30, 1998.

(2) APPROVED ALTERNATIVE TO A REQUIREMENT. The department may approve an alternative to any requirement in this chapter that is not a statutory requirement when the department is provided with satisfactory written proof that the alternative is as protective of human health and the environment as the original requirement. A request for approval of an alternative shall be in writing, shall be sent to the department and shall include justification for the alternative and how it is as protective as the requirement. The department shall approve or deny the alternative or request additional information within 20 days of receipt of the request for approval. If granted, the department will send the applicant a written notice of approval which may include limits on the approval.

**Note:** Submit your request for approval of an alternative to a requirement to the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711.

SECTION 2. HFS 163.03 (1) is repealed and recreated to read:

HFS 163.03 (1) "Abatement" means any measure, set of measures or project designed or intended to permanently eliminate lead-based paint hazards, and is further defined as follows:

(a) "Abatement" includes, but is not limited to, one or more of the following activities:

1. Removal of lead-based paint or lead-contaminated dust.
2. Enclosure or encapsulation of lead-based paint.
3. Replacement of lead-based painted surfaces or fixtures.
4. Removal or covering of lead-contaminated soil.
5. All preparation associated with an abatement.
6. Cleanup associated with an abatement.

7. Preparation for disposal of waste from an abatement.

(b) Specifically, an abatement project includes, but is not limited to, one of the following projects:

1. A project for which there is a written contract or other documentation which provides that a person will be conducting an activity in or to target housing or a child-occupied facility when the project meets one of the following criteria:

a. The project will result in the permanent elimination of a lead-based paint hazard.

b. The project is designed to permanently eliminate a lead-based paint hazard and includes one or more of the activities described in this paragraph or par. (a).

2. A project resulting in the permanent elimination of a lead-based paint hazard, conducted by a person certified by the department under this chapter, unless the project is covered by par. (c).

3. A project resulting in the permanent elimination of a lead-based paint hazard, conducted by a person who, through their company name or promotional literature, represent, advertise or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless the project is covered by par. (c).

4. A project resulting in the permanent elimination of a lead-based paint hazard, that is conducted in response to a state or local government abatement order.

5. A project conducted in response to a request for an abatement activity or which claims to be an abatement.

(c) "Abatement" does not include interim controls, operations and maintenance activities or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards. Furthermore, abatement does not include renovation, remodeling, landscaping or other activities, when the activities are not designed to permanently eliminate a lead-based paint hazard but, instead, are designed solely to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

**Note:** While not an abatement activity, clearance must be conducted under s. HFS 163.14(6) by a certified lead (Pb) inspector or risk assessor and clearance levels met before abatement is finished.

SECTION 3. HFS 163.03 (3m) is created to read:

HFS 163.03 (3m) "Adequate quality control" means a plan or design which ensures the authenticity, integrity and accuracy of samples, including dust, soil and paint chip or paint film samples and includes provisions for representative sampling.

SECTION 4. HFS 163.03 (4) is amended to read:

HFS 163.03 (4) "Certification" means an approval status granted by the department to an individual or company meeting the conditions for certification under subchs. I and II.

SECTION 5. HFS 163.03 (8g), (8m), (8r), (8t), (9m), (10m), (11m) (13g), (13m), (14m), (18m), (19g), (19m), (22m), (25g), (25m) and (26) note are created to read:

HFS 163.03 (8g) "Clearance level" means the value that indicates the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(8m) "Common area" means a portion of a building or the building's real property that is generally accessible to all occupants.

**Note:** Examples of common areas are a hallway, stairway, laundry room, recreation room, playground, community center, garage and boundary fence.

(8r) "Component" or "building component" means a specific design or structural element or fixture of a building, residential dwelling or child-occupied facility that is distinguished from another by form, function or location.

**Note:** Examples of an interior component are ceiling, crown molding, wall, chair rail, door, door trim, floor, fireplace, radiator or other heating unit, shelf, shelf support, stair tread, stair riser, stair stringer, newel post, railing cap, balustrade, window and trim (including sash, window head, jamb, sill or stool and trough), built-in cabinet, column, beam, bathroom vanity, counter top and air conditioner.

Examples of an exterior component are painted roofing, chimney, flashing, gutter, downspout, ceiling, soffit, fascia, rake board, cornerboard, bulkhead, door and door trim, fence, floor, joist, lattice work, railing, railing cap, siding, handrail, stair riser, stair tread, stair stringer, column, balustrade, window sill, window stool, window trough or well, casing, sash and air conditioner.

(8t) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

**Note:** Examples of containment are a temporary structure built around an abatement site and a restricted area marked off with plastic, tape or signs.

(9m) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(10m) "Course test blue print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

(11m) "Deteriorated paint" means paint that is cracking, flaking, chipping, peeling or otherwise separating from the substrate of a building component.

(13g) "Distinct paint history" means the application history, as indicated by its visual appearance or a record of the application of paint or other surface coatings to a component or room.

(13m) "Documented methodologies" means generally used and accepted methods or protocols.

**Note:** Documented methodologies include the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control for Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines. To request federal documents, contact HUD USER by telephone at 800-245-2691 or the National Lead Information Clearinghouse by telephone at 800-424-5323 or by fax at (202) 659-1192.

(14m) "Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials or an adhesively bonded covering material.

(18m) "General supervision" means assistance and oversight provided by a person who is either onsite or in contact with and readily available to the person being supervised.

(19g) "Hands-on skills assessment" means an evaluation which tests a trainee's ability to satisfactorily perform work practices and hands-on activities, as well as any other skill taught in a training course.

(19m) "Hazardous waste" means a solid waste that fits the definition of hazardous waste in s. NR 605.04 and that is not excluded by the provisions of s. NR 605.05.

(22m) "Interim certification" means a temporary status the department may grant to an individual who has applied for lead (Pb) supervisor, inspector or risk assessor certification and is qualified to take a certification examination but is not yet eligible for initial certification.

(25g) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-based paint that is

deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects.

(25m) "Lead company" means a company, partnership, corporation, sole proprietorship, association or other entity that performs, supervises or offers to perform or supervise a lead-based paint activity.

(26) **Note:** The maximum amount of lead allowed in dust following an abatement project is specified in s. HFS 163.14(6)(h).

SECTION 6. HFS 163.03 (29) is amended to read:

HFS 163.03 (29) "Lead hazard reduction activity" means any action designed to permanently or temporarily reduce or eliminate human exposure to ~~lead~~lead-based paint hazards through methods that include abatement or interim control activities.

SECTION 7. HFS 163.03 (33m), (38g), (38m), (39m), (40g), (40m) and (42m) are created to read:

HFS 163.03 (33m) "Lead poisoning" means a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood.

(38g) "Living area" means any area of a residential dwelling or child-occupied facility used by one or more resident.

**Note:** Examples of living areas are living rooms, kitchen areas, dens, play rooms and children's bedrooms.

(38m) "Multi-family dwelling" means a structure that contains more than one separate residential dwelling unit which is used or occupied or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(39m) "Paint in poor condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, more than 2 square feet of deteriorated paint on interior components with large surface areas or that more than 10 percent of the total surface area is deteriorated on interior or exterior components with small surface areas.

**Note:** Examples of large surface areas are walls, ceilings, floors and doors. Examples of small surface areas are window sills, baseboards, soffits and trim.

(40g) "Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch and other landscaping materials are not considered permanent covering.

(40m) "Person" means any natural or judicial person including any individual, corporation, partnership or association, any body politic or corporate, any Indian tribe or any state or political subdivision of a state, any interstate body or any department, agency or other instrumentality of the federal government.

(42m) "Recognized laboratory" means an environmental laboratory recognized by the department as being capable of performing an analysis for lead compounds in paint, soil and dust based on its accreditation by the national lead laboratory accreditation program (NLLAP).

**Note:** To obtain a list of recognized laboratories, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. The National Lead Information Center (NLIC) Clearinghouse updates the NLLAP list on a monthly basis. Updated copies may be obtained by calling NLIC at 1-800-424-5323.

SECTION 8. HFS 163.04 is repealed.

SECTION 9. HFS 163.10 is repealed and recreated to read:

**HFS 163.10 CERTIFICATION OF AN INDIVIDUAL.** (1) REQUIREMENT. Only an individual certified by the department under this chapter may do any of the following:

(a) Perform, supervise or offer to perform or supervise an abatement, lead inspection, lead hazard screen, risk assessment, clearance or project design involving one of the following:

1. A child occupied facility or the real property on which the child-occupied facility stands.
2. Target housing or the real property on which the target housing stands when the target housing or real property is not owned by the individual performing the work.
- 3 Target housing or the real property on which the target housing stands when the target housing or real property is rented or occupied by an individual other than the target housing's owner or the owner's immediate family.
- 4 Target housing or the real property on which the target housing stands when a child residing in the target housing has been identified as having a confirmed concentration of 20 or more micrograms of lead per deciliter ( $\mu\text{g}/\text{dl}$ ) of whole blood for a single venous test or a concentration of 15-19  $\mu\text{g}/\text{dl}$  in 2 consecutive tests taken 3 to 4 months apart.

(b) Perform interim controls when funded by a HUD lead-based paint grant.

(c) Perform a lead hazard reduction when certification is required under an order issued by a court, the department, another state agency or a local agency.

**Note:** Certification requirements under this chapter do not preclude a person from requiring certification under this chapter in a contract for services. For the requirement that a company be certified to perform, supervise or offer to perform or supervise a lead-based paint activity, see s. HFS 163.105.

(2) **DISCIPLINES.** Certification of individuals shall be specific to one of the following disciplines:

(a) **Lead (Pb) inspector.** A certified lead (Pb) inspector may conduct lead inspections, write inspection reports and conduct clearance following a lead hazard reduction activity.

(b) **Lead (Pb) project designer.** A certified lead (Pb) project designer may design lead hazard reduction projects, develop occupant protection plans and write lead hazard reduction reports.

(c) **Lead (Pb) risk assessor.** A certified lead (Pb) risk assessor may perform the duties of a lead (Pb) inspector, conduct lead hazard screens and risk assessments, write risk assessment reports and provide options to reduce specific lead hazards.

(d) **Lead (Pb) supervisor.** A certified lead (Pb) supervisor may supervise or perform on-site lead hazard reduction activities, develop occupant protection plans and write lead hazard reduction reports.

(e) **Lead (Pb) worker.** A certified lead (Pb) worker may perform on-site lead hazard reduction activities, but only under the direct supervision of a certified lead (Pb) supervisor.

(f) **Lead (Pb) worker-homeowner.** A certified lead (Pb) worker-homeowner may perform lead hazard reduction activities in the homeowner's own nonrental dwelling or real property. When certification is required under sub. (3), the homeowner-worker shall be under the general supervision of a certified lead (Pb) supervisor.

(3) **CONDITIONS FOR INITIAL CERTIFICATION.** (a) Summary. An individual applying for initial certification in any discipline identified under sub. (2) shall be 18 years of age or older, shall meet applicable education and experience qualifications under par. (b), shall successfully complete certification training requirements under s. HFS 163.12 and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, shall pass a certification examination under par. (c). To apply for certification, the applicant shall submit to the department an application under sub. (4) and include the applicable fee under s. HFS 163.11.

(b) Education and experience. 1. 'Requirement.' An applicant for initial certification as a lead (Pb) project designer, risk assessor or supervisor shall meet the applicable education and experience qualifications in this paragraph in addition to the certification training requirements under s. HFS 163.12.

2. 'Project designer.' An applicant for lead (Pb) project designer certification shall meet or exceed one of the following:

- a. Have a bachelor's degree in engineering, architecture or a related profession and have one year of experience in building construction and design or a related field.
- b. Have 4 years of experience in building construction and design or a related field.

3. 'Risk assessor.' An applicant for lead (Pb) risk assessor certification shall meet or exceed one of the following:

- a. Have a bachelor's degree and one year of experience in a related field, such as lead, asbestos, environmental remediation work or construction.
- b. Have an associate's degree and 2 years of experience in a related field such as lead, asbestos, environmental remediation work or construction.
- c. Have a high school diploma or equivalent and 3 years of experience in a related field, such as lead, asbestos, environmental remediation work or construction.
- d. Hold professional certification as an industrial hygienist, professional engineer or registered architect or in a related professional engineering, health or environmental field, such as safety professional or environmental scientist.

4. 'Supervisor.' An applicant for lead (Pb) supervisor certification shall meet or exceed one of the following:

- a. Have one year of experience as a certified lead (Pb) worker or supervisor.
- b. Have 2 years of experience in a related field, such as lead, asbestos, environmental remediation work or in the building trades, such as construction.

(c) Certification examination for lead (Pb) inspectors, risk assessors and supervisors. 1. 'Requirement.' To be certified, an applicant for initial certification as a lead (Pb) inspector, risk assessor or supervisor shall do one of the following:

- a. Pass a certification examination administered by the department or by a person authorized by the department to administer the certification examination under the department's direction or with the department's approval. A training provider may not administer a certification examination, except that the department may be a training provider and also administer a certification examination.

- b. Successfully demonstrate knowledge of subchs. 1, II and IV of this chapter if the individual previously passed a certification examination administered by EPA, another EPA-authorized state or an EPA-authorized tribe and currently possesses an applicable



certification card or license issued by EPA, another EPA-authorized state or an EPA-authorized tribe. To demonstrate knowledge of subchs. 1, II and IV of this chapter, the applicant shall obtain a regulation worksheet and regulations from the department, shall accurately complete the worksheet with information from the regulations and shall submit the worksheet to the department with the certification application.

**Note:** To obtain a copy of the worksheet and regulations, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed worksheet, application and fees to the same office.

2. 'Timing of certification examination.' a. Applicant with interim certification. An applicant for initial certification to whom the department granted interim certification under sub. (5) (b) shall take the next available certification examination offered at a reasonably accessible location, as determined by the department. The applicant with interim certification may take the certification examination a maximum of 3 times within 6 months after completing an approved training course for the discipline under s. HFS 163.12. If an applicant does not pass the certification examination and become certified by the department within this 6-month period, the individual shall retake the initial training course before reapplying for certification.

b. Applicant without interim certification. An applicant for initial certification who chooses not to seek interim certification or who is not eligible for interim certification, but who meets the certification examination prerequisites under subd. 3., shall take a certification examination offered at a reasonably accessible location, as determined by the department. The applicant without interim certification may take the certification examination a maximum of 3 times within 6 months after the date the department receives the individual's registration. If an applicant does not pass the certification examination and become certified by the department within this 6-month period, the individual shall retake the initial training course before reapplying for certification.

3. 'Certification examination prerequisites.' To be registered to take a certification examination, an applicant for initial certification shall do both of the following:

a. Meet the age, education and experience, and training conditions for initial certification under this section.

b. Register for the certification examination by submitting to the department a completed application for certification under sub. (4) and the registration fee under s. HFS 163.11.

**Note:** To obtain a copy of the certification application, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed application and fees to the same office.

4. 'Rescheduling a certification examination.' If unable to take the certification examination at the time or date scheduled by the department, the applicant may

reschedule the certification examination at another time or date without payment of an additional fee if the applicant requests the transfer not less than one work day prior to the scheduled certification examination. The certification examination fee is not refundable.

(4) **APPLICATION FOR INITIAL CERTIFICATION.** An individual applying for initial certification shall submit all of the following to the department:

(a) **Application form.** A fully and accurately completed application on a form obtained from the department. The applicant shall personally sign the application affidavit verifying the accuracy of the information.

(b) **Photograph.** A recent, clearly identifiable photograph of the applicant's face in a standard passport size of 2" x 2".

(c) **Verification of birth date.** A document that verifies the applicant's birth date, such as a birth certificate.

(d) **Documentation of training.** 1. Copies of all previous training certificates for required courses under s. HFS 163.12. The copy of the most current training certificate shall be notarized as a true copy of the original certificate.

2. Except for an applicant for worker-homeowner certification, documentation of worker safety training under s. HFS 163.12 (5) on a form obtained from or approved by the department.

(e) **Documentation of education and experience.** For certification as a lead (Pb) project designer, risk assessor or supervisor, an affidavit of education and experience required under sub. (3) (b) on a form obtained from the department. The applicant also shall be prepared to submit one or more of the following if requested:

1. 'Education.' For documentation of education, an official transcript or diploma.

2. 'Experience.' For documentation of experience, information describing the relevant experience, which shall include the month and year the experience began and the month and year the experience ended and which may include one or more of the following:

a. A resume describing the relevant experience.

b. A letter describing the tasks performed by the individual and signed by the employer where the experience was obtained.

c. Letters of reference from individuals with competent knowledge of the applicant's experience.

- d. Copies of inspection reports prepared by the applicant.
- e. Copies of certifications issued by other jurisdictions which allowed the individual to perform related work.

3. 'Other professional certification.' For documentation of other professional certification, a copy of the certification, notarized as a true copy of the original document.

(f) Fees. 1. The appropriate certification fee under s. HFS 163.11 or a written request for a government certification fee exemption under s. HFS 163.11 (1). To request an exemption, the applicant shall complete the exemption section of the application and submit a letter from the employing agency describing the job duties that qualify an employe for a certification fee exemption.

2. For lead (Pb) inspector, risk assessor or supervisor initial certification, a certification examination registration fee under s. HFS 163.11.

**Note:** For copies of the application form, worker-safety training form or affidavit of education and experience, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed application and fee to the same office.

(5) **ACTION BY THE DEPARTMENT.** (a) Time limit. Within 10 work days after receipt of a fully and accurately completed certification application, as specified in sub. (4), the department shall grant interim or initial certification or shall deny certification.

(b) Grant interim certification. If an individual applies for lead (Pb) inspector, risk assessor or supervisor certification, meets all of the certification examination prerequisites under sub. (3) (c) 3. and is registered for, but has not passed, the certification examination for the discipline, the department may grant interim certification. When interim certification is granted, the department shall issue or arrange for the issuance of an interim certification card for the appropriate specific discipline under sub. (2). Interim certification may be granted only once per discipline.

**Note:** When interim certification is granted, the department will also register the applicant for a certification examination and send the applicant information regarding the scheduled certification examination.

(c) Grant initial certification. If an individual applies for certification and meets all of the conditions for initial certification under sub. (3), the department may grant initial certification. When certification is granted, the department shall issue or arrange for the issuance of a certification card for the appropriate specific discipline under sub. (2).

(d) Deny certification. If certification is denied, the department shall give the applicant a written explanation for the denial and shall notify the applicant of the right to appeal that decision under s. HFS 163.05.

(6) LENGTH OF INTERIM AND INITIAL CERTIFICATION. (a) Interim certification. Interim certification shall remain valid for a maximum of 6 months after the completion date of the most recent training course for the discipline under s. HFS 163.12.

(b) Initial certification. Initial certification shall remain valid for a maximum of 3 years after the completion date of the most recent training course for the discipline under s. HFS 163.12, depending on the fee paid and compliance with training and other certification requirements under this subchapter. The department may not grant a certification expiration date that extends 12 months or more beyond the date the applicant is required to complete refresher training for the discipline.

(7) RECERTIFICATION OF AN INDIVIDUAL. (a) Requirement. No individual certified under this subchapter may perform a lead-based paint activity for which certification is required after the expiration date on that individual's certification card until the individual is recertified by the department and possesses a new, unexpired certification card.

(b) Conditions. To be recertified, the individual shall:

1. Be in compliance with all requirements of subch. I and this subchapter.
2. Be current with the certification training requirements under s. HFS 163.12.
3. Submit an application for recertification to the department under par. (c) and include the appropriate certification fee under s. HFS 163.11.
4. Pass a certification examination under sub. (3) (c) when one of the following applies:
  - a. The department requires the individual to pass the certification examination because the department has reason to believe a training course or training certificate does not meet all requirements of this chapter.
  - b. The applicant for recertification as a lead (Pb) inspector, risk assessor or supervisor has not previously passed a certification examination under sub. (3) (c) 1.

**Note:** To request a certification exam registration form, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed registration form and fee to the same office.

(c) Application. An applicant for recertification shall submit all of the following to the department:

1. 'Application form.' A fully and accurately completed application on a form obtained from the department. The applicant shall personally sign the application affidavit verifying the accuracy of the information.

2. 'Photograph.' A recent, clearly identifiable photograph of the applicant's face in a standard passport size of 2" x 2".

3. 'Training certificates.' A copy of any training certificate which was not previously submitted for training required under s. HFS 163.12. The copy of the training certificate shall be notarized as a true copy of the original certificate.

4. 'Fee.' The appropriate certification fee under s. HFS 163.11 or, if requesting a government fee exemption under s. HFS 163.11 (1), a letter from the employing agency describing the job duties that qualify the employe for a fee exemption.

**Note:** For a copy of the application form, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed application and fee to the same office.

(d) Action by the department. 1. 'Time limit.' Within 10 work days after receipt of a fully and accurately completed application for recertification, the department shall grant or deny recertification.

2. 'Grant recertification.' If an individual applies for recertification and meets the conditions for recertification under par. (b), the department may grant recertification. When recertification is granted, the department shall issue or arrange for the issuance of a certification card for the appropriate specific discipline under sub. (2).

3. 'Deny recertification.' If recertification is denied, the department shall give the applicant a written explanation for the denial and shall notify the applicant of the right to appeal that decision under s. HFS 163.05.

(e) Length of recertification. Recertification shall extend the individual's certification expiration date a maximum of 3 years depending on the fee paid and compliance with training and other certification requirements under this subchapter.

SECTION 10. HFS 163.105 is created to read:

**HFS 163.105 CERTIFICATION OF A COMPANY.** (1) REQUIREMENT. Only a company certified by the department as a lead (Pb) company under this chapter may perform, supervise or offer to perform or supervise a lead-based paint activity.

(2) CONDITIONS FOR CERTIFICATION. To be certified as a lead (Pb) company, a company shall do all of the following:

(a) Submit a completed application under sub. (3).

(b) Agree to employ only appropriately certified employees to perform or supervise lead-based paint activities.

(c) Agree that all company employees will follow the work practice standards under s. HFS 163.14.

(d) Have an owner, officer or employe of the company who is authorized to act on the company's behalf certified as a lead (Pb) supervisor before providing lead hazard reduction services.

(e) Have an owner, officer or employe of the company who is authorized to act on the company's behalf certified as a lead (Pb) risk assessor before providing lead management services.

(3) APPLICATION FOR CERTIFICATION. A company seeking certification shall submit to the department a fully and accurately completed application on a form obtained from the department. The application shall include the name of any individual certified under sub. (2) (d) or (e) and a signed statement attesting that the company will employ only appropriately certified employees to conduct or supervise lead-based paint activities and that the company and its employees will follow the work practice standards in s. HFS 163.14 for conducting lead-based paint activities. The statement shall be signed by an owner or officer of the company.

**Note:** For a copy of the application form, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed application and fee to the same office.

(4) ACTION BY THE DEPARTMENT. (a) Time limit. Within 10 work days after receipt of a fully and accurately completed certification application, the department shall grant or deny a company's request for certification.

(b) Grant certification. If the department grants lead (Pb) company certification, the department shall issue a certificate of approval.

(c) Deny certification. If the department denies lead (Pb) company certification, the department shall give the company a written explanation for the denial and shall notify the company of the right to appeal that decision under s. HFS 163.05.

(5) LENGTH OF COMPANY CERTIFICATION. A company's certification shall remain valid for a maximum of 3 years from the date of issuance, depending on compliance with this chapter.

(6) RECERTIFICATION OF A COMPANY. (a) Requirement. A lead company certified under this subchapter may not perform, supervise or offer to perform or supervise a lead-based paint activity for which certification is required after that

company's certification expires until the company is recertified by the department and possesses a new, unexpired certificate of approval.

(b) Conditions. To be recertified, the company shall:

1. Be in compliance with all requirements of this chapter.
2. Submit an application for recertification to the department under par. (c).

(c) Application. A company applying for recertification shall submit to the department a fully and accurately completed application on a form obtained from the department. The application shall include a signed statement attesting that the company will employ only appropriately certified employees to conduct or supervise lead-based paint activities, and that the company and its employees will follow the work practice standards in s. HFS 163.14 for conducting lead-based paint activities. The statement shall be signed by an owner or officer of the company. In the application, the company may designate an employee who is authorized to act on the company's behalf.

**Note:** For a copy of the application form, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711. Return the completed application and fee to the same office.

(d) Action by the department. 1. 'Time limit.' Within 10 work days after receipt of a fully and accurately completed application for recertification, the department shall grant or deny a company's request for recertification.

2. 'Grant recertification.' If the department grants recertification to a lead (Pb) company, the department shall issue a certificate of approval to extend certification for a maximum of 3 years, depending on compliance with this chapter.

3. 'Deny recertification.' If the department denies recertification to a lead (Pb) company, the department shall give the company a written explanation for the denial and shall notify the company of the right to appeal that decision under s. HFS 163.05.

SECTION 11. HFS 163.12 and 163.13 are repealed and recreated to read:

**HFS 163.12 CERTIFICATION TRAINING REQUIREMENTS.** To be certified under subch. I and this subchapter as a lead (Pb) inspector, project designer, risk assessor, supervisor, worker or worker-homeowner, an individual shall meet all of the following training requirements:

(1) APPROVED TRAINING COURSES. The individual shall complete one of the following department-approved training courses:

(a) A training course accredited by the department under subch. III.

(b) A training course offered in another state that is accredited by that state if the state is EPA-authorized, by an EPA-authorized tribal program or by EPA, and that is approved by the department as being as protective as the accreditation requirements under subch. III.

(c) An EPA-sponsored training course from a regional lead (Pb) training center or an approved member of the center's consortium when the course was completed prior to March 1, 1999.

(d) A training course offered in another state that is accredited by that state and is comparable to the accreditation requirements under subch. III when the course was completed prior to March 1, 1999.

(2) INITIAL TRAINING. (a) The individual shall have successfully completed a department-approved initial training course and passed a course test in the discipline in which certification is sought and shall have successfully completed any prerequisite training course and course test as follows:

1. For certification as a lead (Pb) inspector, worker safety training under sub. (5) prior to an initial lead inspector course.

2. For certification as a lead (Pb) risk assessor, training under subd. 1. prior to an initial lead risk assessor course.

3. For certification as a lead (Pb) project designer, training under subd. 4. prior to an initial lead project designer course.

4. For certification as a lead (Pb) supervisor, training under subd. 5. prior to an initial lead supervisor course.

5. For certification as a lead (Pb) worker, worker safety training under sub. (5) prior to an initial lead worker course.

(b) For certification as a lead (Pb) worker-homeowner, an individual shall have successfully completed a department-approved initial lead worker-homeowner or a lead worker course and passed a course test in the discipline.

(3) REFRESHER TRAINING. (a) Requirement for refresher training. The individual shall remain current with training by completing the applicable refresher training course under par. (b) no later than 3 years after completing the initial training course and each subsequent refresher training course within 3 years after completing the previous training course.

**Note:** To be certified or licensed to perform lead-based paint activities in another state, refresher training may be required annually or every other year instead of every 3 years.



(b) Required refresher courses. The individual shall successfully complete department-approved refresher training courses, as follows:

1. For certification as a lead (Pb) inspector, a lead inspector refresher course.
2. For certification as a lead (Pb) risk assessor, a lead inspector refresher course and a lead risk assessor refresher course.
3. For certification as a lead (Pb) project designer, a lead project designer refresher course.
4. For certification as a lead (Pb) supervisor, a lead supervisor refresher course.
5. For certification as a lead (Pb) worker, a lead worker refresher course.
6. For certification as a lead (Pb) worker-homeowner, a lead worker-homeowner refresher course or a lead worker refresher course.

(c) Retaking initial training. When an individual fails to take a refresher course within 3 years of previous training, the individual is not in compliance with certification requirements and may not perform services for which certification is required. Before performing services for which certification is required, the individual shall comply with the following:

1. If the individual's training is past due and certification has not expired, the individual shall complete a refresher training course.
2. If the individual's training is past due and certification has expired, the individual shall complete an initial training course.

(4) TRAINING CERTIFICATES. The individual shall retain an original training certificate for each required training course completed.

(5) WORKER-SAFETY TRAINING. (a) Requirement for worker-safety training. As a prerequisite for lead training under sub. (2) (a), an individual shall have successfully completed worker-safety training.

(b) Content of worker-safety training. Worker-safety training shall cover information required for persons working with lead in construction under federal occupational and safety health administration (OSHA) standards and shall include all of the following topics as appropriate for the discipline:

1. Personal protection equipment, including equipment uses and limitations, respiratory protection, respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, filter use, protective clothing and equipment, hygiene practices and hands-on practice in use of personal protective equipment.

2. Worker safety, including Material Safety Data Sheets (MSDS), respiratory protection program, basic lead (Pb) engineering controls, trips and falls, heat stress, scaffold and ladder hazards, electrical hazards and fire hazards.

**Note:** To request a form to document completion of worker-safety training or to request additional information on the OSHA lead training standards under 29 CFR 1926.62, write or phone the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Avenue, Madison, WI 53703-3043; (608) 261-6876 or fax (608) 266-9711.

**HFS 163.13 RESPONSIBILITIES OF CERTIFIED PERSONS.** (1) **MAY NOT REFUSE ENTRY.** No person at a site where a lead (Pb) company conducts business or the site of a lead-based paint activity may refuse entry to any representative of the department acting under the authority of s. HFS 163.30 (3).

(2) **REQUIREMENT FOR VALID CARD ON SITE.** Only a Wisconsin lead (Pb) certification card is valid in this state for performing a lead-based paint activity. Each individual performing a lead-based paint activity for which certification is required shall have a valid unexpired certification card at the job site whenever performing a lead-based paint activity.

(3) **REQUIREMENT TO PASS CERTIFICATION EXAMINATION.** To maintain certification, a lead (Pb) inspector, risk assessor or supervisor certified by the department prior to August 31, 1998, shall pass the certification examination under s. HFS 163.10 (3) (c) prior to August 31, 1999.

(4) **RESPONSIBILITY FOR TRAINING CERTIFICATE AND CERTIFICATION CARD.** The individual to whom a training certificate is issued by a training manager and a certification card is issued by the department is responsible for that training certificate and certification card. They are not the property of that individual's employer. The employer may not confiscate an employee's training certificate or certification card and may be subject to an enforcement action under s. HFS 163.32 for violating this subsection.

(5) **RESPONSIBILITY FOR VERIFICATION OF CERTIFICATION.** The employer of individuals conducting a lead-based paint activity shall verify the certification status of individuals performing or supervising those activities before the start of each project and may not make use of non-certified lead (Pb) inspectors, project designers, risk assessors, workers or supervisors to perform a lead-based paint activity for which certification is required.

(6) **SUMMARY OF LEAD IDENTIFICATION ACTIVITIES.** (a) Requirement for summary. A person conducting a lead inspection, lead hazard screen or lead risk assessment on or after August 31, 1998, for which a certified lead (Pb) inspector or risk assessor is required, shall submit to the department a summary of the lead

identification activity conducted on a form obtained from or approved by, the department.

(b) Summary period. Each summary shall cover a three-month period as follows:

1. January through March.
2. April through June.
3. July through September.
4. October through December.

(c) Submittal date. The summary shall be submitted to the department on or before the last day of the month following the end of the summary period.

**Note:** Reports are due the last day of January, April, July and October for the previous quarter.

(d) Content of summary. The summary shall include the name, address, telephone number and certification identification number of the lead (Pb) company reporting and all of the following information for each lead identification activity conducted:

1. Date the lead identification activity was conducted.
2. Street address and city or fire address of the dwelling or child-occupied facility where the lead identification activity was conducted.
3. Name and lead certification identification number of the individual or individuals conducting the lead identification activity.
4. Type of lead identification activity conducted.
5. The result of the lead identification activity.

**Note:** To request a summary form, to request approval of an alternative form or to submit a summary, fax to (608) 266-9711 or mail to the Asbestos and Lead Unit, Bureau of Public Health, Room 117, 1414 E. Washington Ave., Madison, WI 53703-3043.

(7) **WORK PRACTICE STANDARDS**. Upon receiving certification, individuals and lead (Pb) companies shall conduct activities in a manner that does not increase the hazards of lead-based paint to building occupants and, beginning March 1, 1999, shall comply with the work practice standards under s. HFS 163.14 when performing a lead-based paint activity or an activity described as an inspection, lead-hazard screen, risk assessment, abatement or clearance.

SECTION 12. HFS 163.14 is hereby repealed and recreated to read:

**HFS 163.14 WORK PRACTICE STANDARDS. (1) EFFECTIVE DATE AND APPLICABILITY.** Beginning March 1, 1999, all lead-based paint activities, including abatement, lead hazard reduction funded by a HUD lead-based paint grant, clearance, inspection, lead hazard screen, risk assessment, project design and development of an occupant protection plan, shall be conducted according to the procedures and work practice standards contained in this section.

**(2) INSPECTION.** Only a certified lead (Pb) inspector or risk assessor may perform an inspection. In performing an inspection, the certified lead (Pb) inspector or risk assessor shall comply with all of the following:

(a) Select the following locations by using documented methodologies and test for the presence of lead-based paint:

**Note:** Refer to the note under s. HFS 163.03 (13m) for examples of documented methodologies.

1. In a residential dwelling or child-occupied facility, test each interior component with a distinct paint history and each exterior component with a distinct paint history, except those components that the inspector or risk assessor determines have been replaced after 1978 or do not contain lead-based paint.

2. In a multi-family dwelling or child-occupied facility, test each component with a distinct paint history in every common area, except those components that the inspector or risk assessor determines have been replaced after 1978 or do not contain lead-based paint.

(b) Conduct paint analysis by using one or both of the following methods:

1. Analyze paint to determine the presence of lead by using documented methodologies which incorporate adequate quality control procedures.

2. Have all collected paint chip samples analyzed by a recognized laboratory under sub. (7) to determine if they contain detectable levels of lead that can be quantified numerically.

(c) Following an inspection, prepare a written inspection report for submission to the property owner who contracted for the inspection. The report shall include all of the following information:

1. Date of the inspection.
2. Address of building.
3. Date of construction.

4. Apartment numbers, if applicable.

5. Name, address and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

6. Name, address, telephone number, certification number and signature of each certified inspector and risk assessor conducting the inspection.

7. Name, address, telephone number and certification number of the certified lead (Pb) company employing the certified inspector and risk assessor conducting the inspection.

8. Each testing method and device and each sampling procedure used for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.

9. Specific locations of each painted component tested for the presence of lead-based paint.

10. The results of the inspection expressed in terms appropriate to the sampling method used.

(3) **LEAD HAZARD SCREEN.** Only a certified lead (Pb) risk assessor may perform a lead hazard screen. In performing a lead hazard screen, the certified lead (Pb) risk assessor shall comply with all of the following:

(a) Collect background information on the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under 6 years of age.

(b) Conduct a visual inspection of the residential dwelling or child-occupied facility to accomplish both of the following:

1. Determine if any deteriorated paint is present.

2. Locate at least 2 dust sampling locations.

(c) If deteriorated paint is present, use documented methodologies to test each surface with deteriorated paint which the risk assessor determines is in poor condition and has a distinct paint history.

**Note:** Refer to the note under s. HFS 163.03 (13m) for examples of documented methodologies.

(d) In residential dwellings, use the standards under sub. (8) to collect 2 composite dust samples, one from the floors and the other from the windows, in rooms, hallways

or stairwells where one or more children under 6 years of age are most likely to come into contact with dust.

(e) In multi-family dwellings and child-occupied facilities, use the standards under sub. (8) to collect composite dust samples from common areas where one or more children under 6 years of age are most likely to come into contact with dust in addition to the samples collected under par. (d).

(f) Collect all dust samples by using documented methodologies that incorporate adequate quality control procedures.

(g) Have all collected dust samples analyzed by a recognized laboratory under sub. (7) to determine if they contain detectable levels of lead that can be quantified numerically.

(h) Conduct paint analysis using one or both of the following methods:

1. Conduct the analysis of paint to determine the presence of lead by using documented methodologies which incorporate adequate quality control procedures.

2. Have all collected paint chip samples analyzed by a recognized laboratory under sub. (7) to determine if they contain detectable levels of lead that can be quantified numerically.

(i) Following a lead hazard screen, prepare a written lead hazard screen report for submission to the property owner who contracted for the lead hazard screen. The report shall include all of the following information:

1. Date of the lead hazard screen.

2. Address of each building.

3. Date of construction of buildings.

4. Apartment number, if applicable.

5. Name, address and telephone number of each owner of each building.

6. Name, address, telephone number, certification number and signature of the certified risk assessor conducting the lead hazard screen.

7. Name, address, telephone number and certification number of the certified lead (Pb) company employing each certified risk assessor conducting the lead hazard screen.

8. Name, address and telephone number of each recognized laboratory conducting analysis of collected samples.

9. Background information collected under par. (a).

10. Results of the visual inspection.

11. Description of testing method and sampling procedure used for paint analysis.

12. Specific locations of each painted component tested for the presence of lead.

13. All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

14. All results of laboratory analysis on collected paint, soil and dust samples.

15. Any other sampling results.

16. Recommendations, if warranted, for a follow-up risk assessment and as appropriate, any further actions.

(4) **RISK ASSESSMENT.** Only a certified lead (Pb) risk assessor may perform a risk assessment. In performing a risk assessment, the certified lead (Pb) risk assessor shall comply with all of the following:

(a) Conduct a visual inspection for risk assessment of the residential dwelling or child-occupied facility to locate the existence of deteriorated paint, assess the extent and causes of the deterioration and identify other potential lead-based paint hazards.

(b) Collect background information on the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under 6 years of age.

(c) Select and test all of the following locations for the presence of lead by using documented methodologies:

1. Each surface with deteriorated paint that is determined to be in poor condition and to have a distinct paint history.

2. Any other surface that is determined to be a potential lead-based paint hazard and to have a distinct paint history.

**Note:** Refer to the note under s. HFS 163.03 (13m) for examples of documented methodologies.

(d) In residential dwellings, collect single-surface dust samples or use the standards under sub. (8) to collect composite dust samples from the window and floor

in each living area where a child under 6 years of age is likely to come into contact with dust.

(e) For multi-family dwellings and child-occupied facilities, collect single-surface dust samples or use the standards under sub. (8) to collect composite dust samples from the window and floor in both of the following locations:

1. Common areas adjacent to the sampled residential dwelling or child-occupied facility.

2. Other common areas in the building where the risk assessor determines that one or more children under 6 years of age are likely to come into contact with dust.

(f) For child-occupied facilities, collect single-surface dust samples or use the standards under sub. (8) to collect composite dust samples in each room, hallway or stairwell used by one or more children under 6 years of age and in other common areas in the child-occupied facility where the risk assessor determines that one or more children under 6 years of age are likely to come into contact with dust.

(g) Collect soil samples for analysis of lead concentrations in both of the following locations:

1. Exterior play areas where bare soil is present.

2. Dripline and foundation areas where bare soil is present.

(h) Conduct any paint, dust or soil sampling or testing using documented methodologies that incorporate adequate quality control procedures.

(i) Have any collected paint chip, dust or soil samples analyzed by a recognized laboratory under sub. (7) to determine if they contain detectable levels of lead that can be quantified numerically.

(j) Following a risk assessment, prepare a written risk assessment report for submission to the property owner who contracted for the risk assessment. The report shall include all of the following information:

1. Date of the risk assessment.

2. Address of each building.

3. Date of construction of buildings.

4. Apartment number, if applicable.

5. Name, address and telephone number of each owner of each building.



6. Name, address, telephone number, certification number and signature of the certified risk assessor conducting the risk assessment.

7. Name, address, telephone number and certification number of the certified lead (Pb) company employing each certified risk assessor conducting the risk assessment.

8. Name, address and telephone number of each recognized laboratory conducting analysis of collected samples.

9. Results of the visual inspection.

10. Description of testing method and sampling procedure used for paint analysis.

11. Specific locations of each painted component tested for the presence of lead.

12. All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

13. All results of laboratory analysis on collected paint, soil and dust samples.

14. Any other sampling results.

15. Any background information collected under par. (b).

16. To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint or other assessments of lead-based paint-related hazards.

17. A description of the location, type and severity of identified lead-based paint hazards and any other potential lead hazards.

18. A description of interim controls or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

**Note:** The work practice standards under this subsection do not apply to an environmental investigation conducted in response to a child with lead poisoning. An environmental investigation has a different purpose and, therefore, a different scope and process than a risk assessment. Guidance for conducting an environmental investigation in response to a child with lead poisoning is available in the Wisconsin Childhood Lead Poisoning Prevention & Control Handbook which the department provides to local public health agencies.

(5) **ABATEMENT.** Only a certified lead (Pb) supervisor, worker, worker-homeowner or project designer may perform abatement. In performing abatement, the

certified lead (Pb) supervisor, worker, worker-homeowner or project designer shall comply with all of the following:

(a) Requirement for supervision of a worker. A certified lead (Pb) supervisor shall provide direct supervision when a lead (Pb) worker performs lead abatement or other lead hazard reduction work requiring certification.

(b) Requirement for supervision of a worker-homeowner. A certified lead (Pb) supervisor shall provide general supervision for a certified lead (Pb) worker-homeowner when certification is required under s. HFS 163.10 (1) to perform abatement in the homeowner's own nonrental dwelling or real property. General supervision includes being onsite during all work site preparation and the post-abatement cleanup of work areas and being either onsite or available by telephone, pager or answering service and able to be present at the work site in no more than 2 hours at all other times when abatement activities are being performed.

(c) Requirement for ensuring compliance. A certified lead (Pb) supervisor and the certified company employing that supervisor shall ensure that all abatement activities are conducted in a manner that does not increase lead-based paint hazards to the occupant of the dwelling or child-occupied facility and are conducted according to the requirements of this section and all other federal, state and local government requirements.

(d) Requirement for notification of abatement. Before performing a lead hazard reduction activity for which certification is required, a lead (Pb) company's supervisor certified under s. HFS 163.105 (2) (d) or a certified worker-homeowner shall notify the department of the activity as follows:

1. 'Original notice.' Except as provided under subd. 2, the supervisor or worker-homeowner shall submit written or verbal notification for receipt by the department not less than 2 work days before the start of the activity.

2. 'Emergency notification.' In an emergency where a health risk warrants immediate action, a supervisor or worker-homeowner shall make an emergency notification for receipt by the department before the start of the activity.

3. 'Revised notice.' a. To change the project start date on an existing notice, the supervisor or worker-homeowner shall submit a revised notification for receipt by the department not less than 2 work days before the activity begins if the new start date is earlier than the original start date or a minimum of one work day before the original start date if the new start date is later than the original start date.

b. To change in the project end date on an existing notice, the supervisor or worker-homeowner shall submit a revised notification as soon as the change is determined, but no later than the original end date.