

J.C.R.A.R. HEARING SLIP

(Please Print Plainly)

DATE: 3/24/99

CHR-NO. 98-155

OR

SUBJECT Em. Rule HFS 163

Gail Boushon & Paul Mense
(NAME)

1414 E Washington Ave Rm 117
(Street Address or Route Number)

Madison WI 53703
(City and Zip Code)

HFS
(Representing)

Speaking in Favor of the Rule:
(i.e. against objection or the rule suspension)

Speaking Against the Rule:
(i.e. in favor of objection or suspension)

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
Room 109-LL One East Main
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/4/99

BILL NO. _____

OR

SUBJECT C.R. 98-155

Gail Boushon & John Kress
(NAME)

1414 E Washington Ave Rm 117
(Street Address or Route Number)

Madison WI 53703
(City and Zip Code)

Dept. of Health & Family Services
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-155

AN ORDER to repeal and recreate chapter 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.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

10-19-98 RECEIVED BY LEGISLATIVE COUNCIL.
11-13-98 REPORT SENT TO AGENCY.

RS:AS:jal;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-155

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Under s. 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.

b. Section HFS 163.30 (3) (a) permits the department to inspect the premises where any violation of ch. HFS 163 is alleged to be occurring or to have occurred. Section 254.30 (1) (a), Stats., 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." Therefore, under s. 254.30 (1) (a), Stats., the authority of the department to enter premises is not as broad as the rule provides. For example, the department is not permitted to enter the premises of a training provider under that statute in order to investigate a violation. In view of the specificity of s. 254.30 (1) (a), Stats., what statutory authority exists for the broad power asserted in s. HFS 163.30 (3) (a)?

2. Form, Style and Placement in Administrative Code

a. Section titles are written with an initial capital letter and in bold print. [s. 1.05 (2) (b), Manual.] Paragraph titles should not be underlined and should be italicized. [s. 1.05 (2) (d), Manual.]

b. In s. HFS 163.10 (8), the Note following par. (a) should be incorporated into the body of the rule.

c. In s. HFS 163.11 (5) (b) 2., "Material Safety Data Sheets" should not be capitalized.

d. In s. HFS 163.12, subs. (6), (7) and (8) should be combined into one subsection or one separate section of the rule.

e. In s. HFS 163.14 (5) (f), it appears that subd. 1. d. should be renumbered as subd. 1. c. In par. (h), the phrase "High Efficiency Particulate Air" should be shown all in lower case.

f. In s. HFS 163.14 (5) (h) 2., "High Efficiency Particulate Air" should not be capitalized. Also, if the drafter wishes to use "HEPA," it should be defined in s. HFS 163.03.

g. In s. HFS 163.20 (8) (a) 4., subd. par. 1. should be written as subd. par. L. This comment also applies to s. HFS 163.31 (4) (L) and sub. (4) (L) of Appendix A.

h. Section HFS 163.24 (3) (e) 2. should be written as an introduction to the subsequent subdivision paragraphs or should be numbered subd. par. a. This comment also applies to sub. (4) (e) 2. (intro.).

i. Section HFS 163.32 (5) (c) and (9) describe possible forfeiture actions and criminal penalties. Since the department does not have authority to authorize the Attorney General to take action or have authority to impose a criminal penalty, these rule provisions that reflect independent statutory authority should be placed in a descriptive note. It is also questionable whether the department can limit a court's review to "whether or not the forfeiture has been paid" in s. HFS 163.32 (5) (c).

4. Adequacy of References to Related Statutes, Rules and Forms

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

b. In the Note to s. HFS 163.10 (3), "sub." should be replaced with "subs."

c. In s. HFS 163.10 (4) (f), a period should be inserted after "b."

d. In s. HFS 163.11 (2) (a) 4., a period should be inserted after "3."

e. In s. HFS 163.11 (2) (a) 5., a period should be inserted after "4."

f. In s. HFS 163.11 (3) (a) 2. and 3. a., a period should be inserted after "1."

g. In s. HFS 163.14 (5) (b), periods should be inserted after "3" and "4."

h. In s. HFS 163.14 (5) (d) 1., a period should be inserted after "2."

i. In s. HFS 163.14 (6) (i) 3., should the reference to par. (g) refer to par. (h)?

j. In s. HFS 163.23 (2), (3) (a) and (5) (a), should “chapter” be replaced with “subchapter”?

k. In s. HFS 163.31 (2) (g), “subchapter” should be written as “subch.”

l. In s. HFS 163.31 (5) (intro.), “sub.” should be replaced with “subs.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HFS 163.02 (2), in the last sentence, “will” should be replaced with “shall.”

b. In s. HFS 163.03 (1) (b), “Specifically,” should be deleted.

c. In s. HFS 163.03 (1) (b) 4., the comma should be replaced by the word “and.”

d. In s. 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.

e. In the second sentence of s. HFS 163.03 (1) (c), the word “abatement” should be placed within quotation marks.

f. In s. HFS 163.03 (13), it seems that occupants should be included in the list of those containment is meant to protect.

g. In s. HFS 163.03 (16), a comma should be inserted after “written.”

h. In s. HFS 163.03 (17), “blue print” should be written as one word. This change should also be made in s. HFS 163.21 (6) (f).

i. In s. HFS 163.03 (22), “paint” should be inserted before “application history.”

j. In s. HFS 163.03 (23), it appears that a phrase such as “for abatement and lead hazard control” should be inserted at the end of the sentence.

k. The definition of “person” in s. HFS 163.03 (63) should be reviewed. What is a “judicial person”? Also, it appears that “corporation” and “body . . . corporate” mean the same thing. See, also, s. 990.01 (26), Stats.

l. In s. HFS 163.03 (55), the phrase “has the authority to” should be replaced by the word “may.”

m. In s. HFS 163.10 (1) (a) 1., a hyphen should be inserted between “child” and “occupied.”

n. In s. HFS 163.10 (2) (f), a phrase such as “to perform work” should be inserted after “required to be certified.”

o. In s. HFS 163.10 (3) (b) 4. b., it appears that the word "or" should precede the phrase "environmental remediation work."

p. In s. HFS 163.10 (3) (c) 4., "at another time" should be replaced with "for another time." Also, "the transfer" should be replaced with "to reschedule."

q. In s. HFS 163.10 (4) (a), "include" should be inserted after "The applicant shall."

r. In s. HFS 163.10 (4) (f) 3., "A" should be inserted at the beginning of the sentence.

s. In s. HFS 163.10 (4) (g), it is not clear who may qualify for the government certification fee exemption, although it becomes clear later in the chapter. It would be helpful to include a cross-reference to a section that explains the exemption.

t. In s. HFS 163.10 (5) (d), reference is made to a check that is not honored by a bank. Since many more types of financial institutions other than banks use checking systems, this provision is drafted too narrowly. The use of the term "financial institution," along with a definition of that term, may be preferable. The entire rule should be reviewed for the inappropriate use of the word "bank." In addition, a phrase such as "holding the account" should be inserted before the phrase "on which it is written."

u. In s. HFS 163.10 (8) (d) 3., the second comma should be replaced by the word "and."

v. In s. HFS 163.10 (8) (e), "for" should be inserted after "expiration date."

w. In s. 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"?

x. In s. HFS 163.11 (1) (c) and (d), "when" should be replaced with "if."

y. In s. HFS 163.11 (2) (a), the internal cross-references to various subdivisions are not clear or, at least, require the reader to unnecessarily be led through consecutive, multiple cross-references.

z. In s. HFS 163.11 (2) (b), "a course test in the discipline" should be replaced by "the course test."

aa. In s. HFS 163.12 (3) (a) 1. a., "company's" should be inserted before "physical address."

ab. In s. HFS 163.12 (3) (a) 1. e., should the first occurrence of the word "certified" be replaced by the word "authorized"?

ac. The Note to s. HFS 163.13 (6) (d) explains how to request a summary form, although the form is not mentioned in par. (d). Is the summary required to be submitted on the form? If so, this should be clarified.

ad. In s. HFS 163.14 (2) (c) 4., "of units inspected" should be inserted after "numbers."

ae. In s. HFS 163.14 (2) (c) 8., "x-ray fluorescence (XRF) device" should be replaced with "XRF" since XRF is a defined term.

af. In s. HFS 163.14 (3) (i) 2., "screened" should be inserted at the end of the sentence.

ag. In s. HFS 163.14 (3) (i) 4., "of units screened" should be inserted after "number."

ah. In s. HFS 163.14 (3) (i) 13., "device" should be deleted.

ai. In s. HFS 163.14 (4) (j) 2., "assessed" should be inserted at the end of the sentence.

aj. In s. HFS 163.14 (4) (j) 4., "of units assessed" should be inserted after "number."

ak. The title for s. HFS 163.14 (5) is "ABATEMENT." However, in par. (d), notification of a lead hazard reduction activity for which certification is required is mandated. Because a lead hazard reduction activity may be a measure to temporarily control a lead hazard, this is confusing. The department should clarify exactly which provisions apply to an activity for which certification is required and which apply only to abatements. Although it may be rare that an activity short of abatement will require certification, it is possible if the work is court- or agency-ordered to be performed by a certified individual. See also par. (e) 1. a. which mentions interim controls.

al. In s. 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?

am. In s. HFS 163.14 (5) (e) 1. a., the phrase "stop dates" is used. Is this the same as the "end date" as used in par. (d) 3. b.? If so, consistent language should be used. Also see pars. (f) 1. a. and (k) 1.

an. In s. HFS 163.14 (5) (e) 3., "date on the" should be inserted before "department's date."

ao. In s. HFS 163.14 (5) (f) 3., "date of the" should be inserted before the second occurrence of "verbal notification."

ap. In s. HFS 163.14 (5) (k) 3., "that" should be inserted before "information."

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

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

as. In s. HFS 163.14 (6) (e) 3., in the second sentence, "is present" should be replaced with "are present."

at. In s. HFS 163.14 (6) (h), the subdivisions' text should end with periods. Also the abbreviation ug/ft² should either be defined in s. HFS 163.03 or spelled out.

au. In s. 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?

av. In s. HFS 163.14 (8) (b), does the requirement that every component that is being tested be included in the sample mean that every window, for example, must be included in one sample? Will there ever be an instance in which it would be more accurate or helpful to limit the number of components included in the sample?

aw. In s. HFS 163.20 (8) (a) 3. f., would it be accurate to replace "other sources of lead exposure" with "sources of lead exposure other than lead-based paint"?

ax. In s. HFS 163.22 (4) (a), the length of accreditation partially depends on the amount of the fee paid. However, the fees specified are for 0 to 24 months. In addition, it is not clear exactly how the department determines how long accreditation may remain in effect. This comment also applies to s. HFS 163.23 (5) (a).

ay. In s. 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?

az. Under s. HFS 163.22 (6) (a), the department may conduct an on-site audit of an accreditation training course. It appears that current s. 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."

ba. Section HFS 163.22 (6) (c) requires that the department notify a training manager of preliminary audit results. Is the manager notified of final audit results?

bb. In s. HFS 163.23 (1), "more than one year" should be replaced with "one year or more" so that it is clear what is required if the accreditation has been expired for exactly one year.

bc. In s. HFS 163.24 (3) (a) 2. a., "lead" after "(Pb)" should be deleted.

bd. In the second paragraph of the Note following s. HFS 163.24 (3) (a) 3. a., the word "and" should precede the phrase "lead management activities relating to other hazardous materials."

be. In s. HFS 163.24 (3) (b) 5., is the "train-the-trainer" course the same as the "teaching methods" course mentioned in par. (a) 1. a.? If so, consistent terminology should be used.

bf. In s. HFS 163.24 (3) (d), it appears it would be clearer to replace the text with "Subject to compliance with this chapter, the department may grant principal instructor approval which shall be valid until the expiration of the instructor's qualifying lead certification or 12 months, whichever is earlier." A similar change is suggested for par. (e) 3.

bg. In s. 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).

bh. In s. HFS 163.25 (7) (a), "closest office location to Wisconsin" should be replaced with "office location closest to Wisconsin."

bi. In s. HFS 163.25 (7) (b) 2., what is meant by "form used in the course"?

bj. In s. 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).

bk. Section HFS 163.31 (4) (b) would be clearer if written as: "Issuance of a training certificate by a training manager to a person who has not attended the appropriate course or an entire course or who has not passed an approved course test."

bl. Section HFS 163.31 (4) (m) and (n) should specify who must be permitted entry or specify the citation of the provision relating to entry and inspection of work sites.

bm. In s. HFS 163.32 (5) (intro.), it appears that the phrase "fails to respond to a notice of inquiry under sub. (1) by the time specified in the order" should be replaced with "fails to respond to a letter of inquiry under sub. (1) by the time specified in the letter" to be consistent with the language in sub. (1). In addition, the language in sub. (5) (b) is extremely broad without any standards for determining whether a person is "fit and qualified."

Vote Record

Senate Committee on Human Services and Aging

Date: 3/4/99 Executive Session Public Hearing
Bill Number: _____
Moved by: Robson Seconded by: Maxell
Motion: To approve 98-155

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>
Sen. Judy Robson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gwendolynne Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Peggy Rosenzweig	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	_____	_____

Motion Carried

Motion Failed



Tommy G. Thompson
Governor

Joe Leraan
Secretary



State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

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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



WISCONSIN APARTMENT ASSOCIATION

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February 5, 1999

Senator Judy Robson
Chair, Joint Committe on Administrative Rules
Wisconsin State Senate
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson,

I am writing to you today to present to you a concern that I have recently discovered with Emergency Clearinghouse Rule 97-091 the HSS Chapter 163 relating to certification to perform lead abatement that is in front of your Administrative Rules Committee. I understand the need to certify inspectors, risk assessors and those involved in the procedure of lead paint removal are needed. However, the concern I have is and correct me if I am wrong is that nowhere in the rule is mentioned the words "bonded or insured" in the verbiage.

Not having people mandated to be bonded or insured exposes the property owner to a huge liability not to mention the public at large. It has also come to my attention that people and businesses that are already certified to perform lead paint removal cannot be insured or when it is made available to them the cost of insurance is prohibitive to perform this work. This will create non-certified people and companies performing this work in the state.

I would like to inquire at this time if the Department of Family Services is aware of this existing problem and what remedy may be available to this industry.

Thank you for your interest in this matter.

Sincerely,

Robert R. Dennik
Director of Government Affairs

Wisconsin Lead Certification and Training Accreditation Program History

The Bureau of Occupational Health (BOH), Asbestos and Lead Section, of the Wisconsin Department of Health and Family Services (DHFS) administers a lead certification and training accreditation program under the provisions of Chapter 254, Wis. Statutes. Related lead services authorized under ch. 254, Wis. Stats., including exposure screening, medical case management and reporting requirements, are administered by the Wisconsin Childhood Lead Poisoning Prevention Program of the Bureau of Environmental Health. The lead certification and training accreditation and program is administered with program revenues and funds from U.S. Environmental Protection Agency (EPA) lead program development grants.

Under ch. 254, Wis. Stats., program rules must meet but not exceed regulations promulgated by EPA under s. 402 of the Toxic Substances Control Act (TSCA), as created under section 1021 of P.L. 102-550. TSCA also requires the State certification program be approved by EPA in accordance with regulations promulgated under sec. 404 in order for State certification to be recognized after August 30, 1998.

The first lead rules under ch. HSS 163, Wisconsin Administrative Code, took effect in July 1993. These first rules were published by emergency order to enable the Wisconsin Childhood Lead Poisoning Prevention Program and the Department of Administration's Division of Housing to implement a grant from the U.S. Department of Housing and Urban Development. Funds for lead hazard reduction projects under this grant could be used only when the work was conducted by properly trained and certified lead workers and supervisors. Therefore, the original rules covered training and certification of lead workers and supervisors and the accreditation of initial and refresher lead worker and supervisor training courses.

In February 1997, the lead rules were amended by emergency order of DHFS in response to EPA's issuance of real estate disclosure regulations. Under these regulations, a lead inspection or risk assessment could be requested before a contract to purchase became binding. Certification requirements for lead inspectors, risk assessors and project designers and accreditation of the related training courses were added in accordance with final EPA regulations for lead training and certification at 40 CFR Part 745, Subparts L and Q, published August 1996. In addition, an optional certification examination process was established to allow individuals to take the exam before it became mandatory. Permanent rules replaced the emergency rules on November 1, 1997.

The rules were again amended by emergency order of DHFS in August 1998. These emergency rules made the final changes necessary for the state lead training and certification program to qualify for EPA authorization under 40 CFR Part 745 Subpart Q. Major changes included the addition of work practice standards, a mandatory state certification examination, certification of companies offering or performing lead-based paint activities, and a wider variety of enforcement options.

On August 31, 1998, DHFS submitted an application to EPA for authorization to administer and enforce a state lead training and certification program. The Wisconsin lead training and certification program administered by BOH received full authorization effective January 27, 1999.

Hearings were held on proposed final rules, repealing and recreating ch. HSS 163, Wis. Adm. Code, at Madison, Eau Claire, Waukesha and Green Bay in November and December 1998. These proposed final rules revised and added fees, revised principal instructor qualifications, established a common November 1 expiration date for company certification and guest instructor approval, revised course accreditation to allow for either a 2-year or a 4-year term, and limited approval of a principal instructor to 12 months or the date the instructor's qualifying certification expires, whichever is earlier. The final draft form was submitted to the legislature on February 8, 1999, as Clearinghouse Rule 98-155.

BOH currently certifies the following: 33 lead companies, 72 lead workers, 630 lead supervisors, 38 lead inspectors, and 208 lead risk assessors.

Wisconsin Lead Certification Program Description

Bureau of Occupational Health
Asbestos & Lead Section
1414 East Washington Avenue, Room 117
Madison, WI 53703-3043
(608) 261-6876

When Lead Certification is Required

HFS 163, Wis. Adm. Code, applies to lead abatement, HUD lead-based paint grant-funded interim control activities, clearance, lead inspections, lead hazard screens and lead risk assessments conducted in pre-1978 dwellings or child-occupied facilities. *Under HFS 163, Wis. Adm. Code, only a properly certified person may do any of the following:*

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

Lead Company Certification

Effective August 30, 1999 companies, including governmental agencies, must be certified in order to perform, supervise or offer to perform or supervise a lead-based paint activity. Companies may apply for certification after August 30, 1998. Although the proposed annual fee for company certification is \$50, no fee is required until new rules take effect in 1999. Recertification is required annually on November 1st. *Conditions of company certification include:*

- Must agree to employ or contract with only certified persons to perform or supervise regulated lead-based paint activities
- Must agree to follow work practice standards
- Must have an owner or employee authorized to act on company's behalf certified as a lead supervisor before offering lead hazard reduction activities
- Must have an owner or employee authorized to act on company's behalf certified as a lead risk assessor before offering lead management activities

- Individual Certification

An individual applying for initial certification in any discipline identified must be 18 years of age or older, must meet applicable education and experience qualifications, must successfully complete certification training requirements and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, must pass a certification examination.

Lead (Pb) Discipline	Required Training	Required Education and Experience	Annual Fee (Proposed for 1999)	Certification Examination Required	Required Refresher Training (within 3 years)
Worker-Homeowner	•Worker-homeowner or Worker	None	None (\$25/3 yrs.)	No	Worker-homeowner or worker, 1 day
Worker	•Worker-Safety •Worker	None	\$50 (\$50)	No	Worker, 1 day
Supervisor	•Worker-Safety •Worker •Supervisor	One of the following: · 1 year experience as a certified lead worker or supervisor · 2 years experience in a related field	\$100 (\$125)	Yes	Supervisor, 1 day
Project Designer	•Worker-Safety •Worker •Supervisor •Project Designer	One of the following: · BA/BS degree & 1 year experience in building construction & design or related field · 4 years experience in building construction & design or related field	\$250 (\$175)	No	Project Designer, ½ day
Inspector	•Worker-Safety •Inspector	None	\$150 (\$150)	Yes	Inspector, 1 day
Risk Assessor	•Worker-Safety •Inspector •Risk Assessor	One of the following: · BA/BS degree & 1 year experience in related field · AA/AS degree & 2 years experience in related field · High School diploma & 3 years experience in a related field · Professional certification as an IH, Professional engineer, registered architect, or related field	\$250 (\$175)	Yes	Inspector, 1 day <i>and</i> Risk Assessor, 1 day

Lead Training

To meet certification requirements, training must be taken from a course accredited by DHFS or accredited by another EPA-authorized program and approved by DHFS.

- **Worker Safety** – This non-accredited training is a prerequisite to all accredited lead courses, except worker-homeowner. The worker safety training must cover OSHA lead in construction worker safety requirements on personal protection equipment, hygiene practices, basic lead engineering controls, general worker safety issues, and must include hands-on practice.
- **Worker-Homeowner** – 16-hours
- **Worker** – 16-hours (prerequisite to Supervisor)
- **Supervisor** – 16-hours (prerequisite to Project Designer)
- **Project Designer** – 8-hours
- **Inspector** – 24-hours (prerequisite to Risk Assessor)
- **Risk Assessor** – 16-hours

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.a.l. 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.a.q. 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.a.r. 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.a.t. 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.

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

Rule Reference

Comment

Department Response

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 recommends 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 AIHA. 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.

Rule Reference

HFS 163.14 (2) (c),
(3) (i), (4) (j)

Comment

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)

Department Response

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.

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

HFS 163 General

Comment

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)

Department Response

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.